



Australian Government

Department of Agriculture

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

May 2014

Introduction

The Department of Agriculture (the department) welcomes the opportunity to provide a submission to the inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity (ACLEI) and seeks to specifically address the following matters identified in the terms of reference:

- (2) the desirability and feasibility of extending ACLEI's jurisdiction to include the entire Department of Agriculture or additional parts of that department;
- (5) whether an activity-based approach to ACLEI's jurisdiction would be preferable to the current jurisdiction-based approach; and
- (6) the most appropriate method of implementing any changes to ACLEI's jurisdiction including any budgetary implications.

The department is responsible for serving the government on matters relating to Australia's agriculture, fisheries, forestry and related industries.

The department operates under the *Financial Management and Accountability Act 1997* and the *Public Service Act 1999*.

The department has approximately 4,300 full-time equivalent staff including policy officers, program administrators, scientists, researchers, economists, accountants, information and communication technology staff, veterinary officers, inspectors and survey staff.

Departmental staff work in a variety of locations including offices, airports, mail centres, shipping ports, laboratories and abattoirs. Staff work in regional centres, rural communities and cities as well as representing Australia's interests in Asia, Europe, the Middle East and the United States.

The key pieces of regulatory focused legislation administered by the department include the *Quarantine Act 1908*, *Export Control Act 1982*, *Imported Food Control Act 1992* and the *Australian Meat and Live-stock Industry Act 1997*.

The department was incorporated into ACLEI's jurisdiction on 1 July 2013, in response to targeted waterfront reform activities announced by the then Minister for Justice on 25 May 2012. Coverage is currently limited to those staff whose waterfront related regulatory functions or work locations were assessed at that time as posing the highest corruption risk.

In accordance with paragraph 10(2E)(b) of the *Law Enforcement Integrity Commissioner Act 2006* (the Act), approximately 1,000 departmental staff are currently prescribed within ACLEI's jurisdiction, including:

- the Secretary;
- persons who hold, or are acting in, the position of Regional Manager;
- members of staff whose duties include undertaking assessment, clearance or control of vessels or cargo imported into Australia; and
- members of staff who have access to the Integrated Cargo System.

Since being incorporated into ACLEI's jurisdiction on 1 July 2013, the department has received eight allegations of suspected corrupt behaviour by staff, or allegations that the department has treated cautiously as matters requiring referral to ACLEI even though a specific corruption allegation was not made. Of these, five of the allegations were determined to be within ACLEI's jurisdiction. The action taken in response to the five allegations within ACLEI's jurisdiction was as follows: one was progressed as a joint ACLEI/department investigation led by ACLEI; one was progressed as a joint ACLEI/department investigation led by the department; and three were referred back by ACLEI to the department to investigate. Furthermore, of the eight allegations of suspected corrupt behaviour by staff, four were closed and no findings of corruption were identified, one is in the process of being closed with no findings of corruption having been identified, two are the subject of ongoing investigation and one, pertaining to a single individual, has been referred to the Australian Federal Police.

In addition to the ACLEI coverage of select staff, the department has a fully integrated integrity framework that covers all staff. The framework comprises a suite of education, policy, legislation and internal governance components and is underpinned by human resource, information technology and investigation controls.

In response to specific matters raised in the inquiry's terms of reference:

1. The desirability and feasibility of extending ACLEI's jurisdiction to include the entire Department of Agriculture or additional parts of that department.

Any extension of ACLEI's jurisdiction within the Department of Agriculture would require careful consideration and would be a matter for the Government to determine. It is envisaged that relevant matters for the Government's consideration would include:

- a) *The extent to which staff in the department undertake roles which meet the definition of law enforcement.*

Under section 5 of the Act, law enforcement is defined as any of the following:

(a) investigating whether:

(i) an offence has been committed against a law of the Commonwealth; or

(ii) there has been a contravention of a law of the Commonwealth in relation to which civil penalty proceedings may be brought;

(b) preparing the material necessary to prosecute a person for an offence against a law of the Commonwealth;

(c) preparing the material necessary to bring civil penalty proceedings against a person for a contravention of a law of the Commonwealth;

(d) collecting, maintaining, correlating, analysing, accessing or distributing information for the purpose of assisting the enforcement of laws of the Commonwealth;

(e) assisting in carrying out a function referred to in paragraphs (a) to (d).

Further to the above definition, ACLEI has developed a list of possible criteria for assessing inherent corruption risk and the need for independent integrity oversight of Commonwealth

law enforcement agencies¹. Under these criteria, an agency would be considered to have law enforcement functions, and powers to support its law enforcement functions, if it, for example:

- has responsibility for the collection or handling of evidence;
- investigates or prosecutes crimes or breaches of the law; or
- deals with criminal intelligence or confidential information

or if its members:

- carry firearms or have authority to use force;
- have search and/or detention powers; or
- have intrusive powers (telecommunications interception, surveillance devices, controlled operations, assumed identities).

It is relevant to note that the department has a very limited number of staff whose roles meet the definitions of law enforcement under section 5 of the Act, or the further criteria developed by ACLEI. If a blanket approach was undertaken and ACLEI's jurisdiction were to be widened to all of the department a very high proportion of staff who have no involvement in law enforcement, even indirectly, would be brought in under its jurisdiction.

b) *Areas of corruption risk.*

Existing ACLEI coverage of departmental staff includes those functions and work locations assessed as posing the highest corruption risk. This scope was initially informed by a study undertaken by Mr Ian Carnell in 2012 and the specific areas of corruption risk that were identified at that time.

To further inform its position on this matter the department initiated a corruption risk assessment in late 2013. This assessment, which is in the process of being finalised, seeks to identify those areas that currently represent the highest corruption risk. Many areas of the department, such as those associated with policy development, program delivery and corporate operations, are considered to represent low corruption risk.

The rationale for including staff and functions that pose low corruption risk within ACLEI's jurisdiction would require careful consideration of the costs and relative benefits. The argument for a blanket approach might be that boundary questions (and associated complexity) in relation to ACLEI's jurisdiction would no longer occur. Conversely, a blanket approach would potentially involve higher costs in relation to staff who have no law enforcement responsibilities and who are undertaking low corruption risk activities.

If a more targeted approach was taken to extending ACLEI's jurisdiction, the department's soon to be completed corruption risk assessment might assist in identifying relatively higher risk staff and functions.

¹ Submission by the Australian Commission for Law Enforcement Integrity (ACLEI) to the Parliamentary Joint Committee on ACLEI – July 2009 (Annexure Two – Example criteria for assessing the need for independent integrity oversight of Commonwealth law enforcement agencies)

2. Whether an activity-based approach to ACLEI's jurisdiction would be preferable to the current jurisdiction-based approach.

ACLEI's primary role is to investigate law enforcement-related corruption issues, giving priority to serious and systemic corruption².

Agencies currently within ACLEI's jurisdiction are:

- the Australian Crime Commission (ACC) and the former National Crime Authority
- the Australian Customs and Border Protection Service
- the Australian Federal Police (AFP)
- the Australian Transaction Reports and Analysis Centre (AUSTRAC)
- the CrimTrac Agency, and
- prescribed aspects of the Department of Agriculture.

The department is the only agency included within ACLEI's jurisdiction that is not a Heads of Commonwealth Operational Law Enforcement Agency (HOCOLEA) and is the only government department.

The majority of activities undertaken by HOCOLEA agencies are aligned to undertaking or supporting law enforcement functions. However, in the case of the department, there are a diverse range of activities undertaken that are not aligned to, or support, law enforcement (regulatory) activities, such as those pertaining to policy development, program delivery and corporate operations.

Due to the diversity of activities undertaken by non-HOCOLEA agencies, such as this department, consideration might be given to coverage of these agencies at an activity level which is targeted towards areas of highest corruption risk.

3. The most appropriate method of implementing any changes to ACLEI's jurisdiction including any budgetary implications.

The current ACLEI cost allocation for the department's prescribed staff is \$495,000 per annum for 2013–2014 and 2014–2015. This is being funded through an existing package of measures established by the then Minister for Justice for targeting organised crime. Changes to ACLEI's jurisdiction, if any, would appropriately be considered in conjunction with transparent funding arrangements that are commensurate with the risks and workloads involved. Should ACLEI's jurisdiction be expanded, care would need to be taken to ensure that lower risk functions, particularly non-law enforcement functions, were not required to bear disproportionate costs. In this context consideration might be given to alternative cost allocation-based funding models. For example, consideration might be given to allocating costs on the basis of the number of incidents of suspected corruption and/or the relative seriousness of these incidents.

² <http://www.aclei.gov.au/Pages/About-us.aspx>