

# Chapter 3

## Key issues

3.1 This chapter considers key issues arising from the committee's consideration of the Integrity Commissioner's 2015–16 annual report, including:

- correction of statistical errors in the annual report;
- reporting on delivery of outcomes in relation to strategic priorities;
- the expansion of the Australian Commission for Law Enforcement Integrity's (ACLEI's) jurisdiction to include the entirety of the Department of Immigration and Border Protection (DIBP);
- issues in relation to Indigenous employment targets and the Indigenous procurement policy;
- complaints handling by ACLEI;
- trends identified in the incidence of corruption; and
- the Ombudsman's briefing about controlled operations.

### Correction of statistics

3.2 As noted in chapter 1, the committee was informed in correspondence from the Acting Integrity Commissioner, Mr John Harris SC, dated 24 April 2017, that it had come to ACLEI's attention that its 2015–16 annual report contained a number of statistical errors relating to the attribution of notifications and referrals to agencies within ACLEI's jurisdiction. In further correspondence dated 23 June 2017, the Integrity Commissioner provided the committee with corrected statistics. The corrections were also posted on the ACLEI website<sup>1</sup> and provided to all affected agencies.

3.3 At his appearance before the committee on 11 July 2017, the Integrity Commissioner made the following comments in relation to the incorrect statistics:

Earlier this year, we discovered that some of the statistics published in 2015-16 annual report of the Integrity Commissioner were incorrect. Further to the detailed correspondence on this matter that I had sent to the committee last month, I would like to take this opportunity to again apologise for those errors. I take full responsibility for the publication of these incorrect statistics. I wish to assure the committee they were the result of human error, rather than any intent to mislead. Nonetheless, we have taken this matter very seriously within the agency. Similar to my efforts to keep this committee informed of our progress in identifying and remedying the errors, I have also engaged with the heads of the impacted agencies. As

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1 ACLEI, *Annual report statistics corrections*, p. 3, [https://www.aclei.gov.au/sites/g/files/net846/f/aclei\\_2015-16\\_areport\\_corrections.pdf](https://www.aclei.gov.au/sites/g/files/net846/f/aclei_2015-16_areport_corrections.pdf) (accessed 29 September 2017).

per parliament's process, the corrections will also be noted in ACLEI's upcoming 2016–17 annual report and will also be published on ACLEI's website.

I can assure the committee that we have put in place improved processes and procedures to ensure the accurate reporting of our statistics in future publications.<sup>2</sup>

3.4 The committee sought clarification of the nature of the 'human error' that had led to these mistakes. The Integrity Commissioner responded:

In this technologically advanced stage, this may seem a little surprising but it comes down simply to an officer sitting in front of a spreadsheet, in which there were different columns attributing the number of cases to various agencies within those columns. Rather than the whole number, it was those individual calculations that then led to the error. Plus, at that point in time, there were some five files that were in different people's hands around the agency at close to the cut-off period that weren't caught in the 30 June sweep. That was realised later as those five files were brought in. So the difference was five but, in the internal columns on that spreadsheet, there were some other changes. It didn't affect the total figure; just the number for three agencies and the five files that were actually out on other people's desks, regrettably, for which I apologise again.<sup>3</sup>

3.5 When the committee noted that the statistical errors were detected by ACLEI itself, and not any of the agencies incorrectly reported on, the Integrity Commissioner responded that these agencies:

would be across the issues, but perhaps not the numbers. In terms of their total numbers, a lot of these things aren't really significant and we have referred them back to them. They are aware of the matters; the absolute number hasn't really become an issue for them.<sup>4</sup>

### ***Committee comment***

3.6 The committee commends ACLEI for quickly notifying relevant agencies and the committee of the statistical errors in the annual report, and for rectifying these errors accordingly. The committee considers, however, that for an agency with considerable oversight responsibilities it is vital that the agency be, and be seen to be, able to establish and maintain operational and accountability systems that engender confidence in the agency and its work. The committee notes ACLEI's work to address the issues that led to the statistical error in the annual report.

### **Reporting of delivery against strategic priorities**

3.7 The annual report contains a summary of ACLEI's progress on the 19 strategic priorities identified in its corporate plan for 2015–16. This is the first time such a snapshot has been included in the annual report. Its inclusion is part of the

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2 Mr Michael Griffin AM, Integrity Commissioner, *Committee Hansard*, 11 July 2017, p. 2.

3 Mr Michael Griffin AM, Integrity Commissioner, *Committee Hansard*, 11 July 2017, p. 4.

4 Mr Michael Griffin AM, Integrity Commissioner, *Committee Hansard*, 11 July 2017, p. 4.

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implementation of the *Public Governance, Performance and Accountability Act 2013*.<sup>5</sup>

3.8 The committee expressed concern that some of the descriptions used to characterise the status of progress against each priority—for example, 'on track' or 'progress made'—are not easily understood.<sup>6</sup> ACLEI provided the following account of the meaning of each of the terms employed in this summary:

- *Complete*: one-off projects or activities that are considered finalised to a satisfactory standard.
- *On track*: projects or activities that are still in progress, or that by their nature are ongoing, but which are progressing satisfactorily (as evidenced by milestone achievements) and for which completion in the following year (or moving to “business as usual” status) could reasonably be anticipated.
- *Progress made*: those projects or goals that are in the early stages of completion, and for which further significant work might be anticipated in the succeeding reporting year.
- *Business as usual*: deliverables that have reached a steady-state of achievement and/or which have been successfully integrated into business processes to form part of the normal work or expectations of the agency.<sup>7</sup>

3.9 ACLEI stated that it would include an explanation of these terms in its subsequent annual report to assist readers.<sup>8</sup>

#### *Committee comment*

3.10 The committee notes ACLEI's efforts to provide information in a way that both complies with relevant legislation and is accessible for readers. The committee agrees that the inclusion of explanations and definitions of specific terms used to describe the agency's performance against targets will be of assistance to readers.

#### **Expanded jurisdiction from 1 July 2015**

3.11 From 1 July 2015 the DIBP—incorporating the Australian Border Force—was included in the Integrity Commissioner's jurisdiction.

3.12 As noted in chapter 2 of this report, ACLEI reported that DIBP notifications comprised 69 per cent of all notifications for that year. In addition, ACLEI reported that 50 per cent of all referrals related to DIBP, and investigations relating to DIBP comprised 43 per cent of ACLEI's operational workload in 2015–16.<sup>9</sup>

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5 ACLEI, Answers to questions on notice, 11 July 2017 (received 14 August 2017), p. 1.

6 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, pp 8–10; Senator Bridget McKenzie, *Committee Hansard*, 11 July 2017, p. 5.

7 ACLEI, Answers to questions on notice, 11 July 2017 (received 14 August 2017), p. 1.

8 ACLEI, Answers to questions on notice, 11 July 2017 (received 14 August 2017), p. 1.

9 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 32.

3.13 In line with the expanded DIBP jurisdiction, ACLEI received additional funding of \$3.1 million to enable it to devote additional resources to anticipated increased workloads arising from its expanded jurisdiction. The funding was in part to enable ACLEI to raise its Average Staffing Level (ASL) to 52. ACLEI reported that it undertook a 'staged' recruitment program throughout 2015–16, which saw ACLEI's staffing increase incrementally by one third over the year.<sup>10</sup>

3.14 As outlined in chapter 2, the committee sought information from ACLEI about the difficulties faced by the agency in recruiting additional staff to manage its expanded responsibilities. ACLEI indicated that there are challenges in recruiting suitably qualified and experienced staff, which impacted on its ability to achieve the maximum ASL in 2015–16.<sup>11</sup> This was foreshadowed by the Integrity Commissioner in his response to the committee's *Examination of the Annual Report of the Integrity Commissioner 2014–15*.<sup>12</sup>

#### ***Committee comment***

3.15 The committee recognises the impact of the expanded jurisdiction on ACLEI and the efforts in this first year of expansion to appropriately increase staffing in order to properly manage the increased workload. The committee notes that the full ASL of 52 had not been reached by the end of June 2016, and urges ACLEI to continue to work towards attaining the full ASL.

### **Indigenous employees and Indigenous Procurement Policy**

3.16 The committee sought advice as to whether ACLEI has developed a reconciliation action plan and what percentage of ACLEI employees identify as Indigenous. ACLEI reported that although it does have a reconciliation action plan, it does not currently have any Indigenous employees. Its recruitment target for Indigenous employees is currently one, and it is attempting to meet this target by arranging placements through the Indigenous graduate programs of the Attorney-General's Department.<sup>13</sup>

3.17 Given its difficulties with recruiting Indigenous employees, ACLEI stated that it had focused on the Indigenous Procurement Policy (IPP) over the last 18 months and provided the following details of the results it had achieved:

While the IPP has a mandatory set-aside for Indigenous-owned businesses for contracts valued between \$80,000 to \$200,000, ACLEI's practice is to apply the IPP to contracts valued outside of these amounts, where appropriate, to ensure maximum participation and encouragement of

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10 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 32.

11 ACLEI, Answers to questions on notice, 11 July 2017 (received 14 August 2017), pp 5–6.

12 ACLEI, Response to PJCACLEI *Examination of the 2014-15 Annual Report of the Integrity Commissioner*, 21 March 2016, p. 1.

13 Mr Craig Furry, Director Corporate Services and Chief Financial Officer, ACLEI, *Committee Hansard*, 11 July 2017, pp 5–6.

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Indigenous-owned businesses and the subsequent benefits this can provide for Indigenous employment.

In the 2015-16 Financial Year, ACLEI expended \$1.36m with Indigenous-owned businesses that had been awarded contracts in accordance with the IPP. The majority of this amount was in relation to provisioning ACLEI's new accommodation.<sup>14</sup>

### ***Committee comment***

3.18 The committee acknowledges ACLEI's application of the Indigenous Procurement Policy in the awarding of contracts to Indigenous-owned businesses. The committee encourages ACLEI to explore further options for attracting Indigenous employees to work in the agency.

### **ACLEI's complaint handling role**

3.19 The committee noted the inclusion in the annual report of the following paragraph concerning ACLEI's role with respect to complaint handling:

ACLEI endeavours to be sensitive and helpful to people who refer concerns to the Integrity Commissioner. However, ACLEI does not have a complaint handling role, and its investigations are not oriented to achieving remedies or personal resolutions for individuals. Rather, the Integrity Commissioner seeks to ensure that all corruption issues are properly addressed.<sup>15</sup>

3.20 The Integrity Commissioner provided the following clarification of ACLEI's approach to handling complaints:

The act sets us up as a corruption prevention agency. I think you would be aware that, as of 8 June this year, we have received 222 matters through our hotline or our email from members of the public who are concerned about issues. We evaluate each and every one of those, even if it is a telephone message left on the voicemail. We have a section of the agency that is dedicated to evaluating those issues. Many of them will fall in the term 'complaints' because they don't come under the definition of 'law enforcement agency' and they may relate to another government agency. We respond to those individuals if they have left any form of contact and, if it is an anonymous email, we will respond to that email via that email directing them, hopefully, in the right direction to deal with their issue. If it falls within the jurisdiction then we move to the next phase of our process, which is the assessment and preliminary intelligence review. So there will be complaints, per se, and then there will be corruption issues that we will deal with. We respond to both, depending on whether or not they fall within jurisdiction.<sup>16</sup>

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14 ACLEI, Answers to questions on notice, 11 July 2017 (received 14 August 2017), p. 2.

15 ACLEI, *Annual Report of the Integrity Commissioner 2015-16*, p. iv.

16 *Committee Hansard*, 11 July 2017, p. 3.

## **Patterns and trends in corruption detection**

3.21 ACLEI's role in developing insights into corruption and sharing these to help strengthen anti-corruption frameworks is reflected by the inclusion in the annual report of a section detailing patterns and trends in corruption that it has identified. The 2015–16 annual report provides a discussion of four trends in corruption:

- detection;
- deeply-concealed corruption;
- workplace culture; and
- managing risk in shared operational environments.

### ***Trends in detection***

3.22 ACLEI had the opportunity over 2015–16 to engage with law enforcement and anti-corruption agencies in North America and the United Kingdom, including participation at the Sixth Conference of States Parties to the United Nations Convention Against Corruption (UNCAC). Key points of interest and issues noted by ACLEI in relation to detecting and investigating corruption include:

- the need for proactive and systematic intelligence-gathering and investigations for effective management of corruption in higher risk environments;
- workplace change can weaken integrity systems in organisations; and
- the value of identifying and protecting the 'asset' that may be the target of a potential 'corruptor', rather than focusing exclusively on staff members' behaviour.<sup>17</sup>

### ***Deeply-concealed corruption***

3.23 ACLEI reported that while its investigations do not always lead to immediate outcomes, the intelligence gathered has been disseminated to disrupt criminality<sup>18</sup> and can inform other cases (as occurred, for example, with Operation Swan).<sup>19</sup>

3.24 In addition, ACLEI reported its 'information holdings have grown' and 'older intelligence is being combined with new information to build a richer picture'.<sup>20</sup> In 2015-16, seven investigations relating to previously closed corruption issues or investigations were re-visited.<sup>21</sup>

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17 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 20.

18 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 20.

19 Operation Swan examined alleged criminal conduct by staff in the Department of Agriculture and Water Resources and resulted in the restraint of alleged proceeds of crime worth approximately \$1 million by the Victoria Police. See ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 15.

20 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 21.

21 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 21.

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### ***Workplace culture***

3.25 ACLEI reported on the introduction of strengthened integrity measures in Australian government law enforcement and border agencies, including the introduction of mandatory drug testing and employment screening. It says, however, that there is some evidence that local implementation of integrity systems 'can be weakened through an inconsistent approach to standards'.<sup>22</sup> ACLEI particularly noted the potential impacts of 'closed environments', such as ports and airports on implementation of anti-corruption measures in government agencies.<sup>23</sup>

### ***Managing risk in shared operational environments***

3.26 Related to the issue of workplace culture is that of managing corruption risk in shared environments (that is, working environments where a range of government and private organisations work closely together). In these types of environments of shared risk, ACLEI has found that it may be preferable to develop local arrangements and/or cross-agency arrangements that fit with the specific characteristics and needs of the environment and recognise the inter-related risks faced by government law enforcement agencies.<sup>24</sup>

### ***Committee view***

3.27 The committee notes with interest the trends and patterns that ACLEI has noted in its annual report. In particular, the committee notes the complexities involved in shared working environments, and the assistance that ACLEI has provided to the committee in better understanding the corruption risks this entails, especially in relation to border operations.

### **Ombudsman's briefing about controlled operations**

3.28 Section 218 of the LEIC Act requires the Ombudsman to provide a briefing to the committee at least once each year about the Integrity Commissioner's involvement in controlled operations under Part IAB of the *Crimes Act 1914* during the preceding 12 months. The committee must meet in private for the purposes of receiving such a briefing. In accordance with this section of the Act, the committee met with the Ombudsman on 10 July 2017 and 14 September 2017.

3.29 The annual report notes that, with respect to ACLEI's powers under the *Surveillance Devices Act 2004*, the *Telecommunications (Interception and Access) Act 1979* and Part IAB of the *Crimes Act 1914*, the Ombudsman made no recommendations concerning ACLEI's records and practices.<sup>25</sup>

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22 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 21.

23 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 21.

24 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 22.

25 ACLEI, *Annual Report of the Integrity Commissioner 2015–16*, p. 96.

**Conclusion**

3.30 The committee appreciates the challenges ACLEI has faced in relation its expanded jurisdiction, in particular noting the increase in workload, the relocation of staff, and the staged expansion of the ACLEI workforce over the 2015–16 year.

3.31 The committee also recognises the significant achievements of ACLEI over 2015-16, but urges ACLEI to ensure that its internal systems and accountability mechanisms are properly in place so that statistical errors such as those made in the 2015-16 annual report are not repeated.

3.32 Finally, the committee commends the Integrity Commissioner, Mr Michael Griffin AM, and his staff for their continued work over the reporting period and the informative annual report.

**Senator David Bushby**  
**Chair**