



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

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Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a supplementary submission to the Parliamentary Joint Committee's inquiry into the integrity of Australia's border arrangements.

To assist the Committee:

- Part 1 of this submission will summarise the role, functions and powers of ACLEI
- Part 2 will discuss border corruption risk, and engagement with Pacific nations' border officers
- Part 3 will outline changes in ACLEI's operations since the original submission that relate to our ability to assist in corruption prevention and to successfully investigate or otherwise respond to corruption in border operations.

1. ACLEI's role, functions, powers and jurisdiction

The office of the Integrity Commissioner, and ACLEI, are established by the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act) to investigate and prevent corrupt conduct in Commonwealth law enforcement agencies.

ACLEI's strategic purpose is to make it more difficult for corruption in designated Australian Government law enforcement agencies to occur or remain undetected. We undertake our oversight of law enforcement agencies in four main ways:

- we receive and assess notifications of alleged corrupt conduct by members of Commonwealth law enforcement agencies
- we conduct investigations into serious and systemic corrupt conduct
- we support our partner law enforcement agencies to detect corrupt conduct and perform their own investigations, and
- we prevent corruption through education, support and identification of vulnerabilities.

The law enforcement agencies that we oversee are:

- the Australian Criminal Intelligence Commission (ACIC)
- the Australian Federal Police (including ACT Policing) (AFP)
- the Australian Transaction Reports and Analysis Centre (AUSTRAC)
- the Department of Home Affairs (including the Australian Border Force), and
- prescribed parts of the Department of Agriculture, Water and the Environment (DAWE).

The LEIC Act requires the Integrity Commissioner to prioritise the investigation of serious and systemic corruption. For this purpose, the Integrity Commissioner has coercive information-gathering powers and the full suite of covert policing capabilities, including telecommunications interception; electronic and physical surveillance; and controlled operations.

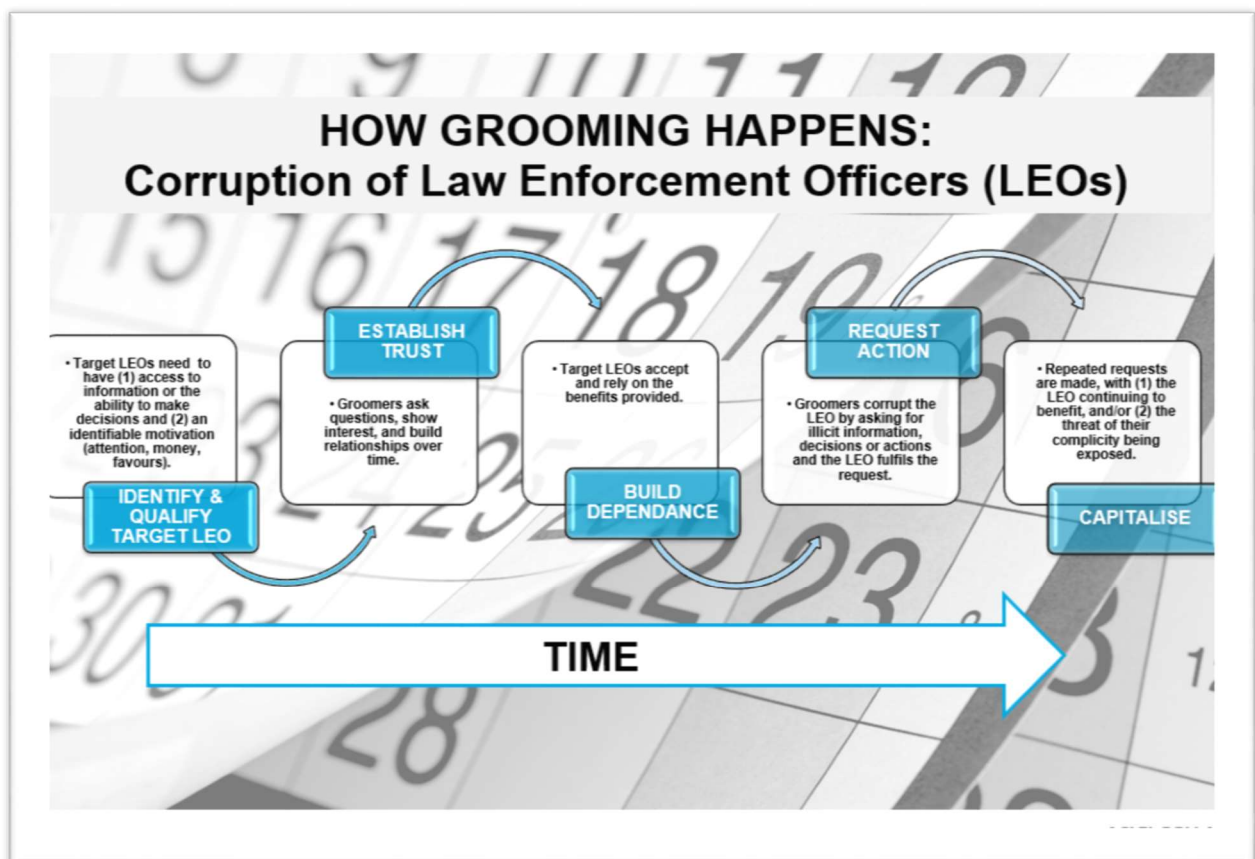
2. Border Corruption risk

Attempted corruption of border officers remains a real and significant threat in Australia. This is because working around or within border operations continues to constitute an activity integral to success for organised crime seeking to do business in Australia.

Of the 146 notifications and referrals received by ACLEI in the 2018-19 financial year, 63 were from the agencies with primary responsibility for border functions (DAWE and HA).¹ Subjectively the majority of ABF and DAWE referrals and notifications appear to involve border functions.

Several major ACLEI investigations have uncovered evidence that organised crime groups actively recruit and compromise law enforcement and border officials to facilitate their illicit operations. The recruitment of law enforcement and border officials often occurs through a grooming process, as set out in Figure 1.

Figure 1: How Grooming Happens: Corruption of Law Enforcement Officers.



¹ See https://aclei.govcms.gov.au/sites/default/files/19468_aclei_-_annual_report_2018-19-accessible.pdf

This active recruitment of law enforcement officers was established in *R v Hampton* (an AFP officer accepting a bribe to release information)², and was similarly alleged in Operation Zeus/Astatine.³ Relationships with organised crime have the potential to compromise border integrity and support criminal activity through the disclosure of classified information or through compromising decision making.

Case Study: Operation Zeus

Operation Zeus involved bribery and smuggling facilitation charges against an ABF officer, a former Customs officer, and prominent members of a Sydney family alleged to be associated with organised crime. This operation was run in parallel to Operation Astatine, a New South Wales Joint Organised Crime Group (JOCG) operation.

Operation Zeus was a joint investigation by ACLEI, the AFP on behalf of the JOCG, and the then Department of Immigration and Border into an ABF officer, who it was alleged assisted an organised crime syndicate to avoid detection by providing sensitive law enforcement information. A former Australian Customs and Border Protection Service officer was also charged with similar offences regarding her alleged conduct during the period of this investigation.⁴ This included offering a financial reward to the co-offender for corruptly providing sensitive and restricted information obtained in the course of the co-offender's duties as an ABF officer and monitoring importation to ensure that it was not detected or examined by fellow uncorrupted ABF officers.⁵

Ultimately both parties pled guilty and were sentenced.

ACLEI has published corruption prevention fact sheets, web pages and videos to illustrate the risk of grooming and assist to educate border officers about the risks. These products are available on the ACLEI website: aclei.gov.au/corruption-prevention.

Overlap of responsibilities with border agencies

A challenge to managing border integrity arises from the overlap of responsibilities between ABF and biosecurity officers in border locations. ACLEI receives corruption notifications alleging corrupt conduct by officers at the port or airport that very often do not delineate between agencies. The notification may say, for example 'someone at X port is helping get drugs through'.

Agencies working within the border environment may also share access to systems (for example, the ICS cargo management system is owned by Home Affairs and accessed by officers from other agencies).

These integrated working arrangements within the border environment increase the complexity of identifying and investigating corrupt conduct. The close interrelation of the work of border agency officers illustrates the importance of having a common, end-to-end

² See https://aclei.govcms.gov.au/sites/default/files/media_statement_-_r_v_ben_hampton_-_22_november_2017.pdf?acsf_files_redirect

³ See <https://newsroom.abf.gov.au/releases/multi-agency-operation-destroys-global-criminal-syndicate>

⁴ See https://www.aclei.gov.au/sites/default/files/aclei_media_statement_-_operation_zeus_-_10_august_2017_1.pdf?acsf_files_redirect

⁵ See <https://www.caselaw.nsw.gov.au/decision/5dfc5e5ee4b0c3247d7148a2>

oversight regime for Commonwealth law enforcement agencies within a specific function or environment.

The ability to prevent and investigate corruption at Australia's sea ports and airports is further challenged where parts of agencies are not covered by oversight arrangements. Specifically, only prescribed part of DAWE fall under the jurisdiction of the Integrity Commissioner. This may result in alleged persons of interest being excluded from ACLEI consideration because at the time of the conduct, the officer was not working in the particular area covered by ACLEI's jurisdiction.

Staff within in a law enforcement agency who have access to decisions, information or influence can be subject to compromise even if they do not work on the front line. This vulnerability has been observed across jurisdictional agencies (ACLEI Operation Hadron exemplifies this vulnerability).⁶ The Committee may like to consider the advantages of the holistic incorporation of high risk agencies in any recommendations for future amendments to ACLEI's jurisdiction.

Case Study: Advantage of bringing whole versus part agencies into jurisdiction: DAWE

An allegation of alleged drug use and inappropriate association by an Agriculture officer who inspected mail was deemed not to be in the jurisdiction of the Integrity Commissioner.

- s7 of the LEIC Regulations 2017 includes that a person is considered to be prescribed officer within jurisdiction of ACLEI if they perform functions of assessing, clearing or controlling vessels or cargo imported into Australia.

- s19 of the *Biosecurity Act 2015* (Cth) includes that mail is considered 'goods'.

An allegation of alleged acceptance of bribes to clear consignments by an Agriculture officer performing duties in inspection services deemed not to be in jurisdiction of Integrity Commissioner as officer worked in the export rather than import stream.

- s7 of the LEIC Regulations 2017 includes that a person is considered to be prescribed officer within jurisdiction of ACLEI if they perform functions of assessing, clearing or controlling vessels or cargo imported into Australia.

An allegation of alleged facilitation of drug importations and terrorism financing by an Agriculture officer deemed not to be in jurisdiction of the Integrity Commissioner as the date of alleged conduct did not coincide with times when the officer held positions considered to be within the Integrity Commissioner's jurisdiction.

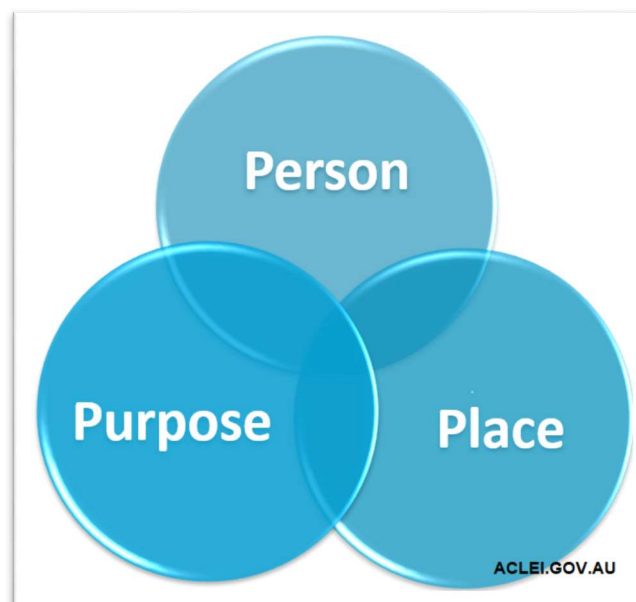
- s7 of the LEIC Regulations 2017 includes that a person is considered to be prescribed officer within jurisdiction of ACLEI if they perform functions of assessing, clearing or controlling vessels or cargo imported into Australia, have access to the Integrated Cargo System or hold the position of Regional Manager.

⁶ <https://www.aclei.gov.au/sites/default/files/pdf.pdf?v=1479441361>

Capacity and capability

ACLEI's Corruption Prevention Strategy articulates the importance of working with agencies within ACLEI's jurisdiction to strengthen the integrity system.⁷ This systems approach relies on the ability of all agencies to prevent, detect, notify and investigate corruption co-operatively. ACLEI advocates that agencies in shared environments consider constructing corruption control plans for an entire operating environment (for example, a Port Fraud and Corruption Plan might involve a number of public sector agencies and private sector partners). This enables agencies to look at risk aggregations within a border environment. To achieve this end, ACLEI has developed the Three Lens Approach to Early Intervention – considering risks related to a place (site, location such as a port); purpose (a type of work, such as import); and person (risk specific to individuals or team).⁸

Figure 2: ACLEI's Three Lens Approach to Early Intervention



ACLEI notes the robust integrity regimes that have been implemented by the agencies within its jurisdiction, while acknowledging there are differences in the maturity and sophistication of those regimes. For the integrity system to function optimally, agency capacity and capability must continue to rise as a whole. To support holistic capability, ACLIE continues to facilitate its Community of Practice for Corruption Prevention, started by ACLEI in June 2011. This is a collaborative forum for the integrity and professional standards units of jurisdictional agencies to identify corruption risks, share information, work together to counter threats to law enforcement integrity, and strengthen their respective agency integrity systems.

Representatives of the LEIC Act agencies attend, with attendance and presentations by representatives of other organisations on a case-by-case basis. The aim of the Community of Practice, which meets around three times a year, is to foster the capability of LEIC Act

⁷ See https://aclei.govcms.gov.au/sites/default/files/aclei_corruption_prevention_strategy_-_june_2018.pdf?acsf_files_redirect

⁸ <https://www.aclei.gov.au/corruption-prevention/key-concepts/what-best-approach-early-intervention>

agencies through a regular practitioner-level meeting designed to share examples of best fit integrity arrangements and the concepts that underpin them.

The Committee may wish to consider the importance of maintaining corruption prevention capability within the integrity system to ensure the extent to which Commonwealth law enforcement agencies are able to prevent and investigate corruption at Australian seaports and airports

Technology

Whilst telecommunication interception remains a critical investigative tool, its effect has been diminished in recent years to a large extent by the increasing shift toward encrypted communications.⁹ Law enforcement officials are very surveillance aware; so they are highly likely to use encrypted communications to conduct any criminal activity. Encrypted communications can be simple smart phone apps such as Whatsapp and Signal but also include more sophisticated platforms being used by organised crime, such as Encro and Ciphre.

An effect of this development is the need for law enforcement to retain other investigative options such as physical / technical surveillance and human source engagement. The result for agencies is the need to recruit for and maintain multiple capabilities: those more traditional techniques; as well as the ability to contend with intercepting and analysing sophisticated, technology based methodologies. Sharing information and capabilities is increasingly important for border and law enforcement agencies to enable them to keep pace with organised crime, who have the flexibility to move quickly and adapt to change.

Effects of Covid-19 Pandemic

At the time of this submission, the full impacts of the COVID-19 pandemic are yet to be realised. The substantial human and economic impacts in many, if not all, nations could lead to a major increase in desires to circumvent Australia's border controls, and concomitant challenges for law enforcement agencies. While some organised crime groups may be inhibited by new border controls and decreased traffic, others may seek to capitalise on the distraction the COVID-19 pandemic provides to essential services.¹⁰ To support our agencies, ACLEI released an advice to its jurisdiction agencies in February 2020 to provide early warning of some anticipated corruption risk impacts. This advice is available on our website.¹¹

The integrity mechanisms for border agencies in Pacific nations

ACLEI's interactions with Pacific nations are generally part of wider interactions through multi-lateral fora such as the United Nations Office on Drugs and Crime, with our jurisdictional partners or the Attorney-General's Department (AGD).

For example, in 2018 ACLEI officers made a presentation to the Asia-Pacific Economic Cooperation forum's *Best Fit Practices and Experience Sharing Workshop on Corruption Prevention Mechanisms in APEC Economies*, held in Papua New Guinea.

⁹ See https://www.acic.gov.au/sites/default/files/2019/08/submission-inquiry_into_the_impact_of_new_and_emerging_information_communications_technology.pdf?v=1565331460

¹⁰ See <https://globalinitiative.net/wp-content/uploads/2020/03/CovidPB1rev.04.04.v1.pdf>

¹¹ https://www.aclei.gov.au/sites/default/files/cp_advice_covid_19.1.pdf

Similarly, since December 2016, ACLEI officers have met with or presented to:

- officers from Pacific nations, attending the AGD-sponsored Pacific Legal Policy Champions—Expert session on police professional standards
- an officer from the Papua New Guinea Immigration and Citizenship Authority, hosted by the Department of Home Affairs
- Papua New Guinea Customs Officers (Internal Affairs), hosted by the Department of Home Affairs, and
- officers from Vanuatu attending the Pacific Legal Policy Twinning Program (facilitated by AGD).

While our interactions with Pacific nation integrity agencies is limited, we consider that we have skills and capabilities that we could usefully share with other integrity agencies in the Pacific and would be happy to do so.

3. ACLEI's expanded jurisdiction

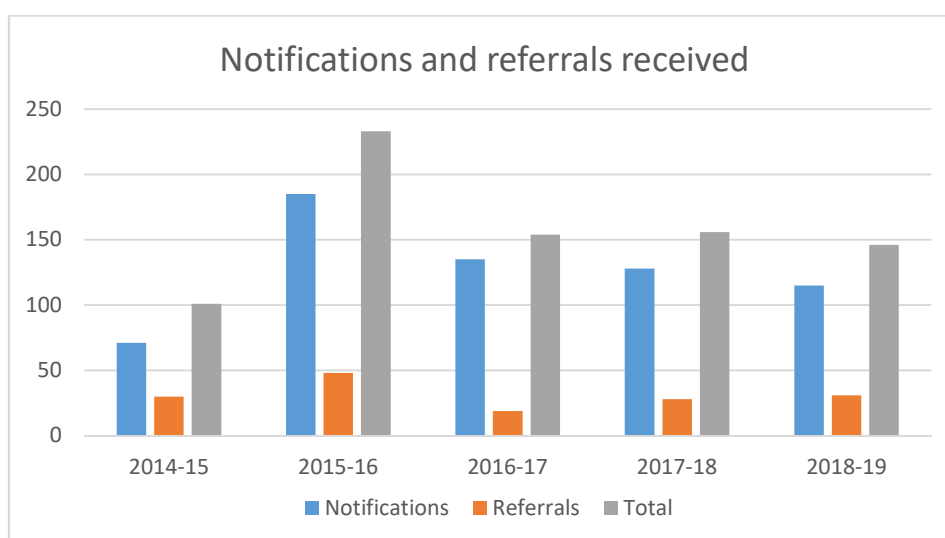
The scope of ACLEI's work has expanded considerably in the past five years.

First, the then Department of Immigration and Border Protection and the Australian Border Force came into ACLEI's jurisdiction in July 2015. The most substantial impact from this change was the addition of the visa processing function to the suite of agency functions ACLEI considers as a corruption risk and a target for criminal elements seeking to circumvent Australia's border controls.

Second, the creation of the Department of Home Affairs in December 2017 led to around 1,000 additional staff coming within ACLEI's jurisdiction. A number of these staff work in intrinsically high-corruption risk functions.

The figure below shows the impact of these changes on the number of notifications and referrals ACLEI has received.

Figure 3: Corruption Notifications and Referrals over time



With the increase in the number of notifications and referrals received by ACLEI, it has become crucial that we prioritise dealing with corruption issues that constitute serious or systemic corruption (section 16 of the LEIC Act). This has required a shift in the operating model of ACLEI from a model where ACLEI has traditionally investigated most matters referred ourselves, to a partnership model with the agencies ACLEI oversees, with ACLEI investigating serious and systemic matters and law enforcement agencies investigating other corruption matters involving their staff.

This partnership is well established within the LEIC Act, which mandates that ACLEI concentrate on serious and systemic corruption issues, while providing support to law enforcement agencies in relation to the corruption investigations that they undertake. The LEIC Act also provides a feedback mechanism by which law enforcement agencies provide the Integrity Commissioner with reports of their investigations once completed.

ACLEI has also undertaken the following initiatives in recent years to enable the agency to better meet its strategic purpose.

Visa Integrity Taskforce

In 2016–17 the then Minister for Justice approved funding under the *Proceeds of Crime Act 2002* (Cth) (Confiscated Assets Account) for an ACLEI-led Visa Integrity Taskforce. This was based in part on the risks exposed by one particular ACLEI joint investigation. The Taskforce, which concluded in December 2019 investigated numerous allegations, collected and produced intelligence about corruption in visa processing, and built significant capabilities in the Department of Home Affairs to detect and investigate fraud in visa processing.

This work has led to strengthening of the integrity of the visa processing system. It demonstrates the value of allocating a substantial amount of resources for a period to an area of government activity where a number of allegations have been made over a period of time, but in a diffuse manner.

Sydney office

ACLEI established a small presence in Sydney in June 2014, in partnership with the AFP, to focus on investigating corruption-enabled border crime. This presence was expanded from July 2015 with the addition of the then Department of Immigration and Border Protection and the Australian Border Force to ACLEI's jurisdiction.

ACLEI later received funding to establish a purpose-built secure operations facility in Sydney, which opened in December 2018. The Sydney location was selected partly due to its proximity to border infrastructure –ports, airports and customs premises. Sydney is one of Australia's largest illicit crime markets, container port and passenger airport, and a key target of international organised crime groups seeking to import contraband items or people.

This enabled work to be redistributed between ACLEI's Canberra and Sydney offices, with investigations generally allocated according to the geographic location of the corruption issue(s). This is enabling closer relations to be established between ACLEI and relevant state authorities, as well as Australian government law enforcement agencies in the area.

Enhanced corruption prevention function

From November 2016 ACLEI moved to strengthen its corruption prevention function by integrating it more directly into operational areas. This helps ensure that vulnerabilities are identified in as timely a manner as possible, and lessons learned are promulgated quickly. Issues which are agency-specific are raised with the agency at the appropriate level (for example, by the Integrity Commissioner or with the relevant functional and professional standards areas). Broader issues are raised through various mechanisms such as general briefs by the Integrity Commissioner, publications on the ACLEI website, and through the Community of Practice for Corruption Prevention.

ACLEI now has a substantial body of work to draw upon, and has, for example, published a corruption prevention toolkit and a wide range of factsheets, videos and case studies.

In 2018–19 ACLEI released a corruption prevention report *International deployments: corruption risks for law enforcement*. The report summarised a project examining potential corruption vulnerabilities for staff deploying overseas. It made twenty recommendations to better mitigate potential corruption risks, covering the pre-deployment, deployment, and post-deployment elements of the cycle. The report is available on our website.¹²

Changes to the way we work

In order to deal effectively and efficiently with the increase in the number and complexity of corruption issues accompanying the broadening of ACLEI's jurisdiction, the agency has developed and adopted a number of improved processes.

The relative priority of corruption issue notifications and referrals is addressed through the application of a Threat, Risk and Assessment Model (TRAM). Developed in 2017–18, the TRAM was implemented across all operational areas in 2018–19. The TRAM assesses and assigns a numerical score to the risk rating of a corruption allegation at an early stage of investigation. A high TRAM score corresponds to high threat and risk. The primary benefit of TRAM is its ability to enable early identification and comparison of those corruption issues which should be given higher priority.

ACLEI has also developed an Operational Risk Assessment Model (ORAM). This risk profiling tool provides a standard framework for assessing the risk of operations. It is underpinned by an algorithm that calculates an overall risk score for an operation and determines a risk rating. The ORAM is applied ninety days after an investigation commences and it has regard to factors such as the nature of the target, the location and management of the operation, and the management of information arising from the operation. The ORAM also includes an assessment of the predicted complexity of the investigation and its potential cost. This information allows the Executive to monitor resources and manage work priorities.

During an investigation's lifecycle, the ORAM and TRAM are applied at various points to reflect changes in risk factors and the operational environment.

¹² https://www.aclei.gov.au/sites/default/files/international_deployments_-_corruption_risks_for_law_enforcement_-_aclei.pdf