



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 submission

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

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The Attorney-General's Department welcomes the opportunity to provide the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (ACLEI) with this submission as part of its inquiry into the jurisdiction of ACLEI.

1. Australia's approach to anti-corruption

The Australian Government's approach to preventing corruption is multi-faceted and diverse. Under this approach, Australia's strong constitutional foundation, which establishes the separation of powers and guarantees the rule of law, is complemented by Australia's multi-agency approach, in which a number of Commonwealth agencies play a role in combating corruption by promoting accountability, transparency and effective enforcement. This holistic approach to anti-corruption includes standards and oversight, detection and investigation, prosecution and international cooperation.

The agencies which contribute to combating corruption at the Commonwealth level include:

- Australian National Audit Office
- Australian Crime Commission
- ACLEI
- Australian Federal Police
- Attorney-General's Department
- Australian Public Service Commissioner
- Australian Securities and Investment Commission
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Commonwealth Director of Public Prosecutions
- Commonwealth Ombudsman
- Department of Foreign Affairs and Trade (and Austrade)
- Department of Finance and Deregulation
- Inspector General of Intelligence and Security
- Office of the Australian Information Commissioner
- Parliamentary Services Commissioner
- Treasury

2. Role and responsibilities of ACLEI

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.

The office of the Integrity Commissioner and ACLEI are established by the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (the LEIC Act), which commenced operation on 30 December 2006.

The objects of the LEIC Act are:

- a) to facilitate:
 - i. the detection of corrupt conduct in law enforcement agencies, and
 - ii. the investigation of corruption issues that relate to law enforcement agencies
- b) to enable criminal offences to be prosecuted, and civil penalty proceedings to be brought, following those investigations
- c) to prevent corrupt conduct in law enforcement agencies, and
- d) to maintain and improve the integrity of staff members of law enforcement agencies.¹

It is important to note that the ACLEI model is one of ‘integrity partnership’. ACLEI is intended to play a role in assisting agencies within the Integrity Commissioner’s jurisdiction to prevent corrupt conduct, as well as dealing or helping to deal, with cases that arise (and then drawing out the lessons for agencies from cases). ACLEI does not attempt to investigate all matters, and has options in the LEIC Act to manage, oversee or review investigations, not just conduct full investigations itself. Having regard to the objects of the LEIC Act, ACLEI prioritises corruption issues that have a nexus to the law enforcement character of the agencies in the Integrity Commissioner’s jurisdiction.

3. Agencies within the Integrity Commissioner’s jurisdiction

Section 5 of the LEIC Act defines the ‘law enforcement agencies’ that fall within the Integrity Commissioner’s jurisdiction. Under this section, ‘law enforcement agency’ was originally defined to include the Australian Federal Police (AFP), Australian Crime Commission (ACC), the former National Crime Authority (NCA) and any other Commonwealth government agency that has a law enforcement function and is prescribed by regulation. This has since been expanded to include the Australian Customs and Border Protection Service (ACBPS), AUSTRAC, CrimTrac and prescribed officers from the Department of Agriculture.

The original choice of the Integrity Commissioner’s jurisdiction was a policy decision of Government, which reflected the key roles the AFP and ACC play in Commonwealth law enforcement.² The subsequent expansions of the Integrity Commissioner’s jurisdiction were carefully considered to ensure a clear link was maintained between the Integrity Commissioner’s jurisdiction and law enforcement corruption issues.

In particular, expanding the Integrity Commissioner’s jurisdiction to ACBPS recognised the strategic role played by ACBPS officers in safeguarding Australia’s borders, and the importance of ensuring those officers maintain the highest standards of honesty and integrity. It also recognised that ACBPS staff are attractive targets for recruitment as facilitators and advisers to criminal groups due to the agency’s role in countering organised crime at the border, for example by preventing the importation of illicit substances.

Staff members from CrimTrac and AUSTRAC, and prescribed staff from the Department of Agriculture, were included in the Integrity Commissioner’s jurisdiction on the basis that each of these agencies support, or undertake, frontline law enforcement and regulatory functions, meaning they can pose an attractive target for criminal infiltration and corrupt compromise by organised crime.

¹ *Law Enforcement Integrity Commission Act 2006* (Cth) s3.

² Commonwealth, *Parliamentary Debates*, House of Representatives, 29 March 2009 (Philip Ruddock).

The Integrity Commissioner's jurisdiction over the Department of Agriculture was limited to prescribed staff to ensure that ACLEI's resources could be targeted to the activities or areas that pose the most serious corruption risks. In line with this, staff prescribed within the Department of Agriculture include:

- officers whose duties include the assessment, control and clearance of vessels and cargo imported into Australia, and
- staff who have access to the Integrated Cargo System.

These staff were included on the basis either that they work within a high risk environment – the waterfront and cargo environment – or they make decisions or have access to information about proposed importation and may therefore pose an attractive target for criminal infiltration and corrupt compromise by organised crime.

In 2014, the Government intends to review ACLEI's implementation of this extension to the Integrity Commissioner's jurisdiction.

4. Expanding the Integrity Commissioner's jurisdiction

The Integrity Commissioner's jurisdiction can be expanded by amending the definition of 'law enforcement agency' in section 5 of the LEIC Act, or by prescribing an agency with a law enforcement function in the regulations.

Amending the definition of law enforcement agency in the Act allows all functions of those law enforcement agencies named in the definition to fall within the Integrity Commissioner's jurisdiction, whereas prescribing an agency by regulation limits the Integrity Commissioner's jurisdiction to the law enforcement functions of that agency.

Prescribing an agency in the regulations allows the Integrity Commissioner's jurisdiction to be expanded quickly, while still enabling Parliamentary scrutiny through the tabling and disallowance process. However, this approach limits the Integrity Commissioner's jurisdiction to the law enforcement functions of a prescribed agency. From an operational perspective, this can be problematic, as staff who work in areas that support or interact with the law enforcement functions of an agency may, at various times, have access to information with value to organised crime, or which otherwise makes them susceptible to corruption. In these circumstances, questions may arise as to the ability of the Integrity Commissioner to investigate the conduct of these individuals where the particular functions they perform fall outside a traditional law enforcement role.

In contrast, amending the definition of law enforcement agency in the LEIC Act allows all of the functions of a law enforcement agency named within the definition to fall within Integrity Commissioner's jurisdiction. This approach allows the Integrity Commissioner to comprehensively address the corruption risk to the law enforcement functions and outcomes of an agency, by removing any doubt that the Integrity Commissioner can investigate corrupt conduct in any part of that agency, should it become necessary.

Any re-evaluation of the Integrity Commissioner's jurisdiction should be conducted on a principled and pragmatic basis. The following are suggested as relevant criteria:

- agency risk profiles (including existing internal mechanisms), and
- consequences of corruption within the agency under consideration.

These criteria are not weighted and are closely related. The emphasis placed on individual criteria will differ according to circumstances.

Agency risk profile

The risk of corruption within an agency with a law enforcement function is a fundamental element to consider in the context of the Integrity Commissioner's jurisdiction. Taking a precautionary and informed approach (through monitoring, research and analysis) helps with the identification and assessment of these corruption risks more accurately, and ensures the Government is able to tailor responses to match accordingly. For example, where an agency is assessed to have a high corruption risk, it may be appropriate to add an additional layer of oversight to that agency by bringing it within the Integrity Commissioner's jurisdiction. Alternatively, where an agency is assessed to have a low corruption risk, this risk may be manageable through strong internal mechanisms.

An agency's internal anti-corruption framework and the agency's response to previous allegations of corruption or misconduct (including steps the agency has taken to address these) may also be useful factors to consider in assessing the corruption risk profile of that agency.

Consequences of corruption within an agency

Related to the above criterion, explicit consideration should be given to the consequences of corruption within an agency. Within the Commonwealth, law enforcement powers have been granted to a wide range of agencies dealing with, amongst other things, border management, financial integrity and corporate regulation. Potentially, the consequences of corruption within one agency may be greater than another. The more serious the consequences of corruption within an agency, the stronger the justification for including it within the Integrity Commissioner's jurisdiction.

5. Costs associated with expanded jurisdiction

Any extensions of the Integrity Commissioner's jurisdiction would likely increase its workload and have resourcing implications that would need to be considered as part of the normal Government Budget process. Consistent with the need to effectively manage the Commonwealth's resources, normal Budget processes require clear justifications and offsets to be provided for any requests for additional funding allocations.

In addition, there is the question of ACLEI's capacity to grow and manage any increased jurisdiction. ACLEI staff often require specialised expertise which is not necessarily readily able to be recruited. In addition, ACLEI needs to invest in learning and analysis each time its jurisdiction is expanded, so that it understands the risks relevant to the business of each new agency.