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Parliamentary Joint Committee on the Australian
Commission for Law Enforcement Integrity

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

AFP Submission

May 2014

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TERMS OF REFERENCE

PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

Pursuant to the committee's duties set out in section 215 of the *Law Enforcement Integrity Commissioner Act 2006 (Cth)*, the committee will inquire into the jurisdiction of the Australian Commission for Law Enforcement Integrity (ACLEI).

In particular, the committee will consider:

1. the adequacy of ACLEI's current jurisdiction;
2. the desirability and feasibility of extending ACLEI's jurisdiction to include the entire Department of Agriculture or additional parts of that department;
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:
 - the Australian Securities and Investments Commission;
 - the Attorney-General's Department; and
 - the Australian Taxation Office;
4. the desirability and feasibility of extending ACLEI's jurisdiction to include the Department of Immigration and Border Protection;
5. whether an activity-based approach to ACLEI's jurisdiction would be preferable to the current jurisdiction-based approach;
6. the most appropriate method of implementing any change to ACLEI's jurisdiction including any budgetary implications; and
7. any relevant matters.

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Executive Summary

The Australian Federal Police (AFP) welcomes the opportunity to provide the Parliamentary Joint Committee (PJC) on the Australian Commission for Law Enforcement Integrity (ACLEI) with information relevant to its inquiry into the jurisdiction of ACLEI.

The AFP provides considerable investigative assistance to ACLEI and a mature relationship has developed between the AFP and ACLEI across the four pillars of the AFP's Integrity Framework including: prevention, detection, response and continuous improvement.

The AFP has primary responsibility for investigating offences against the *Criminal Code Act 1995* (Cth), in particular Divisions 141 and 142, where offences relating to the following reside:

- bribery of a Commonwealth public official;
- corrupting benefits given to or received by a Commonwealth public official; and
- abuse of public office.

The AFP would support further analysis of the proposed benefits of further extending ACLEI's jurisdiction at this time and would like to bring the following issues to the attention of the committee:

- Note the existing workload for ACLEI carried over into the 2013-14 financial year. The AFP acknowledges that some cases are complex and long standing. The AFP remains concerned about ACLEI's ability to address their workload. As such, any further expansion of ACLEI's jurisdiction may compound its existing workload challenges.
- Note any expansion to the ACLEI mandate would require an appropriate increase to their current capacity, including investigations and operational support resources, in order to assume oversight of additional agencies.
- Note the requirement to establish sufficient demarcation between existing AFP capability and the current capacity within ACLEI to undertake corruption and integrity investigations when considering any expansion of ACLEI jurisdiction. The AFP already undertakes considerable work on integrity based strategies and investigations across the Commonwealth.

The AFP suggests that, in the first instance, an evaluation be undertaken to determine the effectiveness and benefits of the earlier extension of ACLEI's jurisdiction to include AUSTRAC, CrimTrac, parts of the Department of Agriculture and Australian Customs and Border Protection Service (ACBPS) in May 2013.

The AFP supports the continuation of the current jurisdictional-based approach to ACLEI's jurisdiction, particularly noting the absence of any auxiliary evidence obtained through proper evaluation to suggest otherwise.

If an expansion of ACLEI's jurisdiction is considered, the AFP would support in-principle a phased approach. This would provide an opportunity for a gradual evaluation of the effectiveness of, and impact on, the investigative capacity of ACLEI and the AFP respectively, as well as additional funding requirements and time to further build the necessary capacity for ACLEI if required.

Any potential expansion would need to be carefully balanced against the level of risk presented and the current fiscal and operating environments as well as the requirement to be consistent with the Government's overarching anti-corruption framework.

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Background

The potential for corruption or compromise of Commonwealth Officials is a serious matter for the Australian Government, its agencies and the community. A number of Australian Government agencies play a role in combating corruption through promoting accountability, transparency and effective enforcement.

In respect to the corruption of Commonwealth Officials, ACLEI's primary role is to provide independent assurance to government about the integrity of prescribed law enforcement agencies and their staff members. This involves investigating law enforcement-related corruption issues within the agencies under ACLEI's jurisdiction, giving priority to serious and systemic issues. At present, these agencies include:

- the AFP;
- the Australian Crime Commission (ACC) and the former National Crime Authority;
- the Australian Customs and Border Protection Service (ACBPS);
- the Australian Transaction Reports and Analysis Centre (AUSTRAC);
- the CrimTrac Agency; and
- prescribed aspects of the Department of Agriculture.

The Integrity Commissioner has a range of options available to address corruption issues within ACLEI's jurisdiction, including referring matters to the AFP or conducting a joint investigation with the AFP.

The AFP's responsibilities are not limited to law enforcement-related corruption issues. The AFP also receives referrals directly from Commonwealth agencies that are then prioritised for investigation against the AFP's Case Categorisation and Prioritisation Model.

The AFP's own Integrity Framework encompasses fraud, corruption and misconduct prevention, detection and response activities. Less serious misconduct issues are dealt with by the business area "line" managers, whereas more serious misconduct is dealt with by a dedicated Professional Standards unit. Corruption matters are in the first instance referred to ACLEI but may then be referred back to the AFP (Professional Standards unit) for investigation. This unit liaises with external oversight bodies on issues of serious misconduct and corruption and also manages prevention and awareness activities.

Adequacy of ACLEI's current jurisdiction

The AFP considers that the current jurisdiction of ACLEI is adequate to fulfil its mandate of investigating law enforcement-related corruption issues, pending any auxiliary evidence being obtained through a robust evaluation process.

The AFP has a strong record of successfully investigating allegations of corruption within the Australian Public Service and Commonwealth agencies in a timely manner. Notable recent examples include:

- The investigation and arrest of a Department of Immigration and Border Protection (DIBP) officer for allegedly unlawfully approving skilled Migration Visas. This matter was referred to the AFP by DIBP. Due to the AFP's established expertise and capability, the AFP responded immediately to the referral and the DIBP officer was arrested the next day.
- The successful investigation and prosecution of an AUSTRAC employee unlawfully releasing restricted information. ACLEI referred this matter to the AFP the same day it was received by ACLEI. Due to the ongoing and extremely sensitive nature of the matter, the

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AFP was able to expedite a response and make an arrest within two weeks, as ACLEI did not have the capability to respond with the same immediacy.

The AFP considers that a mature working relationship has developed between the AFP and ACLEI in regard to alleged corruption which has occurred within the current ACLEI jurisdiction. However some challenges currently exist in the area of referral thresholds as well as how investigations are currently undertaken using the resources of both agencies. Consideration continues to be given to ensuring the AFP and ACLEI acceptance models for corruption are aligned to reduce potential inconsistencies in how matters are handled by each agency.

For instance, the AFP continues to work with ACLEI in refining mandatory corruption referral thresholds (relating to corruption information about AFP appointees) which are purposefully broadly defined in the *Law Enforcement Integrity Commissioner Act 2006 (Cth)* but, for purposes of practical application, require greater clarity at the working level.

The AFP is currently working with ACLEI and the Commonwealth Ombudsman's Office to identify legislative reform around reporting thresholds; however, these potential reforms will only go part way to resolving the challenges that relate to ACLEI's investigative capacity and capability. Increasing ACLEI's jurisdiction, in terms of a broader range of activities and agencies, could compound this issue.

Desirability and feasibility of extending ACLEI's jurisdiction

The AFP supports further analysis of the benefits to further extending ACLEI's jurisdiction, and how any expansion would enhance the Government's ability to address corruption and integrity matters.

The AFP suggests that, before any further extension of ACLEI's jurisdiction is considered, an evaluation be undertaken to determine the effectiveness, benefits and costs of the extension of ACLEI's jurisdiction that occurred in May 2013. This extension expanded ACLEI's remit to include AUSTRAC, CrimTrac and prescribed aspects of the Department of Agriculture. Any evaluation should also consider ACBPS in the context of the overlap of their functions with DIBP.

The evaluation should also identify the additional referral and investigative-related activity and resource impacts on ACLEI, the AFP and any other agencies who provide support to ACLEI to achieve their increased oversight responsibilities, along with any administrative issues that have arisen with the extended jurisdiction. From the AFP's experience, corruption investigations are particularly protracted and resource intensive, not only in the number of investigators required, but also in the amount of specialist resources required to support investigative teams.

The evaluation would provide an evidence base to identify the impact of increased responsibilities, and may give weight to future options such as maintaining the status quo or extending ACLEI's jurisdiction.

In considering any expansion of ACLEI's jurisdiction, it is worth examining the Commission's current workload. The 2012-13 ACLEI Annual Report indicates that a number of corruption issues were carried forward into the 2013-14 financial year.

Although it is acknowledged that some corruption and integrity cases may be complex and long standing, the AFP has concerns over ACLEI's management of its current workload. As such, any further expansion of ACLEI's jurisdiction may compound its existing workload challenges. This is particularly relevant when considering the size of the Attorney-General's Department (AGD) and the Australian Taxation Office (ATO), and particularly having regard for the national footprint of the ATO.

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Any expansion to the ACLEI mandate would also likely require an appropriate increase to their current capacity, including investigations and operational support resources, in order to effectively assume oversight of additional agencies.

Currently, the agencies being proposed to come under an expanded ACLEI jurisdiction refer any possible corruption issues they identify directly to the AFP. Should they then come under ACLEI oversight, they will be required to refer these matters to ACLEI. Given ACLEI's current resources and capability, it is likely these matters will still then be referred to the AFP for investigation. Therefore if an expansion of ACLEI's jurisdiction were to occur, a clear demarcation of roles and responsibilities would be required to limit any duplication of investigative effort. Further, any expansion would likely require additional funding for both ACLEI and the AFP to manage increased workloads.

The AFP notes that an increased jurisdiction for ACLEI will likely require amendments to the existing *Law Enforcement Integrity Commissioner Act 2006 (Cth)* and the associated *Law Enforcement Integrity Commissioner Regulations 2006 (Cth)* to address a potential legislative gap. For example, the AFP's interpretation of the legislation as it currently stands is that it provides ACLEI oversight of the Department of Agriculture, but only for activities relevant to its law enforcement functions (the prescribed aspects). Given ACLEI's jurisdiction is limited to law enforcement related corruption issues, this raises the question as to why an extension to include the entire Department of Agriculture is required, as this seems to imply that the whole agency undertakes law enforcement activities.

The AFP considers that the definition of law enforcement functions is significantly dependent upon interpretation, and even without potential expansion of ACLEI jurisdiction, this definition requires clarification. For instance, while the AGD has a broad range of roles and responsibilities, the AFP is unable to identify any particular law enforcement function it might undertake, except for possible mutual assistance and/ or extradition negotiations that would warrant oversight by ACLEI.

With regard to the Department of Immigration and Border Protection (DIBP), the Committee may wish to consider the recent changes to the administrative arrangements for border protection, noting the establishment of the new Australian Border Force.

Whether an activity-based approach to ACLEI's jurisdiction would be preferable to the current jurisdiction-based approach

The AFP supports a jurisdictional approach as it defines both agency oversight and function, whereas AFP experience demonstrates that activity (referral) thresholds would be challenging to delineate, resulting in jurisdictional confusion and potential duplication of investigative efforts.

Adoption of any activity-based approach would, in the AFP's opinion, require the clear demarcation of roles and responsibilities in terms of corruption investigations. For instance, the AFP currently has primary jurisdiction over corruption issues identified in Australian Government agencies, except where legislation sets out requirements for referrals of a particular nature or by a particular class of bodies or agencies. Law enforcement-related corruption issues identified within the agencies currently under ACLEI's jurisdiction fall under this exception.

The AFP further notes the risks posed by delayed referrals which could disrupt the collection of evidence and may ultimately increase the likelihood of an unsuccessful outcome without a clear delineation of responsibility. From an AFP perspective, priority would need to be given to developing clear guidelines addressing timeframes for initial evaluation and prioritisation of referrals between the AFP and ACLEI.

Complex fraud and corruption matters are generally protracted, requiring specialised skills and significant resources. The AFP specialises in complex fraud and corruption investigations,

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maintaining both an investigative and response capacity. The AFP therefore has significant expertise and resources available to respond flexibly to corruption issues, and works closely with partner agencies to improve the detection, prevention and investigation of such matters.

The most appropriate method of implementing any change to ACLEI's jurisdiction

The AFP submits that any changes to ACLEI's jurisdiction should have regard to the Government's overarching anti-corruption framework, including the Commonwealth Fraud Control Guidelines and the Australian Government Investigation Standards. These instruments provide an overview of the key considerations in the areas of integrity and anti-corruption within the Australian Government.

As noted earlier in this submission, the AFP suggests that in the first instance an evaluation of the recent expansion of ACLEI's jurisdiction be undertaken, including identification of resource implications for ACLEI, the AFP and other agencies. If the findings of such an evaluation identify clear merit in a further expansion of ACLEI's jurisdiction, the AFP would support in principle the consideration of a staged approach to expansion. This support would be conditional upon ongoing analysis of resource implications, additional funding being allocated and consideration of investigative outcomes and capability.