

PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR
LAW ENFORCEMENT INTEGRITY

Examination of the Annual Report of the Integrity Commissioner 2015–16

Senator Bridget McKenzie asked the following question during the hearing on 11 July 2017:

CHAIR: [...] I was looking at part 1 of your report, where you're reporting on your delivery against strategic priorities. This is like a 101 question and I do apologise. Some aspects and priorities have been completed, progress has been made on others and others are on track. Does on track mean you've started or are halfway through completion? Could you, a little more quantitatively, update me on what those particular status words mean against the difference on priorities. What is the difference between 'progress made' and 'on track', for instance? It is on page 8.

Mr Griffin: Yes, I am looking at that.

CHAIR: Maybe on notice you could flesh that out a little more, because to me you may have put it on an agenda of a committee meeting and that constitutes being on track or progress being made. I want a slightly more detailed understanding on what that means. [...]

The answer to the honourable senator's question is as follows:

In line with the final phase of implementation of the *Public Governance, Performance and Accountability Act 2013*, the 2015–16 Annual Report was the first year in which ACLEI gave a summarised status report of its delivery against strategic priorities identified in the respective year's Corporate Plan. The issues referred to in the Honourable Senator's question relate to a "snapshot" overview which outlines progress made against these deliverables (on pages 8–10 of the Annual Report).

The meaning of the four evaluation descriptors used is as follows:

- *Complete*: one-off projects or activities that are considered finalised to a satisfactory standard.
- *On track*: projects or activities that are still in progress, or that by their nature are on-going, but which are progressing satisfactorily (as evidenced by milestone achievements) and for which completion in the following year (or moving to "business as usual" status) could reasonably be anticipated.
- *Progress made*: those projects or goals that are in the early stages of completion, and for which further significant work might be anticipated in the succeeding reporting year.
- *Business as usual*: deliverables that have reached a steady-state of achievement and/or which have been successfully integrated into business processes to form part of the normal work or expectations of the agency.

To assist readers, an explanation of the terms will be added to the forthcoming Annual Report.

Senator Bridget McKenzie asked the following question during the hearing on 11 July 2017:

CHAIR: [...] I assume you have a reconciliation plan.

Mr Furry: Yes, we do.

CHAIR: I read last night that you did. What percentage of Indigenous employees does ACLEI have?

Mr Furry: We currently have no employees that identify as Indigenous.

CHAIR: What is your target?

Mr Furry: One.

CHAIR: I will check at our next meeting how you're going. Do you have a plan to achieve that target?

Mr Furry: Yes, we do.

CHAIR: What does that involve?

Mr Furry: As you know, in a small agency it is quite difficult to achieve an Indigenous recruitment target. Being an agency that isn't necessarily attractive to Indigenous peoples who want to make a direct contribution to the Indigenous community, we don't tend to get a lot of applications.

CHAIR: But what are you doing?

Mr Furry: At the moment we are trying to engage with other agencies that have programs in place to identify placements for people who for instance might be participating in Indigenous graduate programs, so we're talking to the portfolio department. As I say, we do find it difficult. Our main focus over the last 18 months has been on the Indigenous Procurement Policy, where we had quite a lot of success.

CHAIR: If on notice you could flesh that out for me, that would be great.

The answer to the honourable senator's question is as follows:

The Indigenous Procurement Policy (IPP) was introduced by the Government in July 2015 and is mandatory for all Non-corporate Commonwealth entities. The purpose of the IPP is to leverage the Commonwealth's annual multi-billion procurement spend to drive demand for Indigenous goods and services, stimulate Indigenous economic development and grow the Indigenous business sector.

While the IPP has a mandatory set-aside for Indigenous-owned businesses for contracts valued between \$80,000 to \$200,000, ACLEI's practice is to apply the IPP to contracts valued outside of these amounts, where appropriate, to ensure maximum participation and encouragement of Indigenous-owned businesses and the subsequent benefits this can provide for Indigenous employment.

In the 2015-16 Financial Year, ACLEI expended \$1.36m with Indigenous-owned businesses that had been awarded contracts in accordance with the IPP. The majority of this amount was in relation to provisioning ACLEI's new accommodation.

Senator Bridget McKenzie asked the following questions via a written question on notice, following the hearing on 11 July 2017:

Corruption notification and referral system

The annual report notes at p. 26 that 'the efficiency of case handling is being improved by the introduction of agreements with agency heads under section 17 of the LEIC Act, to enable agencies to investigate less significant allegations of corrupt conduct themselves, while specifically drawing ACLEI's attention to any matters relating to identified strategic threats.' The annual report also notes at p. 28 that ACLEI expects the number of corruption issues dealt with through internal investigations to increase in future due to the introduction of such 'section 17 agreements'.

1. Can you explain to the committee how these section 17 agreements operate? Have any problems arisen from such agreements to date?
2. Is ACLEI satisfied that these agreements do not undermine its ability to monitor corruption matters within agencies?
3. Can you outline for the committee the criteria these agreements contain to determine whether a matter constitutes a 'significant corruption issue'?

Conduct of investigations

The annual report notes at p. 27 that the 2015-16 peer review survey generated comments from some agencies about 'the need to strengthen management of operational risks associated with notified corruption issues or ACLEI investigations.'

4. Can you explain in more detail what concerns among LEIC Act agencies may have led to these comments?
5. Have any changes been made to ACLEI procedures to address these concerns?

Governance risks of expanding workforce

The annual report states at p. 30 that a continuing governance challenge for ACLEI is to 'manage the effects of rapid growth across ACLEI's Canberra and Sydney sites, having regard to maintaining common professional standards and a shared integrity culture', and that this problem may be aggravated by ACLEI's 'high-volume/high-risk workload'.

6. Can you expand on the specific difficulties ACLEI has faced in recruiting extra staff to meet its expanded responsibilities?
7. Have you introduced any specific measures to address the apparent risks to professional standards and integrity culture presented by significant workforce expansions?

The answers to the honourable senator's questions are as follows:

1. Under section 17(1) of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act), the Integrity Commissioner may enter into a written agreement with the head of a law enforcement agency, including in relation to:
 - (a) The kinds of issues that are significant corruption issues in relation to staff members of the agency (significant corruption issue is defined in section 5 of the LEIC Act as a corruption issue relating to serious corruption or systemic corruption)
 - (b) The level of detail required to notify the Integrity Commissioner of a corruption issue

An agreement made with an Agency Head under section 17(1)(a) has the practical effect of modifying the definition of 'significant corruption issue' at section 5 of the LEIC Act in

relation to the kinds of issues that will, or will not, be treated as ‘significant corruption issues’ for that agency.

Currently, ACLEI has only one section 17 agreement with the head of a law enforcement agency, the Australian Federal Police (AFP). This agreement, dated 25 May 2016, relates to the handling of significant corruption issues and the level of detail required to notify the Integrity Commission of corruption issues—(a) and (b) above.

The Integrity Commissioner may revoke or vary the written agreement at any time by providing written notice to the head of the agency.

No problems have arisen from this agreement in place with the AFP.

2. Regardless of the terms of a section 17 agreement, an agency head is still required to notify the Integrity Commissioner of all conduct which constitutes a “corruption issue” as defined in the Act.

The Integrity Commissioner may then deal with a corruption issue, regardless of whether or not it falls within the definition of a ‘significant corruption issue’, through any of the ways referred to in subsection 26(1) of the LEIC Act:

- (a) by investigating the corruption issue;
- (b) by referring the corruption issue to the law enforcement agency for investigation and:
 - (i) managing the investigation; or
 - (ii) overseeing the investigation; or
 - (iii) neither managing nor overseeing the investigation;
- (c) if the law enforcement agency is not the AFP, by referring the corruption issue to the AFP for investigation and:
 - (i) managing the investigation; or
 - (ii) overseeing the investigation; or
 - (iii) neither managing nor overseeing the investigation;
- (d) by managing an investigation of the corruption issue that is being conducted by the law enforcement agency;
- (e) by overseeing an investigation of the corruption issue that is being conducted by the law enforcement agency.

As such, the Integrity Commissioner is always afforded the discretion to investigate a corruption issue or refer it to a law enforcement agency for investigation and manage or oversee its investigation.

Further, the Integrity Commissioner may at any time reconsider how a particular corruption issue is dealt with, and decide to deal with the matter in a different way, which is not affected by a corruption issue being classified as a ‘significant corruption issue’ or the existence of a section 17 agreement.

3. Section 17 agreements are individual written agreements between the Integrity Commissioner and the head of a law enforcement agency. What constitutes a significant corruption issue within an agreement made with an agency within ACLEI’s jurisdiction will vary based on a number of factors—including, but not limited to, the individual corruption risks and vulnerabilities affecting that agency and the maturity of that agency’s internal integrity framework.

For instance, the section 17 agreement with the AFP has regard to the following considerations:

- the objects and provisions of the LEIC Act
- whether the conduct is an isolated incident
- whether the conduct is linked to a criminal entity

- the position, seniority and nature of the role occupied by the AFP staff member at the time of the conduct, and
- whether the conduct may have the effect of placing another person in danger or any harm.

Additionally, for guidance purposes, a number of examples are provided to further clarify the types of conduct which may be assessed as not constituting a significant corruption issue, such as:

- an isolated incident of personal drug use by an AFP member where there is no apparent ongoing link between the AFP member's drug use and a known or suspected criminal entity, or
- an isolated incident of unauthorised access to the PROMIS system to look for information which is not operationally relevant, for instance to look up AFP holdings for a family member or friend of the AFP member.

ACLEI's judgment is that these types of matters can and should be dealt with by the AFP as internal investigations, unless other factors would warrant ACLEI's direct involvement.

4. The 2015–16 peer review survey was prepared by Dr David Lacey as an independent reviewer. As part of the report, all ACLEI jurisdictional partners participated in confidential interviews, in addition to representatives from the New South Wales Police, Victoria Police and the Queensland Police Service.

The report revealed a number of key themes relating to the heightened risks partner agencies confront between the time of notification of a matter to ACLEI through to the time ACLEI takes to advise the partner on the course of action that will be taken. The report highlights that whilst the corruption risk may not change during this period, the awareness of such risks and the vacuum between their notification and assessment does naturally heighten concerns for the partner. In particular, some agencies expressed a strong interest in having ACLEI enhance the timeliness of this process and increase the communication flows about such matters to partner agency senior executives.

5. As part of ACLEI's strategic intent to become more proactive in the detection and investigation of corruption, a number of new products and procedures have been developed which have the additional effect of addressing the concerns noted by partners in this review. Products such as vulnerability assessments—which use data and insights gathered through ACLEI investigations—are provided to partner agencies to raise awareness of specific risks that may exist within internal processes and procedures, including the conduct of staff members. Additionally, ACLEI now holds monthly meetings with integrity and professional standards areas within each jurisdictional partner agency. During these meetings, concerns raised by partner agencies—including management of concerns as to risks that exist between the referral and assessment period of a notified corruption issue—are addressed. ACLEI has also appointed an additional assessment officer to ensure that the assessment of corruption issues is progressed in a reasonable timeframe.

It should be noted that due to the operational security requirements of ACLEI investigations, there are still situations in which ACLEI is unable to provide information to a jurisdictional partner in relation to a corruption issue.

6. During 2015–16, ACLEI's funded Average Staffing Level (ASL) increased from 38 to 52, with these increased resources to be primarily directed at fighting corruption enabled border crime. Additional specialist positions were established across intelligence and investigative activities, with the majority being recruited to Sydney. Generally, successful applicants for these specialist positions require specific qualifications and skills, usually demonstrated by 5–10 years' experience in law enforcement or regulatory environments. While positions are advertised in Sydney and Canberra to increase access to available recruitment pools, only very few candidates applying for these roles actually meet our requirements, necessitating a number of recruitment processes to be run over an extended period. ACLEI's recruitment

strategies are based on hiring the right people and skills rather than filling roles in order to manage workload, and our high standards will not be compromised.

The use of secondments and temporary transfer arrangements with other law enforcement agencies are used to mitigate staff shortages to the extent possible, noting that these agencies also experience similar difficulties with employing staff. ACLEI's stringent Integrity Framework and operational security environment, mandates high-level Commonwealth Government security clearances as well as detailed pre-employment checks. While ACLEI has put in place streamlined administrative arrangements to avoid excessive delays with successful candidates commencing their employment, the high standards required do militate against short timeframes for recruitment.

7. An independent audit of the potential risks associated with ACLEI's rapid expansion was conducted by an external provider in mid-2015, with a number of recommendations subsequently being implemented by ACLEI. These measures included strategies to maintain and extend ACLEI's operational security culture. Strategies have been put in place to further strengthen ACLEI's professional standards and integrity arrangements and, in particular, ensure an appropriate workplace culture was established and maintained in ACLEI's Sydney operations. Accordingly, ACLEI has expanded its professional standards resourcing, increased the visibility of Senior Management and key corporate roles, and provided greater opportunities for temporary staff re-location and interaction between Sydney and Canberra operations staff.