

Chapter 3

Issues

3.1 This chapter considers issues including the expanded jurisdiction of ACLEI, financial issues and the expansion of ACLEI's operations into Sydney through its taskforce. Further, the committee will also address additional matters raised in the public hearing into ACLEI's annual report conducted in November 2014.

3.2 It is important to acknowledge that while the committee makes observations about ACLEI's annual report (and ongoing issues affecting ACLEI's operation), the committee is currently finalising an inquiry into ACLEI's expanded jurisdiction. This requires a different approach to the committee's examination of ACLEI annual report. As such, the committee will reserve its opinion on such matters, pending the finalisation of its broader inquiry into ACLEI's jurisdiction.

Operation Heritage/Marca

3.3 ACLEI's 2012-13 Annual Report discussed Operation Heritage/Marca, a joint operation between ACLEI and the AFP. Operation Heritage/Marca commenced in January 2011, when the ACBPS was included as a LEIC Act agency, and ACBPS subsequently notified ACLEI of multiple corruption issues.¹

3.4 It is clear from the acting Integrity Commissioner's foreword that Operation Heritage/Marca has been both a significant focus and success for ACLEI and the AFP:

...in 2012-13, 2013-14 and the early months of 2014-15, Operation Heritage/Marca resulted in 19 convictions for criminal offences with sentences ranging from eight and a half years imprisonment to suspended sentences and convictions resulting in good behaviour bonds.²

3.5 With reference to Operation Heritage/Marca, the acting Integrity Commissioner noted that from ACLEI's perspective, it was largely finalised, 'save to the extent that we are still assisting with some prosecutions which are yet to be completed.'³ Further, the acting Integrity Commissioner relayed his expectations that the major outcome for ACLEI and its law enforcement agency partners was that Operation Heritage/Marca had succinctly and clearly demonstrated the nexus between corruption in law enforcement agencies and organised crime.⁴

1 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 51.

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

3 Mr Robert Cornall AO, A/g Integrity Commissioner, ACLEI, *Committee Hansard*, 27 November 2014, p. 1.

4 Mr Robert Cornall AO, A/g Integrity Commissioner, ACLEI, *Committee Hansard*, 27 November 2014, p. 2.

Changes to LEIC Act agency heads

3.6 The acting Integrity Commissioner also contended that an important focus for ACLEI in 2013-14 had been the larger number of appointments and changes to senior managers and agency heads of LEIC Act agencies, and the need for ACLEI to quickly build effective and collaborative relations with the new agency heads within its jurisdiction.⁵ Mr Cornall also noted the significant changes of leadership at both ACLEI and its jurisdiction and partner agencies,⁶ including:

- Mr Chris Moraitis PSM, Secretary, Attorney-General's Department (appointed September 2014);⁷
- Mr Paul Jevotvic APM, Chief Executive Officer, AUSTRAC (appointed October 2014);⁸
- Mr Chris Dawson APM, Chief Executive Officer, ACC (appointed April 2014);⁹
- Mr Roman Quaedvlieg APM, Chief Executive Officer, ACBPS (appointed October 2014);¹⁰
- Mr Andrew Colvin APM, Commissioner, AFP (appointed November 2014);¹¹
- Mr Phillip Glyde, Acting Secretary, Department of Agriculture (appointed March 2015);¹² and
- Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection (appointed October 2014).¹³

5 Mr Robert Cornall AO, A/g Integrity Commissioner, ACLEI, *Committee Hansard*, 27 November 2014, p. 2.

6 Mr Robert Cornall AO, A/g Integrity Commissioner, ACLEI, *Committee Hansard*, 27 November 2014, p. 2.

7 Attorney-General's Department, *Biographical details—Chris Moraitis PSM*, www.ag.gov.au/About/Seniormanagement/Pages/BiographicaldetailsChrisMoraitisPSM.aspx (accessed 11 May 2015).

8 AUSTRAC, *Minister for Justice media release: New era for Australian Transaction Reports and Analysis Centre*, www.austrac.gov.au/media/media-releases/minister-justice-media-release-new-era-australian-transaction-reports-and (accessed 11 May 2015).

9 Australian Crime Commission, *Australian Crime Commission CEO – opening statement*, www.crimecommission.gov.au/media-centre/release/australian-crime-commission-media-statement/australian-crime-commission-ceo (accessed 11 May 2015).

10 Australian Customs and Border Protection Service, *Roman Quaedvlieg profile*, www.customs.gov.au/site/Roman-Quaedvlieg-Profile.asp (accessed 11 May 2015).

11 Australian Federal Police, *Media Release*, www.afp.gov.au/media-centre/news/afp/2014/october/Media%20Release%20Andrew%20Colvin%20appointed%20as%20AFP%20Commissioner.aspx?source=rss (accessed 11 May 2015).

12 Department of Agriculture, *Organisational Structure*, <http://www.agriculture.gov.au/about/contactus/org-structure> (accessed 11 May 2015).

3.7 The acting Integrity Commissioner submitted that the merger of the Department of Immigration and Border Protection and ACBPS from 1 July 2015 into the ABF would provide further challenges for ACLEI and its partner agencies.¹⁴

3.8 In its report on ACLEI's 2012-13 Annual Report, the committee commented on the proposed Sydney ACLEI office and noted it would:

...create the opportunity of further liaison with state agencies in New South Wales that undertake similar work to the Integrity Commissioner and that participate in joint operations.¹⁵

3.9 In further evidence to the committee for the 2013-14 annual report, ACLEI officers explained the clear benefits for ACLEI in establishing the Sydney task force, and the flow on benefits for Commonwealth and State partner agencies:

...corruption enabled border crime is one of the main focuses of ACLEI. The purposes of establishing the task force were to be in closer proximity to the border and also to other agencies that work at the border, including New South Wales Police and the New South Wales Crime Commission. Being in Sydney allows us to build those synergies and operational links, to build relationships and to attend the critical meetings at which crime strategy is discussed. It also widens the recruitment pool for ACLEI.¹⁶

Corruption-enabled border crime

3.10 Operation Heritage/Marca has also undoubtedly given rise to further questions about the integrity of the border, especially with respect to ongoing efforts by ACLEI and other law enforcement agencies to maintain effective deterrence, detection and disruption of corrupt activity.

3.11 It is clear from evidence gathered throughout the committee's work that corruption enabled border crime remains a significant concern and one that ACLEI is actively engaged with, together with its agency partners.

3.12 Chapter 7 of the annual report discusses patterns and trends and is particularly useful for the committee in its oversight role. The annual report notes that ACLEI has consistently drawn attention to the pressures of corruption enabled border crime:

In recent annual reports, ACLEI drew attention to pressure mounting in border law enforcement environments, concerning the prospect (and reality) of corruption being used as part of the organised crime business model to import illicit drugs and other contraband. These pressures continued in the 2013–14 year.

13 Department of Immigration and Border Protection, Michael Pezzullo, Secretary, www.immi.gov.au/About/Documents/biography-michael-pezzullo.pdf (accessed 11 May 2015).

14 Mr Robert Cornall AO, A/g Integrity Commissioner, ACLEI, *Committee Hansard*, 27 November 2014, p. 2.

15 PJACLE, *Annual Report of the Integrity Commissioner 2012-13*, p. 21.

16 Mr Nick Sellars, Executive Director Secretariat, ACLEI, *Committee Hansard*, 27 November 2014, p. 7.

According to the most recent ACC data, the number of drug detections at the Australian border—of amphetamine-type stimulants, ecstasy, cocaine and performance and image-enhancing drugs—are at record levels and the number of detections of amphetamine-type stimulant precursors is increasing significantly. The high number of detections reflects the fact that Australia remains one of the most profitable illicit drug markets in the world, due to the high relative prices paid by consumers.¹⁷

3.13 Operation Heritage/Marca provided an example of horizontal collusion between two Commonwealth law enforcement officers from different agencies. This itself is a disturbing trend, but the committee notes that ACLEI is actively engaging its partner agencies to enhance cross agency collaboration in detecting, deterring and disrupting corrupt activities:

Horizontal collusion is one way in which a corrupt officer's risk of detection can be dispersed, for instance by defeating detection measures which may be stronger in one agency than in another, or by circumventing surveillance. It raises the possibility that corrupt collusion may also occur vertically—that is, between Commonwealth and State-level law enforcement officials.

Accordingly, ACLEI and its partners—particularly through the ACLEI/AFP Joint Taskforce in Sydney—are building networks with State agencies so that relevant intelligence about possible vertical collusion can be identified and shared. It is intended that this strategy will deliver a more complete picture of drug importation and distribution business models, including any corruption or money laundering elements.¹⁸

Trends

3.14 The annual report also noted other observations and trends that ACLEI continues to monitor, including 'private' illicit conduct, back office risks, trigger events, reach back, social media issues and 'the enduring lie'. The committee examines each of these issues below.

'Private' illicit conduct

3.15 The annual report noted that in 2013-14 three separate investigations found staff of law enforcement agencies who were users of illicit drugs, like cocaine and ecstasy. The report suggested that most staff 'considered their drug use to be simply part of their private life and entirely separate from their professional obligations and responsibilities.'¹⁹ Given the supply of most illicit drugs is inherently connected to organised crime groups, the use of illicit drugs by law enforcement agencies officers exposes themselves to a high risk of compromise, and possibly blackmail. The committee agrees with ACLEI's assessment.

17 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 92.

18 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 92.

19 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 94.

Back office risk

3.16 The annual report raised the issue of 'back office risk', as it relates to officers of law enforcement agencies. Specifically, ACLEI argued that as 'information has become more computer-based and centralised, opportunities for corrupt conduct have extended to a broader class of employees: the so called back office staff.'²⁰

3.17 The committee notes that ACLEI intends to report on the risks of corrupt conduct to back office staff in its 2014-15 annual report.²¹

Trigger events

3.18 ACLEI has previously raised the spectre of trigger events, that together with an officer's susceptibility risk, could result in corrupt conduct:

For instance, Operation Heritage/Marca discovered that sharing illegally imported performance and image enhancing drugs was one method by which potential members of a corrupt network at Sydney International Airport could be recruited, or around which members might coalesce as a group.²²

3.19 The committee notes that ACLEI and associated agencies are '...considering the relevance of trigger events, which may suddenly and radically alter a person's susceptibility to corruption.'²³

Reach back

3.20 The annual report also raised the issue 'reach back', where former staff members of an agency retain contact with former colleagues for the purposes of obtaining improper access to information they are no longer entitled to.²⁴ ACLEI noted:

In principle, there is nothing wrong with friendships between current and former staff members. However, current staff need to recognise that the rules of secrecy and the need-to-know principle apply also to ex-colleagues, and be alert to the possibility that these former colleagues could be abusing their trust.²⁵

Social media

3.21 ACLEI also discussed the potential misuse of social media by criminal groups, in an effort to groom officers of law enforcement agencies. ACLEI notes the

20 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 94.

21 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 94.

22 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 95.

23 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 95.

24 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 95.

25 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 95.

best precaution staff can take is to 'be circumspect about their professional affiliations in social settings, including on social media.'²⁶

Enduring lie

3.22 The annual report also raised the problem of 'the enduring lie', which occurs when an employee of a law enforcement agency 'deliberately fails to disclose relevant information on recruitment or during security assessment and needs to continue the deception.'²⁷

3.23 The committee agrees that this is a problem, noting an investigation in 2013-14 illuminated a situation where an 'enduring lie' situation was identified. The committee agrees with ACLEI's assessment that barriers to self-reporting need to be identified and managed.²⁸

Hamburger report

3.24 The committee also heard that the Attorney-General's Departmental review of ACLEI's expanded jurisdiction was due to report imminently on the expanded jurisdiction of ACLEI. ACLEI officers noted that Mr Peter Hamburger PSM had been careful in his consideration of whether the additional financial resources provided to ACLEI were sufficient in funding the expanded jurisdiction.²⁹

3.25 While the report has been provided to the Minister, ACLEI were unable to comment on its contents. These issues are particularly close to the committee's current inquiry into ACLEI's expanded jurisdiction, and the committee will defer commentary on issues relating to ACLEI's expanded jurisdiction until it presents its report later in 2015.

Coercive information-gathering powers

3.26 Part 9 of the LEIC Act sets out the Integrity Commissioner's information gathering powers. These powers require a person to produce documentary evidence or appear as a witness and answer questions truthfully at a hearing. A 'notice to produce' or a summons to attend a hearing can be issued only in relation to ACLEI investigations or joint operations.³⁰

3.27 The annual report notes that 'it is an offence not to comply with a notice or summons and not to answer questions, or not to answer truthfully.'³¹ In the previous year (2012-13), the Integrity Commissioner undertook five investigations, held 20 hearings, issued 28 notices and 21 summonses.³²

26 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 95.

27 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 96.

28 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 96.

29 Mr Nick Sellars, Executive Director Secretariat, ACLEI, *Committee Hansard*, 27 November 2014, p. 7.

30 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 81.

31 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 81.

32 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 28.

3.28 In 2013-14, the Integrity Commissioner issued:

...17 summonses in relation to four investigations and held 17 hearings. The Integrity Commissioner also issued 31 notices to produce information, documents or things, in relation to three investigations (including one investigation for which both notices and hearings were used).³³

3.29 These figures would suggest the increase in ACLEI's jurisdiction has not resulted in increased use of coercive powers.

Intrusive information gathering powers

3.30 The Integrity Commissioner has extensive intrusive and covert powers for the purpose of investigating possible corrupt conduct. During the year, these powers were used 47 times as part of investigation strategies relating to two investigations. This is a large increase on the 16 uses of intrusive and covert information gathering powers used in 2012-13.³⁴ ACLEI noted the powers exercised under warrants did so in the context of joint operations, such as Operation Heritage/Marca.

Ombudsman report on controlled operations

3.31 In the usual manner, the committee received a report from the Commonwealth Ombudsman regarding the Integrity Commissioner's involvement in controlled operations under Part 1AB of the *Crimes Act 1914* during the preceding 12 months. The report was provided in accordance with section 218 of the LEIC Act. The committee noted the report's findings and has received it as confidential correspondence in adherence to the LEIC Act.³⁵ The committee is satisfied that ACLEI's controlled operations were conducted within the relevant boundaries and requirements.

Corruption issues carried forward

3.32 In 2013-14 and 2014-15, 124 issues and 150 issues were carried forward from the previous years respectively.³⁶ These figures include a correction for the 2012-13 annual report. In previous reports the committee has expressed concerns about the increasing number of issues carried over from one year to the next and ACLEI's ability to manage the volume of work within existing resources.³⁷

3.33 The committee notes with concern that there are 26 more corruption issue carried over during the reporting period than the year before. The committee will seek an explanation from ACLEI for the number of ongoing investigations being carried forward over multiple years.

33 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 81.

34 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 83.

35 *Law Enforcement Integrity Commission Act 2006*, s. 218.

36 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 81.

37 PJC-ACLEI, *Examination of the Annual Report of the Integrity Commissioner 2012-13*, September 2014, p. 22.

Committee view

3.34 The committee appreciates the challenges before ACLEI at the present time, including the ongoing issues associated with ACLEI's expanded jurisdiction.

3.35 ACLEI's 2013-14 report reflects its strong presence within the Commonwealth's law enforcement and integrity landscape and its ability to respond and adapt to a rapidly transforming corruption landscape.

3.36 Finally, the committee commends the outgoing Integrity Commissioners, welcomes Mr Michael Griffin AM and thanks ACLEI's staff for their hard work over the reporting period and for their informative annual report.

Mr Russell Matheson MP

Chair