



Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

Inquiry into the expansion of ACLEI's jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services

October 2021

Submission by the Australian Federal Police

Introduction

The AFP 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. This submission should be read in conjunction with the submission made by the Department of Home Affairs, which the AFP has contributed to.

The AFP and ACLEI share a highly productive working relationship and work collaboratively to detect, investigate and prevent corrupt conduct in the AFP and Commonwealth Law Enforcement broadly. Under section 27 of the Law Enforcement Integrity Commissioner's Act 2006, the AFP and ACLEI continue to respond jointly to allegations of corrupt conduct and to mitigate many of the risks inherently involved in such investigations.

In addition, the AFP investigates allegations of corrupt conduct which fall outside of ACLEI's remit (that is, corruption in agencies and departments that are not oversighted by ACLEI).

Noting the Terms of Reference of this inquiry, this submission outlines the AFP's role in countering corruption, and the specific measures being undertaken to mitigate the threat of corruption within contracted service providers and non-law enforcement partner agencies.

The AFP's role in investigating, disrupting and preventing corruption

The AFP manages corruption risks and investigates instances of corruption in two ways:

AFP Professional Standards Command

The role of AFP Professional Standards (PRS) Command is to maintain, promote and enhance the integrity of the AFP through:

- A proactive integrity framework incorporating the development and delivery of misconduct and corruption prevention strategies, and
- Complaint management through investigation and resolution of misconduct, practices issues and corruption issues.

All AFP appointees have an individual responsibility to maintain the AFP's professional standards.

Instances of the most serious type of misconduct by AFP appointees – corruption – are notified to ACLEI by the AFP Commissioner. Pursuant to the *Law Enforcement Integrity Commissioner Act 2006*, ACLEI make an assessment of corruption referrals involving AFP appointees and may decide whether they are to be investigated:

- By ACLEI,
- Jointly by ACLEI and the AFP,
- By the AFP without ACLEI oversight or management, or
- By the AFP with ACLEI oversight or management.

The vast majority of matters notified to ACLEI by the AFP are later referred to PRS for investigation, without ACLEI oversight or management.

Whilst the jurisdiction of PRS extends to only AFP appointees, the broader AFP supports ACLEI's investigations into corruption in other law enforcement agencies. This allows ACLEI to leverage the AFP's significant investigative experience and specialist capabilities. The AFP has members seconded to ACLEI in support of investigations relevant to all agencies under ACLEI's remit.

Fraud and corruption Investigations

Part of the AFP's legislated functions is to investigate, disrupt and prevent Commonwealth crime, including corruption. Anti-corruption is referenced as one of the five focus areas for the AFP under its current Ministerial Direction (issued by the former Minister for Home Affairs in 2020). The AFP is responsible for delivering this function.

AFP's Crime Command holds strategy responsibility for the AFP's response to allegations of corrupt conduct in the broader public service (including parliamentarians, the Federal judiciary, external service providers, and instances of foreign bribery). Referrals to the AFP relating to corruption are considered against the AFP's Case Categorisation and Prioritisation Model (CCPM) and if accepted for investigation, assigned to the most appropriate Regional Command to investigate.

Crime Command liaise with the Attorney General's Department's Counter Fraud Prevention Centre and anti-corruption section to support the detection, prevention and disruption of fraud and corruption within and against the Commonwealth and informs international engagement.

Expansion of ACLEI's jurisdiction over law enforcement agencies

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.

Neither PRS nor Crime Command has experienced significant change in the nature of their relationship with ACLEI since the expansion – both areas of the AFP report strong working relationships with ACLEI.

Corruption investigations are often complex, and may involve other offending. This could include fraud against the Commonwealth, secrecy and unauthorised disclosure offences, and drug offences. Education amongst public service agencies about what constitutes corrupt conduct and indicators is key to ensuring prompt reporting to the appropriate authority.

Use of external service providers

b) The additional corruption vulnerabilities that may exist from the contracting of services by functions of law enforcement agencies to external service providers.

The variation in systems used by external service providers can make it difficult to track or audit the activities of service providers, whether proactively or as a result of a breach which requires further investigation.

The level of due diligence undertaken by external service providers over their own employees and sub-contractors should be considered as a relevant risk. Law enforcement agencies should rely on their own, appropriate levels of due diligence over all persons who have access to sensitive information. Additional due diligence should also be applied to the investigators undertaking investigations on corrupt conduct to ensure that any corruption risks are identified and mitigated.

It is the experience of law enforcement that organised crime groups can be patient when it comes to breaching law enforcement's secrecy. AFP has recently identified officials being offered AUD\$50,000 in exchange for law enforcement information. The possibility that organised crime groups may place individuals into employment and/or positions of trust with a view to exploiting

their access in future should not be discounted. This heightens the need for appropriate checks and balances on employees. For example, prior to being engaged by the AFP, contractors first must undergo an Organisational Suitability Assessment. A designated AFP assessment officer evaluates the applicant's suitability to be engaged, after which the contractor goes through a separate security clearance assessment.

c) What systems or processes are in place within law enforcement agencies to identify, report and investigate potential corruption within external service providers.

The AFP has a very rigorous professional standards framework, designed to prevent and mitigate the risk of corruption within its ranks. That same framework is extended to external service providers and partner agency members seconded to the AFP, to mitigate the risk of corruption when those entities have access to sensitive law enforcement information.

The AFP's professional standards framework, which is set out in Part V of the *Australian Federal Police Act 1979* (AFP Act), applies to all 'AFP Appointees'. The term "AFP Appointees" covers a wide range of personnel, including consultants and independent contractors engaged under section 35 of the AFP Act. This mechanism of engaging external service providers is typically utilised for work that requires access to AFP information systems, including sensitive law enforcement information. Consultants and contractors engaged in this way are subject to the same anti-corruption mechanisms as AFP members, including oversight by PRS, by operation of the AFP Act. Their obligations are clearly articulated in legislation, through the contract documents, and through mandatory training.

The AFP's integrity framework further places mandatory reporting obligations on appointees in relation to a number of life events and instances, including significant financial changes, relationship changes and interactions with certain individuals. This is an obligation strengthened by legislation which does not exist in most other Commonwealth or state agencies, nor in the private sector.

The AFP's *Fraud Control and Anti-Corruption (FCAC) Plan 2024* sets out the AFP's strategy for overall management of fraud and corruption risks within, and against, the agency and satisfies PGPA requirements. The FCAC Plan covers contractors and service providers, who are made aware of their individual roles and responsibilities in fraud and corruption prevention, detection and response.

AFP's partnerships with other government agencies

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.

In recognition of the unique role that AFP Appointees have, including their access to criminal information and contacts, the AFP has strengthened its integrity obligations beyond that required of the Australian Public Service. The AFP applies significant reporting obligations on AFP Appointees to ensure a clear picture of potential corruption risks exists throughout the organisation and has a stricter standard for integrity issues. For example, what the AFP would consider an integrity issue may not constitute the same in another agency, nor attract the same reporting obligations such as declarable associations, drug use, financial losses or windfalls. On occasions, Commonwealth employees from other agencies who seek employment with the AFP have been assessed as not suitable on the basis that they do not meet the AFP's Character Standards.

The AFP regularly partners with other agencies and departments, including non-law enforcement agencies for joint investigations, "agency-assist" operations and taskforces. The AFP employs a range of anti-corruption mechanisms to counter the risks in these partnerships, including co-location of operational members and segregation of information. Some types of particularly sensitive law enforcement information, for example telecommunications intercepts, are kept on separate systems that can only be accessed by AFP members for the purpose of an investigation, and not by partners.

For ongoing arrangements, such as operational taskforces, participants are generally made Special Members of the AFP, an appointment which brings them under the AFP's integrity framework and the legal requirements of Part V of the AFP Act. Special Members are subject to the same integrity oversight and legal obligations as employees of the AFP.

Corruption investigations require increased operational security and secrecy as the evidence required to prove the offence is often sourced from another agency and may involve senior officials. In the past, the AFP has imposed secrecy agreements on those involved in high risk sensitive investigations, reinforcing the sensitive nature of the investigation. Such agreements cover all secondees and Special Members of the AFP from other agencies who may join the investigation. These agreements do not introduce additional penalties, but serve to highlight the existing legislation and mechanisms to maximise the operational security of matters.

The AFP also engages with State and Territory agencies, and the disparate corruption regimes across the various Australian jurisdictions creates additional complexities.

Conclusion

Corruption within law enforcement and broader Government is a critical risk category for any organisation. Corrupt members with access to and an understanding of law enforcement methodologies, sensitive capabilities or operational information are key facilitators for transnational serious organised crime groups, undermining the operational effectiveness of the agency and Government objectives of ensuring the safety of the public. Corrupt officials are highly sought after by criminal groups and their identities are closely guarded, indicating the high value these groups place on insider members.

Indecisive, outdated or inadequate risk mitigation strategies ultimately undermine the Australian public and law enforcement partner agency confidence. The risk for AFP members and the subjects they deal with, in units such as the undercover and human source programs and witness protection, increases the risk to a 'risk to life' category, due to the relationships those individuals hold with criminal groups.

Noting the AFP's current agreed priorities, there will be a continuing need to clarify and clearly define the AFP's role in preventing and investigating corruption as a criminal offence, separate to or in support of ACLEI (or any future Commonwealth Integrity Commission). Resourcing this work will also require further consideration. Where a referral does not meet the AFP's CCPM or Sensitive Investigation threshold, it may not meet the threshold for acceptance by the AFP, despite being of potentially high priority / high risk to another Commonwealth agency. The future expansion of ACLEI's role and remit will necessitate a consideration of corruption within the AFP's CCPM.