



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

---

Inquiry into the jurisdiction of the Australian  
Commission for Law Enforcement Integrity

May 2016

© Commonwealth of Australia 2016

ISBN 978-1-76010-447-4

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

This document was printed by the Senate Printing Unit, Parliament House, Canberra

# The Committee

## Members

Mr Russell Matheson MP	LP, NSW (Chair)
Senator Catryna Bilyk	ALP, TAS (Deputy Chair)
Senator Sean Edwards	LP, SA
The Hon Justine Elliot MP	ALP, NSW
Mr Steve Irons MP	LP, WA
Senator Barry O'Sullivan	NATS, QLD
Senator Glenn Sterle	ALP, WA
Mr Jason Wood MP	LP, VIC
Mr Tony Zappia MP	ALP, SA

## Former Members

Senator Mark Furner	ALP, QLD (from 12.11.13 to 30.6.14)
Senator Stephen Parry	LP, TAS (from 2.12.13 to 30.6.14)
The Hon Christian Porter MP	LP, WA (from 4.12.13 to 12.2.15)
Mr Chris Hayes MP	ALP, NSW (from 5.12.13 to 17.7.14)
Senator the Hon David Johnston	LP, WA (from 10.9.15 to 4.2.16)

## Secretariat

Mr Stephen Palethorpe, Secretary  
Ms Jedidiah Reardon, Principal Research Officer  
Mr Michael Kirby, Senior Research Officer  
Mr Josh See, Senior Research Officer  
Mr Tim Hillman, Acting Senior Research Officer  
Mr Josh Wrest, Acting Senior Research Officer  
Ms Rosalind McMahon, Administrative Officer  
Ms Sophie Clark, Administrative Officer

PO Box 6100  
Parliament House  
CANBERRA

Telephone: (02) 6277 3419

Facsimile: (02) 6277 5809

Email: [aclei.committee@aph.gov.au](mailto:aclei.committee@aph.gov.au)

Internet: [www.aph.gov.au/aclei\\_ctte](http://www.aph.gov.au/aclei_ctte)

# Table of Contents

<b>The Committee .....</b>	<b>iii</b>
<b>Recommendations .....</b>	<b>vii</b>
<b>Chapter 1.....</b>	<b>1</b>
<b>Introduction .....</b>	<b>1</b>
Conduct of the inquiry .....	1
ACLEI and the LEIC Act .....	2
Genesis of the inquiry .....	2
Report structure .....	3
Acknowledgements .....	3
<b>Chapter 2.....</b>	<b>5</b>
<b>From Customs to Australian Border Force .....</b>	<b>5</b>
Historical context.....	5
Operation Heritage/Marca .....	6
Reorganising Customs into Australian Border Force.....	8
Support for DIBP's inclusion.....	9
<b>Chapter 3.....</b>	<b>11</b>
<b>Department of Agriculture and Water Resources .....</b>	<b>11</b>
Background.....	11
Prescribed aspects of Agriculture .....	11
Jurisdictional 'grey spots' .....	13
Risks beyond the 'front line'—'black spot' risks .....	14
ACLEI's support for whole-of-agency coverage.....	17
Department of Agriculture risk assessment.....	18
Budgetary implications of expanding ACLEI's jurisdiction .....	19
<b>Chapter 4.....</b>	<b>23</b>
<b>Matters relating to the ATO, ASIC and the AGD.....</b>	<b>23</b>
Operation of the LEIC Act inquiry.....	23
Criminal intelligence inquiry.....	24

Australian Taxation Office .....	26
Australian Securities and Investments Commission .....	28
Attorney-General's Department.....	31
<b>Chapter 5.....</b>	<b>35</b>
<b>A national anti-corruption body .....</b>	<b>35</b>
<b>Appendix 1 .....</b>	<b>39</b>
<b>Submissions received by the committee .....</b>	<b>39</b>
<b>Appendix 2.....</b>	<b>41</b>
<b>Witnesses who appeared before the committee .....</b>	<b>41</b>

# Recommendations

## Recommendation 1

**3.49** The committee recommends the government amend the *Law Enforcement Integrity Act 2006*, to include the entire Department of Agriculture and Water Resources within the Australian Commission for Law Enforcement Integrity's jurisdiction.

## Recommendation 2

**4.28** The committee recommends that the Government initiate an independent assessment of the Australian Taxation Office's corruption risk profile, together with an examination of the feasibility of including the Australian Taxation Office within ACLEI's jurisdiction.

## Recommendation 3

**4.53** The committee recommends that the Government consider transferring the responsibility for vetting Aviation Security Identification Cards and Maritime Security Identification Cards to an agency within ACLEI's jurisdiction.



# Chapter 1

## Introduction

1.1 On 6 March 2014, the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (the committee) initiated an inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity (ACLEI). Under the terms of reference, the committee was required to examine:

1. The adequacy of ACLEI's current jurisdiction;
2. The desirability and feasibility of expanding ACLEI's jurisdiction to include the entire Department of Agriculture or additional parts of that department;
3. In response to a recommendation of the Parliamentary Joint Committee on Law Enforcement, the desirability and feasibility of extending ACLEI's jurisdiction to include:
  - a. The Australian Securities and Investments Commission;
  - b. The Attorney-General's Department; and
  - c. The Australian Taxation Office;
4. The desirability and feasibility of extending ACLEI's jurisdiction to include the Department of Immigration and Border Protection;
5. Whether any activity-based approach to ACLEI's jurisdiction would be preferable to the current jurisdiction based approach;
6. The most appropriate method of implementing any change to ACLEI's jurisdiction including any budgetary implications; and
7. Any relevant matters.

### Conduct of the inquiry

1.2 The inquiry was advertised in *The Australian* and through the internet. The committee invited submissions from Commonwealth, state and territory law enforcement agencies and interested organisations and individuals.

1.3 The committee received 12 public submissions. A list of individuals and organisations that made submissions to the inquiry, together with other information authorised for publication, is provided at Appendix 1. The committee held two public hearings in Canberra, on 19 June and 26 September 2014. Details of the public hearings are available in Appendix 2. The public submissions and Hansard transcript of evidence may be accessed through the committee's website.<sup>1</sup>

---

1 [www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Australian\\_Commission\\_for\\_Law\\_Enforcement\\_Integrity/Jurisdiction\\_of\\_ACLEI](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Australian_Commission_for_Law_Enforcement_Integrity/Jurisdiction_of_ACLEI)

## **ACLEI and the LEIC Act**

1.4 ACLEI was established in 2006 by the *Law Enforcement Integrity Act 2006* (LEIC Act). The LEIC Act requires the appointment of the Integrity Commissioner, whose role is to 'consider the nature and scope of corrupt conduct revealed by investigations, and report annually on any patterns and trends concerning corruption in law enforcement agencies.'<sup>2</sup> The Integrity Commissioner also acts as the Chief Executive of ACLEI.

1.5 ACLEI's jurisdiction has expanded considerably from its establishment in 2006. ACLEI's original jurisdiction included the Australian Federal Police (AFP), the Australian Crime Commission (ACC) and staff of the former National Crime Authority (NCA). Its jurisdiction was first broadened in 2011 to include the then Australian Customs and Border Protection Service (Customs).<sup>3</sup>

1.6 In 2012, the *Law Enforcement Integrity Legislation Amendment Act 2012* amended the LEIC Act so as to include three additional agencies from 1 July 2013. The three agencies added were the Australian Transaction Reports and Analysis Centre (AUSTRAC), CrimTrac and certain quarantine-related functions of the then Department of Agriculture, Fisheries and Forestry (now the Department of Agriculture and Water Resources) as defined by regulation.<sup>4</sup>

## **Genesis of the inquiry**

1.7 In May 2013 the Parliamentary Joint Committee on Law Enforcement tabled its report into the gathering and use of criminal intelligence. That report recommended that:

...the Parliamentary Joint Committee on ACLEI (PJC-ACLEI) [inquire] into the feasibility of extending ACLEI's jurisdiction to include ASIC, the AGD and the ATO. The committee recommends that the PJC-ACLEI consider whether these three agencies should be brought under ACLEI's jurisdiction on a whole-of-agency basis by regulation.<sup>5</sup>

1.8 Based on this recommendation, and given its ongoing interest in this area, the committee decided to initiate this inquiry into ACLEI's jurisdiction.

1.9 This report examines the question of whether ACLEI's jurisdiction should be expanded to include the Australian Securities and Investments Commission (ASIC), the Australian Taxation Office (ATO) and the Attorney-General's Department (AGD). It also considers the inclusion of other agencies of interest, namely the restructured Department of Immigration and Border Protection (DIBP) as well as other areas within the Department of Agriculture and Water Resources.

---

2 ACLEI, *Submission 1*, p. 1.

3 PJC-ACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Final report, July 2011, p. 12.

4 ACLEI, *Submission 1*, p. 5.

5 Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, May 2013, p. 93.

**Report structure**

1.10 This introductory chapter provides an outline of the conduct and establishment of the inquiry.

1.11 Chapter 2 examines matters relating to the establishment of the Australian Border Force (ABF) within the DIBP, and its inclusion within ACLEI's jurisdiction.

1.12 Chapter 3 examines ACLEI's jurisdiction over parts of the Department of Agriculture and Water Resources.

1.13 Chapter 4 examines matters relating to other agencies, including the ATO, ASIC and the AGD.

1.14 Finally, Chapter 5 discusses proposals for a national anti-corruption body.

**Acknowledgements**

1.15 The committee wishes to express its appreciation to all parties who contributed to the conduct of this inquiry, whether by making a written submission, by attending a public hearing or, as in many cases, by making both written and oral submissions.



## 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'.<sup>1</sup> 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.<sup>2</sup>

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

2.5 Customs was brought within ACLEI's jurisdiction, initially from 1 January 2011 by regulation made under the LEIC Act.<sup>4</sup> 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.<sup>5</sup>

### **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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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]...<sup>12</sup>

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.<sup>13</sup> Since that time, 3 additional convictions have been achieved with the total now standing at 22. A further 3 matters continue to be progressed.<sup>14</sup>

### ***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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

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...'<sup>18</sup>

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

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.<sup>20</sup>

### **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'.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup>

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.<sup>24</sup>

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.'<sup>25</sup>

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.'<sup>26</sup>

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.<sup>27</sup>

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

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.<sup>29</sup> 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.

## Chapter 3

### Department of Agriculture and Water Resources

3.1 Over the course of the inquiry the committee heard from several witnesses and submitters in relation to whether ACLEI's jurisdiction should be expanded to include the entire Department of Agriculture and Water Resources (Agriculture).

3.2 As described previously, certain aspects of Agriculture's border-related operations have been subject to ACLEI's jurisdiction since 2013. This chapter examines the historical context that led to this arrangement and then considers the substantive question of whether ACLEI's jurisdiction should include other parts of Agriculture or the entire department.

#### Background

3.3 As discussed in Chapter 1, the expansion of ACLEI's jurisdiction has been an iterative process. This is largely reflective of its relative newness and initial small size.

3.4 The inclusion of certain prescribed functions of Agriculture has its origins in amendments to the *Law Enforcement Integrity Act (2006)* (LEIC Act). These amendments permit the inclusion of certain aspects of Agriculture within ACLEI's jurisdiction, as defined by regulation.<sup>1</sup>

3.5 Under current arrangements, the Law Enforcement Integrity Commissioner Regulations provide for the inclusion of certain Agriculture staff, all of whom are connected to certain functions relating to the cargo control systems. Of the approximately 4300 full time equivalent staff at Agriculture, approximately 1000 are subject to ACLEI's jurisdiction. These positions include:

- the Departmental Secretary;
- Regional Managers;
- members of staff whose duties include undertaking assessment, clearance or control of vessels or cargo imported into Australia; and
- members of staff who have access to the Integrated Cargo System.<sup>2</sup>

#### Prescribed aspects of Agriculture

3.6 With respect to Agriculture, ACLEI submitted that the areas of highest risk that were initially included within jurisdiction were quite narrow in scope. ACLEI explained that further decisions about jurisdictional scope would be informed by a comprehensive risk assessment to be undertaken by Agriculture:

Each agency has its own distinct risk profile, specific to its core business and level of integration with other agencies with law enforcement

---

1 ACLEI, *Submission 1*, p. 4. See also paragraph 10(2E)(b) of the *Law Enforcement Integrity Commissioner Act 2006*.

2 Department of Agriculture, *Submission 4*, p. 1.

functions. In the case of the Department of Agriculture, the initial jurisdiction was set narrowly—to address areas of highest risk (to the extent then known)—while further risk assessment work was to be undertaken to inform subsequent decision-making about jurisdictional scope. ACLEI understands that the Department of Agriculture has since commissioned a comprehensive survey of its corruption risks, as part of its broad approach to risk management.<sup>3</sup>

3.7 Further examination of Agriculture's risk assessment is discussed towards the end of this chapter.

3.8 The Attorney General's Department explained the two broad options for amending ACLEI's jurisdiction and the relative merits of each approach:

Prescribing an agency in the regulations allows the Integrity Commissioner's jurisdiction to be expanded quickly, while still enabling Parliamentary scrutiny through the tabling and disallowance process. However, this approach limits the Integrity Commissioner's jurisdiction to the law enforcement functions of a prescribed agency. From an operational perspective, this can be problematic, as staff who work in areas that support or interact with the law enforcement functions of an agency may, at various times, have access to information with value to organised crime, or which otherwise makes them susceptible to corruption. In these circumstances, questions may arise as to the ability of the Integrity Commissioner to investigate the conduct of these individuals where the particular functions they perform fall outside a traditional law enforcement role.

In contrast, amending the definition of law enforcement agency in the LEIC Act allows all of the functions of a law enforcement agency named within the definition to fall within Integrity Commissioner's jurisdiction. This approach allows the Integrity Commissioner to comprehensively address the corruption risk to the law enforcement functions and outcomes of an agency, by removing any doubt that the Integrity Commissioner can investigate corrupt conduct in any part of that agency, should it become necessary.<sup>4</sup>

3.9 During the course of the committee's inquiry, the Acting Integrity Commissioner, Mr Rob Cornall, outlined the possible options for expanding ACLEI's jurisdiction with relation to Agriculture:

In relation to the Department of Agriculture, the partial inclusion of a department or agency within ACLEI's jurisdiction can present some problems. For example, ACLEI recently received advice about alleged corrupt activity involving a Department of Agriculture staff member who fell outside ACLEI's jurisdiction, so it could not assist in that matter. As you know, our current jurisdiction is limited to staff who have access to the Integrated Cargo System or have authority to release or dispatch vessels and cargoes. There is also the problem that it may be difficult to determine,

---

3 ACLEI, *Submission 1*, p. 4.

4 Attorney-General's Department, *Submission 3*, p. 4.

in a particular situation, if a relevant officer is included in the definition of 'staff member'. It is possible that this uncertainty could lead to a legal challenge either to the exercise of ACLEI's statutory powers in an investigation or to the use of the information or evidence obtained through those statutory powers.

One solution would be to include all of the staff in the department within ACLEI's jurisdiction, but on the clear understanding that ACLEI would maintain its primary focus on law enforcement integrity. In that situation, my expectation is that the Integrity Commissioner would respect the objects of the act and exercise his or her discretion under section 16 of the act to give priority to serious or systemic corruption in law enforcement. Alternatively, the committee could consider an extension of ACLEI's jurisdiction to cover all Department of Agriculture staff in the regions—that is, at the border—and relevant back office staff in Canberra, but not ACT-based policy and other officers with no connection to law enforcement. This extended jurisdiction, with the increased definition of Department of Agriculture staff members who are subject to ACLEI's jurisdiction, would be a very significant advance on the current partial inclusion of departmental staff.<sup>5</sup>

### **Jurisdictional 'grey spots'**

3.10 While Operation Heritage/Marca largely focused on corruption issues within Customs, one officer from the Department of Agriculture was also implicated. That officer eventually faced charges of 'abuse of public office, prohibited disclosure of official information, receiving a corrupting benefit and influencing a Commonwealth public official.'<sup>6</sup>

3.11 The arrest and subsequent conviction of the officer in question exposed a significant 'grey spot' within ACLEI's jurisdiction. This jurisdictional uncertainty arose due to the constraints imposed by the regulations relating to Agriculture as outlined above. The former Integrity Commissioner, Mr Phillip Moss, noted that the jurisdictional uncertainty was problematic for ACLEI:

An employee of that agency [Agriculture] was arrested by the AFP during Operation Heritage-Marca. That operation...was investigating criminal and corrupt conduct at Sydney international airport. The person has since been convicted...and sentenced to 14 months imprisonment, fully suspended, on entering into a good behaviour bond... Since that person's primary place of employment was at Sydney international airport, rather than in a role more clearly defined in the Law Enforcement Integrity Commissioner Act and regulations, *it is not clear whether she would have fallen within the Integrity Commissioner's jurisdiction. It is conceivable that she did, but it is*

---

5 Mr Rob Cornall AO, Acting Integrity Commissioner, ACLEI, *Committee Hansard*, 26 September 2014, pp 61–62.

6 ACLEI, Investigation Report 02/2013, *Operation Heritage—a joint investigation of alleged corrupt conduct among officers of the Australian Customs and Border Protection Service at Sydney International Airport (Interim Report)*, 2013, p. 3. Further background detail of Operation Heritage/Marca is provided in Chapter 2.

*not clear*. In my written submission I referred to this situation as a grey spot. Fortunately, in the particular circumstances of that case, the lack of jurisdiction was able to be dealt with in the context of a joint investigation.<sup>7</sup>

3.12 Representatives of the Attorney-General's Department added weight to the former Integrity Commissioner's concerns about jurisdictional 'grey spots':

It certainly is the case that, for example, only some staff of the Department of Agriculture are currently within ACLEI's jurisdiction. I think there is a potential there that if the Integrity Commissioner was looking at some staff who were within the jurisdiction of the Department of Agriculture and then wished to extend that investigation to consider the actions of other staff—and it was not clear whether those staff did fall within the jurisdiction or not—that has the ability potentially to undermine either the investigation or the use of the specialist powers that the Integrity Commissioner has. I think that is a risk that should certainly be noted.<sup>8</sup>

### ***Committee view***

3.13 The committee is concerned by the former Integrity Commissioner's evidence that it was unclear whether or not the Agriculture officer implicated in the Heritage/Marca investigation was within ACLEI's jurisdiction. The committee is of the view that such jurisdictional uncertainty poses a real risk for future ACLEI investigations involving agencies such as Agriculture where partial ACLEI coverage is prescribed.

3.14 The committee notes the former Integrity Commissioner's comments that it was fortunate Operation Heritage/Marca was a joint investigation. However under a future scenario ACLEI may not be so fortunate and an important investigation may be compromised by this grey spot. From the committee's perspective, ACLEI's identification of the 'grey spot' is an influential consideration in determining whether ACLEI's jurisdiction should be expanded to include all of Agriculture.

3.15 Similarly, the jurisdictional constraints imposed by the LEIC regulations exposed problems of 'back office' risks, which are discussed below. Both these risks are substantively connected to the current application of ACLEI's jurisdiction over Agriculture by the use of partial agency inclusion by legislative instrument.

### **Risks beyond the 'front line'—'black spot' risks**

3.16 While ACLEI continues to monitor and investigate border-related corruption risks, the agency's submission notes that 'so-called "back-end" staff—such as information technology administrators—are as much at risk of an integrity breach as are "front-line" operational staff.'<sup>9</sup>

---

7 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 19 June 2014, p. 2, emphasis added.

8 Mr Iain Anderson, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 26 June 2014, p. 34.

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

3.17 Key agencies such as ACLEI and the ACC identified back office operations as a significant corruption risk. For instance, in a submission dated July 2009 for the purpose of a former committee inquiry, the Integrity Commissioner observed that back office staff may be 'soft targets':

Law enforcement may be only one of a number of functions and services delivered by an agency. However, administrative staff and other employees or contractors support, or have access to, the agency's law enforcement functions, information, decision-making powers, staff and systems. These staff may be soft targets and are as attractive and vulnerable to subversion or coercion by criminal groups as law enforcement personnel.<sup>10</sup>

3.18 ACLEI noted that recent investigations had highlighted potential corruption risks for back office support staff that could be compromised.<sup>11</sup> Mr Moss submitted:

Although [back-office staff] do not have front-line roles, some staff members can access valuable law enforcement information held by an agency, or have decision making authority that intersects with law enforcement functions. Furthermore, they often have the skills and ability to cover their own tracks or the tracks of others. A partial agency or activities based model may preclude the Integrity Commissioner from investigating such matters. In my written submission I used the term 'black spot' to describe the problem of artificially limiting the Integrity Commissioner's jurisdiction within an agency. The black spot and grey spot problems are especially pertinent because we know that corrupt conduct will often involve conspirators working together, across boundaries, to conceal evidence of their misconduct.<sup>12</sup>

3.19 ACLEI has suggested the exposure to corruption or attempted corruption of back office staff was a greater problem due to an absence of integrity measures, awareness, and training in areas that might appear to be lower risk.<sup>13</sup>

3.20 When asked about back office risk within Agriculture, ACLEI officers gave the following example:

One matter that immediately comes to mind is an allegation of corruption against an employee of the Department of Agriculture who did not fall within the definition of staff members who come under our jurisdiction from the regulations—in other words, the staff member was not involved in releasing imports into the country and did not have access to the integrated

---

10 ACLEI submission to the Parliamentary Joint Committee on ACLEI, *Inquiry into the operation of the Law Enforcement Integrity Commissioner Act 2006*, July 2009, p. 11, which is quoted at ACLEI, *Submission 1*, p. 6.

11 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 19 June 2014, p. 2.

12 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 19 June 2014, p. 2.

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

cargo system—so we said, 'That is all very interesting, but we cannot take this matter any further.'<sup>14</sup>

...in this instance because the person did not have access to the relevant systems or come within the definition of the regulations we were unable to investigate that conduct.<sup>15</sup>

3.21 In addition to this example, the committee is in possession of a confidential Agriculture document which provides a summary of corruption allegations and investigations that occurred over a recent two year period. While the committee chooses not to disclose the sensitive details of any of these potential integrity issues, it does observe that of a total number of 15 listed issues, 7 or nearly 50 per cent include the following note: 'the matter was not notified to ACLEI as the officer does not fall within jurisdiction.'<sup>16</sup> Each allegation of corruption not notified to ACLEI was either investigated by the department or the Australian Federal Police. Three of the eight matters that were originally notified to ACLEI were referred back to the department for investigation.<sup>17</sup>

3.22 ACLEI outlined the constraints it faces as a result of Agriculture's partial inclusion:

Under Part 9 of the LEIC Act, the Integrity Commissioner may require any person—including any Department of Agriculture staff member—to attend and provide evidence at an information-gathering hearing or to provide documents or things. However, the Integrity Commissioner may not be able to investigate the conduct of—and may not make findings about—Department of Agriculture staff members who are not prescribed under the LEIC Regulations. *This situation limits ACLEI's ability to track a corruption issue across the Department of Agriculture, hold corrupt collaborators to account, and address risk to the Department's law enforcement functions and business outcomes.*<sup>18</sup>

3.23 The ACC also supported additional detection and management measures to mitigate back office risks. Mr Chris Dawson, Chief Executive Officer of the ACC provided evidence that organised crime groups would seek to infiltrate or influence public servants regardless of their operational role. Mr Dawson argued that organised crime groups were more interested in sensitive information for their benefit, and would not distinguish between back office staff and frontline staff:

If it is a public sector official that is conducting an activity that is not necessarily front of house but they have access, for instance, to systems,

---

14 Mr Rob Cornall AO, Acting Integrity Commissioner, ACLEI, Examination of the Annual Report of the Integrity Commissioner 2013-14, *Committee Hansard*, 27 November 2014, p. 8.

15 Ms Sarah Marshall, Acting Executive Director, Operations, ACLEI, Examination of the Annual Report of the Integrity Commissioner 2013-14, *Committee Hansard*, 27 November 2014, p. 8.

16 Department of Agriculture and Water Resources, *Inquiry into the integrity of Australia's border arrangements – Site visits*, November 2015, pp 4–8.

17 Department of Agriculture and Water Resources, *correspondence*, 21 April 2016.

18 ACLEI, *Submission 1*, p. 8, emphasis added.

organised crime will of course try to exploit those opportunities. It would not be right for me to say it is free of risk; it is not. Wherever organised crime will go, that of course presents a risk. That is not to say that government departments do not have good antifraud, anticorruption measures within the public sector themselves.<sup>19</sup>

### *Committee view*

3.24 In addition to the concerns expressed above with regard to 'grey spot' risks, the committee is concerned by the evidence it received about 'black spot' risks. ACLEI's evidence that back-office staff, who are currently operating beyond ACLEI's jurisdiction, are seen as 'soft targets' and 'are as much at risk of an integrity breach' as its front-line staff is of serious concern to the committee. The committee is also concerned with the somewhat artificial constraints imposed on ACLEI's investigations by the current jurisdictional limitations.

### **ACLEI's support for whole-of-agency coverage**

3.25 ACLEI supported the inclusion of the entire Agriculture department within its jurisdiction. Mr Moss argued that while Agriculture is identified primarily as a policy and program delivery agency, its biosecurity functions make it vulnerable to law enforcement corruption risks across the entire agency.<sup>20</sup>

3.26 Mr Moss also clearly articulated his preference for the inclusion of Agriculture in its entirety:

My submission, which is based on my knowledge of corruption risk and how it can best be mitigated, is that the Department of Agriculture should be included in the LEIC Act jurisdiction on a whole of agency basis.<sup>21</sup>

3.27 The former Integrity Commissioner went on to clarify that under such a scenario 'the Integrity Commissioner's role should remain focused on the law enforcement related corruption risks of any agency...'<sup>22</sup>

3.28 The acting Integrity Commissioner who succeeded Mr Moss reiterated this point by stating 'that the Integrity Commissioner would respect the objects of the act and exercise his or her discretion under section 16 of the act to give priority to serious or systemic corruption in law enforcement.'<sup>23</sup>

3.29 Despite ACLEI's support, the former Secretary of Agriculture, Dr Paul Grimes, did raise the question of whether 'well removed' officers should be subject to ACLEI's jurisdiction, providing an example of a policy officer in Canberra. He argued that officers 'working on agricultural policy matters, [have] absolutely nothing to do

---

19 Mr Chris Dawson, CEO, Australian Crime Commission, *Committee Hansard*, 26 September 2015, p. 30.

20 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 19 June 2014, p. 2.

21 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 19 June 2014, p. 2.

22 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 19 June 2014, p. 2.

23 Mr Rob Cornall AO, Acting Integrity Commissioner, ACLEI, *Committee Hansard*, 26 September 2014, p. 62.

with our biosecurity administrative functions, processing of cargo and other matters at the border.<sup>24</sup>

3.30 Although Dr Grimes would not be drawn on whether or not ACLEI's jurisdiction should be expanded, he did concede that if there were significant questions around boundaries there would be a case to include the entire Department within ACLEI's jurisdiction:

If there is a case that there is a significant issue around that boundary [of Agriculture's inclusion with ACLEI's jurisdiction] then I think there is a case to expand jurisdiction. Whether that takes you to the entire department, bearing in mind that we have officers who are well removed from these operational areas—whether that takes you to having to go to that full extent to deal with the boundary question—I really do think is open for further consideration.<sup>25</sup>

3.31 Dr Grimes noted however that while only prescribed aspects were subject to ACLEI's jurisdiction, the Department was nevertheless taking a 'cautious approach' by referring all potential corruption matters to the Integrity Commissioner:

[I alert] the commissioner to matters within the department to make sure that he has full visibility of the range of matters that we are managing within the department. In a sense that is providing some of the checks and balances around that boundary question. I think there is benefit in having something very simple in referring matters to the commissioner and alerting the commissioner to matters rather than trying to have a graduated system where we try to put it through some algorithm and then determine how it will be handled.<sup>26</sup>

### **Department of Agriculture risk assessment**

3.32 ACLEI describes Agriculture's corruption risk in the following terms:

The Department of Agriculture has a varied and overlapping mix of policy, regulatory, facilitation, administrative and law enforcement functions. To achieve its objectives, the Department works closely with other Commonwealth, State and Territory-based agencies that have law enforcement roles and, in some instances, works in shared premises or otherwise has shared access to sensitive law enforcement information. Accordingly, corruption risk to broad law enforcement outcomes can arise in many ways, whereby a corruptor may attempt to subvert or divert apparently innocuous public functions to achieve private or criminal ends.<sup>27</sup>

---

24 Dr Paul Grimes, Secretary, Department of Agriculture, *Committee Hansard*, 19 June 2014, p. 10.

25 Dr Paul Grimes, Secretary, Department of Agriculture, *Committee Hansard*, 19 June 2014, p. 10.

26 Dr Paul Grimes, Secretary, Department of Agriculture, *Committee Hansard*, 19 June 2014, p. 11.

27 ACLEI, *Submission 1*, p. 6.

3.33 In September 2014, Agriculture provided the committee with a copy of its Corruption Risk Assessment (risk assessment). The report is an internal Agriculture document. It contains a comprehensive assessment of Agriculture's activities, including those not currently within ACLEI's jurisdiction. In including the following commentary, the committee is mindful to not disclose integrity risks or operational information that is specific to Agriculture.

3.34 The risk assessment was developed by engaging internal business areas as well as external law enforcement agencies. It initially identifies those areas within Agriculture that are potentially at risk of corrupt practices. It then considers the effectiveness of the current control environment.<sup>28</sup>

3.35 In its approach, the risk assessment defines the relationship between likelihood and consequence applicable to the risk under review.<sup>29</sup> A range of factors is taken into consideration when determining the rating of likelihood and consequence.<sup>30</sup>

3.36 As might be anticipated, the corruption risks that lie outside ACLEI's jurisdiction are not estimated to be as serious as those for employees involved in the department's front-line regulatory function. This is to be expected because ACLEI's prescribed coverage of Agriculture was designed to encompass the higher risk areas of the department. Nevertheless, the corruption risk for one particular departmental function which falls outside ACLEI's jurisdiction was assessed to have a 10–20 per cent probability of occurring during 2014–2016 and which could result in moderate reputational damage to the department or government and a financial loss of \$1 000 000–\$10 000 000.<sup>31</sup> The department has recently advised that for this corruption risk 'two additional treatment measures' have been implemented which have mitigated the likelihood of this risk to 'remote' (less than 10 per cent) while the consequence remains 'moderate'.<sup>32</sup>

### **Budgetary implications of expanding ACLEI's jurisdiction**

3.37 Budgetary implications were cited by the former Secretary of Agriculture as a key factor in considering whether ACLEI's jurisdiction should be expanded.

3.38 Representatives of the Attorney-General's Department also touched on this subject when they referred to an unpublished report to the Minister for Justice, stating:

The [unpublished] report also notes though that, in principle, resourcing requirements should not influence decisions on jurisdiction and those decisions on jurisdiction should be made on the merits or otherwise of applying the Integrity Commissioner's powers to particular agencies; however, ACLEI is a very small agency and any extensions of the Integrity Commissioner's jurisdiction would increase its workload and have

---

28 Department of Agriculture, *Part II: Corruption Risk Assessment*, September 2014, pp 2–3.

29 Department of Agriculture, *Part II: Corruption Risk Assessment*, September 2014, p. 5.

30 Department of Agriculture and Water Resources, *correspondence*, 21 April 2016.

31 Department of Agriculture, *Part II: Corruption Risk Assessment*, September 2014, p. 16.

32 Department of Agriculture and Water Resources, *correspondence*, 21 April 2016.

resourcing implications that could not be met from within ACLEI's existing resources, so any expansion would need to be coupled with appropriate resourcing and secured as part of the normal budget process.<sup>33</sup>

3.39 ACLEI noted that an additional \$0.725 million and \$0.732 million was received in 2013-14 and 2014-15 respectively for the implementation of ACLEI's expanded jurisdiction in 2013 to include AUSTRAC, CrimTrac and Agriculture's cargo management functions.<sup>34</sup>

3.40 The former Integrity Commissioner, Mr Phillip Moss noted that expanding ACLEI's jurisdiction was ultimately a consideration for government as to whether the risk outweighed the cost:

...the funding of agencies is determined by government through the government process, based on the government's policy priorities at the time and its assessment of risk and opportunities.<sup>35</sup>

### ***Committee view***

3.41 The committee acknowledges that at face value, unlike Commonwealth bodies such as the AFP and the ACC, the Department of Agriculture and Water Resources is not a typical law enforcement agency. Agriculture does however, have some very important law enforcement functions that contribute to the security of Australia's borders. These include its screening for biosecurity risks and cargo management responsibilities at Australia's international airports and seaports. It was as a result of these important responsibilities that in mid-2013 the Agriculture portfolio was partially included within ACLEI's jurisdiction.

3.42 The committee notes that Operation Heritage/Marca uncovered a critical 'grey spot' that created a legal ambiguity for ACLEI's investigation. Were it not for the joint AFP-ACLEI operation that ensured coverage, this jurisdictional uncertainty may have obstructed ACLEI's investigation into serious allegations of corrupt activity at the Sydney International Airport.

3.43 The committee also acknowledges the evidence relating to 'back office' or 'black spot' risks. The committee agrees with the ACC's assessment that organised crime figures will use whatever means available to them, regardless of a staff member's proximity to the border, when attempting to compromise Commonwealth departments and agencies. Further, the committee acknowledges the increasing use of ICT systems results in greater access to sensitive law enforcement information.

3.44 The committee also notes the practice of former Secretary Grimes in referring all potential corruption issues to ACLEI for consideration. This is the same pragmatic approach advocated by the former head of Customs and now Secretary of DIBP, Mr Pezzullo, which is described in Chapter 2.

---

33 Mr Iain Anderson, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 26 June 2014, pp 33–34.

34 ACLEI, *Submission 1*, p. 4.

35 Mr Phillip Moss, Integrity Commissioner, ACLEI, *Committee Hansard*, 19 June 2014, p. 2.

---

3.45 Finally the committee notes the Integrity Commissioner's support for whole-of-agency coverage.

3.46 Accordingly, the committee is persuaded that it is preferable to have the entire Department of Agriculture and Water Resources included within ACLEI's jurisdiction. Although the committee acknowledges that the corruption risks apparent in the prescribed parts of the department are higher than in those not currently prescribed, there is sufficient evidence of corruption risks in other parts of the department to warrant the expansion of ACLEI's jurisdiction.

3.47 The committee does not favour a partial expansion of ACLEI's jurisdiction to higher risk areas such as ICT support as this would merely shift the grey spots and black spots rather than remove them as an impediment to the Integrity Commissioner's future corruption investigations.

3.48 The committee notes that section 16 of the *Law Enforcement Integrity Act 2006* requires the Integrity Commissioner to give priority to corruption issues that constitutes serious corruption or systemic corruption. Given that Agriculture's functions that are not already prescribed by regulation are relatively lower risk, it is likely that an expansion jurisdiction will not result in a significant workload increase for ACLEI or Agriculture.

### **Recommendation 1**

**3.49 The committee recommends the government amend the *Law Enforcement Integrity Act 2006*, to include the entire Department of Agriculture and Water Resources within the Australian Commission for Law Enforcement Integrity's jurisdiction.**

3.50 To fully support ACLEI's expanded jurisdiction, the government should assess the additional resources required by ACLEI to ensure that the transition is adequately funded.

3.51 Furthermore, Agriculture should provide appropriate training and guidance for staff that will for the first time be covered by ACLEI's jurisdiction.



## Chapter 4

### Matters relating to the ATO, ASIC and the AGD

4.1 As foreshadowed at the beginning of this report, this chapter examines whether the Australian Taxation Office (ATO), the Australian Securities and Investments Commission (ASIC) and the Attorney-General's Department (AGD) ought to be subject to Australian Commission for Law Enforcement Integrity's (ACLEI) jurisdiction.

4.2 The chapter first sets out two earlier parliamentary inquiries that have touched upon the inclusion of these agencies in one form or another. It then considers the key evidence tendered to the committee regarding each of those agencies.

#### Operation of the LEIC Act inquiry

4.3 In July 2011, this committee (PJC-ACLEI) tabled its final report into the operation of the *Law Enforcement Integrity Commissioner Act 2006*. The inquiry, which was initiated in 2009, sought to examine the merits of expanding ACLEI's jurisdiction to include other Commonwealth departments and agencies with either law enforcement functions or coercive powers.<sup>1</sup> It is important to note that at that time, ACLEI's jurisdiction applied to the ACC (including the former National Crime Authority) and the AFP.

4.4 The committee made numerous recommendations about the operation of both the LEIC Act and ACLEI's jurisdiction. The committee supported the expansion of ACLEI's jurisdiction to encompass a 'second tier' that would include specific agencies within a more limited form of ACLEI's jurisdiction. The second tier would operate on a voluntary basis, in that corruption issues could be voluntarily referred to the Integrity Commissioner by an agency head or Minister.<sup>2</sup> This is distinct from current arrangements, where agency heads are required to notify the Integrity Commissioner of corruption issues within their agency.<sup>3</sup>

4.5 The agencies recommended by the committee for inclusion within the proposed second tier jurisdiction included the ATO, AUSTRAC, CrimTrac, the then Australian Quarantine and Inspection Service (AQIS) and the then Department of

---

1 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, July 2011, p. 1.

2 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, July 2011, p. vii.

3 *Law Enforcement Integrity Commissioner Act 2006*, section 19.

Immigration and Citizenship.<sup>4</sup> With the exception of the ATO, these agencies (current and former) are all now subject to ACLEI's jurisdiction.

4.6 With regard to the ATO, the committee noted that while not a traditional law enforcement agency, the organisation has significant law enforcement functions and works collaboratively with the ACC and AFP.<sup>5</sup> The committee found that:

In addition to the intrinsic value of the information held by the ATO and its role in collecting revenue for the government, the ATO has a significant law enforcement function, investigating tax fraud and ensuring compliance with taxation legislation. In doing so, it works closely with law enforcement agencies, notably the ACC...

The committee considers that it would be beneficial to include the ATO in a tier two oversight arrangement, particularly in light of the ATO's involvement in investigations targeting serious and organised crime...<sup>6</sup>

### ***Government response***

4.7 In February 2012, the Government responded to the committee's recommendations. In noting the committee's second tier recommendation, the Government stated a preference for recent increases in ACLEI's jurisdiction to be 'bedded down' prior to further expansion:

Before considering the inclusion of new agencies within ACLEI's jurisdiction, the Government considers that it is appropriate to allow 12 to 18 months for ACLEI to consolidate existing jurisdiction following the inclusion of [Customs]. That experience then be used to properly inform any further expansion of ACLEI's functions.<sup>7</sup>

### **Criminal intelligence inquiry**

4.8 In May 2013, the Parliamentary Joint Committee on Law Enforcement (PJC-LE) presented a report to Parliament into the gathering and use of criminal intelligence.<sup>8</sup> That inquiry examined substantive issues around the collection and

---

4 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, July 2011, p. vii.

5 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, July 2011, p. 11.

6 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, July 2011, pp 11–12.

7 Government response, Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, February 2012, p. 3.

8 Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, May 2013, p. 92.

dissemination of criminal intelligence information between commonwealth law enforcement agencies, some of which are currently subject to ACLEI's jurisdiction.

4.9 In the report, the PJC-LE noted the earlier inquiry of PJC-ACLEI had recommended the inclusion of some additional agencies, including the ATO, within ACLEI's jurisdiction under the 'second tier' model.<sup>9</sup>

4.10 The PJC-LE also noted the development of the Australian Criminal Intelligence Model (ACIM), which 'will facilitate better [criminal intelligence] information sharing across agencies, including law enforcement, policy and regulatory agencies.'<sup>10</sup> At the same time the PJC-LE acknowledged that 'law enforcement and other government agencies are vulnerable to corruption by reason of their use or knowledge of information technology systems and processes.'<sup>11</sup> In this regard the PJC-LE stated that 'many Commonwealth agencies who have endorsed the ACIM are currently under the purview of ACLEI. These include the ACC, AFP and [Customs]. CrimTrac will come under ACLEI's oversight from 1 July 2013.'<sup>12</sup>

4.11 However the PJC-LE expressed concerns 'that three Commonwealth agencies [the ATO, ASIC and the AGD] that have endorsed the model and will gain access to sensitive information and intelligence through the national repository are not subject to the oversight of the ACLEI.'<sup>13</sup>

4.12 To address this concern the PJC-LE decided that further investigation was required into the possible expansion of ACLEI's jurisdiction. Accordingly, the PJC-LE recommended that:

...the Parliamentary Joint Committee on ACLEI (PJC-ACLEI) [inquire] into the feasibility of extending ACLEI's jurisdiction to include ASIC, the AGD and the ATO. The [PJC-LE] committee recommends that the PJC-ACLEI consider whether these three agencies should be brought under ACLEI's jurisdiction on a whole-of-agency basis by regulation.<sup>14</sup>

4.13 As discussed earlier in this report, this recommendation, along with the committee's ongoing interest in this area, led to the initiation of this inquiry into ACLEI's jurisdiction.

---

9 Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, May 2013, p. 92.

10 Government response, Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, October 2014, p. 1.

11 Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, May 2013, p. 91.

12 Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, May 2013, p. 92.

13 Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, May 2013, p. 92.

14 Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, May 2013, p. 92.

## **Australian Taxation Office**

4.14 As described above, the question of the potential inclusion of the ATO within ACLEI's jurisdiction largely revolves around access to sensitive law enforcement information.

### ***Integrity issues***

4.15 In evidence, Mr Malone, Assistant Commissioner in the Fraud Prevention and Internal Investigations area, gave an overview of the number of integrity complaints received by the ATO on an annual basis. He indicated that 295 integrity complaints had been received in 2011-12; followed by 187 in 2012-13; and 241 in 2013-14.<sup>15</sup> Of the integrity complaints received, Mr Malone explained that approximately 20 per cent are substantiated.<sup>16</sup> This equates to a range of approximately 36–60 established integrity breaches per annum over recent years.

4.16 Mr Malone acknowledged that like other large agencies, the ATO was not immune to integrity issues, but argued:

...relative to the size of the organisation...I do not think we have any more issues or less issues than other people. I would say that they are quite well managed.<sup>17</sup>

### ***Internal integrity risk management***

4.17 Mr Malone outlined the ATO's internal integrity framework:

The ATO maintains a dedicated and experienced fraud prevention and internal investigations branch that investigates allegations of fraud and serious corruption by ATO employees. Whilst it has no statutory powers, it has the capability to conduct most facets of a criminal investigation, including the submission of briefs of evidence to the Commonwealth Director of Public Prosecutions. Several of these investigations have resulted in successful prosecutions and lengthy terms of imprisonment for those employees found to have acted corruptly.<sup>18</sup>

4.18 While not subject to its jurisdiction, ACLEI noted that the ATO has one of the most highly respected professional standards units of the entire Australian Public Service.<sup>19</sup> ACLEI also acknowledged that the ATO goes one step further, by volunteering information to ACLEI that helps both agencies stay in close cooperation:

---

15 Mr Paul Malone, Assistant Commissioner, ATO Corporate, Fraud Prevention and Internal Investigations, Australian Taxation Office, *Committee Hansard*, 26 September 2014, p. 54.

16 Mr Paul Malone, Assistant Commissioner, ATO Corporate, Fraud Prevention and Internal Investigations, Australian Taxation Office, *Committee Hansard*, 26 September 2014, p. 55.

17 Mr Greg Williams, Deputy Commissioner, Private Groups and High Wealth Individuals, Australian Taxation Office, *Committee Hansard*, 26 September 2014, p. 53.

18 Mr Paul Malone, Assistant Commissioner, ATO Corporate, Fraud Prevention and Internal Investigations, Australian Taxation Office, *Committee Hansard*, 26 September 2014, p. 54.

19 ACLEI, *Submission 1*, Supplementary submission, p. 3.

---

The [ATO professional standard unit] works closely with several law enforcement partners on investigations and detection operations and, with the AFP, has achieved a number of corruption-related prosecutions relating to its staff or former staff. On its own initiative, the ATO maintains links with ACLEI to keep itself informed of developments in the anti-corruption threat picture, and to apprise ACLEI of its own anti-corruption activities.<sup>20</sup>

### ***Arguments for inclusion***

4.19 ACLEI noted that of the three Commonwealth agencies discussed in this chapter (the ATO, the AGD and ASIC), 'the case for inclusion appears strongest for the ATO'.<sup>21</sup> ACLEI explained that this was because the ATO is 'both a user and contributor of law-enforcement related information, and a primary partner in joint law enforcement activities, such as Project Wickenby'.<sup>22</sup>

4.20 Since the committee's public hearings the government has established the Serious Financial Crime Taskforce. This new taskforce, established to fight serious and organised financial crime, includes officers from the ATO, the ACC, the AFP, the AGD, AUSTRAC and ASIC.

4.21 ACLEI suggested that if its jurisdiction were expanded to include the ATO it would 'add significantly to the law enforcement anti-corruption system'.<sup>23</sup> ACLEI also noted the benefits that would flow to the ATO from its inclusion within ACLEI's jurisdiction:

It is likely also that the coercive and intrusive information-gathering powers available to the Integrity Commissioner would assist the ATO in its management of its corruption and criminal infiltration risks.<sup>24</sup>

4.22 The ACC argued that an increase in ACLEI's jurisdiction to include agencies such as the ATO would alter ACLEI's remit, given they are not primarily law enforcement agencies. However, the ACC also observed that the ATO (as well as DIBP, AGD and ASIC) contains high risk areas that 'would be susceptible to corruption'.<sup>25</sup>

### ***Arguments against inclusion***

4.23 ATO representatives appeared ambivalent on the question of whether the ATO should be included within ACLEI's jurisdiction. Mr Greg Williams, Deputy Commissioner of Taxation, argued that the second tier proposal was the ATO's preferred model:

---

20 ACLEI, *Submission 1*, Supplementary submission, p. 3.

21 ACLEI, *Submission 1*, Supplementary submission, p. 3.

22 ACLEI, *Submission 1*, Supplementary submission, p. 3.

23 ACLEI, *Submission 1*, Supplementary submission, p. 3.

24 ACLEI, *Submission 1*, Supplementary submission, p. 3.

25 ACC, *Submission 6*, p. 3.

Ideally, the tier 2 arrangements that we have where the [Commissioner of Taxation] can call on ACLEI in certain circumstances, to be honest, would be our preferred outcome. Having said that, in terms of coming under ACLEI's jurisdiction, we are open to that... We believe we do have robust internal processes. What we would not want to see is a degradation of those, because we think that is about prevention.<sup>26</sup>

### *Committee view*

4.24 The committee notes the commentary regarding the potential inclusion of the ATO within ACLEI's jurisdiction. While the ATO's preference is for a second tier arrangement, the committee notes that this previously recommended model has not been adopted by government, and is not likely to be implemented in the near future.

4.25 The committee notes ACLEI's comments in support of the ATO's inclusion, but also notes the lack of clear risk assessment information. While the committee received some evidence about the numbers of integrity investigations across the ATO, resulting on average to 36–60 substantiated integrity breaches annually, no differentiation was made regarding the lesser forms of misconduct and the more serious forms of corruption.

4.26 Accordingly, the committee believes that further detail is required to assess the level of the integrity risks within the ATO. The committee therefore strongly supports an independent assessment of the ATO's corruption risks, including an examination of the likelihood of corrupt conduct within the ATO, its potential consequences for the organisation, the government and the economy, and the resourcing implications of inclusion.

4.27 The committee believes that an independent assessment of the ATO's organised crime corruption and integrity risks, together with possible funding options is critical in determining whether it should be included within ACLEI's jurisdiction.

### **Recommendation 2**

**4.28 The committee recommends that the Government initiate an independent assessment of the Australian Taxation Office's corruption risk profile, together with an examination of the feasibility of including the Australian Taxation Office within ACLEI's jurisdiction.**

### **Australian Securities and Investments Commission**

4.29 As the financial services regulator, ASIC is responsible for investor and consumer protection in financial services, through the administration of the Australian financial services licensing regime.<sup>27</sup>

4.30 ASIC also performs functions as the consumer credit, markets and corporate regulator, ensuring various financial market participants adhere to financial services

---

26 ACLEI, *Submission 1*, Supplementary submission, p. 3.

27 ASIC, *Submission 5*, p. 2.

---

legislation, including the *National Consumer Credit Protection Act 2009*, and the *Corporations Act 2001*.<sup>28</sup>

### ***ASIC integrity risks***

4.31 As a self-acknowledged law enforcement agency, ASIC is responsible for the investigation and prosecution of a range of criminal offences and civil penalties.<sup>29</sup> ASIC's submission notes however that at present, '[ASIC] has not had any reported instances of serious and systemic law-enforcement relation corruption issues'.<sup>30</sup>

4.32 ASIC submitted that its corruption risks are associated with its regulator role, where:

Potential corruptors may stand to make a financial profit, or otherwise enhance their commercial interests, by obtaining access to the information and intelligence that ASIC collects as a result of ASIC's regulatory functions. Alternatively, potential corruptors may seek to benefit from favourable treatment such as the imposition of lower penalties, improper determinations of relief applications, or other biased decisions.<sup>31</sup>

4.33 ASIC's submission details its integrity risk management processes, that include public interest disclosure frameworks, together with the Australian Public Service (APS) Code of Conduct as important integrity measures.<sup>32</sup> The submission also describes ASIC's Professional Standards Unit, which:

...is an independent unit housed within ASIC's Chief Legal Office with responsibility for investigating allegations of misconduct by ASIC officers. Where appropriate, the Professional Standards Unit will refer investigations to the AFP or the relevant State Police. Reports of misconduct or corruption can be made by existing and ex-staff as well as by members of the public via the whistleblower arrangements or as a complaint.<sup>33</sup>

4.34 ASIC acknowledged that its staff may seek to gain profits or benefits for themselves or others, or misuse ASIC powers and discretions for improper purposes, protection of unlawful activities or manipulating surveillance and investigations.<sup>34</sup> However, at the hearing ASIC's Commissioner, Mr Greg Tanzer stated that 'there does not seem to be a compelling case for including ASIC within the jurisdiction of ACLEI...'<sup>35</sup>

---

28 ASIC, *Submission 5*, p. 2.

29 ASIC, *Submission 5*, p. 6.

30 ASIC, *Submission 5*, p. 6.

31 ASIC, *Submission 5*, p. 6.

32 ASIC, *Submission 5*, p.8.

33 ASIC, *Submission 5*, p. 9.

34 ASIC, *Submission 5*, p. 6.

35 Mr Greg Tanzer, Commissioner, ASIC, *Committee Hansard*, 26 September 2014, p. 37.

4.35 ASIC noted that ACLEI focuses on serious and systemic law enforcement related corruption, and particularly, examines links between law enforcement and organised crime.<sup>36</sup> As such, ASIC argued its operational activities rarely contain a 'strong nexus with combating serious and organised crime.'<sup>37</sup>

4.36 ASIC argued that its business processes also lower corruption risks. For example, ASIC noted that its processes encourage decisions being made by more than one officer, and that ASIC officers rarely operate away from central agency controls.<sup>38</sup>

4.37 With respect to the ACIM/ACIF criminal intelligence access issue, ASIC submitted that 'ASIC's endorsement of the ACIM has not, in an appreciable way, enhanced ASIC's access to sensitive information and intelligence'.<sup>39</sup>

4.38 Furthermore, while it has previously and continues to access sensitive information disseminated by the ACC, ASIC has a number of measures in place to mitigate the type of risk described by the PJC-LE.<sup>40</sup>

4.39 ACLEI noted that ASIC had provided the committee with a realistic assessment about its law enforcement corruption risks. ACLEI further noted that an expanded jurisdiction must be based on either a demonstrated connection to law enforcement functions or a clear assessment of corruption risks.<sup>41</sup> In response to ASIC's evidence, the former acting Integrity Commissioner, Mr Robert Cornall, observed that ASIC's written submission and ASIC officers' oral evidence 'supported the position that [ASIC is] not in a high-risk environment'.<sup>42</sup>

### ***Committee view***

4.40 On the available information, the committee is persuaded that ASIC is adequately addressing its integrity risks. The committee notes that ASIC remains a relatively low risk target for serious and organised crime infiltration. The committee also notes the various integrity measures set out by ASIC. Further the committee notes that the level of ASIC's corruption risk, due to its access to criminal intelligence, has not changed appreciably since its endorsement of ACIM. Given ASIC's own processes, and the evidence presented by ACLEI, the committee is satisfied that ASIC should not be included within ACLEI's jurisdiction at this time.

---

36 ASIC, *Submission 5*, p. 6.

37 ASIC, *Submission 5*, p. 7.

38 ASIC, *Submission 5*, p. 7.

39 ASIC, *Submission 5*, p. 7.

40 ASIC, *Submission 5*, pp 7–8.

41 Mr Robert Cornall, Acting Integrity Commissioner, ACLEI, *Committee Hansard*, 26 September 2014, p. 63.

42 Mr Robert Cornall, Acting Integrity Commissioner, ACLEI, *Committee Hansard*, 26 September 2014, p. 67.

---

## Attorney-General's Department

4.41 The Attorney-General's Department (AGD) delivers programs and policies including in areas that support, maintain and improve Australia's law and justice framework, and strengthen our national security and emergency management.<sup>43</sup> Its submission notes that:

The Department is the central policy and coordinating element of the Attorney-General's portfolio, for which the Attorney-General and Minister for the Arts, and the Minister for Justice are responsible. ACLEI falls within this portfolio, as do other agencies within the Integrity Commissioner's jurisdiction, namely the Australian Federal Police (AFP), Australian Crime Commission (ACC), AUSTRAC and CrimTrac.<sup>44</sup>

4.42 Like the two aforementioned agencies, the ATO and ASIC, the PJC-LE recommended consideration of whether the AGD should be brought under ACLEI's jurisdiction. The recommendation was made on the basis of the AGD's access to sensitive criminal intelligence, via its participation in ACIM.

4.43 The AGD consists of three groups: Strategic Policy and Coordination; Civil Justice and Legal Services; and National Security and Criminal Justice.<sup>45</sup> The AGD submission notes that only one of these groups could be classified as having law enforcement functions, and even then only indirectly. Staff of the National Security and Criminal Justice Group are responsible for matters in relation to the *Crimes Act 1901*, the *Australian Federal Police Act 1979* and the *Telecommunications (Interception and Access) Act 1979*.<sup>46</sup>

4.44 Further, AGD officers perform background checks for the issuance of Aviation and Maritime Security Identification Cards, assess applications for importing firearms and make decisions in relation to parole of federal offenders.<sup>47</sup>

4.45 The ACC noted that while the group of officers with access to sensitive information within the AGD is small; the agency's inclusion is nonetheless worthy of examination. Mr Chris Dawson, CEO of the ACC argued that the regulatory function specifically involved in issuing of Aviation and Maritime Security Identification Cards warranted consideration of inclusion within ACLEI's jurisdiction:

By way of example, the Attorney-General's Department has access to certain privacy information as it relates to persons that are applying for access to maritime air transport sectors. That such information is not broadly across the Attorney-General's Department, but there are very small areas there. The submission we make is simply that it is an area that government may wish to consider because of the type of information and

---

43 AGD, *Submission 3*, Supplementary submission, p. 2.

44 AGD, *Submission 3*, Supplementary submission, p. 2.

45 AGD, *Submission 3*, Supplementary submission, p. 2.

46 AGD, *Submission 3*, Supplementary submission, p. 4.

47 AGD, *Submission 3*, Supplementary submission, p. 4.

the persons who are seeking such access to areas of risk. That is a matter that is worthy of consideration.<sup>48</sup>

4.46 In a similar fashion to its comments about ASIC, ACLEI submitted that the AGD had set out a realistic assessment of its corruption risks.<sup>49</sup>

4.47 The AGD's submission contends that the staff responsible for the identity card vetting processes, assessing applications for importing firearms and making parole decisions were not carrying out "law enforcement functions" as defined by the LEIC Act, nor do they have access to sensitive information:

While these staff may have an indirect involvement in law enforcement issues, they do not have law enforcement functions as defined by both section 5 of the LEIC Act and the further criteria developed by ACLEI. In particular, they do not have access to the types of information or powers that would make them attractive targets for corruption by serious and organised crime, especially when compared with staff from agencies already within jurisdiction. Their roles are limited to policy formulation and advice, the delivery of Australian Government programs and some regulatory functions.<sup>50</sup>

#### ***Committee view***

4.48 While the committee has recommended an independent corruption and integrity risk assessment for the ATO, the committee does not support a similar review of either ASIC or the AGD at this time.

4.49 Given its findings in relation to Agriculture, the committee is not inclined to recommend partial inclusion of agencies or departments. This is because in the committee's view the existence of 'grey spots' within Australia's law enforcement integrity framework is problematic. Therefore, the committee is not inclined to support the prescription of certain areas of either ASIC or the AGD to ACLEI's jurisdiction by regulation at this time.

4.50 With respect to ASIC and the AGD, the committee is persuaded that their overall corruption risks remain relatively low. While the committee does not support ASIC's or the AGD's inclusion at this time, it will continue to monitor the adequacy of ACLEI's jurisdiction into the future.

4.51 Finally, with respect to aviation and maritime security cards arrangements at the AGD, the committee notes that the recent Government response to the Ice Taskforce report announced changes to the eligibility criteria of the cards.<sup>51</sup> The committee further notes that the tightening of the security card eligibility criteria may

---

48 Mr Chris Dawson APM, CEO, ACC, *Committee Hansard*, 26 September 2014, p. 30.

49 Mr Robert Cornall, Acting Integrity Commissioner, ACLEI, *Committee Hansard*, 26 September 2014, p. 62.

50 AGD, *Submission 3*, Supplementary submission, p. 4.

51 Australian Government, *Taking action to combat ice, Australian Government response to the National Ice Taskforce Final Report*, December 2015, p. 2.

increase the incentives for serious and organised crime groups to gain influence within the approvals process, which in turn may increase the corruption risk to vetting officers.

4.52 Legislation to implement these changes is currently before the Senate and the bill has been referred to the Senate Rural and Regional Affairs Legislation Committee.<sup>52</sup> On the assumption that the bill is not considered by the Senate during the upcoming Parliamentary sittings, the committee believes that it is appropriate for the Government to examine whether officers responsible for the card security vetting ought to be subject to ACLEI's jurisdiction by being transferred to an agency within ACLEI's jurisdiction.

### **Recommendation 3**

**4.53 The committee recommends that the Government consider transferring the responsibility for vetting Aviation Security Identification Cards and Maritime Security Identification Cards to an agency within ACLEI's jurisdiction.**

---

52 Transport Security Amendment (Serious or Organised Crime) Bill 2016, Second reading moved on 16 March 2016.



# Chapter 5

## A national anti-corruption body

5.1 Over the course of the inquiry, several submitters, including the Transparency International Australia (TIA), the Law Council of Australia (Law Council) and the Accountability Round Table (ART) supported the establishment of a federal anti-corruption agency, with coverage of the entire Commonwealth Government, including members of the judiciary and Members of Parliament.

5.2 The existing Commonwealth approach to anti-corruption was described in the Attorney-General's Department's submission in the following terms:

The Australian Government's approach to preventing corruption is multi-faceted and diverse. Under this approach, Australia's strong constitutional foundation, which establishes the separation of powers and guarantees the rule of law, is complemented by Australia's multi-agency approach, in which a number of Commonwealth agencies play a role in combating corruption by promoting accountability, transparency and effective enforcement. This holistic approach to anti-corruption includes standards and oversight, detection and investigation, prosecution and international cooperation.

The agencies which contribute to combating corruption at the Commonwealth level include:

- Australian National Audit Office
- Australian Crime Commission
- ACLEI
- Australian Federal Police
- Attorney-General's Department
- Australian Public Service Commissioner
- Australian Securities and Investment Commission
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Commonwealth Director of Public Prosecutions
- Commonwealth Ombudsman
- Department of Foreign Affairs and Trade (and Austrade)
- Department of Finance and Deregulation
- Inspector General of Intelligence and Security
- Office of the Australian Information Commissioner
- Parliamentary Services Commissioner

- Treasury<sup>1</sup>

5.3 The Law Council's submission provides an overview of previous parliamentary committee considerations of the establishment of a national anti-corruption body. The Law Council noted that back in 2011 it argued that 'parliamentary consideration of the arguments for and against a federal anti-corruption agency would be a useful exercise.'<sup>2</sup>

5.4 It then noted this committee's previous recommendation for a review of the Commonwealth integrity system, particularly examining the merits of establishing a Commonwealth integrity commission with anti-corruption oversight of all Commonwealth public sector agencies.<sup>3</sup> The former Government noted this recommendation and stated that 'on the available evidence there is no convincing case for the establishment of a single overarching integrity commission.'<sup>4</sup>

5.5 The Law Council's submission also acknowledges a House of Representatives Standing Committee on Social Policy and Legal Affairs recommendation for a Parliamentary Joint Select Committee to 'investigate the feasibility and cost of establishing [a federal anti-corruption body], taking into account the threshold issue of desirability of such a commission.'<sup>5</sup>

5.6 The TIA advocated for a more comprehensive integrity and anti-corruption framework across the Commonwealth. Its submission expresses 'continued concern that the Australian Government's multi-agency approach to promoting integrity and fighting corruption is fragmented and misconceived.'<sup>6</sup>

5.7 The ART argued that ACLEI's jurisdiction should be expanded, 'to provide a single national anti-corruption and malpractice body with a jurisdiction giving it comprehensive coverage of the whole Commonwealth sector.'<sup>7</sup>

5.8 ACLEI noted that further proposals to extend its jurisdiction, 'would need to balance any likely strategic gains to the integrity system against possible detriment to ACLEI's operational effectiveness.'<sup>8</sup> These proposals would also require consideration of funding implications, ACLEI's physical presence across the Commonwealth, and significant examination of ACLEI's statutory and policy underpinnings.<sup>9</sup>

---

1 Attorney-General's Department, *Submission 3*, p. 2.

2 Law Council of Australia, *Submission 12*, p. 1.

3 Law Council of Australia, *Submission 12*, p. 1.

4 Government response, Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, February 2012, p. 8.

5 Law Council of Australia, *Submission 12*, p. 2.

6 Transparency International Australia, *Submission 8*, p. 1.

7 Accountability Round Table, *Submission 11*, p. 2.

8 ACLEI, *Submission 1*, Supplementary submission, p. 4.

9 ACLEI, *Submission 1*, Supplementary submission, p. 4.

---

**Committee view**

5.9 In this report the committee has considered the question of expanding ACLEI's jurisdiction with regards to a number of agencies, and in doing so has canvassed many of the arguments for and against extending ACLEI's jurisdiction.

5.10 While the committee appreciates the arguments put by submitters in favour of a wholesale increase in ACLEI jurisdiction, the committee is of the view that it is preferable for ACLEI to retain its present focus on agencies with law enforcement functions rather than being expanded across the entire Commonwealth. ACLEI's current alignment is rightly targeted towards agencies which are likely to experience higher corruption risks through infiltration by serious and organised criminal groups.

5.11 The committee is mindful of the risks of expanding ACLEI's jurisdiction too quickly, and believes that it should predominantly maintain its current Commonwealth law enforcement focus. The stepwise increase of ACLEI's jurisdiction, as necessary, to law-enforcement and related agencies is an approach which the committee believes provides the greatest benefits for both ACLEI and the agencies it oversees.

5.12 Nevertheless, although the committee notes that Australia is generally regarded as one of the least corrupt countries in the world,<sup>10</sup> the committee is not opposed to calls for the further examination of advantages and disadvantages of a broad-based federal anti-corruption agency.

**Russell Matheson MP**

**Chair**

---

10 Law Council of Australia, *Submission 12*, p. 3.



# **Appendix 1**

## **Submissions received by the committee**

- 1 Australian Commission for Law Enforcement Integrity
- 2 CrimTrac
- 3 Attorney-General's Department
- 4 Department of Agriculture
- 5 Australian Securities & Investments Commission
- 6 Australian Crime Commission
- 7 Australian Public Service Commission
- 8 Transparency International Australia
- 9 Joint submission from the Australian Customs and Border Protection Service  
and the Department of Immigration and Border Protection
- 10 Australian Federal Police
- 11 Accountability Round Table



## **Appendix 2**

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

**Thursday, 19 June 2014 – Canberra, ACT**

#### **Australian Commission for Law Enforcement Integrity**

Mr Philip Moss, Integrity Commissioner

Ms Sarah Marshall, Acting Executive Director, Operations

Mr Tony Alderman, Acting Executive Director, Secretariat

Mr Nick Sellars, Acting Executive Director

Ms Penny McKay, Principal Lawyer

#### **Department of Agriculture**

Dr Paul Grimes, Secretary

Mr Mark Tucker, Deputy Secretary

Ms Lee Cale, Acting First Assistant Secretary, Governance Division

Mr Colin Hunter, Acting First Assistant Secretary, Compliance Division

**Friday, 26 September 2014 – Canberra, ACT**

#### **Accountability Round Table**

The Hon Stephen Charles QC, Member

#### **Transparency International Australia**

Mr Roger Gyles AO QC, Chair (by teleconference)

#### **Australian Public Service Commission**

Mr Stephen Sedgwick, Australian Public Service Commissioner

Ms Karin Fisher, Acting Merit Protection Commissioner

#### **CrimTrac**

Mr Doug Smith, Chief Executive Officer

#### **Australian Federal Police**

Assistant Commissioner Ian McCartney, National Manager Crime Operations

Assistant Commissioner Shane Connelly, Manager Professional Standards

Commander David McLean, Manager Professional Standards

**Australian Crime Commission**

Mr Chris Dawson APM, Chief Executive Officer

Dr John Moss, National Manager, Intelligence

Mr Paul Williams, Executive Director, Corporate Services

**Attorney-General's Department**

Mr Iain Anderson, First Assistant Secretary, Criminal Justice Division

Ms Jenna Priestly, Senior Legal Officer

Ms Catherine Hawkins, Acting First Assistant Secretary, International Crime Cooperation Division

Mr Kieran Butler, Anti-Corruption Unit

**Australian Securities and Investments Commission**

Mr Greg Tanzer, Commissioner

Mr Mark Bielecki, South Australian Regional Commissioner

**Australian Customs and Border Protection Service and the Department of Immigration and Border Protection**

Mr Mike Pezzullo, Chief Executive Officer, Australian Customs and Border Protection

Mr Martin Bowles, Secretary, Department of Immigration and Border Protection

**Australian Taxation Office**

Mr Greg Williams, Deputy Commissioner, Private Groups and High Wealth Individuals

Mr Paul Malone, Assistant Commissioner, ATO Corporate, Fraud Prevention and Internal Investigations

**Australian Commission for Law Enforcement Integrity**

Mr Robert Cornall AO, Acting Integrity Commissioner

Ms Sarah Marshall, Acting Executive Director, Operations

Mr Nick Sellars, Acting Executive Director