

Chapter 2

Examination of the Annual Report

The role of the Australian Commission for Law Enforcement Integrity

2.1 Section 15 of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) sets out the functions of the Integrity Commissioner. In summary these functions are to:

- detect, investigate and prevent corruption in law enforcement agencies;
- maintain and improve the integrity of staff members of law enforcement agencies; and
- collect and process intelligence on corruption in law enforcement.

The ACLEI Model

2.2 The Annual Report emphasises two interrelated features that broadly characterise the 'ACLEI model':

- ACLEI and the agencies it oversees work in an anti-corruption partnership with a complementary mix of external and internal corruption controls
- ACLEI is an anti-corruption body and not a police complaints body

The 'unique ACLEI model' – an integrated approach

2.3 The Integrity Commissioner described the 'unique ACLEI model' as 'an integrity system that is integrated with the agencies it oversees but which retains the key element of independent authority'.¹

Mandatory notification

2.4 Within the ACLEI model there is a statutory requirement for the agencies under ACLEI's oversight to notify ACLEI of all potential corruption issues.² Misconduct matters of a less serious nature are dealt with internally. This approach places the primary responsibility for creating and maintaining a culture of integrity with the agency under oversight. At the same time, it enables ACLEI to focus its attention on serious and systemic corruption.

2.5 The Annual Report notes that ACLEI was satisfied with the 'timeliness and completeness of notifications' over the reporting period.³

1 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 2.

2 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 4.

3 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 27.

Relationships with agencies under ACLEI's jurisdiction

2.6 The Integrity Commissioner described a continuing productive relationship between ACLEI and the AFP and ACC and stated:

The year saw the maturing of the cooperative relationship that ACLEI has fostered with the ACC and the AFP since its inception.⁴

2.7 Consistent with the Integrity Commissioner's observation, Commander Mark Walters, Manager of the AFP's Professional Standards, remarked:

I believe that the relationship we have with ACLEI is a very productive, very effective one. I have been in the role for eight months now. ... In my time in the role, I have seen an increased engagement between the AFP and ACLEI. The level of interaction, as I said, is quite high. We get terrific support right from the Integrity Commissioner through to all the staff of ACLEI in all aspects of the work that we do within Professional Standards.⁵

2.8 Mr Andrew Wood, Chief Operating Officer, AFP, reflected on the AFP's internal integrity arrangements emphasising in particular, the efforts to embed the AFP's values and standards of integrity in the work culture:

There are several layers to the integrity infrastructure that we have in place but the most important one in my view is that we actually have the executive out there talking about it and then we have the protocols and structures underneath to reinforce just why we regard it as so important.⁶

2.9 The recently appointed CEO of the ACC, Mr John Lawler APM, observed:

We need a very strong and practical working relationship with ACLEI and particularly the commissioner. My sense is that that relationship has already been in place and continues.⁷

2.10 Mr Lawler informed the committee that during his short time with the ACC he has been 'impressed' with developments in the ACC's 'integrity regime', noting in particular the ACC's new drug and alcohol policy and a comprehensive ethics awareness training program, which will be delivered to all staff over the next twelve months.⁸ He noted, however, that:

Training seminars and drug testing and a range of other anticorruption measures need to be influenced by a change in culture or by an enhancement of culture, and that is something in the context of the ACC,

4 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 3.

5 Commander Mark Walters, AFP, *Committee Hansard*, 13 March 2009, p. 23.

6 Mr Andrew Wood, AFP, *Committee Hansard*, 13 March 2009, p. 23.

7 Mr John Lawler APM, ACC, *Committee Hansard*, 13 March 2009, p. 36.

8 Mr John Lawler APM, ACC, *Committee Hansard*, 13 March 2009, pp 34-35.

given the diversity of the workforce that comes to join us, that has to be constantly reinforced in my view.⁹

2.11 The committee commends ACLEI for its efforts to foster a constructive relationship with the agencies under its jurisdiction and notes also the importance that those agencies assign to the integrity-building process.

Anti-corruption body

2.12 ACLEI further consolidated its role as an anti-corruption agency during the reporting year.

2.13 Section 16 of the LEIC Act stipulates that the Integrity Commissioner must give priority to corruption issues that constitute serious or systemic corruption. As set out in ACLEI's previous annual report, such a focus distinguishes ACLEI from a police complaints body.¹⁰ The purpose of a complaints agency is to provide an avenue of recourse to individuals who feel they have been treated unfairly, unreasonably or improperly. A complaint management agency must address all complaints. The purpose of an anti-corruption body is to detect and prevent corruption and raise standards of integrity. In order to achieve this, attention is directed towards matters of a serious nature.¹¹ As stated in the Annual Report:

In establishing the new Commonwealth law enforcement integrity regime, it was never envisaged that the Integrity Commissioner would investigate every corruption issue.¹²

2.14 Mr Moss informed the committee that during the reporting period ACLEI had gained a greater appreciation of the differences between an anti-corruption agency and a complaints-handling body.¹³ Two issues regarding ACLEI's anti-corruption role were highlighted in the Annual Report and inquiry evidence: the assessment process and the approach to informants.

The assessment process

2.15 The Integrity Commissioner explained that potential corruption issues are prioritised according to the seriousness of the issue and the anticipated impacts that ACLEI's intervention will cause:

Under our prioritisation arrangements, ACLEI assesses each corruption issue as to its seriousness and the likelihood that intervention by ACLEI will be beneficial to detecting or investigating corruption. Cases are

9 Mr John Lawler APM, ACC, *Committee Hansard*, 13 March 2009, p. 35.

10 See in particular, Table One in ACLEI, *Annual Report of the Integrity Commissioner 2006-07*, p. 18.

11 PJC-ACLEI, *Inquiry into Law Enforcement Integrity Models*, February 2009, p. 8.

12 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 4.

13 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 14.

assessed and reassessed against this matrix and resources are allocated to where they will be of most use.¹⁴

2.16 The Annual Report also noted the 'changing complexity' of matters requiring assessment and identified three factors underpinning this:

- Corruption issues notified or referred to ACLEI are now more likely to be about contemporaneous (and even imminent) matters, requiring more timely assessment and response by ACLEI;
- Many of the corruption issues previously notified to ACLEI by the ACC and the AFP had already been subject to at least preliminary investigation by those agencies. As ACLEI now receives notifications earlier, the task of assessing those issues has shifted towards ACLEI; and
- As ACLEI gains greater access to information sources, corruption issues can be assessed more thoroughly, although it may take longer as a consequence.¹⁵

2.17 In order to manage this changing complexity within ACLEI's resources the Annual Report stated that in the future ACLEI would make more use of the options provided for in the LEIC Act, which allow ACLEI to refer matters back to the law enforcement agencies for investigation, whilst retaining a supervisory role.¹⁶

2.18 The committee supports this approach providing that matters referred back to the law enforcement agencies fall reasonably within their remit. The committee is concerned, however, that borderline matters that would perhaps more appropriately be handled by ACLEI may be referred back to the law enforcement agency because ACLEI does not have sufficient resources, capacity or infrastructure to investigate them. This would, the committee concludes, simply shift the resourcing pressures on to those law enforcement agencies.

2.19 Within this context the committee notes the comments of the ACC's CEO Mr John Lawler APM:

I just make the point that the commissioner and the commission are working in a very complex area, an area that has a whole array of different dimensions to it. One of the ways that these matters are advanced is to refer them back to the ACC for further examination... the ACC does not have a strong and deep internal investigations or code of conduct capacity. We have quite a large number of matters that fall into that category and limited capacity and experience to deal with the complexity of these matters.¹⁷

14 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 4.

15 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 40.

16 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 40.

17 Mr John Lawler APM, ACC, *Committee Hansard*, 13 March 2009, p. 36.

2.20 The committee will monitor this matter.

Approach to informants

2.21 As an anti-corruption agency, ACLEI deals with informants rather than complainants. While complaints may be brought forward to ACLEI, these are treated as pieces of information that may help to uncover corruption in order, ultimately, to improve standards of integrity. As noted above, unlike a complaint-handling body, ACLEI's primary purpose is not to provide some form of resolution for the complainant (although this may be a secondary outcome of the process) but to make findings of fact and make recommendations that will eliminate or mitigate the corruption risk.¹⁸

2.22 Within this context it is important to manage the expectations of individuals bringing forward information to ACLEI who may view themselves as aggrieved complainants rather than informants. Mr Moss informed the committee that ACLEI is striving to improve its performance in this regard. He outlined ACLEI's approach:

In our initial contact in our written responses we would seek to make it very clear as to what our aims were and also, I think where appropriate, to increase the personal contact if we could. If a person were local or if we were making a trip interstate and that person was in that locality, we would seek a face-to-face opportunity if they wanted to and in a place that was acceptable to them. I think it is the quality of that contact whereby you are able to fully understand what they are seeking and then to also convey to them what ACLEI's role and purpose is and to try and get a concordance there and understanding that is acceptable to both. And to be able to say to people: look, we will take your matter but it will not be investigated, but it will perhaps be considered back on information that ACLEI holds and maybe brought forward in some other context but perhaps not specifically in relation to you or provide a specific resolution for you.¹⁹

2.23 The committee recognises that the role of a body such as ACLEI is relatively new and at a general level not well understood. The committee anticipates that as ACLEI's work is more widely promoted the incidence of these misunderstandings will diminish. The committee notes ACLEI's efforts to better communicate its role to informants.

Progress towards outcomes

2.24 Annual reporting by Australian Government agencies is based on an 'outcome and output' structure, which is derived from the Portfolio Budget Statements. These

18 Recommendations and actions may include proposed changes to agency policies and practices, recommended disciplinary action against individual law enforcement officers or, in the event of evidence of an offence, the referral of evidence to the relevant public prosecution agency or police force, ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, pp 14-15.

19 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, pp 14-15.

statements are published as part of the annual Budget process with a statement prepared for each agency. The structure includes performance measures.²⁰

2.25 ACLEI had one outcome and one output in the 2007-08 year:

Outcome: Assurance that Australian Government law enforcement agencies and their staff act with integrity

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

Performance measures

2.26 ACLEI's outcome and output are achieved with reference to qualitative and quantitative performance measures. The performance measures for 2007-08 included:

Quality measures:

- Serious and systemic corruption in law enforcement is identified and addressed
- The quality of internal investigations into corruption matters by law enforcement agencies is monitored
- Law enforcement agency plans to prevent corruption and improve integrity are oversighted
- Reports by the Integrity Commissioner are accepted by the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
- The public is made aware that corruption allegations can be referred to the Integrity Commissioner for investigation

Quantity measures:

- Number and complexity of investigations
- Amount and complexity of intelligence gathering
- Proportion of recommendations stemming from investigations that are accepted by the relevant agency
- Proportion of recommendations relating to potential criminal charges that proceed to prosecution
- Success rate for confiscation proceedings under the *Proceeds of Crime Act 2002*
- Number of reports/submissions to Government

20 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 20.

-
- Number of presentations to Government and the community on integrity in law enforcement and the role of ACLEI²¹

2.27 The committee is satisfied that the performance report included in the Annual Report corresponds with the above measures as well as meeting the performance reporting requirements set out in the LEIC Act and LEIC Regulations.

2.28 The committee notes, however, that the performance measures set out above have since been revised and will not apply to the 2008-09 reporting year. In reference to the performance measures the Annual Report stated:

These measures were devised early in ACLEI's existence and have proved to be aspirational, given ACLEI's resources. Many of these measures do not give a realistic basis for assessing the range of work that ACLEI undertakes to improve integrity, because they focus on investigation outcomes.

Revised measures have since been adopted in the 2008–09 Portfolio Budget Statements and will apply for activity from 1 July 2008.²²

2.29 The committee further notes that during the examination of the previous annual report the Integrity Commissioner pointed to the limits of the reporting requirements set out in the LEIC Regulations. The Integrity Commissioner informed the committee that these requirements were better suited to a police complaints body and not an anti-corruption body.

2.30 As noted in the committee's examination of ACLEI's 2006-07 annual report, the committee is of the view that the regulations should be revised within the context of the prescribed three-year review of the LEIC Act.

Performance measurement in the anti-corruption field

2.31 The Annual Report outlines the difficulty in measuring performance in the anti-corruption field:

The nature of corruption, particularly law enforcement corruption, is that it seeks to remain undetected. In the absence of data about how much corruption exists, it is difficult to assess the impact of an anti-corruption agency. Is the detection of corruption a sign that corruption is prevalent or merely that detection strategies are working? If no corruption were detected, does it mean there is no corruption? Further, even if no prosecutions eventuate from investigations, does it mean that there has been no deterrent effect?²³

21 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, pp 23-25.

22 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 22.

23 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 22.

2.32 Notwithstanding this difficulty, the committee believes that sound performance measures can assist in achieving good practice and providing greater assurance to the public and to government. As noted in its report on law enforcement integrity models, the committee believes there is merit in developing performance measurement in the anti-corruption field.²⁴ The committee recognizes, however, that ACLEI currently does not have the resources to undertake such work. For this reason, the committee views this as a longer term priority.

Anti-corruption plan reviews

2.33 As presaged in the previous annual report, ACLEI reached agreement with the AFP and ACC to undertake reviews of those agencies' anti-corruption plans. These reviews have since commenced.

2.34 Commander Walters explained that the review of the AFP's anti-corruption plan was agreed between the Police Commissioner and the Integrity Commissioner in June 2008. The review is being conducted according to four phases:

- establishing a board of reference;
- evidence-gathering;
- analysis of evidence; and
- reporting on the anticorruption risks.²⁵

2.35 The Annual Report states that the primary purpose of these reviews is to 'assist ACLEI to understand the range of corruption risks facing each agency, and how those risks are currently being managed.'²⁶ The committee sees considerable value in this 'corruption risk assessment'²⁷ approach. It will strengthen ACLEI's capacity to detect corruption and will assist the law enforcement agencies to increase their corruption resistance.

Assessments and investigations

2.36 Mr Moss informed the committee that since the last reporting period ACLEI has been building its investigation and report writing experience and expertise:

In the operations area, we have been skilling ourselves to conduct solid, fair and reliable investigations and to produce high quality reports.²⁸

24 PJC-ACLEI, *Inquiry into Law Enforcement Integrity Models*, February 2009, p. 73.

25 Commander Mark Walters, AFP, *Committee Hansard*, 13 March 2009, p. 23.

26 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 30.

27 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 17.

28 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 2.

2.37 Two issues were considered by the committee regarding the assessment and investigation processes: the increase in matters notified and referred, and accountability with respect to the assessment process.

Increasing workload

2.38 ACLEI reported that the increase in notifications and referrals during the reporting period was 'noticeable'²⁹ and that this upward trend was continuing in the 2008-09 year.³⁰ A graph of this trend is included at Attachment 3.

2.39 The Integrity Commissioner, Mr Moss, informed the committee that as of 12 March 2009, ACLEI had received 102 corruption issues.³¹ A total of forty-five corruption issues were notified /referred to the Commissioner in the 2007-08 year,³² up from eighteen matters in the previous financial year.³³

2.40 Mr Moss pointed to two main reasons for the increase in workload: the promotion of ACLEI and its work and the complexity of matters notified and referred. He explained that:

[A]s ACLEI's existence has become better known, ACLEI has attracted information from whistleblowers, other integrity agencies and from other government agencies. ...Secondly, the complexity of some of ACLEI's work was not perhaps anticipated.³⁴

2.41 The increasing workload is given further consideration later in this chapter.

Auditing of assessments

2.42 The committee sought information on the measures in place to ensure the integrity of the assessment process and, in particular, matters that are assessed as requiring no further action. Mr Moss informed the committee that there is no external audit of the assessment process and nor is he required to report to the Minister on matters in which the decision to take no further action has been made. Mr Moss stated, 'as such, there is no check on my decision'.³⁵

29 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 40.

30 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 3.

31 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 3.

32 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 2.

33 It should be noted that ACLEI was only in operation for the second six months of the previous financial year and, therefore, it would be more accurate to compare the 2006-07 figure of eighteen with half the total for 2007-08 – that is 22.5 matters. However, of those eighteen matters referred or notified in 2006-07, several were in fact matters that had arisen prior to ACLEI's establishment thus inflating the 2006-07 figures.

34 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 3.

35 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 8.

2.43 However, Mr Moss explained that within ACLEI 'there is considerable effort to determine how a matter should be dealt with and indeed whether a matter should be investigated' and he explained that the following measures keep the assessment process in check:

- All matters notified or referred to the Integrity Commissioner go through a systematic assessment process that involves more than one ACLEI officer as well as the Integrity Commissioner;
- Informants may request the Integrity Commissioner to reconsider a decision; and
- Informants may raise their dissatisfaction with the Commonwealth Ombudsman.³⁶

2.44 The committee is satisfied that there is currently sufficient rigour and breadth of input in the assessment process to ensure that each matter is dealt with fairly and appropriately. The committee further considers there are sufficient avenues for informants to seek reconsideration of their concerns.

Patterns and trends

2.45 The Annual Report noted that the types of matters referred and notified to ACLEI during the reporting period were consistent with those in the previous year. Allegations and information predominantly fell within the following areas of law enforcement corruption risk:

- providing false evidence to courts;
- improper involvement with the manufacture, importation, distribution and supply of illicit drugs; and
- unauthorised release of confidential information, including law enforcement methodologies.³⁷

2.46 It was noted that these trends were expected to continue.

2.47 The Annual Report further reported that two corruption risks held prominence in investigations across the state and Commonwealth jurisdictions:

- Relationships with former law enforcement officers – unauthorised disclosure of information by currently serving officers to former officers
- High profile operatives – 'occupying a senior position does not provide immunity from corruption – high profile or senior people in an organisation may have a particular vulnerability because of their ability to avoid close supervision'.³⁸

36 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 9.

37 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 51.

38 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, pp 52-53.

Potential impacts of the global financial crisis

2.48 The Integrity Commissioner brought to the committee's attention the potential impacts of the global financial crisis on crime and corruption. He explained:

There are theories emerging that, of course, more corruption will occur as a result of the economic downturn...The proponents of the theory say that, because of a corruption perfect storm, organised crime recognises and exploits the opportunities to gain access to information and to form other illicit collaborations. People are more vulnerable or susceptible to acting corruptly when they are under financial pressure. People are more prepared to cover up or not report misconduct in times of crisis; that is, the moral climate changes. There can be a cut to corruption control protection and deterrence programs in times of financial crisis; that is, the deterrence environment weakens.³⁹

2.49 Mr Moss noted that ACLEI are keeping a watching brief on this matter. However, on questioning from the committee it was established that current resources do not provide for a dedicated focus on this specific matter or on international anti-corruption developments.

2.50 The committee recognises that ACLEI has directed considerable effort to building relationships with state counterparts and other relevant agencies in order to 'build a picture of corruption vulnerabilities in law enforcement'. The committee also believes that within the staffing and financial resources available, ACLEI's achievement in keeping pace with emerging corruption risks, research and development is to be commended.

2.51 The committee remains concerned, however, that ACLEI is not resourced adequately to undertake a strong, dedicated corruption prevention, education and research role.⁴⁰ The committee notes that the Integrity Commissioner similarly sees merit in developing this aspect of ACLEI's work.⁴¹

Exercise of powers

2.52 The Integrity Commissioner is granted a range of powers for the purposes of conducting investigations and public inquiries. The Annual Report reports on the powers used in the 2007-08 reporting period.⁴² These are summarised in the table below.

39 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 7.

40 The committee noted these concerns in its recent inquiry into law enforcement integrity models.

41 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 30.

42 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, pp 46-47.

Notice to a law enforcement agency officer to provide information or produce documents or things	s. 75(1), LEIC Act	5
Notice to a person other than a law enforcement agency officer to provide information or produce documents or things	s. 75(1)(b), LEIC Act	26
Summons to attend a hearing to give evidence and/or produce documents or things	s. 83, LEIC Act	5
Power of entry	s. 105, LEIC Act	0
Application for, and execution of, search warrants	s. 107-138, LEIC Act	0
Telecommunications interception and access	<i>Telecommunications (Interception and Access) Act 1979</i>	0
Use of surveillance devices	<i>Surveillance Devices Act 2004</i>	0
Controlled operations	Part 1AB, <i>Crimes Act 1914</i>	0
Assumed identity	Part 1AC, <i>Crimes Act 1914</i>	0
Applications to the Federal Court for delivery of a witness's passport or for their arrest	s. 197-101, LEIC Act	0

2.53 ACLEI anticipates that some of the above powers will be used within the context of joint investigations in the 2008-09 year.

Coercive information-gathering power

2.54 Mr Moss informed the committee that in the 2007-08 reporting period ACLEI had, amongst other things, developed its coercive information gathering capacity through holding private hearings:

We learned more about the ways ACLEI might operate more effectively, for example, in holding coercive information gathering hearings.⁴³

2.55 The capacity to hold coercive hearings is one of ACLEI's principal powers and the committee anticipates that it will be employed increasingly over time. Such capacity is, as previously reported by the committee, integral to the work of ACLEI. As previously recommended by the committee, ACLEI should be better resourced to use this capacity, specifically through access to a purpose built hearing room in Canberra.⁴⁴

43 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 2.

44 PJC-ACLEI, *Inquiry into Law Enforcement Integrity Models*, February 2009, p. 74.

Promoting ACLEI

2.56 ACLEI currently promotes its presence and work in the following ways:

- Presentations to ACC and AFP staff courses
- Presentations to other agencies about ACLEI's role
- Public presentations
- Information and reports are published on its website

2.57 AFP witnesses identified the ways in which ACLEI is internally promoted to staff:

- As part of the 'values sessions'⁴⁵;
- ACLEI staff presentations in recruit training;
- An article in the AFP magazine;
- Information on the internal website.⁴⁶

2.58 Ms Bailey, Executive Director Organisational Services, ACC concluded that ACC staff have a 'reasonably good' awareness and understanding of ACLEI's role.⁴⁷

2.59 The committee is satisfied that ACLEI has gained a stronger presence amongst the staff of those agencies it oversees. This is confirmed by the increase in information being brought forward to ACLEI and the inclusion of ACLEI on the training and information agendas of the AFP and the ACC. The committee would expect to see ACLEI's profile increasing over the current financial year.

Management

Achieving corporate autonomy

2.60 During the 2007-08 year ACLEI achieved corporate autonomy from the Attorney-General's Department. This included the following:

- The shift to a stand alone payroll system
- The procurement and implementation of ACLEI's Financial Management and Information System (FMIS)

45 In 2008, AFP Deputy Commissioners conducted sessions around the country with all AFP staff to discuss the AFP values and ethical conduct.

46 Commander Mark Walters and Mr Andrew Wood, AFP, *Committee Hansard*, 13 March 2009, p. 28.

47 Ms Jane Bailey, ACC, *Committee Hansard*, 13 March 2009, p. 39.

2.61 The Annual Report notes that the implementation of an FMIS involved the development of a new Chart of Accounts, which is designed to accommodate changes to ACLEI's future operations.⁴⁸

Organisational structure

2.62 The Annual Report notes that following the budget announcement of increased funding for ACLEI in 2008, the organisational structure was reviewed and a new staffing structure introduced to better accommodate the workload. The new structure was also designed to allow for increased staffing levels should growth occur.⁴⁹

2.63 The committee understands that the changed structure has been independently assessed and endorsed.

Staff retention

2.64 The Annual Report states that no staff left ACLEI during the reporting period. For an organisation still in the relatively early phases of development, this rate of retention is, the committee believes, a positive indicator of a healthy and productive work environment.

Security

2.65 The committee recognises the importance of high-level security for an agency such as ACLEI and notes the review of ACLEI's security risks and security measures, which was scheduled for 2008-09. The committee will monitor the outcomes of this review.

Governance and accountability

2.66 ACLEI has a number of internal and external governance and accountability mechanisms, which underpin ACLEI's operations and provide assurance that ACLEI is exercising its significant powers in an ethical and appropriate manner.

Internal arrangements

2.67 The committee notes that during the 2007-08 reporting period the set up of internal accountability mechanisms was advanced from the previous year.

Internal Audit Committee

2.68 The committee welcomed the establishment of ACLEI's Audit Committee, which held its inaugural meeting in February 2008. The committee concurs with

48 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 57.

49 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 64.

ACLEI's view that the Audit Committee is an integral part of ACLEI's governance structure.⁵⁰ It brings valuable external expertise to inform decision-making and provides a clear forum through which to advise on and keep in check internal control and reporting systems.

2.69 The Audit Committee is comprised of external and internal members and operates within terms of reference that have been developed in accordance with the *Financial Management and Accountability Orders 2005*.

2.70 The Audit Committee is appointed by the Integrity Commissioner and acts in an advisory capacity in the following areas:

- Internal control systems;
- risk management;
- financial reporting and control of public money and assets; and
- compliance with relevant laws, rules, regulations and directions.⁵¹

Internal accountability mechanisms

2.71 ACLEI's internal accountability mechanisms include: clear procedures, high ethical standards, quality review of performance and privacy management. The committee is satisfied that ACLEI has further established its internal accountability arrangements.⁵²

External mechanisms

2.72 Along with the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, a number of external mechanisms are in place to monitor the operations and performance of the organisation and provide safeguards for the use of the Integrity Commissioner's considerable powers.

'Process accountability'

2.73 The Report explains that a range of ACLEI's powers and authorities 'require the prior approval of an external authority, in the form of, for example, search warrants, warrants to use or retrieve surveillance devices or intercept telecommunications.'⁵³

50 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 58.

51 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 58.

52 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, pp 77-79.

53 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 73.

2.74 In addition to this, ACLEI is compelled by law to report on the use of certain powers to the Attorney-General and in some cases to the Parliament.⁵⁴

Judicial review

2.75 Like all agencies that exercise law enforcement powers, the authorities and powers of ACLEI and the Integrity Commissioner are open to judicial review. ACLEI was not involved in any court or tribunal proceedings during the reporting period.⁵⁵

Commonwealth Ombudsman

2.76 The Report notes that the Commonwealth Ombudsman contributes to the accountability of ACLEI in three ways:

- independent investigation of complaints about ACLEI;
- own motion investigation into matters of ACLEI's administration; and
- monitoring ACLEI's compliance with legislation relating to use of intrusive and covert powers.⁵⁶

2.77 In the 2007-08 reporting period there were no notifications by the Commonwealth Ombudsman of investigations into complaints about ACLEI or own motion investigations. ACLEI did not use powers subject to inspection by the Commonwealth Ombudsman.⁵⁷

Reports to the Minister for Home Affairs

2.78 Under the LEIC Act the Integrity Commissioner must provide the Minister for Home Affairs with investigation reports. If a public hearing has been held during an investigation the Minister is compelled under the LEIC Act to present the report to both Houses of Parliament within 15 sitting days of receiving it. If no public hearings are held in the course of an investigation, release of the report by the Minister is discretionary.⁵⁸

2.79 Special reports relating to the operations or the functions and powers of the Integrity Commissioner may be provided to the Minister at any time, for presentation to the Parliament.⁵⁹

2.80 During the reporting period the Integrity Commissioner gave two investigation reports to the Minister for Home Affairs. Recommendations were made

54 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 74.

55 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 74.

56 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 75.

57 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 75.

58 Section 203, LEIC Act.

59 Section 204, LEIC Act.

in the second of these reports, which concerned the AFP.⁶⁰ Commander Walters from the AFP confirmed that in response to the recommendation the AFP undertook a review of relevant guidelines and procedures. The Integrity Commissioner is currently considering the report of that review.⁶¹

Auditor General

2.81 The Auditor-General is responsible under the *Auditor-General Act 1997* for providing auditing services to the Parliament and public sector entities such as ACLEI. ACLEI was not subject to a performance audit by the Auditor-General in the 2007-08 reporting period.⁶²

Senate estimates

2.82 Estimates of government expenditure are referred to Senate committees as part of the annual budget cycle. The Integrity Commissioner appeared before the Senate Standing Committee on Legal and Constitutional Affairs on 18 February 2008 (additional estimates) and 26 May 2008 (Senate estimates).⁶³

Funding shortfall

2.83 As noted earlier, ACLEI has experienced an increase in workload, which has outpaced the resources allocated to it. The Integrity Commissioner, Mr Moss, explained that:

The legislative framework is sufficient to perform this function but the work involved for a small agency to achieve it was, I submit, underestimated.⁶⁴

2.84 The possibility that insufficient resources to meet this growing workload will result in investigation delays was raised in the Annual Report and inquiry evidence.

Impact of lengthy investigations

2.85 The Annual Report stated that:

The Integrity Commissioner has been concerned about delays that might be caused by a workload that has been larger than anticipated. In practice, no investigations have been compromised...Nevertheless, the Integrity

60 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, pp 49-50.

61 Commander Mark Walters, AFP, *Committee Hansard*, 13 March 2009, p. 24.

62 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 76.

63 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 73.

64 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 4.

Commissioner is monitoring this aspect of ACLEI's performance, as there is a growing backlog of matters to be finalised.⁶⁵

2.86 During the public hearing the Integrity Commissioner reiterated his concern that a larger than anticipated workload may result in assessment and investigation delays, in turn potentially adding to the pressure on those individuals under investigation and impacting negatively on affected agencies:

I am aware of the inconvenience to individuals and of the stress that can be caused when ACLEI cannot act swiftly to finalise issues. I am also aware of the potential for damage to reputations of the ACC and the AFP and the difficulties they face in managing workplaces where corruption issues are not concluded quickly.⁶⁶

2.87 Mr John Lawler APM, CEO of the ACC commented on the need to ensure that matters are resolved as 'expeditiously as possible' and stated:

The issue of timeliness is something that the commissioner has raised with me and is working hard to try and give effect to but it is not always easy.⁶⁷

2.88 The committee has noted elsewhere its concern about ACLEI's level of funding.⁶⁸ The committee believes it is imperative that ACLEI's base level funding be reviewed to ensure it is commensurate with the number of corruption matters being referred and notified to the Integrity Commissioner.

2.89 The committee had anticipated that the examination of ACLEI's annual report would provide an opportunity to further examine the apparent variance between ACLEI's funding and ACLEI's increasing workload. The committee has in the past attempted to obtain information on the original costing undertaken by the Attorney-General's Department to establish ACLEI. During this inquiry, the committee sought to elicit information on revised analyses that may have been undertaken in response to ACLEI's growing workload. Limited information was provided on both occasions.

2.90 The Attorney-General's Department is the body responsible for the administration of its portfolio agency, ACLEI. This committee, the PJC-ACLEI, is responsible for monitoring the performance of the Integrity Commissioner and ACLEI. The committee sees these two different roles as complementary and anticipated a mutually constructive relationship. The committee is, therefore, disappointed that the Attorney-General's Department has not adopted a more cooperative approach.

65 ACLEI, *Annual Report of the Integrity Commissioner 2007-08*, p. 27.

66 Mr Philip Moss, ACLEI, *Committee Hansard*, 13 March 2009, p. 4.

67 Mr John Lawler APM, ACC, *Committee Hansard*, 13 March 2009, p. 36.

68 PJC-ACLEI, *Inquiry into Law Enforcement Integrity Models*, February 2009, p. 69.

2.91 The committee will continue to seek assistance and information from the Attorney-General's Department and hopes that in future this will be more forthcoming.

2.92 In the absence of sufficient information from the Department at this point in time, the committee repeats its call for an urgent review of ACLEI's funding.

Recommendation 1

2.93 The committee recommends that the Australian Government undertake a review of the funding levels of the Australian Commission for Law Enforcement Integrity as a matter of urgency.

