



Australian Government

**Australian Commission for
Law Enforcement Integrity**

Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

*Inquiry into the jurisdiction of the Australian
Commission for Law Enforcement Integrity*

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

17 April 2014

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 Commission for Law Enforcement Integrity (the Committee) concerning its *Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*.

At the invitation of the Committee, ACLEI is providing a preliminary submission with regard to the second term of reference, “the desirability and feasibility of extending ACLEI’s jurisdiction to include the entire Department of Agriculture or additional parts of that department.” At a later date, ACLEI will make a further submission addressing the remaining terms of reference.

To assist the Committee, Part 2 of this submission provides background about ACLEI’s role and responsibilities, and Part 3 provides comments relating to the inclusion of the Department of Agriculture in the Integrity Commissioner’s jurisdiction on a whole of agency basis.

2. Role and responsibilities of ACLEI

Establishment

The office of 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.*

The agencies subject to the Integrity Commissioner’s jurisdiction under the LEIC Act are the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Federal Police; the Australian Transaction Reports and Analysis Centre (AUSTRAC), the CrimTrac Agency, prescribed aspects of the Department of Agriculture and the former National Crime Authority.

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 corrupt conduct 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 with law enforcement functions 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.

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

- a corruption issue or issues;
- an issue or issues about corruption generally in law enforcement agencies; 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, Minister for Justice 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 agencies. Accordingly, the Integrity Commissioner:

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

Receiving and disseminating information about corrupt conduct

The LEIC Act establishes a framework whereby the Integrity Commissioner and the agency heads can prevent and deal with corrupt conduct jointly and cooperatively. The arrangement recognises both the considerable work of the agencies in the Integrity Commissioner's jurisdiction 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 staff members.

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 in his or her agency (section 19).

The LEIC Act also enables any other person, including members of the public or other government agencies or the Minister, to refer a corruption issue to the Integrity Commissioner.

Further, ACLEI is authorised under the *Telecommunications (Interception and Access) Act 1979* to receive information about any corruption issue involving an agency within the LEIC Act jurisdiction that may be identified by other integrity agencies or law enforcement agencies 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.

The Integrity Commissioner may disclose information to the head of a law enforcement agency, or other government agency, if satisfied that, having regard to the functions of the agency concerned, it is appropriate to do so.

The Integrity Commissioner is exempt from the operation of the *Privacy Act 1988*, reflecting the importance of ACLEI's collection and intelligence-sharing role.

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Investigation options

The Integrity Commissioner decides independently how to deal with any allegations, information or intelligence about corrupt conduct concerning the agencies in ACLEI's jurisdiction.

The Integrity Commissioner is not expected to investigate every corruption issue that arises in Commonwealth law enforcement. Rather, the Integrity Commissioner's role is to ensure that indications and risks of corrupt conduct in law enforcement agencies are identified and addressed appropriately.

The Integrity Commissioner can choose from a range of options in dealing with a corruption issue. The options are to:

- investigate the corruption issue;
- investigate the corruption issue jointly with another government agency;
- refer the corruption issue to the law enforcement agency for internal investigation (with or without management or oversight by ACLEI) and to report findings to the integrity Commissioner;
- refer the corruption issue to another agency, such as a State integrity agency, the AFP, or another government agency, for investigation; or
- take no further action.

Section 27 of the LEIC Act sets out the matters to which the Integrity Commissioner must have regard in deciding how to deal with a corruption issue.

With these matters in mind, the Integrity Commissioner will investigate when there is advantage in ACLEI's direct involvement. Under the LEIC Act, the Integrity Commissioner must also give priority to serious or systemic corruption.

Accordingly, the Integrity Commissioner gives priority to corruption issues that may:

- may indicate a suspected link between law enforcement and organised crime;
- involve suspected conduct (such as the use of illicit drugs) which would undermine a law enforcement agency's functions;
- bring into doubt the integrity of senior law enforcement managers;
- relate to law enforcement activities that have a higher inherent corruption risk;
- warrant the use of the Integrity Commissioner's information-gathering powers, including hearings; or
- would otherwise benefit from independent investigation.

ACLEI also prioritises corruption issues that have a nexus to the law enforcement character of the agencies in the Integrity Commissioner's jurisdiction, having regard to the objects of the LEIC Act.

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Investigation powers

A challenge facing ACLEI is that law enforcement officers subject to investigation by the Integrity Commissioner are likely to be familiar with 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:

- notices to produce information, documents or things;
- summons to attend an information-gathering 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 search and seizure powers;
- integrity testing; and
- arrest (relating to the investigation of a corruption issue).

It is an offence not to comply with notices, not to answer truthfully in hearings, or otherwise to be in contempt¹ of ACLEI.

3. Jurisdiction of the Department of Agriculture

In December 2012, the *Law Enforcement Integrity Legislation Amendment Act 2012* changed the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) to add three agencies to the Integrity Commissioner's jurisdiction (with effect from 1 July 2013), namely:

- the Australian Transaction Reports and Analysis Centre (AUSTRAC);
- the CrimTrac Agency; and
- aspects of the then Department of Agriculture, Fisheries and Forestry (now the Department of Agriculture) as defined by Regulation.

Each agency has its own distinct risk profile, specific to its core business and level of integration with other agencies with law enforcement functions. In the case of the Department of Agriculture, the initial jurisdiction was set narrowly—to address areas of highest risk (to the extent then known)—while further risk assessment work was to be undertaken to inform subsequent decision-making about jurisdictional scope. ACLEI understands that the Department of Agriculture has since commissioned a comprehensive survey of its corruption risks, as part of its broad approach to risk management.

¹ See, section 96B (Federal Court or Supreme Court to deal with contempt), *Law Enforcement Integrity Commissioner Act 2006*.

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Regulation 8 of the *Law Enforcement Integrity Commissioner Regulations 2006* prescribes the following staff members of the Department of Agriculture for the purposes of the LEIC Act:

- (1) *For paragraph 10(2E)(b) of the Act, the following persons are staff members of the Agriculture Department:*
- (a) *persons who hold, or are acting in, the position of Regional Manager of the Agriculture Department;*
 - (b) *members of staff of the Agriculture Department whose duties include undertaking assessment, clearance or control of vessels or cargo imported into Australia;*
 - (c) *members of staff of the Agriculture Department who have access to the Integrated Cargo System.*

ACLEI received an additional \$0.725m in 2013–14, and will receive a further \$0.732m in 2014–15, for the initial implementation of the extended jurisdiction, as follows:

| Source of funding for extended jurisdiction | 2013–14 | 2014–15 | 2 year total |
|---|-----------------|-----------------|-----------------|
| General Appropriation | \$0.495m | \$0.502m | \$0.997m |
| AUSTRAC (transfer through Appropriations) | \$0.155m | \$0.155m | \$0.310m |
| CrimTrac (section 31 ² receipt) | \$0.075m | \$0.075m | \$0.150m |
| Total | \$0.725m | \$0.732m | \$1.457m |

This funding is due to lapse on 30 June 2015, pending the outcomes of the normal Budget processes of Government.

² *Financial Management and Accountability Act 1997.*

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Considerations about jurisdiction

In his 2009 submission³ to the Committee's *Inquiry into the Operation of the LEIC Act*, the Integrity Commissioner outlined some key principles relating to jurisdiction, as follows:

- *ACLEI's investigative jurisdiction should remain focussed on countering law enforcement corruption;*
- *the LEIC Act should apply to named law enforcement agencies that have a high inherent risk of corruption due to:*
 - *information held, or operational activities undertaken, that have a strong nexus with combating serious and organised crime;*
 - *close interaction with other law enforcement agencies that have high inherent corruption risks; and*
 - *whose operational staff may operate with a high degree of autonomy or discretion, away from central control.*
- *the present arrangement, whereby other agencies with law enforcement functions may be added to jurisdiction by regulation, should continue as a safeguard; [and]*
- *all staff members of an agency in jurisdiction should be included, irrespective of their role.*

The Integrity Commissioner observed⁴ further that:

Law enforcement may be only one of a number of functions and services delivered by an agency. However, administrative staff and other employees or contractors support, or have access to, the agency's law enforcement functions, information, decision-making powers, staff and systems. These staff may be soft targets and are as attractive and vulnerable to subversion or coercion by criminal groups as law enforcement personnel.

Match measures to evolving risks

The independent scrutiny of corruption issues by the Integrity Commissioner is intended to provide an additional layer of assurance that the most significant instances of suspected corrupt conduct are being handled appropriately and that an agency's capabilities and business outcomes are being protected appropriately and proportionately from corrupt compromise.

The Integrity Commissioner uses the term "matching measures to risks" to express how integrity arrangements function best when they are matched to the specific types of corruption risks faced by an agency.

The Department of Agriculture has a varied and overlapping mix of policy, regulatory, facilitation, administrative and law enforcement functions. To achieve its objectives, the Department works closely with other Commonwealth, State and Territory-based agencies that have law enforcement roles and, in some instances, works in shared premises or otherwise has shared access to sensitive law enforcement information. Accordingly, corruption risk to broad law enforcement outcomes can arise in many ways, whereby a corruptor may attempt to subvert or divert apparently innocuous public functions to achieve private or criminal ends.

³ ACLEI submission to the Parliamentary Joint Committee on ACLEI, [Inquiry into the operation of the Law Enforcement Integrity Commissioner Act 2006](#), July 2009, page 10.

⁴ ACLEI submission to the Parliamentary Joint Committee on ACLEI, [Inquiry into the operation of the Law Enforcement Integrity Commissioner Act 2006](#), July 2009, page 11.

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Agency culture

Integrity and high professional standards are essential assets that agencies—including the Department of Agriculture—must manage in order to deliver outcomes on behalf of the Government.

As a general principle, ACLEI encourages corruption prevention measures that:

- are matched to an objective assessment of risk, including emerging risk factors;
- are as simple to apply as is practical;
- promote a single agency culture, based on high professional standards; and
- provide for consistent messaging about integrity and clarity about expectations of staff behaviours and performance.

In his 2012–13 Annual Report,⁵ the Integrity Commissioner acknowledged the significant steps taken by the Department of Agriculture to strengthen its whole-of-agency integrity framework in preparation for the addition of the LEIC Act to its anti-corruption arrangements. For instance, in May and June 2013, senior ACLEI staff gave joint corruption prevention presentations around Australia as part of the Department of Agriculture's national program for Security Week.

Since then, ACLEI has worked closely with the Department of Agriculture on corruption prevention initiatives, including to develop jointly an all staff e-learning product, to raise corruption and fraud awareness. The Integrity Commissioner also met with the Department's Audit Committee to discuss patterns and trends in corruption, and emerging risks.

ACLEI recognises the Department for its whole-of-agency approach to these integrity and organisational risk initiatives.

Integrity Commissioner's investigations

A key concern for ACLEI is the current level of pressure on law enforcement agencies exerted by organised crime groups—particularly in the border environment, which is Australia's main opportunity to interdict illicit drugs and other smuggling.⁶ It is also apparent that so-called “back-end” staff—such as information technology administrators—are as much at risk of an integrity breach as are “front-line” operational staff. Accordingly, agency-wide measures to resist corruption, as well as risk-specific measures, are important strategies in the present environment.

A vulnerability identified in recent ACLEI investigations is that criminal groups use trusted intermediaries—including colleagues in other areas or former workmates—to gain introductions to, groom or compromise people with the information or access they desire. The personal use of illicit drugs, such as cocaine and methamphetamine, is emerging as a means for compromise. ACLEI's Operation Heritage⁷ investigation, among other current investigations, demonstrates the relevance of these associations to the success of corrupt enterprises and, consequently, the importance of detecting, investigating and dismantling such networks.

⁵ [Annual Report of the Integrity Commissioner 2012–13](#), pages 6, 8 and 9.

⁶ Philip Moss, [Integrity partnership in action: making investigations count in integrity reform](#), a speech made to the Australian Public Sector Anti-Corruption Conference, Sydney, 27 November 2013, page 3.

⁷ [Operation Heritage—a joint investigation of alleged corrupt conduct among officers of the Australian Customs and Border Protection Service at Sydney International Airport \(Interim report\)](#), page 2, paragraph 5. Operation Heritage was conducted jointly with the ACBPS, and with the AFP's *Operation Marca*.

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Under Part 9 of the LEIC Act, the Integrity Commissioner may require any person—including any Department of Agriculture staff member—to attend and provide evidence at an information-gathering hearing or to provide documents or things. However, the Integrity Commissioner may not be able to investigate the conduct of—and may not make findings about—Department of Agriculture staff members who are not prescribed under the LEIC Regulations. This situation limits ACLEI’s ability to track a corruption issue across the Department of Agriculture, hold corrupt collaborators to account, and address risk to the Department’s law enforcement functions and business outcomes.

ACLEI is also mindful that the present jurisdiction relating to the Department of Agriculture opens the prospect that a person who is the subject of an exercise of powers by the Integrity Commissioner may seek to argue that the person, although a staff member of the Department of Agriculture, is not subject to the LEIC Act jurisdiction. ACLEI assesses this risk as a significant issue, and has adopted a more conservative approach in construing jurisdiction than may otherwise be desirable from a public policy perspective.

“High harms” focus

Section 16 of the LEIC Act requires the Integrity Commissioner—in carrying out his or her functions—to give priority to corruption issues that relate to corrupt conduct that constitute serious corruption or systemic corruption. One way in which the Integrity Commissioner meets this requirement is to maintain a focus on areas of highest risk and harm to legitimate law enforcement outcomes. In addition, the Integrity Commissioner aims to pursue those investigations that are most likely to yield the highest strategic contribution to maintaining and improving integrity in the agencies in the LEIC Act jurisdiction.

Should the Government decide that there would be merit in extending the Integrity Commissioner’s jurisdiction to include all or additional parts of the Department of Agriculture, ACLEI would intend to continue to give precedence to those corruption issues that would most harm the agency’s capacity to deliver its legitimate and intended law enforcement-related outcomes.

Were it considered necessary, section 16 of the LEIC Act could be amended to reflect this strategic focus and priority.

Conclusion

Having regard to risk, ACLEI considers it would be preferable to ensure that the Integrity Commissioner could investigate suspected corrupt conduct in any part of the Department of Agriculture.

However, the “integrity partnership” concept requires continued positive engagement between the Integrity Commissioner and the LEIC Act agencies, and is a significant factor to be considered. The LEIC Act makes it clear that the responsibility for the integrity of staff resides with the head of each agency.⁸ Accordingly, it is ACLEI’s view that the Department of Agriculture’s assessment of risk and opportunity—and its own tolerance for risk—must be afforded appropriate weight in settling the question of jurisdiction.

The Committee’s present Inquiry will no doubt draw out more about the relevant factors than is presently known to ACLEI, and thereby assist Ministers in their deliberations.

⁸ For instance, paragraph 27(2)(e), *Law Enforcement Integrity Commissioner Act 2006*.