

Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

Inquiry into the integrity of Australia's border arrangements

**Submission by the Department of Agriculture, Water and the
Environment**

April 2020



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Introduction

The Department of Agriculture, Water and the Environment (the department or AWE) has made submissions to the Parliamentary Joint Committee (PJC) on the Australian Commission for Law Enforcement Integrity (ACLEI) Inquiry into the Integrity of Australia's border arrangements in both 2015 and 2017. The department continues to work closely with ACLEI in strengthening its ability to detect, deter and respond to corruption at the border.

This submission provides an update on further progress to date and seeks to respond to additional terms of reference included at this time.

1 AWE and ACLEI

1.1 The department

The role of the department is diverse and far reaching. The department delivers policies and programs for a strong economy and a healthy environment, with a focus on driving robust and sustainable agricultural industries, managing our environment and heritage, and supporting our regional communities.

In doing this, the department acts as a policy adviser to government, researcher, program administrator, service provider, market access negotiator and regulator.

The department employs approximately 7,000 staff throughout Australia and overseas, including policy officers, program administrators, economists, meat inspectors, researchers, veterinary officers, communicators and project managers. Staff work in places as varied as offices, airports, mail centres, shipping ports, laboratories and abattoirs; located in regional centres, rural communities and capital cities.

1.2 ACLEI jurisdiction

Since 1 July 2013 the department has operated under partial coverage of the ACLEI. The *Law Enforcement Integrity Commissioner Regulations 2017* (the Regulations) provide for the following positions to be included as *staff members* of the Department for the purposes of the *Law Enforcement Integrity Commissioner Act 2006* (the Act):

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

Approximately 1000 department staff currently fall under ACLEI jurisdiction.

2 Response to Terms of Reference

2.1 The nature and extent of corruption risks facing Commonwealth agencies involved in the management of seaport and airport border operations

The department has a rigorous and methodical approach to managing fraud and corruption, and has undertaken significant work to identify and understand integrity risks and controls across the organisation. This includes a biannual independent review of fraud and corruption risk and the production of an updated Fraud and Corruption Control Plan in 2019. Following Machinery of Government changes in February 2020 work is currently underway to develop a consolidated position.

The department's key corruption risks are:

- Unauthorised access to, manipulation of or disclosure of information
- Forgoing of official duties for personal or third party gain
- Corruption of accreditation, use and monitoring of third party providers.

The diverse nature of the department's functions and the value of the information it holds make it and its staff a target for fraud and corruption. While the department detected a low incidence of fraud and corruption between 2013 and 2017, the Department's has seen a moderate increase in allegations of, and investigations into fraud and corruption over the past two years. This reflects improvements in the department's detection and investigative capability, as well as efforts to raise awareness amongst its people of fraud and corruption risks and to embed a culture of integrity, through initiatives such as mandatory Integrity Awareness Training.

At the border, the department undertakes a range of regulatory functions to manage the increasing and high volume of goods and vessels into and out of Australia. In 2018-19 this included:

- 23,100,000 travellers were cleared at airports and seaports
- Over 270,000 items of biosecurity concern were intercepted on travellers
- Over 16,000 inspections were conducted on international vessels
- 144,000,000 mail articles entered Australia, 68,000 items of biosecurity concern were intercepted in mail articles
- 550,000 commercial consignments were referred to the department, 65,000 involved non-compliance with Biosecurity or other regulation
- 430,000 non-commercial consignments were referred to the department, 40,000 involved non-compliance with Biosecurity or other regulation
- 2,100 post border detections were recorded, of which 840 were actionable

To support the delivery of the department's regulatory functions, the department continues to utilise the services of a range of third-party service providers. The department has 3,476 Approved Arrangements in place (as at August 2019) with a range of businesses including customs brokerages, cold stores, freight companies and importers. Between 2017 and August 2019, six (6) Approved Arrangements were revoked and eight (8) were suspended due to non-compliance. These establishments or individuals are accredited to undertake various activities such as inspection, storage, handling or treatment of goods/containers.

2.2 The extent to which Commonwealth law enforcement agencies are able to prevent and investigate corruption at Australian seaports and airports

2.2.1 The department's corruption prevention capability

The department continues to keenly focus its efforts on strengthening capability to prevent corruption. A range of initiatives have been implemented that serve this outcome:

- The formation of a dedicated Integrity Branch focussed on the management of integrity, fraud and corruption and personnel security risks.
- The introduction of an Integrity Hotline providing a 'one-front-door' approach to the assessment, triage and referral of all allegations of wrongdoing.
- Analysis of trends in reporting data derived from the Integrity Hotline to identify 'hot-spots' relating to integrity concerns.
- The delivery of face-to-face Integrity Awareness Training to over 2000 staff Australia-wide and to our overseas counsellors.
- Continued to provide and update mandatory online learning packages to raise staff awareness of fraud and corruption.
- The introduction of a Workplace Drug and Alcohol Policy that enables testing on suspicion of impairment, and recent or regular use of prohibited drugs by ACLEI workers. The department is currently reviewing the policy following Machinery of Government changes to ensure alignment with the broader AWE operating environment.
- Implementing a strengthened policy position for key integrity policies including Conflicts of Interest, Outside Employment and Gifts and Benefits.
- Conducting open source pre-employment Conflict of Interest checks of individual's in high risk roles.
- Ongoing strengthening of personnel security practices including a comprehensive review of the department's Designated Security Position (DSAP) Register. Personnel security has also been embedded into the Integrity function to provide increased visibility of personnel risk.
- Strengthening governance arrangements through the introduction of a Case Assessment Meeting forum where critical stakeholders are informed of and make decisions regarding the resolution of allegations of wrongdoing.
- The provision of monthly briefings to the Chief Security Officer and relevant Senior Managers on Integrity and Staffing, and Security (including personnel security).

- The delivery of an awareness campaign for Security Week 2019 which emphasised personnel security (for example obligations of security clearance holders and good personnel security practices).
- The conduct of a Management Initiated Review to consider departmental access to the Integrated Cargo System and confirm appropriate controls were in place.
- Implementation of the *One Identity* scheme which introduced a new username standard for network access across the department strengthening access control.
- Strengthening of off boarding procedures by having separating employees acknowledge that they understand that all official information, including sensitive and classified information, acquired in the course of their duties remains the property of the Australian Government via an Official Secrets Declaration.
- The department is a member agency of the Australian Federal Police's Fraud and Anti-Corruption Centre (FACC), now known as Operation Ashiba. Since joining the FACC in 2018, the department has placed two secondees in the FACC.
- The department is currently delivering a project to uplift its personnel security controls, with expected completion in July 2020. This project will significantly enhance the department's posture as it relates to protecting the organisation, its assets and people from integrity risks.

2.2.2 Investigations

Investigation of allegations that are not referred to or accepted by external agencies such as the Australian Federal Police (AFP) and ACLEI are managed through the following internal means:

- a) the Enforcement and Sanctions Branch (Compliance Division) investigates allegations of breaches of portfolio legislation;
- b) the Fraud and Corruption section (People Division) investigates allegations of fraud and corruption by departmental employees;
- c) the Conduct section (People Division) investigates allegations of breaches of the APS Code of Conduct;
- d) the IT Security section (Information Services Division) investigates threats to the integrity of the department's IT infrastructure;
- e) the Security section (Corporate and Business Services Division) responds to breaches of Security protocols; and
- f) the People Support section (People Division) responds to allegations of wrongdoing for which a formal investigation is unwarranted.

2.2.3 Information sharing to prevent corruption

An enhanced ability to share information amongst all law enforcement agencies would markedly strengthen the capacity of AWE to prevent corruption against the Commonwealth.

The department notes the introduction of the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2018* which allows for limited information sharing in respect of defined integrity purposes. The department notes however that initial advice suggests the provisions introduced by this Act are limited to the sharing of information in respect of identifiable activities referable to specific entities, rather than enabling data matching.

Legislation enables Commonwealth law enforcement agencies to share criminal intelligence with each other. This is useful in instances where information is collected as part of a criminal investigation into wrongdoing (criminal or otherwise) by an employee of another law enforcement agency. Currently, the department does not have this legislative power. In some circumstances this limits our ability to prevent corruption.

An expanded recognition of the department as a law enforcement agency (rather than the current approach where that recognition is limited by certain functions of the department) would enable the receipt, sharing and ability to act on information. This would aid detection, prevention and investigation of corruption and prevent further wrongdoing.

It would also strengthen the department's effectiveness in investigating a broad range of criminal offences at the border under portfolio legislation, including offences under the *Biosecurity Act 2015*, the *Imported Food Control Act 1992*, and associated *Crimes Act 1914* offences.

2.2.4 The employment framework

The APS employment framework does not empower the department to manage fraud and corruption in the same way as traditional law enforcement agencies. This means that the department is at a significant disadvantage in our ability to prevent, detect and disrupt corruption compared with traditional law enforcement agencies. The lack of a common standard across agencies creates vulnerabilities through employment transfers and shared system access.

For example, the Department of Home Affairs (Home Affairs) has authority to manage fraud and corruption risk in its workforce under the *Australian Border Force Act 2015* and amendments to the Act. In contrast, the department can only draw upon the powers of the *Public Service Act 1999* (for example by imposing conditions of engagement or to pursuing a potential breach of the Code of Conduct).

The power provided to Commonwealth law enforcement agencies to impose conditions upon its workforce is markedly greater. These agencies can apply provisions on engagement, during employment and retrospectively to an existing workforce. Provisions such as the following enable active prevention and detection of corruption:

- the requirement to obtain and maintain an Employment Suitability Clearance or equivalent
- the power to conduct random drug and alcohol testing
- the power for an agency head to declare that a dismissal was for reasons of serious misconduct thereby modifying rights under the Fair Work Act
- the authority to issue binding orders relating to conduct and integrity (such as mandatory reporting of misconduct).

While the department obtains some assurance through the security clearance process, clearances are designed to determine the suitability of an individual to have access to national security classified information and assets. Security clearances do not assess risk or an individual's suitability in the context of a particular agency (for example, criminal associations for employees in border-facing roles). A clear authority to support entity-specific checking would address this deficiency and could be achieved through, for example, amendments to the *Public Service Act 1999* to recognise employees of law enforcement agencies as subject to particular terms and conditions of their engagement and ongoing suitability.

2.2.5 The exclusion of casual employees and independent contractors from jurisdiction

The department is increasingly reliant upon a casual and contracted workforce to fulfil its obligations at the border. The department understands that independent contractors are not "members of staff" for the purposes of the Regulations. This creates a vulnerability where such staff are not covered by ACLEI jurisdiction, despite performing like tasks alongside ongoing and non-ongoing department employees.

Amendments to the Regulations clearly prescribing contractors and casual employees as 'staff members' would overcome this specific vulnerability.

2.3 The extent to which the Australian Commission for Law Enforcement Integrity is able to assist in corruption prevention and to successfully investigate or otherwise respond to corruption in border operations

The department's ongoing relationship with ACLEI serves to strengthen and guide corruption prevention, detection and response efforts.

ACLEI's increased focus on education and awareness raising in recent times has been beneficial to the department. The release of promotional materials (including videos and posters), targeted reports and regular information sharing via the Community of Practice have supported corruption prevention for the department. ACLEI has also provided direct input into the design of the department's revised fraud and corruption online learning packages.

The department continues to actively engage with ACLEI whilst investigations are being conducted, and provides reporting to the Integrity Commissioner on investigative outcomes in accordance with the Act.

ACLEI uses its coercive and intrusive powers to investigate serious corruption matters and shares the information in the course of its investigation with the Department in accordance with applicable legislation. The department has not however, identified indicators of systemic corruption and notes the following ACLEI cases active during the period centred around individual actors:

Operation Zelinsky <i>Matter currently before the courts</i>	Corruption allegations related to personal gain, unauthorised access to departmental systems and modifying restricted data.
Operation Camden <i>Matter successfully prosecuted (2019)</i>	Corruption allegations related to the importation of prohibited marine fauna, possession of illegal imported specimens, abuse of public office and dealing in the proceeds of crime.
Operation Voss <i>Matter successfully prosecuted (2019)</i>	Corruption allegations related to a former employee dishonestly obtaining benefits and

	inappropriately disclosing information as a Commonwealth Public Official.
Operation Overbeek <i>Matter currently before the courts</i>	Corruption allegations related to unauthorised access to sensitive information and personal gain.

ACLEI continues to appropriately refer matters back to the department to resolve following referral and assessment under the Act. In this regard, the department has sought to foster a cooperative relationship with ACLEI which supports active reporting, particularly where this is required under the Act. The practical application of the Act can however create some role ambiguity where matters are referred back to the department for investigation.

The department continues to develop and maintain a robust internal capability to prevent, detect and investigate fraud and corruption—independently and in partnership with law enforcement. The proportionality of response, aligned with that of resourcing availability, is an important consideration for the department.

Over the 2017-18 and 2018-19 financial years ACLEI was involved in 5 investigations relating to AWE employees:

- 2 joint investigations with AWE
- 3 ACLEI-only investigations

AWE referred 12 matters to ACLEI during the period. 19 matters were referred by ACLEI to the department for investigation (noting matters may originate from different sources).

During the same time period, the department's internal fraud and corruption team resolved 13 investigations, including matters referred to the department by ACLEI. A further 2 matters were conducted jointly with the AFP and Australian Criminal Intelligence Commission (ACIC).

2.4 ACLEI's expanded jurisdiction in recent years

In 2016 the Committee recommended that the Act be amended to include all department staff under ACLEI's jurisdiction. The department has confirmed its agreement with that recommendation.

The department's support for broad jurisdictional coverage was and remains focussed on ensuring a clear cohesive approach across the department and to further strengthen our pro-integrity culture.

The corruption risk profile for other parts of the department that may be brought into jurisdiction is much lower and more aligned to that of other APS policy agencies. Given that the areas of higher risk are already covered, expansion of jurisdiction would not materially increase the workload for ACLEI and therefore the department does not support a case for the provision

of additional funding. Any costing model should be based on robust corruption risk assessments and performance measures rather than FTE/ASL or headcount-based models, which are not reliable indicators of the scale or complexity of potential corruption matters.

2.5 The integrity mechanisms for border agencies in Pacific nations'

The department has primary responsibility for the Northern Australia Quarantine Strategy (NAQS) to manage potential biosecurity risks in unregulated pathways in Torres Strait and northern Australia.

Trade and traditional movements between PNG treaty villages and Torres Strait Islands (supported under the Torres Strait Treaty) and through Torres Strait biosecurity zones have the potential to introduce exotic pests and diseases into mainland Australia.

The department works closely with other Australian Government entities including the Department of Home Affairs, and its operational arm the Australian Border Force (ABF), to carry out functions in Torres Strait and manage risk at the border.

The department has formalised arrangements with the Torres Strait Regional Authority (2018) and the Australian Border Force (2019) through letters of exchange. While not specifically related to law enforcement, these arrangements provide assurance and establish a foundation of collaboration and consultation across agencies in managing movements across the border in Torres Strait.