

Chapter 2

From Customs to Australian Border Force

2.1 One significant question raised in the inquiry was what the reorganisation of the Australian Customs and Border Protection Service (Customs) into the Australian Border Force (ABF) meant for Australian Commission for Law Enforcement Integrity (ACLEI) and its jurisdiction.

2.2 This chapter examines the evolution and expansion of ACLEI's jurisdiction, starting with the inclusion of Customs and the ground-breaking Operation Heritage/Marca. It then considers the reorganisation of Customs into the ABF within the Department of Immigration and Border Protection (DIBP).

Historical context

2.3 At the time of ACLEI's establishment, its jurisdiction included the Australian Federal Police (AFP) and the Australian Crime Commission (ACC) (including the former National Crime Authority). In February 2010, the committee tabled a report on its inquiry into the operation of the LEIC Act. That report recommended the immediate inclusion of Customs within ACLEI's jurisdiction due to 'the high corruption risk nature of Customs'.¹ As a general proposition the committee expressed support for the inclusion of entire agencies, as opposed to prescribing certain functions or aspects:

The committee supports ACLEI's argument that it should have whole-of-agency oversight of any agency brought within its remit regardless of the role of individual staff members.²

2.4 Subject to finalising the budgetary matters, the then Government agreed to the Committee's recommendation.³

2.5 Customs was brought within ACLEI's jurisdiction, initially from 1 January 2011 by regulation made under the LEIC Act.⁴ The entire agency was then

1 Parliamentary Joint Committee on the Australian Committee for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Interim Report, February 2010, p. 16.

2 Parliamentary Joint Committee on the Australian Committee for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Interim Report, February 2010, p. 37.

3 Government response, Parliamentary Joint Committee on the Australian Committee for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Interim Report, September 2010, p. 2.

4 Government response, Parliamentary Joint Committee on the Australian Committee for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Interim Report, February 2012, p. 2.

included via the enactment of the *Crimes Legislation Amendment Act (No. 2) 2011*, effective from 6 December 2011.⁵

Operation Heritage/Marca

2.6 One significant instance of corruption within Customs was illuminated by Operation Heritage/Marca. This major investigation was a joint AFP-Customs-ACLEI operation into the activities of a number of Customs staff working at Sydney International Airport.⁶ On 4 January 2011, three days after Customs became subject to ACLEI's jurisdiction, ten allegations of possible corrupt conduct were notified by the then CEO of Customs, Mr Michael Carmody.⁷

2.7 One allegation was that one or more Customs officers at Sydney International Airport were in regular contact with a person who was suspected of involvement with the importation of border controlled substances, including pseudoephedrine or other chemicals used in the manufacture of ecstasy.⁸

2.8 As a consequence, in March 2011 the Integrity Commissioner established Taskforce Natio, a joint operations team comprised of ACLEI, Customs and the AFP. The aim of the taskforce was:

...to investigate this allegation and related information concerning the possible facilitation by other Australian Government officials of illicit movements of border controlled substances.⁹

2.9 Taskforce Natio included Operation Heritage, which was an investigation into the possible corrupt collaboration between Customs officers and others to import illicit drugs through Sydney International Airport.¹⁰ The AFP contributed to the investigation through Operation Marca, which included the provision of additional

5 Government response, Parliamentary Joint Committee on the Australian Committee for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Interim Report, February 2012, p. 2.

6 Staff from the Department of Agriculture were later implicated in the corrupt activities uncovered by Operation Heritage/Marca. For more information, see ACLEI, *Investigation Report: Operation Heritage—a joint investigation of alleged corrupt conduct amount officers of the Australian Customs and Border Protection Service at Sydney International Airport (Interim Report)*, Report 02/2013, June 2013

7 ACLEI, *Investigation Report: Operation Heritage—a joint investigation of alleged corrupt conduct amount officers of the Australian Customs and Border Protection Service at Sydney International Airport (Interim Report)*, Report 02/2013, June 2013, p. 2.

8 ACLEI, *Investigation Report: Operation Heritage—a joint investigation of alleged corrupt conduct amount officers of the Australian Customs and Border Protection Service at Sydney International Airport (Interim Report)*, Report 02/2013, June 2013, p. 2.

9 ACLEI, *Investigation Report: Operation Heritage—a joint investigation of alleged corrupt conduct amount officers of the Australian Customs and Border Protection Service at Sydney International Airport (Interim Report)*, Report 02/2013, June 2013, p. 2.

10 ACLEI, *Investigation Report: Operation Heritage—a joint investigation of alleged corrupt conduct amount officers of the Australian Customs and Border Protection Service at Sydney International Airport (Interim Report)*, Report 02/2013, June 2013, p. 2.

AFP resources.¹¹ The name Heritage/Marca is used throughout this chapter to refer to this joint ACLEI (Heritage) and AFP (Marca) investigation.

Investigation outcomes

2.10 As outlined above, Operation Heritage/Marca involved allegations of corruption within Customs. As at 30 June 2014, eight Customs officers faced criminal charges arising from Operation Heritage/Marca. The Integrity Commissioner 2013-14 Annual Report, which provided a summary of the final Operation Heritage report, noted:

...three of the [Customs] officers had been convicted of offences relating to abuse of public office, bribery and drug importation. Having regard to various court proceedings still underway, including appeals, the Integrity Commissioner decided to reserve indefinitely his findings in relation to these eight officers.

The conduct of five other [Customs] officers—who were not charged with criminal offences—was also investigated and appropriate disciplinary action was taken by [Customs]...¹²

2.11 The annual report also noted that overall, as at October 2014, Operation Heritage/Marca has resulted in 19 convictions for a range of criminal offences in 2012-13, 2013-14 and the early parts of 2014-15.¹³ Since that time, 3 additional convictions have been achieved with the total now standing at 22. A further 3 matters continue to be progressed.¹⁴

Observations of Heritage/Marca

2.12 The annual report stated that anti-corruption treatments and agency structures must be re-examined and re-configured to strengthen anti-corruption resistance.¹⁵ In its submission to this inquiry, ACLEI maintained strong concerns about the levels of pressure exerted by organised crime on Australian law enforcement agencies, especially those with proximity to the border.¹⁶

2.13 Further, ACLEI supported the establishment of the ABF based on the lessons derived from Operation Heritage/Marca:

11 ACLEI, *Investigation Report: Operation Heritage—a joint investigation of alleged corrupt conduct amount officers of the Australian Customs and Border Protection Service at Sydney International Airport (Interim Report)*, Report 02/2013, June 2013, p 2.

12 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 89.

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

14 Mr Nick Sellars, Executive Director Secretariat, ACLEI, *Correspondence*, 8 April 2016, p. 1.

15 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 89.

16 ACLEI, *Submission 1*, p. 7.

...there is a strong link between integrity and organisational capability... Accordingly, [the final Operation Heritage investigation report] supported the Australian Border Force concept...as an important integrity initiative.¹⁷

2.14 In May 2014, the government announced the transferral of Customs into the ABF. Critically, the explanatory memorandum for the ABF bill notes that the ABF would be subject to a number of integrity provisions to 'increase resistance to criminal infiltration and corruption and to enhance government and public confidence in Immigration and Border Protection workers...'¹⁸

Organisational change

2.15 Operation Heritage/Marca has had a lasting effect on both Customs, its successor the ABF, as well as on ACLEI itself. The Integrity Commissioner's interim report on Operation Heritage/Marca notes that the investigation 'resulted in considerable changes to Custom's integrity policy, practice and organisational arrangements.'¹⁹

2.16 The interim report also notes that as a result of Operation Heritage/Marca the LEIC Act was amended in 2012 to introduce:

...specific anti-corruption measures for [Customs]—namely, drug and alcohol testing, the power for the CEO to declare that a dismissal was for a reason of serious misconduct (which modifies appeal rights), and an authority to issue binding orders relating to conduct and integrity (such as mandatory reporting of misconduct). The new powers bring [Customs] into closer alignment with integrity arrangements already in place in the AFP and the ACC.²⁰

Reorganising Customs into Australian Border Force

2.17 The question of the inclusion of the entire DIBP within ACLEI's jurisdiction was settled following the decision by the government to significantly change the agencies responsible for Australia's border. This is reflected in the decision to not only re-organise Customs into the ABF, but to also integrate the ABF within DIBP as its 'operational arm'.²¹

2.18 Prior to the merger, Customs and the DIBP provided a joint submission to the inquiry which noted that the consolidated DIBP would provide a streamlined approach with respect to the management of Australia's borders. Further, the joint submission outlined the agencies' support for the extension of ACLEI's jurisdiction to at least the law enforcement function of those agencies:

17 ACLEI, *Annual Report of the Integrity Commissioner 2013-14*, p. 89.

18 Australian Border Force Bill 2015, *Explanatory Memorandum*, p. 2.

19 ACLEI, *Investigation Report 02/2013*, p. 4.

20 ACLEI, *Investigation Report 02/2013*, p. 4.

21 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, 'A new era in border protection', Media release, 1 July 2015.

The functions of the Department of Agriculture and DIBP include border-related law enforcement responsibilities and the exercise of powers that are potentially open to corruption. For this reason, [Customs] and DIBP are of the view that, at a minimum, the law enforcement functions of these agencies should be subject to ACLEI's jurisdiction.²²

2.19 The ABF was created on 1 July 2015, with the integration of Customs into DIBP. The former functions of Customs were transferred into the ABF through the enactment of the *Customs and Other Legislation Amendment (Australian Border Force) Act 2015*. Upon the bill's introduction in the House of Representatives, the Minister for Immigration and Border Protection, the Hon Peter Dutton MP, noted:

...the Bill substitutes the Department of Immigration and Border Protection for [Customs] as the primary agency with overarching responsibility for protecting our borders.²³

2.20 The Minister explained that the inclusion of customs functions within the DIBP would result in the expansion of ACLEI's jurisdiction:

The Bill proposes that the Integrity Commissioner's jurisdiction would be broadened to apply to the Department of Immigration and Border Protection on a whole of agency basis, from 1 July 2015.²⁴

2.21 The passage of the *Customs and Other Legislation Amendment (Australian Border Force) Act 2015* effectively settled the question of whether ACLEI's jurisdiction should apply to the entirety of the new ABF-DIBP arrangement.

Support for DIBP's inclusion

2.22 Noting the Minister's support for the inclusion of DIBP within ACLEI's jurisdiction, there was also broad support from submitters and witnesses for DIBP's inclusion.

2.23 For instance the Hon Stephen Charles, a member of the Accountability Round Table (ART) noted that ART generally 'supports the extension of ACLEI's jurisdiction to...the entire Department of Immigration and Border Protection.'²⁵

2.24 The former CEO of Customs and now head of DIBP, Mr Mike Pezzullo supported whole-of-DIBP inclusion saying that 'I would have thought the easier thing to do would be to have universal coverage on a jurisdictional basis.'²⁶

2.25 Mr Martin Bowles, the former Secretary of DIBP supported Mr Pezzullo's view for whole-of-DIBP inclusion:

22 Customs and DIBP, *Submission 9*, p. 1.

23 *House of Representatives Hansard*, 25 February 2015, p. 1209.

24 *House of Representatives Hansard*, 25 February 2015, p. 1209.

25 The Hon Stephen Charles, Member, Accountability Round Table, *Committee Hansard*, 26 September 2014, p. 1.

26 Mr Mike Pezzullo, Chief Executive Officer, Customs and Border Protection Service, *Committee Hansard*, 26 September 2014, p. 45.

One thing though is that the entire organisation [the amalgamated DIBP], all 14,000-plus people, should fit under the [ACLEI] umbrella and then we work out, with ACLEI, what the coverage is, what the touch points are. As Mr Pezzullo said, you cannot be half in and half out.²⁷

Committee view

2.26 The committee notes that from 1 July 2015 DIBP was included on an all-of-agency basis within ACLEI's jurisdiction. Although the main question posed by this chapter has now been settled, the committee also notes the strong support for the inclusion of the entire Department of Immigration and Border Protection in ACLEI's jurisdiction.

2.27 The committee agrees that the potential corruption risks within DIBP are best addressed through the inclusion of the entirety of DIBP within ACLEI's jurisdiction. The committee commends the pragmatic approach taken by Mr Pezzullo of 'liberal referrals' to ACLEI to avoid 'definitional quagmires' and a 'downward spiral' of not informing the Integrity Commissioner of potential corruption issues.²⁸

2.28 The committee also notes that additional funding has been allocated for ACLEI's expanded jurisdiction in the 2015-16 Budget, including for the coverage of DIBP.²⁹ The committee supports further budgetary supplementation commensurate with any future expansions of ACLEI's jurisdiction.

27 Mr Martin Bowles PSM, Secretary, Department of Immigration and Border Protection, *Committee Hansard*, 26 September 2014, p. 48.

28 Mr Mike Pezzullo, Chief Executive Officer, Customs and Border Protection Service, *Committee Hansard*, 26 September 2014, p. 45.

29 Commonwealth of Australia, *Budget 2015-16, Budget Measures, Budget Paper No 2*, May 2015, pp 65 and 123.