



ASIC
Australian Securities &
Investments Commission

Australian Commission for Law Enforcement Integrity's (ACLEI) Jurisdiction and Corruption Vulnerabilities of Contracted Services

Submission by the Australian Securities and Investments Commission

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Introduction and Background

- 1 The Australian Securities & Investments Commission (ASIC) welcomes the opportunity to provide a submission to the Committee's inquiry into the expansion of the Australian Commission for Law Enforcement Integrity (ACLEI)'s jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services.
- 2 Since 1 January this year ASIC has come under the jurisdiction of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) as administered by the Australian Commission for Law Enforcement Integrity (ACLEI).
- 3 ACLEI forms part of the broad oversight environment in which ASIC operates, with oversight from the Senate Estimates Committee, Parliamentary Joint Committee on Corporations and Financial Services, legislation such as the PGPA Act and Commonwealth Crimes Act and the Financial Regulator Assessment Authority.
- 4 This submission sets out:
 - (a) How ASIC and ACLEI interact and coordinate activities in relation to corruption issues (see paragraphs 6-9);
 - (b) How ASIC views priorities for corruption prevention (see paragraphs 11-13);
 - (c) The makeup of ASIC's external service providers and how they are managed (see paragraphs 11-16); and
 - (d) The design of ASIC corruption prevention activities and the scope of Commonwealth agency partners (paragraphs 17-22).

Terms of Reference

- 5 ASIC's response addresses the following inquiry terms of reference:
 - (a) The January 2021 expansion of ACLEI's jurisdiction from five to nine law enforcement agencies, including the support given to, and effectiveness of, agencies undertaking new responsibilities in working collaboratively with ACLEI in detecting, investigating and preventing corruption;
 - (b) The additional corruption vulnerabilities that may exist from the contracting of services or functions by law enforcement agencies to external service providers;
 - (c) What systems or processes are in place within law enforcement agencies to identify, report and investigate potential corruption within external service providers; and
 - (d) Whether there are similar corruption vulnerabilities in partnerships between law enforcement agencies and other government agencies who are not subject to ACLEI's powers for investigation.

A Working with ACLEI

Managing ACLEI Notifications

- 6 ASIC's management of ACLEI arrangements is coordinated jointly by ASIC's Professional Standards Unit and the Chief Risk Office. A formal governance framework and standard operating procedures are in place, which are communicated broadly to all ASIC staff.
- 7 Each ACLEI matter is oversighted by an Executive Integrity Committee (EIC), which has broader oversight of ASIC's overall integrity practices. The EIC members include the Chief Operating Officer, General Counsel, Chief Risk Officer, Chief People Officer and Executive Director, Markets Enforcement.
- 8 The Chief Risk Office and Commission Counsel meet at least monthly with executive level staff from ACLEI to discuss potential corruption issues and to explore questions relating to jurisdiction and interpretation of the LEIC Act.
- 9 Although these activities have been integrated into ASIC's exiting processes and procedures, there has been some increased overhead for ASIC in resourcing and responding to the notification and reporting requirements under the LEIC Act.

Corruption Prevention

- 10 ASIC takes the management of corruption seriously and adopts a holistic approach that covers all operations, not just those that relate to enforcement activities. ASIC has benefited from the Community of Practice events hosted by ACLEI and the proactive anti-corruption advice, and capability building materials being developed and deployed by ACLEI. ASIC is exploring how to leverage ACLEI services to augment its own integrity risk management efforts.
- 11 ASIC would like to acknowledge ACLEI's willingness, availability and transparency in testing how the LEIC Act applies to ASIC's operational environment, which extends beyond law enforcement activities. ASIC also acknowledges that ACELI plays an important independent role in ensuring corruption issues across law enforcement agencies within their jurisdiction are appropriately investigated and managed.

B Contracting External Services

External Services and Corruption Vulnerabilities

- 12 ASIC's procurement of external services can be broadly categorised into:
- (a) Legal
 - i. Retaining external legal services
 - ii. Briefing external counsel
 - iii. Engagement of experts/expert witnesses
 - iv. Transcription, translation and interpreter services
 - (b) ICT (hardware, software and service solutions)
 - (c) Professional and operational services
 - i. Property (cleaning, building security etc)
 - ii. Research
 - iii. Consultancy
 - iv. Corporate management related
 - v. HR/Training
- 13 External services can be the target of criminal elements or foreign intelligence services seeking to access organisational assets, in particular where contractors and temporary staff may gain access to systems or groom employees to facilitate unauthorised access to sensitive information. ASIC's Suitability and Baseline Assessment process addresses this threat and our security policy requires all contractors and temporary staff to be subject to the same controls as ASIC employees. This includes access to premises, systems, training and auditing of access privileges.
- 14 Additional corruption vulnerabilities relate to legal services, where ASIC has an enhanced focus on actively managing potential conflicts of interest. At the point of sourcing, ASIC applies a probity risk assessment to identify and manage potential probity risks, including the use of independent probity officers for sensitive and high value procurements. Additionally, operational teams apply protocols and procedures to assess whether a conflict of interest may exist in a legal services engagement as part of procurement activities.

Managing Corruption Vulnerabilities

- 15 ASIC's integrity environment has a number of elements that contribute to the prevention, detection and response to corruption.
- (a) Active executive oversight in the form of an Executive Integrity Committee.
 - (b) ASIC's Enterprise Risk Management Framework and Fraud Control Plan.

- (c) Speak Up Platform (internal Whistleblower hotline – see para 22)
 - (d) Whistleblower arrangements for members of the public
 - (e) Investigation teams and documented procedures
 - (f) Baseline security vetting (AGSVA Approved) and ongoing organisation suitability assessments
 - (g) Investigation teams and supporting procedures, including Professional Standards Unit.
 - (h) Disclosure of interest processes, including procurement probity risk management guidelines.
- 16 The role of ASIC's Executive Integrity Committee.
- (a) As part of its Terms of Reference, the EIC oversees ASIC's Integrity Framework, policies and practices, and advises the ASIC Chair on internal corruption matters notified to ACLEI.
 - (b) Relevant ASIC teams responsible for the prevention, detection and response to integrity issues, including corruption, actively share intelligence and information as part of ASIC's Integrity Framework. This insight is provided to the EIC for consideration, with an emphasis on responding to indications or evidence of systemic integrity issues or behaviours of concern, and trends identified through ASIC's Speak Up program.
 - (c) The Integrity Committee sponsors training and awareness raising on integrity related topics and makes recommendations to the Executive Risk Committee (ERC) and Commission Risk Committee (CRiC) in relation to material integrity risks and issues.
- 17 The role of ASIC's Professional Standards Unit (PSU)
- (a) ASIC's PSU is responsible for the investigation of serious complaints and overseeing the management of less serious complaints in accordance with Information Sheet 107 which includes staff involved in ASIC's enforcement and other operational functions. The PSU manages internal complaints and reviews concerning operational staff involved in our investigations or enforcement related functions, as well as investigating allegations of misconduct, corruption and allegations of unauthorised release of confidential information.
 - (b) The PSU provides advice to ASIC staff and management concerning professional standards and ethics. The Professional Standards Unit reports to the Commission Counsel in the Chief Legal Office.
- 18 ASIC has recently launched an enhanced Speak Up program that builds on existing processes and channels to better guide ASIC employees and encourage a speak up culture. The Speak Up program is underpinned by a technology platform, which provides a secure reporting channel where employees can lodge reports about integrity related matters such as alleged Code of Conduct breaches, fraud, or corruption and can do so while remaining completely anonymous if they wish to.
- 19 ASIC's corruption management arrangements are holistic and extend to all interactions and arrangements with other agencies where appropriate. Commonwealth agencies ASIC regularly works with:
- (a) Australian Prudential Regulation Authority
 - (b) Australian Taxation Office

- (c) Australian Competition and Consumer Commission
 - (d) AUSTRAC
 - (e) Australian Federal Police
 - (f) Australian Charities and Not for Profit Commission
 - (g) Commonwealth Director of Public Prosecutions
 - (h) Australian Stock Exchange Limited
- 20 Memoranda of Understandings operate between ASIC and partner agencies. ASIC does not consider there to be any material corruption risks in these engagements.