



Australian Government

**Australian Commission for
Law Enforcement Integrity**

Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

*Inquiry into the integrity of
Australia's border arrangements*

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

28 May 2015

**ACLEI Submission: Inquiry into the integrity of Australia's border arrangements
(28 May 2015)**

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 concerning its *Inquiry into the integrity of Australia's border arrangements*.

To assist the Committee, Part 2 of this submission provides background about ACLEI's role and responsibilities. Part 3 sets out ACLEI's response to each of the terms of reference.

Summary

Recent evidence indicates that large profits available in Australia's illicit drug markets is providing a strong incentive for organised crime groups to use corruption to circumvent regulatory and law enforcement controls at the border—also known as corruption enabled border crime.

However, the full extent of organised criminal capability to interfere with border controls is not yet clear.

Further work to address intelligence gaps and to strengthen corruption detection and deterrence capabilities is needed.

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 currently subject to the Integrity Commissioner's jurisdiction under the LEIC Act are the Australian Crime Commission (ACC), the Australian Customs and Border Protection Service (ACBPS), the Australian Federal Police (AFP), the Australian Transaction Reports and Analysis Centre (AUSTRAC), the CrimTrac Agency, prescribed parts of the Department of Agriculture, and the former National Crime Authority.

From 1 July 2015 the Department of Immigration and Border Protection (DIBP) – incorporating the Australian Border Force – will join the integrity Commissioner's jurisdiction (when that department assumes the functions of the ACBPS).

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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.

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
- an issue about corruption generally in law enforcement, 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 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 relevant 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).

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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 'whistle-blowers' 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.

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
- 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 the AFP (if the corruption issue does not relate to the AFP)
- investigate the corruption issue jointly with another government agency or an integrity agency for a State or Territory, 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:

- indicate a link between law enforcement and organised crime
- involve suspected conduct, such as the private use of illicit drugs, which would undermine an agency's law enforcement functions

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- 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 prioritises corruption issues that have a nexus to the law enforcement character of the agencies in its jurisdiction, having regard to the objects of the LEIC Act.

In this way, ACLEI aims to pursue those investigations which are most likely to yield the highest strategic contribution to maintaining and improving integrity in law enforcement agencies.

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
 - integrity testing (in relation to the ACBPS, ACC and AFP only)
 - 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, 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 contempt of ACLEI.

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3. Responses to the Terms of Reference

TOR (a)—the nature and extent of corruption risks facing Commonwealth agencies involved in border operations

Corruption-enabled border crime

Most corruption risk at the border is connected to the smuggling of contraband, evasion of duties or circumvention of regulations to gain an advantage. Due to the nature of those crimes—particularly importations of illicit drugs—corrupt conduct can have a connection with organised crime, and represents a significant risk to Australia's national security and revenue protection.

According to data from the Australian Crime Commission and United Nations Office on Drugs and Crime (UNODC), Australia is among the world's most lucrative illicit drug markets (UNODC *World Drug Report 2014*, pp 37–8). Cocaine and methamphetamine (Ice) are the two illicit drugs (by value) most commonly imported into Australia. Domestically, the 'street' selling price of 1 kilogram of crystalline methamphetamine ('ice') can reach up to \$320,000, with 1 kilogram of cocaine reaching prices up to \$250,000 (Source: ACC, *Illicit Drug Data Report 2013–14*, pp 45, 102).

These high profits have the potential to fund growth in organisational capability of crime groups operating in Australia, including the use of aggressive methods and actively seek out corruption opportunities. For instance, several organised crime groups are known to routinely deploy counter-surveillance and intelligence-gathering techniques and are using money-smuggling methods to export the proceeds of crime. In its *Organised Crime in Australia 2015* report, the ACC noted:

"... the large profits available in Australia's illicit drug markets are a strong motivator for organised crime groups to develop the capability to corrupt in order to facilitate access to those markets." (p 29).

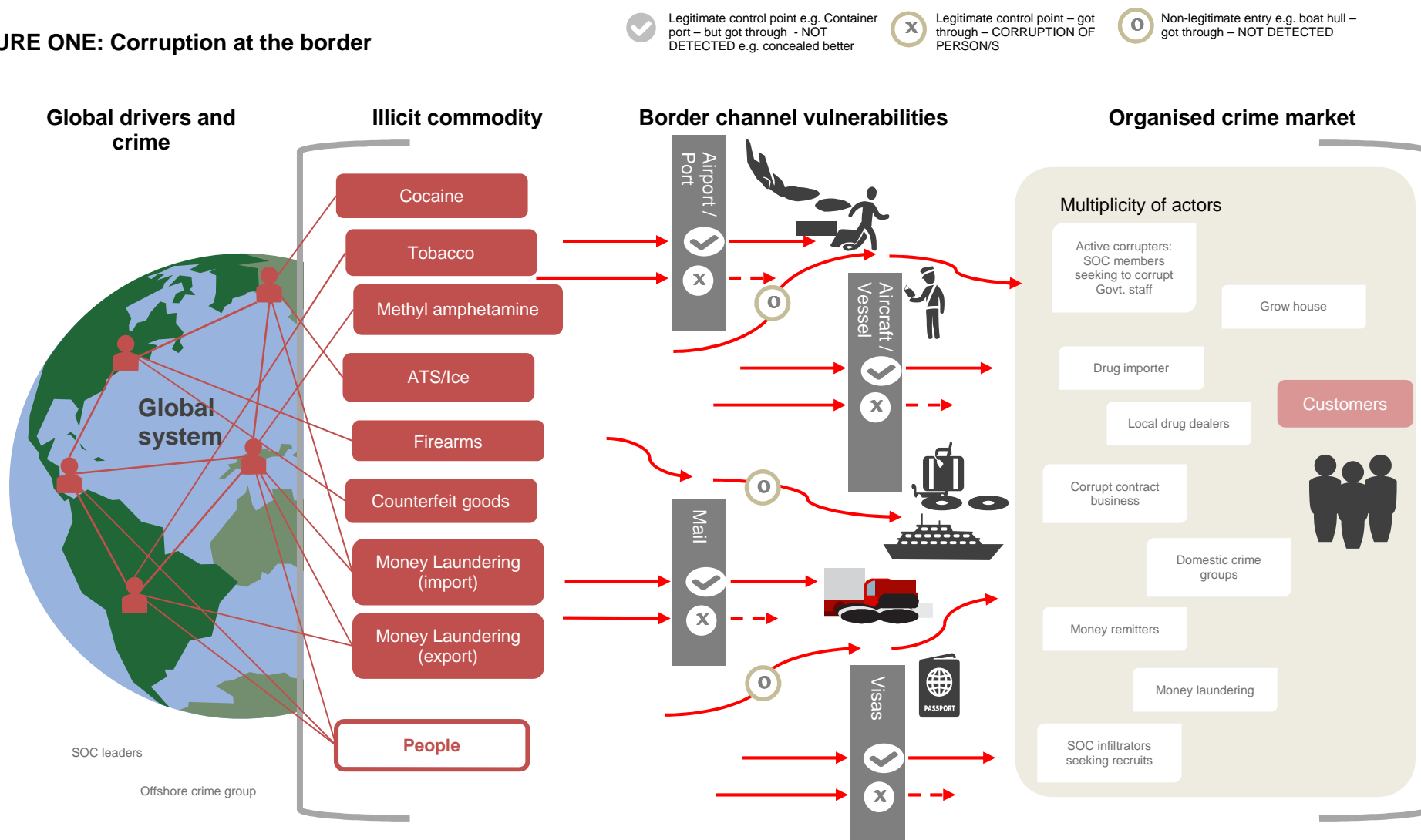
The ACC also observes that:

"Mexican drug trafficking cartels are becoming increasingly involved in the global methylamphetamine market. These groups have actively sought international criminal partners in Australia..." (The Australian Methylamphetamine Market: A National Picture, 2015, p 7).

High profit margins make it affordable for illicit drug importers to build-in numerous costs to their business models—including the cost of shipments lost to legitimate detections by border agencies. As Figure One illustrates, organised crime groups must circumvent regulatory and law enforcement controls if they are to successfully import contraband. However, the advantage to them of using corrupt insiders to reduce the risk of detection remains significant and has been observed in some instances. Both civilian and government workforces may be the targets of corruption attempts of this kind. There are indications also that some corrupt border officials are themselves directly involved in initiating criminal activity, as well as in concealing the crimes of others.

The Committee's present Inquiry is focussed on the corruption potential in Commonwealth agencies that link to border crime. While law enforcement agencies have seen recent, significant instances of corruption enabled border crime, the full extent of the problem is difficult to know with any confidence, due to the hidden nature of corruption and the ability for 'trusted insiders' to cover their tracks. In addition, the extent of organised criminal capability to interfere with border controls is constantly changing, and remains an intelligence challenge.

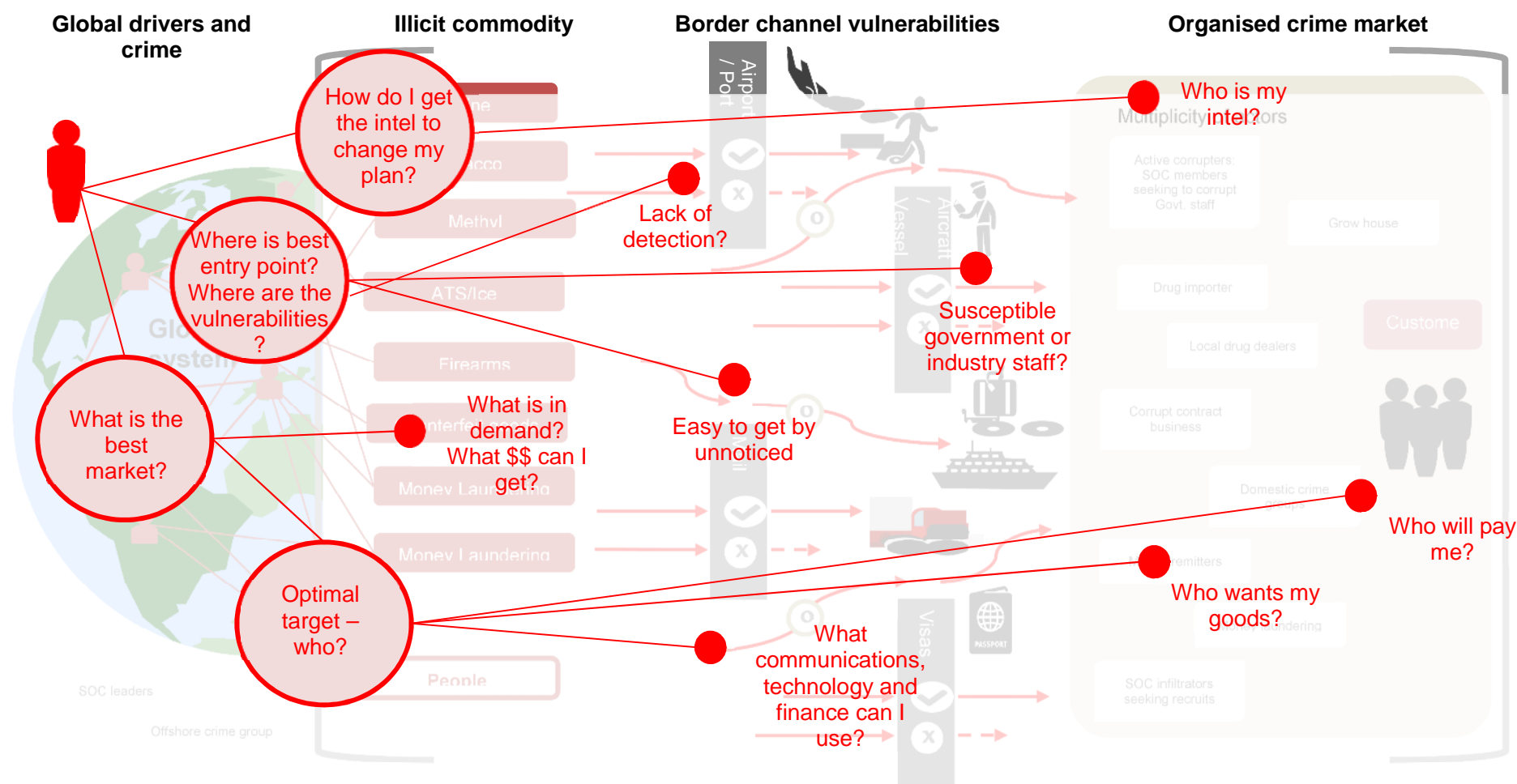
FIGURE ONE: Corruption at the border



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The main commodity sought or used by organised crime is general information about law enforcement capability, methodology, personnel and systemic vulnerabilities. ACLEI investigations have identified multiple instances of this type of information being sought by and/or provided to criminal entities by officials. Several significant instances of specific information being released to criminals—for instance, about whether a container is the subject of law enforcement interest—have also been detected. A sample of the information needs of organised crime groups is illustrated in Figure Two.

FIGURE TWO: Information needs of organised crime groups



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Corruption risk at the border

The Australian Government routinely undertakes intelligence assessments about criminal threats to Australia, including the:

- Organised Crime Threat Assessment (compiled every two years by the ACC), and
- National Border Strategic Assessment (compiled annually by DIBP).

(Note: the OCTA and the NBSA are both classified documents and not publically available).

Other Commonwealth agencies, and their State and Territory counterparts, also contribute to the key criminal threat assessments. These assessments, which are classified documents, assist Australia's law enforcement and border agencies to respond strategically to the contemporary threat picture, having regard to emerging factors.

In addition, every two years each agency in ACLEI's jurisdiction conducts its own Fraud and Corruption Risk Assessment. These assessments consider specific risks that may affect the respective business lines and assets of an agency.

ACLEI contributes to these assessments, based on its investigation experience. For instance, ACLEI has recently made general observations about:

- corruption enabled border crime
- private illicit drug¹ use by public officials, which brings them into potential compromise by organised crime groups²
- the risk posed by 'back office' staff – particularly ICT 'super-users'—who may have access to sensitive law enforcement information, but who often are subject to lesser scrutiny than front-line officers
- vulnerabilities in specific border operating environments, such as airport and quarantine clearance environments, and
- the prospect of 'vertical collusion', whereby Federal and State officials might collude in corruption enabled border crime.

TOR (b)—the extent to which Commonwealth law enforcement agencies are able to prevent and investigate corruption at the Australian border
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It is not possible to be 'corruption proof'. As noted above, the high price of illicit drugs creates a large profit incentive for some public officials to act corruptly, despite the sophistication of control measures introduced by diligent agencies.

The integrity arrangements of each agency are decided by the heads of those agencies, having regard to risk.

¹ Border-controlled substances, including cocaine and other stimulants, and image and performance enhancing drugs.

² For instance, Investigation Report 01-2014—*Operation Myrrh—An investigation into "private" illicit drug use by certain Australian Customs and Border Protection Service officers* and Investigation Report 03-2014—*A joint investigation into the conduct of an Australian Crime Commission employee who avoided a drug test*. Australian Commission for Law Enforcement Integrity, Canberra.

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At a general level, the integrity frameworks of Australian Government agencies with a presence at the border can be considered by world standards to be robust and innovative, with some variation between agencies in expertise and resources. Such variation is not necessarily unexpected or inappropriate, and reflects perceptions of risk, stage of development, judgements related to competition for resources, role specialisation, and differing ability to leverage economies of scale and in-house expertise.

A high level of cooperation between agencies, both to detect and investigate corruption, is a characteristic of Australia's border agencies. Nevertheless, the most serious forms of corruption will remain difficult to detect, due to the size and dispersed nature of the border workforce and the ability for 'insiders' to cover their tracks.

TOR (c)—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

Operational capacity

ACLEI's operations involve high-end investigation techniques—including human sources, controlled operations, electronic surveillance and physical surveillance—and interface closely with organised crime investigations across Australia to examine the link between organised crime and law enforcement corruption (the "corruptor/corrupted" investigation method).

ACLEI works closely with its operational partners to achieve investigation objectives. For instance, ACLEI has priority access to a physical surveillance team through a funded service agreement with the ACC, and to serious and organised crime investigation resources through a partnership arrangement with the AFP.

Since June 2014, ACLEI has had a small presence in Sydney through a pilot partnership arrangement with the AFP to give a focus to investigating corruption-enabled border crime. From July 2015, with the addition of DIBP to ACLEI's jurisdiction, the Sydney Office will be expanded and established on a permanent footing. This measure—which was announced in the *2015–16 Federal Budget*—will contribute to increasing ACLEI's staffing from 38 to 52, essentially doubling ACLEI's investigation capability. This capability will be further supplemented by the AFP's significant contribution of accommodation in Sydney (for two years, subject to review) and deployment of several specialised teams of serious and organised crime investigators to work alongside ACLEI operations.

These joint arrangements—as well as developments in cooperation with state policing and integrity agency partners—help to ensure that ACLEI has in place the necessary channels to gather and disseminate information about corruption enabled border crime with a range of law enforcement agencies.

Corruption Prevention

ACLEI's corruption prevention goal is to work with partner agencies to make it as expensive and risk-laden as possible for their officials to collude with organised crime groups to smuggle drugs, or other contraband and commodities.

Having regard to its operational observations, ACLEI achieves this objective by:

- contributing to knowledge and understanding of current and emerging themes and risks,
- facilitating or contributing to the capability of partners and stakeholders in anti-corruption and integrity practice, and
- advising the Australian Government on changes to legislation.

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For instance, ACLEI was closely involved in strengthening the ACBPS integrity framework after corruption vulnerabilities were identified at Sydney International Airport in 2011. In that instance, ACLEI advised on changes to internal frameworks and played a role in the introduction of integrity testing and drug testing. ACLEI has since similarly advised on changes to the DIBP integrity regime.

ACLEI participates in a modest way with the normal training objectives of agencies. Largely, this objective is achieved by ensuring that integrity messaging includes contemporary information and is appropriately matched to the risk environment of each agency.

In addition, ACLEI forms linkages with the Human Resources and Personnel Security areas of agencies, to ensure that integrity objectives and messaging are coordinated with the normal risk management activities of law enforcement agencies. For instance, most agencies consult with ACLEI on the development of their Fraud and Corruption Control Plans and related processes.

TOR (d)—the nature and effectiveness of integrity measures, models and legislation adopted by other jurisdictions, for their border operations and high corruption risk agencies

ACLEI and the ACC officers recently visited law enforcement and border agencies in the United States of America and Canada to better understand the corruption pressures those agencies face from Organised Crime Groups. Together with the AFP, these senior officers hosted a day-long workshop at the Embassy of Australia in Washington DC, entitled *Corruption Enabled Border Crime—New Frontiers*.

ACLEI, the ACC and the AFP intend to brief the Committee on the outcomes of the ACLEI/ACC North America Corruption Enabled Border Crime Study Visit and the workshop. Similar briefings will be provided to relevant Australian agencies, to inform the 'lessons learned' approach.

TOR (e)—any other relevant matters

Possible reforms to legislation

The key challenge of corruption enabled border crime is that compromised officers are able to use inside knowledge to avoid detection or frustrate the collection of evidence. It is this knowledge that makes the corrupt collaboration of officials so valuable to criminal partners.

Accordingly, subject to appropriate safeguards, the Committee may wish to consider whether there would be merit in amending telecommunications interception law to overcome some of the current barriers to investigation of corrupt officials, to:

- permit the use of telecommunications data for disciplinary proceedings (to remedy an inconsistency—AFP and ACC are covered, yet other LEIC Act agencies are not)
- permit the sharing of source de-identified non-personal information derived from telecommunications content between law enforcement bodies (to enhance corruption detection and prevention efforts by sharing specific information about criminal methods and activities)
- permit the use of telecommunications content to support prosecutions relating to unlawful disclosure of law enforcement information (to better target the most common corruption-related offence), and

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- where legislation already provides for integrity and law enforcement agencies to undertake integrity testing operations, to permit the obtaining of an interception warrant for the purposes of such operations (to improve the performance of this important deterrence measure).

Detection challenge

Detecting corruption is an area in which several of the agencies in ACLEI's jurisdiction are among the world's leaders. However, in some circumstances, these measures can also be intrusive on the privacy expectations of individuals. In addition, the scale and form of external threats is constantly changing—for instance, the prospect of vertical and horizontal public sector corruption (collusion between officers across agencies and between jurisdictions).

Accordingly, the Committee may wish to consider what opportunities may exist to ensure that intelligence gathering and corruption detection capabilities are operating to their maximum effect across agencies, having regard to the civil rights of individuals and Australia's national security interests. Similarly, it would be informative to identify what opportunities may exist to collect intelligence about the capability of various organised crime groups to use corruption enabled border crime.