



Auditor-General for Australia



1 May 2020

Senator Paul Scarr
Chair
Joint Committee on the Australian Commission for Law Enforcement Integrity
Email: aclei.committee@aph.gov.au

Dear Senator Scarr

Integrity of Australia's border arrangements

The Australian National Audit Office (ANAO) published the following performance audit reports that you may find relevant to the Joint Committee on the Australian Commission for Law Enforcement Integrity inquiry into the Integrity of Australia's border arrangements:

- Report No.41 of 2018–19 [*Coordination Arrangements of Australian Government Entities Operating in Torres Strait*](#)
- Report No.4 of 2018–19 [*Operational Efficiency of the Australian Commission for Law Enforcement Integrity*](#)
- Report No. 39 of 2016–17 [*The Australian Border Force's Use of Statutory Powers*](#)

Information about what the audits assessed, concluded and recommended is attached. The audit reports are available online at www.anao.gov.au.

Should the Committee require further information in relation to these matters, my office would be pleased to provide you with a briefing at a time convenient to you or appear as a witness at a hearing. To arrange a briefing, please contact our External Relations area at external.relations@anao.gov.au.

Yours sincerely

Grant Hehir

Report No. 41 of 2018–19 *Coordination Arrangements of Australian Government Entities Operating in Torres Strait* assessed the effectiveness of the coordination arrangements of key Australian Government entities operating in Torres Strait. To form a conclusion against this objective, the following high level criteria were adopted:

- Do Australian Government entities operating in Torres Strait have appropriate governance arrangements to support the coordination of their activities?
- Are the coordination arrangements effective in supporting Australian Government activities in Torres Strait?

The audit concluded that:

- The coordination arrangements of key Australian Government entities operating in Torres Strait are largely effective in supporting Australian Government activities.
- The business rules are effective for the implementation of biosecurity and fisheries legislation, and support the application of the Treaty provisions and the coordination of activities in Torres Strait. The business rules are not fully effective for the implementation of immigration and customs legislation in the context of the Treaty. This impacts on the capacity of entities to coordinate their activities and to develop a shared understanding of immigration and customs rules applicable in the region.
- The governance structures and joint activities are largely effective to support cross-entity coordination. However, key policy decisions made by the Torres Strait Joint Advisory Council (JAC)¹ are not adequately documented, and the risks associated with the impacts of a changing strategic and operational environment on the Treaty operation have not been analysed. The Protected Zone Joint Authority (PZJA)² annual reports and website are not up-to-date.
- The key systems and assets support the coordination of Australian Government entities' operations in Torres Strait. An important project to improve telecommunications in Torres Strait is progressing.

The audit made four recommendations:

- Noting the complexities in Torres Strait and the need for a degree of flexibility and discretion, the Department of Home Affairs develop comprehensive business rules to guide the implementation of immigration and customs legislation in Torres Strait and ensure consistent application of Treaty and legislative provisions.
- Department of Foreign Affairs and Trade establish and maintain a central register of policy decisions made by the Torres Strait Joint Advisory Council and ensure that the register is accessible to stakeholders, including Australian Government entities, operating in Torres Strait.
- Department of Foreign Affairs and Trade conduct an analysis of the risks associated with the impacts of a changing strategic and operational environment on the enduring implementation of the Torres Strait Treaty.
- Australian Fisheries Management Authority work with the Protected Zone Joint Authority's other member entities, the Torres Strait Regional Authority and Queensland Department of Agriculture and Fisheries, to:

¹ The Torres Strait Joint Advisory Council is the central bilateral (Australia and PNG) body overseeing the implementation of the Treaty provisions. It is supported by four bilateral advisory committees and reports to the Foreign Ministers for Australia and PNG.

² The Protected Zone Joint Authority is responsible for the administration of the Torres Strait Fisheries Act and comprises the Commonwealth minister responsible for fisheries, the chair of the Torres Strait Regional Authority and the Queensland minister responsible for Fisheries.

- a. finalise the Protected Zone Joint Authority annual reports for the 2015–16, 2016–17 and 2017–18 financial years and implement a process to ensure that future annual reports are published in a timely manner; and
- b. keep the Authority's website up-to-date.

Report No. 4 of 2018–19 *Operational Efficiency of the Australian Commission for Law Enforcement Integrity* examined the efficiency of ACLEI in detecting, investigating and preventing corrupt conduct. To form a conclusion against the audit objective, the following high level criteria were adopted:

- Has ACLEI established appropriate arrangements to assess its efficient use of resources?
- How well does ACLEI's efficiency compare with comparable entities and its own previous performance?

The audit objective and scope did not include an assessment of ACLEI's operational effectiveness and no conclusions are made on this issue. The audit also did not seek to form a conclusion on the adequacy of ACLEI's resourcing.

The audit concluded that:

- As ACLEI has not measured, benchmarked or reported on its efficiency in detecting, investigating and preventing corrupt conduct the ANAO has not been able to conclude whether ACLEI has been operating efficiently. The ANAO's analysis and work that is underway within ACLEI indicates that improving case management and prioritisation practices is key to improving ACLEI's operational efficiency as well as aligning its resource allocation with the legislative obligation to focus on serious and systemic corruption.
- ACLEI has not established appropriate arrangements to enable an assessment of its operational efficiency to support the risk-based prioritisation of resources. While ACLEI measures the timeliness of assessments completed, a wider focus on the final outputs to be produced from its operational activities would provide a more robust indicator of performance.
- ACLEI does not assess its operational efficiency against its own past performance or other organisations. The ANAO's analysis indicates that the efficiency of ACLEI's investigation activities requires particular improvement, including to address growth in the number of investigations commenced compared to the number of investigations completed.

The audit made three recommendations:

- ACLEI develop performance measures focussed on the efficiency of its operations and collect additional data to report on its performance against those measures.
- ACLEI investigate whether it could introduce a more structured review process to support the prioritisation of available resources on a risk basis to the highest value investigations, including time or milestone based intervals to trigger decisions on the ongoing allocation of resources.
- ACLEI periodically compare and benchmark its operational efficiency against comparable organisations including other anti-corruption bodies, and with its own performance over time, to determine whether changes to its current processes are required.

Report No. 39 of 2016–17 *The Australian Border Force's Use of Statutory Powers* assessed the establishment and administration of the Australian Border Force's framework to ensure the lawful exercise of powers in accordance with applicable legislation.

To form a conclusion against the audit objective, the ANAO adopted the following high-level audit criteria:

- Is there an effective accountability and reporting framework for the lawful exercise of powers?
- Do Border Force officers have adequate knowledge of their powers and how to use them?

The audit concluded that:

- As part of the integration of Immigration and Customs, the department has made progress towards establishing a framework to ensure Border Force officers exercise coercive powers lawfully and appropriately. However, significantly more work needs to be done to gain assurance that controls are effective.
- The department's enterprise risk management framework does not adequately address the risk of officers exercising coercive powers unlawfully or inappropriately. Several internal assurance reviews have uncovered problems relating to the exercise of statutory powers. The Border Force has established an integrated operational quality assurance team, which has not yet finalised any reports. Delegations and authorisations for coercive powers are complete and in place but not all instruments are accessible to officers.
- The ANAO found instances of potentially unlawful searches and failure to comply with instructions under both the Customs Act and Migration Act, which indicate current internal controls for mitigating the risk of unlawful or inappropriate use of coercive powers are inadequate.
- The department has not provided adequate instructions and guidance for officers exercising coercive powers. There is currently no single source of instructions and guidance material for Border Force officers, and much of the guidance material available is out of date and inaccurate. While positive foundational work has commenced on integrating the former Customs and Immigration training regimes, officers have been exercising significant coercive powers without having undertaken pre-requisite training.

The ANAO made three recommendations to the Department of Immigration and Border Protection:

- The department develop and disseminate a separate enterprise risk profile relating to the risk of officers exercising powers unlawfully or inappropriately due to inadequate guidelines, training or supervision.
- The department:
 - a. urgently upload all operational instructions, guidance, delegations and authorisations to the Document Control Register; and
 - b. within one year, design and implement an integrated platform for instructions, guidance, delegations and authorisations that meets the operational needs of users.
- The department ensure:
 - a. certification and training records relating to statutory powers are entered into the Learning Management System; and
 - b. officers exercising coercive powers have current pre-requisite qualifications.