

Chapter 2

Strategy and performance

2.1 ACLEI is expected to foster an 'Australian Government law enforcement culture that resists corruption'.¹ Further, it supports the Integrity Commissioner to provide 'independent assurance to government about the integrity of prescribed law enforcement agencies and their staff members by detecting, investigating and preventing corrupt conduct.'²

2.2 ACLEI's responsibilities include:

- detecting, investigating and preventing corrupt conduct;
- maintaining and improving the integrity of law enforcement staff, through awareness raising and making recommendations for reforms of practices and laws; and
- collecting and analysing information about corruption, and informing the Australian Parliament about patterns and trends.³

2013-14 in review

2.3 Commonwealth agencies currently within ALCEI's jurisdiction include the Australian Crime Commission (ACC), the Australian Customs and Border Protection Service (ACBPS) and the Australian Federal Police (AFP).

2.4 Pursuant to the committee's report into the *Operation of the LEIC Act*, Australian Transaction and Reporting Analysis Centre (AUSTRAC), CrimTrac and biosecurity staff (within the Department of Agriculture) are now included in ACLEI's jurisdiction. The committee's report into ACLEI's 2012-13 annual report notes:

The committee identified these agency staff as subject to a higher potential risk of infiltration by organised crime because of the nature of their work. This recommendation was realised when the Parliament passed amendments to the LEIC Act on 27 November 2012.⁴

2.5 The three new agencies were included within ACLEI's jurisdiction from 1 July 2013.

2.6 The outgoing Integrity Commissioner, Mr Philip Moss, focused his review on ACLEI's achievements following the enlargement of its jurisdiction, together with, 'some significant detection and prosecution outcomes across a number of ACLEI's

1 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 12.

2 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 12.

3 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 12.

4 *Journals of the Senate*, No.127—27 November 2012, p. 3412.

operations, and the launch of a joint taskforce to tackle corruption-enabled border crime.⁵

2.7 The former acting Integrity Commissioner, Mr Robert Cornall noted:

...my understanding is that 2013-14 was a very successful year for ACLEI. It contributed to some very significant criminal prosecution outcomes, as you know. At the same time, it helped strengthen integrity systems and built the anti-corruption community.⁶

2.8 With reference to the addition of AUSTRAC, CrimTrac and biosecurity functions of the Department of Agriculture, the Integrity Commissioner noted that ACLEI's anti-corruption program continued to reflect the importance of protecting the AFP and the ACC's integrity assets, from 'the significant threats and temptations that uniquely affect their working environments.'⁷

2.9 The Integrity Commissioner also highlighted the importance of ACLEI leading by example with respect to integrity measures, noting it had focused on a 'year-long programme of strengthening internal arrangements, such as integrity training, governance and audit procedures, and risk monitoring initiatives.'⁸

2.10 The annual report suggests that one of ACLEI's significant milestones in the year ahead was the merger of the ACBPS and the Department of Immigration and Border Protection into the new Australian Border Force (ABF), effective 1 July 2015. The annual report notes that assuring ABF's integrity is 'expected to be a high priority for ACLEI in coming years.'⁹

2.11 ACLEI commended the ACC's leadership of taskforce Pharos, a corruption detection project, noting that while it had produced promising results it was, 'establishing itself as an efficient, scalable model which other agencies may adopt.'¹⁰

2.12 ACLEI noted the additional significance of its integrity partnership model with the establishment, in June 2014, of the anti-corruption taskforce in Sydney. In partnership with the AFP, the taskforce has a focus on the detection and prevention of corruption-enabled border crime:

The joint taskforce will run initially for twelve months, and is part funded by a \$1 million injection that was provided to ACLEI in the May 2014 Budget for the purposes of conducting integrity testing initiatives ahead of the establishment of the Australian Border Force in July 2015.¹¹

5 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 12.

6 Mr Robert Cornall, Acting Integrity Commissioner, *Committee Hansard*, 27 November 2014, p. 1.

7 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 9.

8 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 8.

9 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 8.

10 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 8.

11 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 10.

2.13 According to ACLEI, the joint operation in Sydney will provide a timely focus on law enforcement issues relating to border control, as well as providing an avenue to pursue investigations started by taskforce Pharos. ACLEI noted that if sustainable, the Sydney task force could form the basis of a permanent arrangement that would enhance ACLEI's investigative abilities.¹²

2.14 The Integrity Commissioner's review also noted that from ACLEI's commencement in January 2007 until the end of 2013-14 it had conducted 111 coercive hearings:

...all of them held in private as part of covert investigations. This investigative tool has proven its worth time and again, especially when combined with other law enforcement and forensic auditing methods.¹³

Resourcing

2.15 In 2013-14 ACLEI's budget was \$7.615 million (an increase from \$6.043 million in 2012-13).¹⁴ The annual report notes that ACLEI received additional funding from two sources, with a payment for ACLEI's expanded jurisdiction (the inclusion of AUSTRAC, CrimTrac and the biosecurity functions of the Department of Agriculture),¹⁵ and another via the *Proceeds of Crime Act 2002*.¹⁶

2.16 ACLEI noted its operating surplus in 2013-14 of \$0.776 million, due to the 'difficulty experienced in filling temporary vacancies.'¹⁷

2.17 ACLEI received an unmodified audit opinion from the Australian National Audit Office (ANAO) for its accounts.¹⁸

2.18 The committee notes that this is the last annual report that ACLEI will produce in accordance with the *Financial Management and Accountability Act 1997* (FMA Act), following the passage of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

2.19 The PGPA Act replaced the FMA Act and the *Commonwealth Authorities and Companies Act 1997*, effective 1 July 2014, to establish, 'a coherent system of governance and accountability for public resources, with an emphasis on planning, performance and reporting.'¹⁹

12 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 10.

13 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 10.

14 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 44.

15 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 44.

16 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 44.

17 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 44.

18 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, pp 138–139.

19 Department of Finance, *PGPA Act legislation and associated instruments*, www.finance.gov.au/resource-management/pgpa-legislation/ (accessed 16 February 2015).

2.20 The committee looks forward to next year's annual report from ACLEI, which it expects to be compliant with the requirements set out in the PGPA Act.

2.21 The committee notes ACLEI has efficiently discharged its 2013-14 annual report obligations pursuant to the FMA Act.

Key performance indicators

2.22 ACLEI is required by the Portfolio Budget Statements (PBS) to perform against a set of 'deliverables'. These deliverables are consistent with those required in 2012-13:

Corruption issues are promptly brought to the attention of the Integrity Commissioner for independent assessment and decision on how each issue should be dealt with (either by ACLEI, the agency to which the issue relates, or another agency);

Where appropriate, ACLEI independently investigates corruption issues, giving priority to conduct that constitutes serious corruption or systemic corruption;

Where appropriate, the Integrity Commissioner uses statutory intrusive and coercive information-gathering powers to assist investigations;

ACLEI analyses and reports on patterns and trends in law enforcement corruption;

ACLEI recommends changes to laws and to agency practices and procedures to improve integrity in law enforcement, and to detect and prevent corruption more effectively;

ACLEI enhances corruption prevention initiatives, such as the assessment of corruption risk and raising awareness about corruption deterrence, thereby helping to build corruption-resistant work cultures; and

Staff members of law enforcement agencies are made aware that information about corruption can be referred with confidence to the Integrity Commissioner.²⁰

2.23 ACLEI's seven Key Performance Indicators (KPIs) are linked to program objectives and deliverables. The annual report notes that:

ACLEI met most of its KPIs for 2013-14. Priority was given to investigations relating to the border environment, including Operation Heritage [which investigated corrupt conduct at Sydney International Airport] and Operation Myrrh [which investigated the private use of illicit drugs by three ACBPS officers]. These investigations, among others, demonstrate the value of the Integrity Commissioner's integrity partnership model, through which ACLEI works with the LEIC Act agencies to achieve durable improvements to the law enforcement integrity system.²¹

20 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 27.

21 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 28.

KPI one—the corruption notification and general referral system is effective

2.24 ACLEI's first KPI supports the premise that if effective anti-corruption arrangements concerning law enforcement agencies are operational, public confidence in those agencies can be maintained. Further, 'an active detection culture contributes to corruption deterrence and the reinforcement of an agency's professional standards.'²²

2.25 There are two different methods by which ACLEI may receive information that assists it to detect corruption: notifications and referrals. The LEIC Act requires the AFP Commissioner and the CEOs of the ACC, ACBPS, AUSTRAC and CrimTrac to notify the Integrity Commissioner of corruption issues related to their respective agencies.²³ The Secretary of the Department of Agriculture is required to notify the Integrity Commissioner of corruption issues related to prescribed (biosecurity) functions, as set out in the LEIC regulations.²⁴ These actions are referred to as notifications throughout ACLEI's annual report.

2.26 The second way in which ACLEI may receive information that assists it in detecting corruption is through the referral mechanism found in the LEIC Act. The annual report notes:

The Minister may refer a corruption issue to the Integrity Commissioner. In addition any other person, company or government agency may provide information to the Integrity Commissioner about possible corrupt conduct.²⁵

2.27 Information provided to ACLEI in this way is called a referral throughout ACLEI's annual report.

Notifications

2.28 ACLEI's annual report notes that the effectiveness of the integrity system is demonstrated through 69 notifications from the six LEIC Act agencies in 2013-14.²⁶ This represents a modest increase from the 55 notifications received in 2012-13, which excluded the additional three agencies of AUSTRAC, CrimTrac and the biosecurity functions of the Department of Agriculture.²⁷

Referrals

2.29 The Integrity Commissioner was referred a total of 23 issues in 2013-14 (8 from individuals and another 15 from other government agencies), compared to 21 referrals in 2012-13.²⁸

22 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 28.

23 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 67.

24 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 67.

25 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 68.

26 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 29.

27 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 29.

28 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 29.

2.30 The annual report notes:

While the notification and referral system is an important source of information for ACLEI, the information received in these ways is complemented by intelligence gained through other means. ACLEI's detection strategy is increasingly moving to a more free exchange of data and information, which by itself—unaggregated—would not raise a corruption issue in every instance. Accordingly, ACLEI has commenced discussions with the Attorney-General's Department and the AFP about how the present regime of notifications and reporting could be modified to accommodate this model of operation.²⁹

2.31 Finally, ACLEI noted the potential interaction or effect of the *Public Interest Disclosure Act 2013* (PID Act) on the LEIC Act was yet unknown and untested.³⁰ This point was raised in reference to the method by which ACLEI receives notifications and referrals of potentially corrupt conduct by law enforcement officers in LEIC Act agencies. A potential issue could arise if there is uncertainty about which statutory referral mechanisms should be used.

Committee view

2.32 The committee agrees with ACLEI's assessment of its performance against KPI one. The committee notes that more than half of the increase in notifications since last year originate from the new LEIC Act agencies.

2.33 In relation to the PID Act issue outlined in paragraph 2.31, the committee notes that section 82A of the PID Act requires the Minister to initiate a review into the operation of the Act. The review must commence before 15 January 2016 and be completed within 6 months.³¹ The committee is confident that the potential overlap between the LEIC and PID Acts will be examined through that process. The PID review will be presented to both Houses of Parliament.

KPI two—ACLEI assesses all notifications and referrals of corruption issues in a timely way

2.34 KPI two quantifies the timeliness of ACLEI's response to notifications or referrals of corruption issues. The annual report notes that some assessments are time critical because of the potential for target identification and evidence collection to require prompt action by ACLEI. The report also explains the importance of timeliness to address agency operational risks:

Timeliness in completing these assessments is also important in order to allow the relevant agency to respond to any operational risks that may arise from corruption issues.³²

29 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 29.

30 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 29.

31 *Public Interest Disclosure Act 2013* (Cth) s2, s82A.

32 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 31.

2.35 The annual report states that ACLEI met this measure through its internal processes relating to the allocation of investigative resources, noting its internal benchmark which aims to complete 75 per cent of all assessments within 90 days of receipt of the notification or referral.³³

2.36 The annual report notes that 64 per cent (or 48 instances) of 75 assessments completed during 2013-14 were assessed within 90 days.³⁴ Further, 71 per cent (or 47 instances) of notifications and referrals received in 2013-14 and for which assessments were completed in the reporting year (66 instances) were finalised within 90 days of receipt.³⁵ Of the 24 issues awaiting assessment, 10 had been received in May or June 2014 (where the 90 day period was yet to lapse).³⁶

Committee view

2.37 The committee notes ACLEI's internal benchmark that provides a mechanism to evaluate whether KPI two was met effectively. The committee notes that ACLEI's performance against this measure has slipped by comparison to the 2012-13 reporting period.³⁷ While ACLEI did not achieve its 75 per cent benchmark this year, it came close for both measures described above. In this regard the committee notes the comments included in the annual report relating to KPI two results:

The tempo and nature of current operations required ACLEI to give a higher priority to investigations rather than to assessments in the first half of 2013–14. However, each notification or referral was examined on receipt, urgent matters were prioritised and action was taken accordingly. In the second half of the reporting period, the Integrity Commissioner temporarily assigned an officer to conclude outstanding assessments.

At the end of the reporting period, ACLEI was finalising the recruitment of a specialist workflow and assessments officer, to ensure that systems are in place to manage assessments more consistently in 2014–15.³⁸

2.38 The committee acknowledges the appropriateness of ACLEI's explanation. The committee would be concerned if ACLEI had prioritised the achievement of this KPI over important areas such as its investigative role. The committee also notes ACLEI's statement that urgent notifications or referrals were prioritised and also that ACLEI has allocated specific resources to ensure outstanding assessments are concluded.

2.39 The committee will continue to monitor this KPI in future reports to ensure ACLEI's assessments are made in a timely manner.

33 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 31.

34 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 32.

35 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 32.

36 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 32.

37 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 24.

38 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 31.

KPI three—ACLEI's investigations are conducted professionally and efficiently, and add value to the integrity system

2.40 KPI three aims at supporting ACLEI's role within the Australian Government's law enforcement integrity framework—to detect and deter possible corrupt conduct. The annual report notes the Integrity Commissioner's role in providing independent advice to the Minister in relation to corruption risks, as well as the investigatory role of the Integrity Commissioner.³⁹

2.41 ACLEI sought to address this measure by focussing its investigations on those 'most likely to yield the highest contribution to maintaining and improving integrity in law enforcement agencies.'⁴⁰

2.42 Further, the annual report noted that ACLEI's legal advisers continue to advise the Integrity Commissioner and investigators about the lawful use of ACLEI's powers, authorisations, surveillance and telecommunication interception issues.⁴¹

2.43 The annual report notes that the Integrity Commissioner may reconsider previous corruption issues and how they should be dealt with. Under this arrangement, the Executive Director—Operations advises the Integrity Commissioner about possible reconsiderations, when warranted. This process did occur in 2013-14, when:

...the Integrity Commissioner reconsidered and discontinued seven ACLEI investigations. In each instance, consideration was given to disseminating collected evidence to relevant agencies, in accordance with the LEIC Act and other relevant legislation.⁴²

Committee view

2.44 ACLEI's response and management, of Operation Heritage/Marca, in collaboration with other agencies, demonstrates ACLEI's efforts to meet this KPI.

KPI four—ACLEI monitors corruption investigations conducted by law enforcement agencies

2.45 The LEIC Act allows the Integrity Commissioner to refer corruption issues for internal investigations of LEIC Act agencies, or where a Commonwealth crime is evident, ask the AFP to investigate a corruption issue or issues relating to other LEIC Act agencies. The annual report notes that at the conclusion of such investigations, the agency head of AFP Commissioner provides a report to the Integrity Commissioner for consideration, and the Integrity Commissioner may make recommendations and comments relating to the investigation or outcome.⁴³

39 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 33.

40 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 34.

41 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 34.

42 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 34.

43 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 36.

2.46 In 2013-14, ACLEI received 16 reports of completed agency investigations. In these instances, 'the Integrity Commissioner did not consider that any comments or recommendations were necessary, and accepted the reports' conclusions as appropriate.'⁴⁴ As at 30 June 2014, 84 agency investigations were in progress. Seventy one of these investigations had been in progress since the commencement of 2013-14 and 73 from the start of 2012-13.⁴⁵

Committee view

2.47 The committee accepts the importance of ACLEI's ability to refer corruption investigations to law enforcement agencies. However the committee expresses concern about the high numbers of ongoing internal investigations, particularly those dating back to July 2012. In future annual reports a clearer explanation of the internal investigations completed and underway, and the reasons for significant delays would be appreciated. It may be appropriate for the committee to receive that information *in camera*.

KPI five—ACLEI contributes to policy development and law reform in accountability and corruption prevention relating to law enforcement

2.48 The purpose of KPI five is to assist the Integrity Commissioner to:

...advise the Australian Government and the Parliament about patterns and trends in corruption risks in law enforcement, and to recommend any changes to law and policy or to agency practices and procedures that may be desirable.⁴⁶

2.49 In 2013-14, ACLEI undertook numerous actions in relation to KPI five, including:

- the Integrity Commissioner's policy observations in investigation reports provided to the Minister;
- sharing the ACLEI Fraud and Corruption Control Plan 2014-15 with other agencies; and
- made three public submissions to Parliamentary or other Australian Government inquiries.⁴⁷

Committee view

2.50 The committee is satisfied that ACLEI has met KPI five, not only through the information provided in the annual report, but also in the committee's interactions with ACLEI over the financial year, where ACLEI's officers have been consistently professional and helpful to the committee in its deliberations.

44 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 36.

45 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 36.

46 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 38.

47 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 38.

KPI six—Staff members of law enforcement agencies are made aware of ACLEI's role

2.51 KPI six supports ACLEI's centrality as the solitary statutory authority charged with the prevention, detection and disruption of law enforcement corruption. As such, it is important that ACLEI continue to inform law enforcement partners and LEIC Act agencies of its role, as well as reminding officers in applicable LEIC Act agencies of their professional and legal obligations under the relevant integrity framework.

2.52 ACLEI noted:

This effort helps to create a law enforcement culture in which individuals (particularly supervisors) are able to recognise the indicators of corrupt behaviour and are willing to report information appropriately.⁴⁸

2.53 ACLEI promotes its work to LEIC Act agencies through a range of strategies including its online presence, speeches, presentations and promotional material.⁴⁹ In 2013-14, the Integrity Commissioner and ACLEI staff addressed 22 audiences of ACLEI agencies, aimed at drawing:

...attention to ACLEI's role in the integrity framework and to build broad and diverse partnerships to further ACLEI's anti-corruption work.⁵⁰

Committee view

2.54 The committee is satisfied that ACLEI has fulfilled its obligations under KPI six. The committee is aware of the effort ACLEI makes to raise awareness of its role as the Commonwealth's only dedicated anti-corruption agency, and believes ACLEI has discharged this obligation effectively.

KPI seven—ACLEI handles personal information appropriately

2.55 ACLEI has been granted significant information gathering and coercive powers, which result in the production of large amounts of personal information. This requires ACLEI to appropriately store and safeguard that information from inappropriate use:

This information is valuable to organised crime and corrupt law enforcement officers, who may wish to manipulate, destroy or use it to undermine a legitimate law enforcement outcome.⁵¹

2.56 The annual report contends that ACLEI's own internal audit committee undertakes regular internal audits to ensure that ACLEI handles personal and sensitive information in an accountable and secure manner:

48 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 40.

49 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 40.

50 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 40. Specific details of ACLEI's outreach activities are included in Appendix 1 of the annual report.

51 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 42.

An audit of information handling arrangements was conducted in 2013-14 to take account of the changing risk environment and ACLEI's access to additional law enforcement information sources, and others in prospect.⁵²

Committee view

2.57 The committee is satisfied that ACLEI has met its obligations to ensure the appropriate and secure storage of sensitive personal information. The committee supports the use of internal risk assessment tools, as well as the steps taken to safeguard information obtained and retained through the Sydney taskforce.

52 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 43.