



Australian Government

Attorney-General's Department
Criminal Justice Division

Parliamentary Joint Committee on the
Australian Commission for Law Enforcement Integrity

Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity

Australian Government Attorney-General's Department supplementary submission

May 2014

Attorney-General's Department supplementary submission to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity

On 21 April 2014, the Attorney-General's Department provided a submission to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (ACLEI) as part of its inquiry into the jurisdiction of ACLEI. That submission covered Australia's approach to anti-corruption, ACLEI's role within this approach and points to consider in relation to amending ACLEI's jurisdiction.

The Attorney-General's Department welcomes the opportunity to provide the Committee with this supplementary submission, specifically addressing the following matter identified in the terms of reference:

3. in response to a recommendation of the Parliamentary Joint Committee on Law Enforcement, the desirability and feasibility of extending ACLEI's jurisdiction to include:
 - a) the Australian Securities and Investments Commission
 - b) **the Attorney-General's Department**, and
 - c) the Australian Taxation Office (emphasis added).

1. Role of the Attorney-General's Department

The Attorney-General's Department delivers programs and policies to maintain and improve Australia's law and justice framework, strengthen our national security and emergency management, and provide support for arts and culture.

The Department is the central policy and coordinating element of the Attorney-General's portfolio, for which the Attorney-General and Minister for the Arts, and the Minister for Justice are responsible. ACLEI falls within this portfolio, as do other agencies within the Integrity Commissioner's jurisdiction, namely the Australian Federal Police (AFP), Australian Crime Commission (ACC), AUSTRAC and CrimTrac.

The Department is structured into three groups to effectively and efficiently deliver programs against strategic aims and broader portfolio objectives:

- Strategic Policy and Coordination
- Civil Justice and Legal Services, and
- National Security and Criminal Justice.

Amongst other things, the Strategic Policy and Coordination Group is responsible for providing support to a number of Royal Commissions (the Royal Commission into Institutional Responses to Child Sexual Abuse and the Royal Commission into the Home Insulation Program), human resources management, information and communications technology management, cabinet and ministerial coordination within the Department, media and strategic communication and the provision of legal advice to the Department on a range of corporate matters.

The Civil Justice and Legal Services Group has responsibilities relating to access to justice, international law and human rights, constitutional law, Commonwealth civil law, providing support to a number of taskforces and Royal Commissions (including the Defence Abuse Response Taskforce, the Royal Commission into Trade Union Governance and Corruption and Constitutional Recognition of Indigenous Australians Taskforce) and the Ministry for the Arts.

The National Security and Criminal Justice Group is responsible for national security and criminal justice policy and legislation, including:

- policy, legislation, advice and programs related to developing resilience to all hazards, including critical infrastructure protection
- coordination of Australia's responses to crises, including natural disasters
- national security policy and capability development and legislative reform
- policy, legislation, advice and engagement on international criminal justice issues, and
- policy, advice, legislation and programs related to criminal law and criminal justice processes.

2. The desirability and feasibility of extending ACLEI's jurisdiction to include the Attorney-General's Department

ACLEI's primary role within the Australian Government's framework to tackle corruption is to support the Integrity Commissioner to investigate *law enforcement-related corruption issues*, giving priority to systematic and serious corruption (emphasis added).

Under section 5 of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act), 'law enforcement function' is defined as:

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

In addition to this definition, ACLEI has developed a list of criteria for assessing inherent corruption risk and the need for independent integrity oversight of Commonwealth law enforcement agencies.¹ Under these criteria, an agency would be considered to have 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

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).

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).

The following criteria are therefore relevant to determining whether the Integrity Commissioner's jurisdiction should be expanded to include the Attorney-General's Department:

- the extent to which staff in the Attorney-General's Department undertake roles which meet the definition of 'law enforcement function'
- the Attorney-General's Department's risk profile, and
- consequences of corruption within the Department.

a) Extent to which Attorney-General's Department staff perform 'law enforcement functions'

As noted above, the Attorney-General's Department consists of three Groups. Of these Groups, only one (the National Security and Criminal Justice Group) could be classified as having, at most, an indirect involvement in law enforcement. Staff members of the National Security and Criminal Justice Group have policy responsibility for some of the matters raised above, for example:

- laws relating to police and other intrusive powers in the *Crimes Act 1901*, the *Australian Federal Police Act 1979* and the *Telecommunications (Interception and Access) Act 1979*
- portfolio oversight of some law enforcement agencies falling within the Integrity Commissioner's jurisdiction, namely the AFP, ACC, AUSTRAC, ACLEI and CrimTrac, and
- limited regulatory functions, such as background checking for Aviation and Maritime Security Cards, assessing applications for the import of firearms and making decisions relating to the parole of federal offenders.

While these staff may have an indirect involvement in law enforcement issues, they do not have law enforcement functions as defined by both section 5 of the LEIC Act and the further criteria developed by ACLEI. In particular, they do not have access to the types of information or powers that would make them attractive targets for corruption by serious and organised crime, especially when compared with staff from agencies already within jurisdiction. Their roles are limited to policy formulation and advice, the delivery of Australian Government programs and some regulatory functions.

b) Agency risk profile and consequences of corruption

As noted in the Department's primary submission, the risk of corruption within an agency is a fundamental element to consider in the context of the Integrity Commissioner's jurisdiction, and explicit consideration should be given to the consequences of corruption within an agency.

In its report on the *Gathering and Use of Criminal Intelligence*, the Parliamentary Joint Committee on Law Enforcement (PJCLE) recommended that the Government consider the

feasibility of extending the Integrity Commissioner's jurisdiction to include oversight of the Attorney-General's Department, ATO and ASIC, which are the only three agencies that have endorsed the Australian Criminal Intelligence Model (ACIM) but who are not currently subject to the Integrity Commissioner's jurisdiction.

This recommendation flowed from the Committee's concerns that agencies who have endorsed the ACIM would gain access to sensitive information and intelligence through the national repository created under the ACIM, which would make them attractive targets for serious and organised crime infiltration.

While the Attorney-General's Department has endorsed the ACIM, no staff from the Department have access to the information or intelligence stored and shared through the national intelligence repository. The Department's endorsement of the ACIM reflects its support for the Model as a member of the Australian Criminal Intelligence Forum and the ACC Board, as opposed to an intention to obtain and use its intelligence database.

However, while Departmental staff do not have access to the national repository, some staff occasionally get access to law enforcement information or strategic intelligence in the course of their duties. Although these documents may contain some information or intelligence of interest to serious and organised crime, they do not contain the 'real time', high value intelligence available to agencies with access to the central repository, with which the PJCLE was primarily concerned. For example, as part of the Department's role in formulating policy, some staff get access to selected strategic intelligence assessments (classified at the Protected level) produced and distributed by the ACC. These strategic assessments are generally provided to the Department after a particular investigation is completed, give a point in time snapshot of a particular risk, and are distributed by the ACC under strict dissemination rules.

In accordance with our primary submission, both of these factors suggest that any risk of corruption or infiltration of the Department by serious and organised crime does not justify bringing the Department within the Integrity Commissioner's jurisdiction.

3. Conclusion

While any extension of the Integrity Commissioner's jurisdiction would ultimately be a matter for the Government to determine, the Department submits that, for the above reasons, it does not consider it desirable for the Integrity Commissioner's jurisdiction to be expanded to include the Attorney-General's Department.

Any expansion of the Integrity Commissioner's jurisdiction has the potential to impact its ability to discharge its fundamental responsibilities with respect to law enforcement integrity. If the Integrity Commissioner's jurisdiction were to be widened to include the Attorney-General's Department (either in whole or in part), this would substantially alter the nature of its jurisdiction and would require a significant review of its operating and funding model.