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Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

Inquiry into the integrity of
Australia's border
arrangements

May 2015

Submission by the
Australian Federal Police

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Introduction

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

2. This submission focuses on the AFP's operational experience and expertise and supports points (a), (b) and (c) of the inquiry's terms of reference:
 - a) The nature and extent of corruption risks facing Commonwealth involved in border operations,
 - b) The extent to which Commonwealth law enforcement agencies are able to prevent and investigate corruption at the Australian border,
 - c) The extent to which ACLEI is able to assist in corruption prevention and to successfully investigate or otherwise respond to corruption in border operations.
3. The AFP has primary responsibility for investigating offences against the *Criminal Code Act 1995* (Cth), in particular:
 - Bribery of a Commonwealth public official,
 - Corrupting benefits given to or received by a Commonwealth public official, and
 - Abuse of public office.
4. The AFP's responsibilities are not limited to corruption issues. The AFP also investigates serious and organised crime (such as illegal drug and weapon importation and money laundering), which may involve an element of public sector corruption. The AFP has access to coercive powers and specialist capabilities to investigate corruption and serious and organised crime.
5. ACLEI supports the Integrity Commissioner to detect, investigate and prevent corrupt conduct. The AFP provides specialist investigative capabilities to support ACLEI investigations under the framework established by the *Law Enforcement and Integrity Commissioner Act 2006* (Cth).
6. Through the work of AFP, ACLEI, and other law enforcement partners, a number of vulnerabilities have been identified in the border environment. Criminal involvement in both private organisations and government agencies continues to challenge law enforcement, as sophisticated criminal groups actively try to infiltrate agencies involved in border protection. Factors such as the integrity of private organisations and access to restricted areas or information are key sources of risk and can impede law enforcement.

Operating environment and risks for border agencies

7. Law enforcement personnel and other government officials hold a privileged place at the border and in the community. They may have access to secure environments, law enforcement databases and significant powers, including powers to search and detain people and their belongings.
8. Organised crime syndicates seek to exploit officials to gain access to sensitive information to circumvent border controls, which facilitates criminal activities and can threaten national security.

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9. Corruption is a key enabler for serious and organised crime, such as drug and weapon importation, money laundering, and visa fraud. Criminal elements actively try to infiltrate agencies involved in border protection. A corrupt official may have access to information and systems that enable them to manipulate data or vulnerabilities in processes. Officials may also be able to use their positions to make or influence decisions, including what imports or passengers are screened and the granting of visas.

10. Corrupt officials across the seaport supply chain can provide inside knowledge, access to ICT systems and/or access to remove concealments. Some private security companies contracted to protect key port infrastructure have strong associations with organised crime groups.

11. Airport criminal infiltration may occur across the supply chain from airport logistics and flight functions to air freight logistics, airport security, baggage handling and aircrew. Criminal infiltration enables criminal groups to exploit aviation vulnerabilities and bypass screening mechanisms, reducing the likelihood of illicit goods being detected.

12. Security risks are not isolated to law enforcement officials that are physically at the border. Personnel in government and law enforcement agencies often move between functions over their careers. Further, activities undertaken at the border cross over a number of operational functions and locations. For example, an employee working in a function or location not associated with the border may still have access to systems or intelligence that could be manipulated to assist criminal activity.

13. The AFP is directly involved in investigating serious and organised crime relating to the maritime and aviation environment, including through joint agency taskforces. Through this work, the AFP and its partners have identified instances where sophisticated criminal organisations have infiltrated government organisations to facilitate nefarious operations.

14. This was highlighted by the joint AFP/ACLEI investigation Operation Marca/ Operation Heritage, where 30 people were arrested at Sydney International Airport in 2013 for corruption enabled drug importation offences.

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Operation Marca

Operation Marca (ACLEI Operation Heritage) was a joint taskforce between the AFP and ACLEI with the assistance of the former Australian Customs and Border Protection Service (ACBPS) targeting corruption within ACBPS at Sydney Airport.

The investigation originated from initial concerns about corruption allegations relating to the illegal importation of border controlled substances. These concerns were raised with ACLEI in early January 2011 by the then CEO of ACBPS. This subsequently resulted in the Integrity Commissioner establishing Taskforce Natio. Taskforce Natio involved ACLEI, AFP and ACBPS officers, with assistance from the New South Wales Police and was tasked to investigate this allegation and related information about the possible importation of border controlled substances.

Through the use of illegally imported performance and image enhancing drugs a network of individuals formed at Sydney International Airport, including ACBPS officers and an employee of the former Department of Agriculture Fisheries & Forestry (DAFF).

The officers used their insider knowledge and privileged access to defeat surveillance and interdiction. This included knowledge about law enforcement techniques, systemic vulnerabilities at the border, and access to law enforcement databases. This enabled corrupt officials to work with criminal organisations to manipulate rosters and job placements which enabled them to facilitate importations of drugs. These officers used their official positions and workplace relationships to gather information and attempt to cover their tracks.

Between June 2012 and March 2014, 27 search warrants conducted under Operation Marca resulted in the seizure of 54 kilograms of pseudoephedrine and \$237,450 in Australian currency.

The investigation resulted in the arrest of 30 people for drug, corruption and perjury offences. These arrests included eight ACBPS officers, a DAFF employee performing a quarantine function, two baggage handlers and organised crime members.

A further seven ACBPS officers have resigned as a result of code of conduct issues identified during the investigation.

This matter highlighted corruption risks arising from targeting of officials by criminal groups, frustrated ambition, complacency, poor oversight at the team level, boredom, and ability to manipulate rostering combined with knowledge of operational processes.

Significant control by private industry

15. A significant proportion of the border is controlled by private industry. This increases the complexity of law enforcement efforts to detect, investigate and disrupt crime. Where private industry controls access to physical premises and data, law enforcement investigations may be reduced through additional time taken and employees having forewarning of the investigation.

ASIC and MSIC vulnerabilities

16. A key risk at sea and air ports is the exploitation of employees with access to secure areas. All persons needing unescorted access to aviation or maritime security

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zones require an Aviation Security Identification Card (ASIC) and/or Maritime Security Identification Card (MSIC). This includes most employees based at air and sea ports and offshore oil and gas facilities, including maintenance and transport workers.

17. Individuals with links to criminal groups have been able to gain employment at Australia's ports and obtain an ASIC/MSIC. This allows unrestricted access to secure areas, such as container and cargo examination facilities, which can be exploited for nefarious purposes. Previously, AFP investigations have identified the importation of border controlled drugs into Australia, facilitated by trusted insiders working with the aviation environment. These employees were able to exploit processes, procedures, and their access to restricted areas within the airport because of the ASIC/MSIC status.

18. The ASIC/MSIC schemes require people who legitimately work in or require access to secure areas to be background checked, and display their valid ASIC or MSIC at all times. The background checks are coordinated by AusCheck and include a criminal history check obtained through CrimTrac, a national security assessment by the Australian Security Intelligence Organisation, and an immigration check by the Department of Immigration and Border Protection (DIBP). The *AusCheck Act 2007* provides the regulatory framework for coordinating and conducting ASIC/MSIC background checks. Legislation administered by the Department of Infrastructure and Regional Development (DIRD) sets out the eligibility criteria applied during those background checks to determine whether an individual can be issued with a card or not.

19. The ASIC/MSIC schemes are governed respectively by the *Aviation Transport Security Act 2004* and the *Maritime Transport and Offshore Facilities Security Act 2003*. Both Acts are administered by DIRD and have broad ranging functions over and above the regulation of ASIC/MSIC. The purpose of this legislation is limited to safeguarding against unlawful interference with aviation and maritime transport and offshore facilities.

20. The AFP is working with the AGD and the Office of Transport Security concerning options to strengthen the ASIC/MSIC regimes and ensure it effectively addresses criminal vulnerabilities and national security threats.

Investigating corruption offences

21. Criminals may seek to corrupt law enforcement officials to gain access to information, protection, and other services that enable criminal activities. Corruption matters are often complex and protracted and may involve a nexus to serious organised crime, requiring specialised skills and significant resources.

Australian Federal Police

22. The AFP has primary responsibility for investigating offences relevant to corruption issues within Australian Government agencies, except where legislation sets out requirements for referrals to ACLEI. Corruption issues identified within agencies under ACLEI's jurisdiction fall under this exception. Corruption matters relating to AFP appointees are referred to ACLEI, but may be investigated jointly if requested by ACLEI.

23. The AFP specialises in complex fraud and corruption investigations, maintaining both an investigative and response capacity. The suite of legislative powers available to the AFP – including telecommunications interception, controlled operations, physical

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and technical surveillance and assumed identities – coupled with its investigative expertise and resources such as the AFP international network, results in a unique ability to respond to corruption issues.

24. The AFP also hosts a Commonwealth Fraud and Anti-Corruption Centre to strengthen the Commonwealth's capacity and response to fraud and corruption, including foreign bribery and identity security. The Centre is located within the AFP and involves the Australian Taxation Office (ATO), Australian Crime Commission (ACC), Department of Human Services, ACBPS, DIBP, and the Australian Securities and Investments Commission. The Centre has the ability to support urgent ACLEI investigations requiring resources and subject matter expertise, as demonstrated in a recent AUSTRAC corruption matter that resulted in an arrest and prosecution within five days of referral to the AFP.

25. Through training, quality assurance reviews of investigations, prevention advice, and coordinated intelligence, the Centre contributes to the reduction or cessation of activities beyond those targeted by a particular investigation.

26. The AFP works closely with ACLEI and partner agencies to improve the detection, prevention and investigation of such matters. Further, through a joint taskforce in Sydney, the AFP directly supports ACLEI investigations through provision of investigative capability for the conduct of joint investigations.

27. In addition to corruption, the AFP is also responsible for detecting, deterring, and disrupting a range of criminal offences including: the importation of drugs and illicit substances, offshore manufacturing of drugs; money laundering; proceeds of crime; and fraud against the Commonwealth. The AFP is also responsible for criminality in the aviation environment, counter terrorism and technology enabled crime.

Joint serious and organised crime investigations

28. To effectively target and dismantle serious and organised crime, including at the border, the AFP works with law enforcement, intelligence and regulatory partners. This leverages the collective expertise, experience and powers of the agencies and ensures a coordinated and integrated approach which results in the most effective enforcement strategy in each individual case.

Investigations at the waterfront

In recent years, the AFP has worked with partner agencies, including ACC, ACBPS, state police and crime commissions, ATO and AUSTRAC, to target identified vulnerabilities and investigate serious and organised crime at the waterfront in Sydney, Melbourne and Brisbane. In 2013-14 alone, this operational activity collectively:

- effected 56 arrests,
- seized 7 firearms,
- seized 138 kilograms of illicit drugs and precursor chemicals, and
- seized 177 tonnes of tobacco.

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Engagement with industry

29. The AFP and its partners are increasingly working with industry to harden environments against criminal infiltration and exploitation. Due to the significant control by private industry at seaports, the AFP leads an Industry Engagement Forum consisting of Commonwealth and state law enforcement representatives, the Department of Agriculture, the ATO and key industry bodies in Sydney and Melbourne. By sharing information on threats and vulnerabilities and developing strategies and solutions to mitigate risk, the forum contributes to strengthening the integrity of the border.

Policing the airstream

30. The AFP has a high visibility policing presence at all major airports. Specialist AFP capabilities include Airstream Investigation Teams (AIT) and Joint Airport Intelligence Groups (JAIG). AITs proactively target serious and organised crime focusing on trusted insiders who may exploit, or aim to exploit, infrastructure and security vulnerabilities at airports. JAIGs based at major Australian airports provide strategic advice on issues relating to security threats, organised crime and community policing incidents in the airstream.

Australian Commission for Law Enforcement Integrity

31. ACLEI supports the Integrity Commissioner to detect, investigate and prevent corrupt conduct and has primary jurisdiction over corruption issues within agencies under ACLEI's jurisdiction. The AFP enjoys a collaborative and effective relationship with ACLEI, working jointly on investigations and giving priority to investigating systemic and serious corruption.

ACLEI Powers

32. The AFP considers that ACLEI's powers (such as the ability to use coercive and covert information gathering techniques), partnerships, and integrity framework will continue to position it well to prevent, investigate, and respond to corruption in border operations.

Joint AFP/ACLEI Taskforce and AFP support to investigations

33. Given the high risk corruption poses to Australians and Australia's interests, the AFP has prioritised support to ACLEI investigations and diverted resources from other priority serious and organised crime programs. This assistance has included investigative support and the provision of technical capabilities.

34. In June 2014 the AFP and ACLEI established a joint Corruption Taskforce which focuses exclusively on corruption enabled border crime. The Taskforce is undertaking significant investigations involving Commonwealth officials within ACLEI's jurisdiction who are enabling, through corrupt activities, serious and organised crime activities. The AFP dedicates 21 appointees to the Taskforce, which are co-located with ACLEI and accommodated by the AFP in its Sydney Office. ACLEI has provided the AFP financial assistance that contributes to the cost of AFP technical support to the Taskforce. This is

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critical to AFP's ability to provide ongoing support to ACLEI investigations, however, the contribution does not cover costs regarding AFP's investigative capability.

ACLEI remit and increased AFP support

35. ACLEI's remit has expanded substantially since its inception in 2006, and the AFP welcomes the inclusion of DIBP from July 2015. The AFP notes legislation to give effect to this extension received Royal Assent on 20 May 2015.

36. The AFP understands that ACLEI will increase its resources in line with the new responsibilities. The AFP has not received direct funding but anticipates that, as the ACLEI caseload increases, the requirement for the AFP to provide investigative assistance to ACLEI will increase commensurately. This will require the redirection of further AFP resources from other priority areas to ensure that integrity of law enforcement officials at the border continues to be addressed appropriately. The AFP understands that the AGD will arrange a review of resource and investigative impacts on the participating agencies after 18 months after the expansion of ACLEI's jurisdiction.

Referrals

37. Generally, law enforcement corruption matters are in the first instance referred to ACLEI for investigation as per the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (the LEIC Act). However, ACLEI may then refer a matter to the AFP for investigation or commence a joint AFP/ACLEI investigation as part of the Corruption Taskforce. The AFP may also receive referrals directly from Commonwealth agencies or members of the public.

38. The AFP continues to work with ACLEI and AGD to ensure the AFP and ACLEI acceptance models for corruption are aligned, to reduce potential inconsistencies in how matters are handled by each agency and to ensure an efficient law enforcement integrity framework to investigate corruption issues.

39. The AFP notes the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015* currently before the Parliament, proposes amendments to ensure that the powers available to the Integrity Commissioner under various provisions of the LEIC Act are internally consistent and allow the Integrity Commissioner to perform the prescribed functions of the office more efficiently and effectively. Part of the Bill seeks to amend the definition of 'significant corruption issue' to allow the Integrity Commissioner and head of a law enforcement agency to reach agreement on what a significant corruption issue is.

Prevention through Integrity

40. It is critical that all agencies working in or with responsibility for the border environment continue to focus on preventing corruption through robust integrity frameworks.

41. The AFP, like all Commonwealth law enforcement agencies working at air and sea ports, is not immune to the risk of corruption. All AFP appointees are subject to the AFP Integrity Framework, which encompasses four pillars: prevention, detection, investigation/response and continuous learning. The Framework has been recognised as

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the benchmark for Australian Government agencies to maintain the integrity of people, information and physical premises. The AFP provides advice and support to other agencies in strengthening their integrity frameworks.

Prevention

42. The AFP has strong prevention mechanisms including stringent screening of potential employees, robust governance and core values to set conduct standards for appointees, early intervention, training, and a culture of reporting.

43. The AFP Fraud Control and Anti-Corruption Plan, by identifying strategic risks and mitigation strategies, play an important role in prevention. The AFP's Fraud Control and Anti-Corruption Plan and policy statement apply to all appointees, contractors and service providers and are consistent with the AFP's professional standards framework. Fraud and corruption risks are reviewed regularly, and progress on the implementation of the Plan is monitored by the AFP's most senior governance mechanism, the Strategic Leaders' Group, and the Audit Committee, as part of their oversight and assurance roles.

44. Screening of potential employees includes consideration of issues relating to character, investigating possible links to individuals or groups involved in criminal activities, and other security risks. Further, AFP appointees must maintain a security clearance in accordance with the Australian Government Protective Security Policy Framework.

45. Between January 2013 and April 2015 the AFP has denied 24 security clearances based on reasons such as failure to provide all information as part of the vetting process, failure to declare drug use, and failure to declare associations.

46. Adherence to the AFP Code of Conduct is enforced through the *Australian Federal Police Act 1979* (the AFP Act) and the AFP Commissioner's Order on Professional Standards (CO2). These set high standards of conduct for all employees, including conduct outside of employment. The AFP is a values-driven organisation and the core values, identified in CO2, represent the organisation's principles and standards. Adherence to these values - integrity, commitment, excellence, accountability, fairness and trust - is also a key consideration in all promotions, deployments and performance feedback.

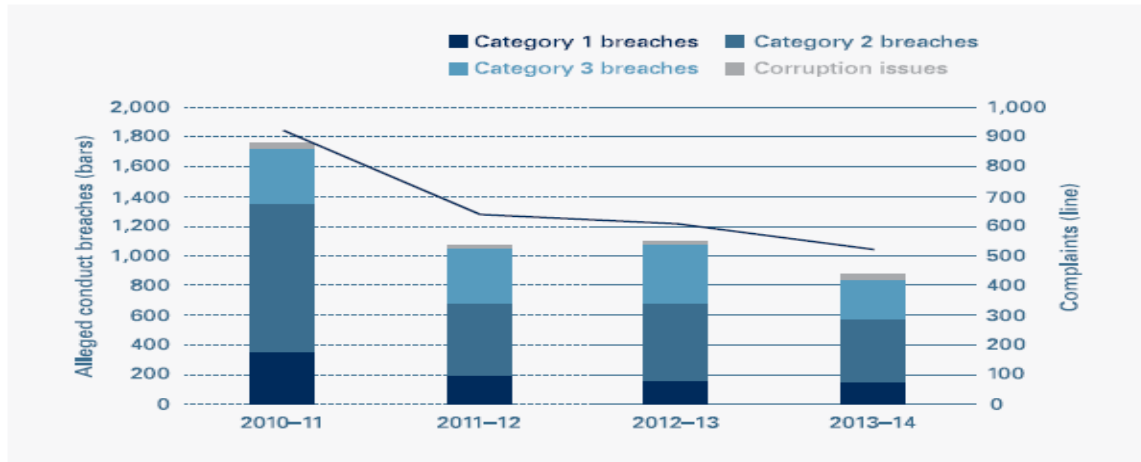
47. The AFP has an extensive education and awareness campaign to promote a culture of integrity, including the importance of integrity reporting. Integrity training, which addresses corruption, occurs at many stages in an employee's career, being a component of training for all new employees and recruits, overseas deployments and leadership programs.

48. The AFP also focuses on early intervention, promoting collaboration in all areas of the AFP to identify and support individuals that may be susceptible to corruption or abuse of their position.

49. The effectiveness of the AFP's integrity culture is demonstrated through the extent to which breaches of conduct are reported by AFP appointees. In 2013-14, of 873 alleged conduct breaches that were recorded, over half were reported from within the AFP (30 self-reported and a further 412 were reported by another member of the AFP). The number of new breaches and conduct complaints received by the AFP also continues to decrease (see Figure 1).

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Figure 1: Trend in the number of complaints and associated breaches, 2010-11 to 2013-14



Detection

50. AFP appointees are subject to random drug and alcohol testing, which can detect individuals vulnerable to external influences, such as blackmail, bribery or exposure to organised crime. The AFP also utilises intelligence systems to proactively detect integrity risk behaviours of appointees or work areas or to verify integrity reporting.

51. The AFP also has a Confidant Network of specially trained appointees which provides independent and discreet information, advocacy and support to staff dealing with integrity dilemmas.

Investigation/response

52. Whilst the AFP has strong integrity measures, they are not infallible. There will always be instances where dishonest or delinquent individuals disregard integrity frameworks.

53. Part V of the AFP Act provides the legislative framework for professional standards and complaint management. Minor misconduct issues are generally dealt with managerially in the workplace, while serious misconduct is managed by Professional Standards investigations. All corruption matters relating to AFP appointees are referred to ACLEI, and may be investigated jointly with AFP or solely by ACLEI.

54. The strength of the AFP’s processes for investigating and responding to potential conduct breaches has been confirmed through regular external scrutiny. Part V of the AFP Act prescribes the process for recording and dealing with AFP conduct and practice issues related to the AFP. An AFP conduct issue relates to whether an AFP appointee has engaged in conduct that contravenes AFP professional standards or engaged in corrupt conduct.

55. In 2013-14, of the 1025 breaches of conduct matters relating to AFP appointees that were finalised, no corruption issues were established. Analysis of corruption and

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serious misconduct matters the AFP has referred to ACLEI since 2006 indicates that collectively, only approximately 20 per cent related to the AFP portfolios with a presence at the border (Aviation, Counter Terrorism, Serious and Organised Crime and Crime Operations).

56. Consistent with the requirement in the AFP Act for the Commonwealth Ombudsman to review the AFP's records relating to conduct and practice issues and reports on its findings. The most recent review for the 2013-14 period found that, overall, the AFP's administration of these matters is comprehensive and adequate.

Continuous learning

57. AFP's Integrity Framework is continually benchmarked against best practice national and international standards. The AFP maintains strong relationships with the Commonwealth Ombudsman's Office, ACLEI and other law enforcement agencies to share best practice integrity frameworks and to understand and develop strategies to address emerging corruption risks. This includes consideration of any recommendations arising from the annual Commonwealth Ombudsman reports on the AFP's administration of conduct and practice issues.