



# Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

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Examination of the Annual Report  
of the Integrity Commissioner  
2013–14

June 2015

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ISBN 978-1-76010-213-5

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# The Committee

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## Acronyms and abbreviations list

ABF	Australian Border Force
ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
ACBPS	Australian Customs and Border Protection Service
ANAO	Australian National Audit Office
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction and Reporting Analysis Centre
CEO	Chief Executive Officer
FMA Act	<i>Financial Management and Accountability Act 1997</i>
Hamburger Review	Review of the Australian Commission for Law Enforcement Integrity's Capabilities, Operating Arrangements and Resources
KPIs	Key Performance Indicators
LEIC Act	<i>Law Enforcement Integrity Commissioner Act 2006</i>
LEIC Regulations	Law Enforcement Integrity Commissioner Regulations 2006
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PID Act	<i>Public Interest Disclosure Act 2013</i>
PJC-ACLEI	Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
the Minister	Minister for Justice
the committee	Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
the report	Annual Report of the Integrity Commissioner 2013-14



# Chapter 1

## Introduction

1.1 The Australian Commission for Law Enforcement Integrity (ACLEI) was established by the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act), and commenced operation on 30 December 2006. The LEIC Act established the Office of Integrity Commissioner, supported by a statutory authority, ACLEI.

1.2 Section 3 of the LEIC Act sets out the objectives of ACLEI to:

- facilitate the detection of corrupt conduct in law enforcement agencies;
- facilitate the investigation of corruption issues that relate to law enforcement agencies;
- enable criminal offences to be prosecuted, and civil penalty proceedings to be brought, following those investigations;
- prevent corrupt conduct in law enforcement agencies; and
- maintain and improve the integrity of staff members of law enforcement agencies.<sup>1</sup>

1.3 The 2013-14 Annual Report of the Integrity Commissioner (annual report) was presented to the Minister for Justice, the Hon Michael Keenan MP, on 7 October 2014, and tabled in the Senate on 27 October 2014<sup>2</sup> and in the House of Representatives on 24 November 2014.<sup>3</sup>

### Requirements for annual reports

1.4 Section 201 of the LEIC Act sets out the requirement for ACLEI to provide an annual report that must provide details of:

- corruption issues notified to the Integrity Commissioner dealt with by the Integrity Commissioner or referred to a government agency for investigation. Reports must include corruption issues investigated over the year and certificates issued under section 149 during the year<sup>4</sup>;
- investigations conducted that 'raise significant issues or developments in law enforcement' and the extent to which ACLEI investigations have resulted in prosecutions or confiscation proceedings;

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1 *Law Enforcement Integrity Commissioner Act 2006*, s. 3.

2 *Journals of the Senate*, 27 October 2014, p. 1604.

3 *House Votes and Proceedings*, 24 November 2014, p. 979.

4 Certificates issued under section 149 relate to the Attorney-General's ability under the LEIC Act to certify that disclosure of information or document contents would be contrary to the public interest on one or more grounds. These include, but are not limited to: prejudicing the security, defence or international relations of the Commonwealth; or the disclosure of ministerial communications or relations between the Commonwealth and states and territories.

- trends and patterns including the nature and scope of corruption in law enforcement and other Commonwealth agencies that have law enforcement functions; and
- recommendations for changes to Commonwealth laws or administrative practices of Commonwealth government agencies.

1.5 The 2013-14 annual report includes an index that provides a guide to the report's compliance with the requirements set out in the LEIC Act and associated regulations. The committee is satisfied that ACLEI has fulfilled its annual report obligations under the LEIC Act and other requirements as set out in the compliance index of the annual report.<sup>5</sup>

### **Requirements for the examination of annual reports**

1.6 Paragraph 215(1)(c) of the LEIC Act requires the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (the committee) to examine:

- each annual report prepared by the Integrity Commissioner under section 201;
- any special report prepared by the Integrity Commissioner under section 204; and
- report to the Parliament on any matter appearing in, or arising out of any such annual report or special report.

### **Requirements for special reports**

1.7 Under section 204 of the LEIC Act, the Integrity Commissioner may prepare special reports that relate to the operations of the Integrity Commissioner or any matter in connection with the performance of the Integrity Commissioner's powers or functions under the LEIC Act.

1.8 In its report on ACLEI's 2010-11 annual report, the committee suggested that future ACLEI annual reports 'clearly state whether any special reports have been provided to the Minister and make an appropriate reference in the compliance index'.<sup>6</sup> ACLEI has adopted this suggestion.

1.9 The 2013-14 annual report states that the Integrity Commissioner prepared no special reports under section 204 of the LEIC Act during the review period.<sup>7</sup>

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5 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, pp 210-211.

6 PJC ACLEI, *Examination of the Annual Report of the Integrity Commissioner 2010-11*, p. 2.

7 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 212.

**Conduct of the inquiry**

1.10 The committee held a public hearing to examine the annual report on 27 November 2014. During the hearing, the committee heard evidence from the Acting Integrity Commissioner, Mr Robert Cornall AO and other ACLEI officers. The list of witnesses is provided in Appendix 1.

**Acknowledgements**

1.11 The committee congratulates both Mr Philip Moss and Mr Robert Cornall, for their contributions as Integrity Commissioner and Acting Integrity Commissioner respectively. The committee also congratulates ACLEI officers for their consistently high quality and readable annual reports, and for their ongoing co-operation and engagement with the committee with its inquiries.

1.12 The committee, having noted last year the impressive contribution of the inaugural Integrity Commissioner, Mr Philip Moss, wishes to extend its gratitude to the former acting Integrity Commissioner, Mr Robert Cornall.

1.13 Further, the committee wishes to congratulate Mr Michael Griffin AM on his appointment as Integrity Commissioner, effective 19 January 2015.



## Chapter 2

### Strategy and performance

2.1 ACLEI is expected to foster an 'Australian Government law enforcement culture that resists corruption'.<sup>1</sup> 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.'<sup>2</sup>

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.<sup>3</sup>

#### 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.<sup>4</sup>

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

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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.<sup>5</sup>

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.<sup>6</sup>

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.'<sup>7</sup>

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.'<sup>8</sup>

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.'<sup>9</sup>

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.'<sup>10</sup>

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.<sup>11</sup>

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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.<sup>12</sup>

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.<sup>13</sup>

## Resourcing

2.15 In 2013-14 ACLEI's budget was \$7.615 million (an increase from \$6.043 million in 2012-13).<sup>14</sup> 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),<sup>15</sup> and another via the *Proceeds of Crime Act 2002*.<sup>16</sup>

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

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

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.'<sup>19</sup>

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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/](http://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.<sup>20</sup>

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.<sup>21</sup>

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

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

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## **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.'<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

### ***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.<sup>28</sup>

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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.<sup>29</sup>

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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

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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.<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup> Of the 24 issues awaiting assessment, 10 had been received in May or June 2014 (where the 90 day period was yet to lapse).<sup>36</sup>

### ***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.<sup>37</sup> 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.<sup>38</sup>

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.

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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.

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**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.<sup>39</sup>

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.'<sup>40</sup>

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.<sup>41</sup>

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.<sup>42</sup>

***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.<sup>43</sup>

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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.'<sup>44</sup> 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.<sup>45</sup>

***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.<sup>46</sup>

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.<sup>47</sup>

***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.

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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.<sup>48</sup>

2.53 ACLEI promotes its work to LEIC Act agencies through a range of strategies including its online presence, speeches, presentations and promotional material.<sup>49</sup> 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.<sup>50</sup>

### ***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.<sup>51</sup>

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:

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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.<sup>52</sup>

***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.

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



## 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.<sup>1</sup>

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.<sup>2</sup>

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.'<sup>3</sup> 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.<sup>4</sup>

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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.<sup>5</sup> Mr Cornall also noted the significant changes of leadership at both ACLEI and its jurisdiction and partner agencies,<sup>6</sup> including:

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

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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](http://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](http://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](http://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](http://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](http://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).

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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.<sup>14</sup>

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.<sup>15</sup>

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.<sup>16</sup>

### **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.

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13 Department of Immigration and Border Protection, Michael Pezzullo, Secretary, [www.immi.gov.au/About/Documents/biography-michael-pezzullo.pdf](http://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.<sup>17</sup>

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.<sup>18</sup>

## **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.'<sup>19</sup> 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.

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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.

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### ***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.'<sup>20</sup>

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.<sup>21</sup>

### ***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.<sup>22</sup>

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.'<sup>23</sup>

### ***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.<sup>24</sup> 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.<sup>25</sup>

### ***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

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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.'<sup>26</sup>

### ***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.'<sup>27</sup>

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.<sup>28</sup>

### **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.<sup>29</sup>

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.<sup>30</sup>

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.'<sup>31</sup> In the previous year (2012-13), the Integrity Commissioner undertook five investigations, held 20 hearings, issued 28 notices and 21 summonses.<sup>32</sup>

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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).<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup>

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.

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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**

## **Appendix 1**

### **Witnesses who appeared before the committee**

**Thursday, 27 November 2014 – Parliament House, Canberra**

**Australian Commission for Law Enforcement Integrity**

Mr Robert Cornall AO, Acting Integrity Commissioner

Ms Sarah Marshall, Acting Executive Director Operations

Mr Nicholas Sellars, Acting Executive Director Secretariat

