

# Chapter 3

## Issues

3.1 This chapter considers issues including changes to LEIC Act agencies, trends in corruption-enabled border crime and the use of ACLEI's coercive powers during the reporting year. Further, the committee will also address additional matters raised in the public hearing into ACLEI's annual report conducted in February 2016.

### Changes to LEIC Act agencies

3.2 The annual report states that an important focus for ACLEI in 2014-15 was the changes to senior managers and agency heads of LEIC Act agencies, and the pending restructures within some of those agencies.<sup>1</sup> In particular the report notes the significant changes in LEIC agencies,<sup>2</sup> including:

- the integration of the Customs service into the DIBP and the establishment of the Australian Border Force within DIBP;
- numerous changes to agency heads:
  - Mr Andrew Colvin APM, Commissioner, AFP (appointed November 2014);<sup>3</sup>
  - Mr Paul Jevotvic APM, Chief Executive Officer, AUSTRAC (appointed October 2014);<sup>4</sup>
  - Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection (appointed October 2014);<sup>5</sup>
  - Mr Roman Quaedvlieg APM, Australian Border Force Commissioner, Department of Immigration and Border Protection (appointed July 2015);<sup>6</sup>

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1 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 91.

2 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 91.

3 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 22 December 2015).

4 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 22 December 2015).

5 Department of Immigration and Border Protection, Michael Pezzullo, Secretary, [www.border.gov.au/about/corporate/who-we-are/senior-staff/michael-pezzullo](http://www.border.gov.au/about/corporate/who-we-are/senior-staff/michael-pezzullo) (accessed 22 December 2015).

6 Department of Immigration and Border Protection, *Roman Quaedvlieg APM*, [www.border.gov.au/about/corporate/who-we-are/senior-staff/roman-quaedvlieg](http://www.border.gov.au/about/corporate/who-we-are/senior-staff/roman-quaedvlieg) (accessed 22 December 2015).

- Mr Daryl Quinlivan, Secretary, Department of Agriculture and Water Resources (appointed June 2015);<sup>7</sup>
- a restructure of the ACC is underway;<sup>8</sup> and
- a review of the organisational arrangements for the administration of CrimTrac is underway.<sup>9</sup>

### **Corruption-enabled border crime**

3.3 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.

3.4 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 according to the United Nations Office on Drugs and Crime, Australia remains a lucrative drug market for international drug syndicates, especially for crystalline methamphetamine 'ice' and cocaine.<sup>10</sup>

3.5 The annual report also notes that the consistently high drug prices have attracted new crimes groups to Australia, including those known to 'routinely use corruption (bribery, extortion and infiltration) as a business cost in the other countries in which they operate'.<sup>11</sup>

3.6 To attempt to minimise risk to their illicit operations, there is a high value for information about 'law enforcement capabilities, methods, personnel and systemic vulnerabilities' that may help to defeat border controls.<sup>12</sup>

3.7 These factors highlight that:

As Australia reinforces its border control environment—for example through the establishment of the Australian Border Force—care will need to be taken to ensure that the risk of methodical attempts by organised crime to cultivate 'corrupt government insiders' is mitigated sufficiently.<sup>13</sup>

### **Corruption risk trends**

3.8 The annual report also notes other observations and trends that ACLEI continues to monitor, including the increased risks to dispersed workforces, the

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7 The Hon. Barnaby Joyce, MP, Minister for Agriculture and Water Resources, 'Agriculture Minister welcomes new Secretary', Media Release, 10 June 2015, [www.agricultureminister.gov.au/Pages/Media-Releases/ag-min-welcomes-new-sec.aspx](http://www.agricultureminister.gov.au/Pages/Media-Releases/ag-min-welcomes-new-sec.aspx) (accessed 19 January 2015).

8 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 91.

9 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 91.

10 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 85.

11 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 85.

12 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 86.

13 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 87.

protection of key commodities, the possible threats posed by corrupt Information and Communications Technology staff and the risks and opportunities posed by structural change within agencies. The committee examines each of these issues below.

### ***Dispersed workforces***

3.9 The annual report notes that some LEIC Act agencies have geographically dispersed workforces, some of whom have border interdiction functions. This mode of work presents additional risk factors for the following reasons:

- Regionally based or dispersed staff have less-easy access to supervisory support and training;
- Staff in these areas have access to information and the discretion to make decisions that may impact the profitability of legal and illicit enterprises;
- Regional, isolated or mobile staff are more likely to have contact with the people or industry they are regulating than with the agency that employs them;
- Regional, isolated or mobile staff are more likely to have off-site supervision;
- Regional, isolated or mobile staff are more likely to work alone, this may provide opportunity for self-initiated corrupt conduct;
- There is also the potential for sub-cultures to develop within geographic or functional teams, potentially leading to misplaced loyalties or practices that may obscure corruption if it were to occur.<sup>14</sup>

3.10 The annual report notes that the LEIC Act agencies with dispersed workforces recognise these risks and review the measures they have in place to protect the integrity of their employees.

### ***Information and Communications Technology roles***

3.11 The annual report notes that corrupt officials with Information and Communications Technology (ICT) access pose a unique security and integrity challenge because of staff members' expertise, wide system access and authorities. They also have the technical expertise to 'conceal wrongful access or the unauthorised disclosure of information.'<sup>15</sup> As a consequence 'a corrupt official with ICT access has a commodity of value to corruptors.'<sup>16</sup>

3.12 The risks posed by corrupt officials in these positions have increased over time as law enforcement agencies have come to increasingly rely upon computer-based controls and information stored in databases.<sup>17</sup>

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14 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 89.

15 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 90.

16 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 90.

17 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 90.

3.13 In 2014-15, ACLEI delivered a report to the Minister into Operation Helix.<sup>18</sup> Operation Helix investigated the possible illicit drug use of two ICT staff members at the ACBPS and their undeclared relationships with criminal contacts. Whilst the investigation did not result in a clear outcome, it illustrated the risk that ICT staff with high-level access may pose.<sup>19</sup>

3.14 ACLEI explained that it would convene a meeting of ICT Security Advisors from LEIC Act agencies in the second half of 2015 to address the increased corruption risk posed to ICT staff.<sup>20</sup>

### ***Managing change***

3.15 As outlined above, several LEIC Act agencies were undergoing structural change at the end of the reporting period.<sup>21</sup> The annual report notes that structural change can give rise to increased corruption but that it can also be an opportunity to build anti-corruption measures into routine business practice and planning.<sup>22</sup>

### ***Protecting key commodities***

3.16 The annual report notes that agencies ought to protect vital pieces of information that allow agencies to carry out their role. ACLEI notes that vital law enforcement information is a valued commodity to organised crime groups and is therefore a target of corruption activity.<sup>23</sup>

3.17 To combat this threat, ACLEI encourages LEIC Act agencies to adopt 'crown jewel strategies' by prioritising protecting their core business assets from discovery, destruction, manipulation or misuse.<sup>24</sup>

### **Coercive information-gathering powers**

3.18 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>25</sup>

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18 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 83; ACLEI, *Report 01/2015 Operation Helix – a joint investigation into alleged drug use by Australian Customs and Border Protection Service ICT employees*.

19 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 83.

20 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 90.

21 See paragraph 3.2.

22 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 91.

23 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 90.

24 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 90.

25 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 70.

3.19 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>26</sup> In the previous reporting period (2013-14), the Integrity Commissioner served 17 summonses and held 17 hearings in relation to four investigations and issued 31 notices in relation to three investigations.<sup>27</sup>

3.20 By comparison, in 2014-15 the Integrity Commissioner issued:

...six summonses in relation to two investigations and held seven hearings, including one hearing for which the summons had been issued in the previous year... The Integrity Commissioner also issued 32 notices to produce information, documents or things, in relation to 10 investigations (including one investigation for which both notices and hearings were used).<sup>28</sup>

3.21 These figures suggest the increase in ACLEI's jurisdiction has not resulted in an increased use of ACLEI's intrusive information gathering powers.

### **Intrusive information gathering powers**

3.22 The Integrity Commissioner has extensive intrusive and covert powers for the purpose of investigating possible corrupt conduct. During the year, these powers were used nine times as part of investigation strategies relating to two investigations. This is a considerable decrease from the 47 uses of intrusive and covert information gathering powers used in 2013-14.<sup>29</sup> The Integrity Commissioner explained that the use of ACLEI's coercive powers fluctuates over time depending on the nature of current investigations:

Often [intrusive information gathering powers are used] in response to how well an investigation goes or how deeply it is penetrating. You would not expect to see a consistent use of [the intrusive powers] over time; rather, peaks and troughs as they are required... the peaks and troughs probably are a little more spread out than they might have been when it was a simpler crime or corruption world than it is now.<sup>30</sup>

3.23 The committee notes that this number does not include warrants obtained by other agencies in the context of joint investigations.

### **Ombudsman report on controlled operations**

3.24 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 the LEIC Act. The committee noted the

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26 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 70.

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

28 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 70.

29 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 71.

30 Mr Michael Griffin AM, Integrity Commissioner, ACLEI, *Committee Hansard*, 4 February 2016, p. 4.

report's findings and has received it as confidential correspondence in adherence to the LEIC Act.<sup>31</sup>

### **Corruption issues carried forward**

3.25 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>32</sup>

3.26 In the Integrity Commissioner's response to the committee's *Examination of the Annual Report of the Integrity Commissioner 2013-14*, the Integrity Commissioner noted that the following factors contribute to corruption issues being carried over:

- an increase in the quality of intelligence leading to more issues being investigated;
- case prioritisation; and
- administrative lag.<sup>33</sup>

3.27 In 2014-15 and 2015-16, 152 and 157 issues were carried forward from the previous years respectively.<sup>34</sup> ACLEI's annual report attributes the variance in the closure rate to:

- variations in the volume and scope of corruption issues notified or reported to ACLEI;
- complexity of the investigations being conducted in any given year;
- progress of the external workload (comprising matters sent to other agencies for internal investigation); and
- the resources available to ACLEI in any given year.<sup>35</sup>

### ***Committee comment***

3.28 The committee acknowledges the appropriateness of ACLEI's explanations. 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.<sup>36</sup>

3.29 The committee notes that the number of issues carried over from 2014-15 to 2015-16 has increased by five. The comparative carry over figure for the previous

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

32 PJC-ACLEI, *Examination of the Annual Report of the Integrity Commissioner 2012-13*, September 2014, p. 22; PJC-ACLEI, *Examination of the Annual Report of the Integrity Commissioner 2013-14*, June 2015, p. 23

33 ACLEI, Response to PJC-ACLEI *Examination of the 2013-14 Annual Report of the Integrity Commissioner*, 9 June 2015, p. 3.

34 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 62.

35 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 76.

36 ACLEI, *Annual Report of the Integrity Commissioner 2014-15*, p. 30.

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reporting period was 26. This reducing carry over trend appears to demonstrate that ACLEI's actions to reduce the time taken to conclude issues are proving effective.

3.30 The committee felt that the addition of Table 17 was a useful inclusion. However, for future reports, the committee would find it useful to have the age of issues being carried forward separated into three tables: corruption issues under investigation by other agencies (similar to Table 17), corruption issues under investigation by ACLEI or jointly with other agencies, and an aggregate table of corruption issues being carried forward (similar to Table 18).

3.31 To ensure that this positive trend continues, the committee will monitor this important aspect of ACLEI's performance in future reporting periods.

### ***Conclusion***

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

3.33 ACLEI's 2014-15 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.

3.34 Finally, the committee commends Mr Michael Griffin AM and thanks all of ACLEI's staff for their hard work over the reporting period and for their informative annual report.

**Mr Russell Matheson MP**

**Chair**