



Australian Government

**Australian Commission for
Law Enforcement Integrity**

Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

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

Supplementary submission by the Australian Commission for Law Enforcement Integrity

27 May 2014

1. Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a second submission to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (the Committee), concerning its *Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*.

At the invitation of the Committee, ACLEI provided an initial submission addressing the second term of reference, “the desirability and feasibility of extending ACLEI’s jurisdiction to include the entire Department of Agriculture or additional parts of that department.” That submission, made on 17 April 2014, also provides background about ACLEI’s role.

This second submission builds on the information already provided and addresses the remaining terms of reference.

2. ACLEI’s focus

ACLEI assists prescribed agencies with law enforcement functions to safeguard their information and professional standards against corruption risk, including the risk of criminal infiltration. It achieves these objectives by detecting and preventing corrupt conduct, and by investigating corruption issues.

ACLEI itself has law enforcement powers, refers evidence of criminal conduct to prosecuting agencies or to other law enforcement agencies, and is an active participant in the law enforcement community. In addition, the Integrity Commissioner may use coercive powers, including by holding hearings or issuing notices to produce documents or things. The Integrity Commissioner may make findings of corrupt conduct, and reports his or her findings to the Minister for Justice.

The ACLEI model is premised on active, voluntary participation in the integrity partnership. This approach acknowledges that the law enforcement anti-corruption system is not vested only in ACLEI, but—with the organising principles of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) as its framework—is a combination of the commitment and participation of the LEIC Act agencies, and the detection and investigation powers available to the Integrity Commissioner.

ACLEI’s approach is to focus on those risks which, if realised, would cause the greatest harm to an agency’s legitimate and intended law enforcement outcomes. This focus is consistent with the statutory requirement for the Integrity Commissioner, in carrying out his or her duties, to give priority to corruption issues that constitute serious or systemic corruption (section 16 of the LEIC Act).

3. Response to terms of reference

TOR 1—Adequacy of ACLEI’s jurisdiction

When considering the Second Reading of the Law Enforcement Integrity Commissioner Bill 2006, a number of Senators and Members of Parliament debated the initial scope of the Integrity Commissioner’s jurisdiction.

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Various Senators and Members noted that the immediate objective was to protect the integrity of the Commonwealth's two premier law enforcement agencies—the Australian Crime Commission and the Australian Federal Police—while providing a mechanism (through regulation) to extend the initial jurisdiction, if it were needed. Other Members noted that corruption risks were likely to be present in other agencies—among those mentioned were the Australian Customs Service (as it then was), the Department of Immigration, Multicultural and Indigenous Affairs (as it then was) and the Australian Taxation Office—and considered that the mechanism to add agencies by regulation risked the prospect of a Minister also removing agencies from jurisdiction, thereby establishing a Ministerial veto over corruption investigations.

ACLEI's jurisdiction has since been kept under active consideration by successive governments, Parliamentary Committees¹ and individual Senators and Members.² The jurisdiction has been extended twice—first (with effect from January 2011) to include the Australian Customs and Border Protection Service (ACBPS), and later (from July 2013) the Australian Transaction Reports and Analysis Centre (AUSTRAC), the CrimTrac Agency and prescribed aspects of (what is now) the Department of Agriculture. Both measures respond to recommendations of the Committee.

The extension of the Integrity Commissioner's jurisdiction has helped to ensure that—in the face of growing external pressures from organised crime and other threats—none of these agencies is a weak point in the broader Commonwealth law enforcement integrity arrangements (the “common integrity platform” approach). The graduated extension of jurisdiction—accompanied on each occasion by additional resources—has enabled ACLEI to develop its size, structure, capacity and expertise accordingly, without serious diversion of resources from the existing jurisdiction.

ACLEI notes the cooperation and additional resources it receives from the LEIC Act agencies that participate from time-to-time in various ACLEI-led operations and taskforces. This “concertina model” has enabled ACLEI to remain modest in budgetary terms, yet remain effective as the size and complexity of the task has increased.

TOR 2—Department of Agriculture

Please see ACLEI's initial submission to this Inquiry, made 17 April 2014.³

TOR 3—The Australian Criminal Intelligence Model

As recommended⁴ by the Parliamentary Joint Committee on Law Enforcement (the Law Enforcement Committee), the Inquiry's third term of reference invites comment on the inclusion in the LEIC Act jurisdiction of three additional agencies. These agencies are:

- a) the Australian Securities and Investments Commission (ASIC);
- b) the Attorney-General's Department; and
- c) the Australian Taxation Office (the ATO).

¹ See, for instance, Parliamentary Joint Committee on ACLEI (July 2011) *Operation of the law Enforcement Integrity Commissioner Act 2006*.

² See, for instance, National Integrity Commissioner Bill 2013—
http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s936

³ <http://www.aph.gov.au/DocumentStore.ashx?id=903ad2f1-ce39-4270-aa71-9b058f03f1a4&subId=252004>

⁴ Recommendation 11, Parliamentary Joint Committee on Law Enforcement, [Report into the inquiry into the gathering and use of criminal intelligence](#), 15 May 2014

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The Law Enforcement Committee observed that, of the agencies which have endorsed the Australian Criminal Intelligence Model (ACIM) and are members of the Australian Criminal Intelligence Forum (ACIF), these three agencies are not subject to the Integrity Commissioner's independent scrutiny. In particular, the Law Enforcement Committee observed that ASIC and the ATO frequently participate in joint taskforces and operations with other law enforcement agencies, including the Australian Crime Commission and the Australian Federal Police.

ACLEI agrees that participation in law enforcement taskforces and access to sensitive information are threshold factors worthy of consideration. However, it is ACLEI's understanding that not all of these agencies have equal access to sensitive information through the ACIM or ACIF.

Of the ACIM agencies noted above, the case for inclusion appears to be strongest for the ATO, which is both a user and contributor of law enforcement-related information, and a primary partner in joint law enforcement activities, such as Project Wickenby.⁵

It is a matter for Government as to whether the level of access of any particular agency to such information would warrant scrutiny by the Integrity Commissioner, in addition to any safeguards that currently may apply.

ACLEI further notes that the ATO has one of the most respected professional standards units in the Commonwealth Public Service. The unit works closely with several law enforcement partners on investigations and detection operations and, with the AFP, has achieved a number of corruption-related prosecutions relating to its staff or former staff. On its own initiative, the ATO maintains links with ACLEI to keep itself informed of developments in the anti-corruption threat picture, and to apprise ACLEI of its own anti-corruption activities.

If the ATO were formally to become a part of the LEIC Act framework, its experience would add significantly to the law enforcement anti-corruption system. It is likely also that the coercive and intrusive information-gathering powers available to the Integrity Commissioner would assist the ATO in its management of its corruption and criminal infiltration risks.

TOR 4—Department of Immigration and Border Protection (DIBP)

ACLEI notes the 2014–15 Budget measure, *Smaller Government—strengthen and enhance Australia's border protection services*, which will establish the Australian Border Force (ABF) within the DIBP.⁶ The ABF will perform a number of functions presently performed by Immigration staff within DIBP, as well as functions presently delivered by the Australian Customs and Border Protection Service.

Recognising that the consolidation of border protection functions could heighten corruption risk—for example, through centralisation of law enforcement information and through merging different operating cultures—the Government has budgeted to provide ACLEI with an initial \$1 million in 2014–15 to assist with the integrity aspects of the transition.⁷

Since the Australian Customs and Border Protection Service is to be disestablished, the ABF implementation project will consider what consequential amendments may be required (beyond the *Acts Interpretation Act 1901*) to clarify the Integrity Commissioner's jurisdiction. ACLEI is confident that necessary arrangements are already in contemplation.

⁵ <https://www.ato.gov.au/general/tax-evasion-and-crime/in-detail/tax-crime/project-wickenby/>

⁶ <http://www.minister.immi.gov.au/media/sm/2014/sm214247.htm>

⁷ See, Portfolio Budget Statements 2014–15, <http://www.ag.gov.au/Publications/Budgets/Budget2014-15/Documents/06%20PBS%202014-15%20ACLEI.DOC>

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More will need to be known about the implementation before ACLEI is in a position to comment further.

TOR 5—An activities-based approach to jurisdiction

ACLEI's jurisdiction currently operates under an agency-based approach. Under this approach, the Integrity Commissioner has jurisdiction over the staff members of an agency set out section 5 of the LEIC Act (Definitions—*law enforcement agency*). With the exception of the Department of Agriculture, the Integrity Commissioner currently has jurisdiction over the entirety of the agencies prescribed by the LEIC Act.

Under the current approach, an agency may also be added to Integrity Commissioner's jurisdiction by regulation. This arrangement provides a means by which the Government may respond quickly to corruption issues that may arise in non-LEIC Act agencies. However, if an agency were added solely by regulation (as ACBPS was initially), subsection 6(2) of the LEIC Act would restrict the Integrity Commissioner's jurisdiction to investigations of corrupt conduct related to the performance of a law enforcement function of an agency.

Term of reference 5 suggests that an activity-based approach—whereby the LEIC Act might define jurisdiction in a way that is connected to a work environment rather than to a specific agency—could be considered as an alternative approach to jurisdiction. For instance, an activity-based approach might include “all Commonwealth employees working at a [particular] airport or [particular] maritime environment”, or “all Commonwealth employees with access to certain law enforcement databases”.

Drawing on ACLEI's experience with the ACBPS jurisdiction—which initially was restricted to the law enforcement functions of that agency—it is likely that such an approach would create “grey spots”, where jurisdiction would be open to doubt or challenge. It is also the case that “black spots” would be created—for instance, those administrative, managerial or ICT staff members of an agency who are not directly captured by the activity-based definition, yet who may have access to relevant law enforcement information or the ability to influence decision making. In summary, the risks are that the Integrity Commissioner would be precluded from investigating or making findings about incidental matters that may have a significant impact on law enforcement integrity, and his or her jurisdiction (and exercise of powers) may be open to challenge.

Accordingly—at this time—ACLEI is not persuaded that an activity-based approach to defining jurisdiction would provide a superior policy outcome to the current agency-based approach.

TOR 6—Implementing a changed jurisdiction

Having regard to ACLEI's present resourcing levels, further proposals to extend the Integrity Commissioner's jurisdiction would need to balance any likely strategic gains to the integrity system (on the one hand) against possible detriment to ACLEI's operational effectiveness (on the other). Such considerations may be dealt with by any or all of the following measures:

- staggering any extension in jurisdiction;
- ensuring there is statutory or policy backing to enable the Integrity Commissioner to give priority in the performance of his or her functions to law enforcement-related corruption issues;
- broadening ACLEI's presence beyond its present Canberra base; and
- ensuring that ACLEI maintains an adequate funding base.

TOR 7—Other relevant matters

There are no other matters that ACLEI wishes to raise at this time.