



Assessment of corruption allegations policy

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1. Application

- 1.1 This policy applies to ACLEI staff tasked with assessing alleged corruption.
- 1.2 ACLEI must have regard to this policy when undertaking its assessment process, subject to the LEIC Act, statutory instruments made under that Act and any other relevant law.
- 1.3 This policy should be read in conjunction with any Standard Operating Procedure that applies to the Intake and Assessment function.

2. Purpose

- 2.1 The purpose of this policy is to ensure the timely and consistent handling of information that may raise a corruption issue.
- 2.2 The timely and consistent handling of information that may raise a corruption issue is critical to the efficient and effective administration of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act) and related statutory instruments.
- 2.3 The LEIC Act defines what a corruption issue is, who may refer or notify of information concerning a corruption issue to ACLEI, and whether and how ACLEI may deal with a notification that raises a corruption issue.
- 2.4 ACLEI uses an assessment process to evaluate the information it receives. The purpose of the assessment process is to determine whether the information gives rise to a matter within ACLEI's purview.
- 2.5 The assessment process takes place in three stages. Regardless of who refers the information, ACLEI:
 - a. Must be reasonably satisfied that the referral raises a corruption issue;
 - b. If so satisfied, make a decision whether to deal with the corruption issue or take no further action;

- c. If a decision is made to deal with the corruption issue, make a further decision how to deal with the corruption issue.

3. General assessment procedure

- 3.1 ACLEI will assess any referral it receives and make decisions based on the allegation made in the referral and any other information available to ACLEI. Decision-makers at ACLEI are not bound by the strict terms of the referrer's allegation and may inform themselves as reasonable and appropriate.
- 3.2 Unless exceptional circumstances justify, ACLEI will decline to assess a referral unless:
 - a. In the case of a referral made by a member of the public – the referral is made in writing.¹
 - b. In the case of a notification made by a law enforcement agency head – the notification is made in the manner and form agreed between ACLEI and the agency, and in the absence of such an agreement, in writing.²
- 3.3 Where a referral is deficient for any reason, ACLEI will make such enquiries as are reasonable in the circumstances to clarify the allegation or to seek supplementary information.
- 3.4 ACLEI's assessment procedure is not designed to make, or predetermine, ultimate findings of fact, but is designed to take an informed approach to referrals with the aim of treating referrals consistently.

4. First stage: Does the referral raise a corruption issue?

ACLEI must be reasonably satisfied of each element of a corruption issue

- 4.1 An allegation will fall within ACLEI's jurisdiction if it is a corruption issue. A corruption issue is defined in section 7 of the LEIC Act as:
 - (1) For the purpose of this Act, a *corruption issue* is an issue whether a person who is, or has been, a staff member of a law enforcement agency:
 - (a) has, or may have, engaged in corrupt conduct; or
 - (b) is, or may be, engaging in corrupt conduct; or
 - (c) will, or may at any time in the future engage in corrupt conduct.
 - (2) To avoid doubt, an allegation or information, may raise a corruption issue even if the identity of the person is unknown, is uncertain or is not disclosed in the allegation or information.
- 4.2 Before it may deal with an allegation, ACLEI must be reasonably satisfied that the allegation raises a corruption issue. This involves being reasonably satisfied that:

¹ See *Law Enforcement Integrity Commissioner Act 2006* (Cth), sub-ss 23(3) and (4).

² See *Law Enforcement Integrity Commissioner Act 2006* (Cth), sub-s 17(1)(b).

- a. The referral raises an issue,
- b. The issue concerns the engagement in corrupt conduct by a person while that person is a staff member,
- c. The person is or was a staff member of a law enforcement agency, and
- d. If the allegation relates to an ATO, ASIC, APRA, ACCC or OSI staff member, the alleged conduct relates to the performance of a law enforcement function of the agency

A. The referral must raise an issue

4.3 ACLEI must be reasonably satisfied that the referral raises an issue in the sense that it brings forward a point the decision of which determines the matter.³

4.4 For most referrals, it will be clear from the allegation that the referral raises an issue. However, referrals that do not bring forward, or invite determination of a matter, will not raise an issue, including, for example the following categories of referral:

- a. Allegations that are so vague or incoherent that it is unclear whether any issue has been brought forward for determination and if so, what is being brought forward.
- b. Allegations that are made, or information that is referred, which is impossible, or implausible, to the extent that there is nothing to determine.
- c. Allegations that are made, or information that is referred, in a manner that suggests no issue is being brought forward.
- d. Allegations that are made, or information that is referred, which leaves nothing to determine.

Practical and policy considerations

4.5 Whether a referral raises an issue is a subjective question, about which reasonable minds can arrive at different conclusions. The guiding principle is whether the referral puts forward a matter that is capable of being determined having regard to the ACLEI's functions, powers and responsibilities under the LEIC Act.

4.6 When reaching a view whether a referral has raised an issue, the matters to which ACLEI will have regard include:

- a. *Nature of the allegation, including its inherent plausibility and objective seriousness* –

³ Sections 18, 19 and 23 of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) permit the Minister, heads of law enforcement agencies and other persons to take action in response to an allegation or information that raises a corruption issue by notifying or referring to the Integrity Commissioner. Section 38 allows the Integrity Commissioner to take action in response to an allegation or information that raises a corruption issue. In this context, the *Macquarie Dictionary* defines "raise" as to give rise to, bring up or about, or put forward. Sections 31 and 32 enable the Integrity Commissioner to respond to referrals and notifications. A corruption issue is an issue whether a person engaged in corrupt conduct (s 7). In this context, the *Macquarie Dictionary* defines issue as a point the decision of which determines a matter.

The nature of an allegation is relevant to its plausibility. Impossible or implausible allegations are less amenable to investigation and ultimately findings of fact. They will be more likely to fall into the category at sub-paragraph 4.4(b).

Moreover, the objective seriousness of an allegation will interact with other considerations in this list. The objective seriousness of an allegation may warrant ACLEI making a final and decisive determination of an issue, notwithstanding that it has already been investigated by an agency internally, whereas a less serious allegation would be more likely to fall into the category at sub-paragraph 4.4(d).

b. *Particularity of the allegation –*

The particularity of an allegation is relevant to the capacity of the matter to be determined. Focussed and precise allegations are more amenable to investigation and findings. Conversely, vague, or imprecise allegations are more likely to fall into the category at sub-paragraph 4.4(a).

c. *History of the referral, including any previous investigation, litigation or scrutiny of the allegations –*

The history of the referral is relevant to whether further investigation of the allegation is likely to lead to a determination of the matter. Allegations that have not been scrutinised prior to their referral are more likely to leave questions to be determined. Conversely, allegations that have already been fully investigated, scrutinised or litigated leading to a conclusive outcome are less likely to raise an issue in the sense that they fall into the category at sub-paragraph 4.4(d).

If an investigation has been completed by an agency within ACLEI's jurisdiction, ACLEI may request information about the investigation in order to determine whether the allegations have been fully investigated in that investigation.

d. *Availability of investigative pathways –*

Just as the history of the referral is relevant to whether further investigation of the allegation could possibly lead to determination of the matter, so is the availability of investigative pathways. Where investigative pathways exist that may shed light on the truth of an allegation, it is more likely that the referral will put forward a question that can be determined. Conversely, where available investigative pathways will lead to a very small prospect of a conclusive investigation, the referral is more likely to fall into the category at sub-paragraph 4.4(d).

In making this assessment, ACLEI may give weight to the credibility and reliability of existing evidence. However, in doing so, ACLEI must take care not to prejudge or prematurely close-off actionable information.

e. *Completeness and credibility of the information provided by the referrer, informed by the referrer's capacity to provide such information –*

The thoroughness and completeness of information that is contained within a referral will inform other considerations in this list. Allegations that are corroborated by information that is within the capacity of the referrer to obtain are inherently more plausible than unsupported, bare allegations.

The unexplained withholding of information that would ordinarily be within the capacity of the referrer to lawfully obtain and provide to ACLEI may be relevant to the credibility of any information that the referrer provides in support of their allegation.

B. The issue must concern engagement in corrupt conduct by a person while that person is a staff member

4.7 A corruption issue is an issue that concerns engagement, by a staff member of a law enforcement agency, in any individual or combination of the following categories of conduct:⁴

a. *Abuse of office* –

This means conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency.

The LEIC Act does not further define the phrase ‘abuse of office’. It is a term that should be given its ordinary meaning. By analogy to criminal law, this may include engaging in conduct, exercising influence or using information with an intention to dishonestly obtain a benefit or cause a detriment in connection with public office.⁵

b. *Perverting the course of justice* –

This means conduct that perverts, or is engaged in for the purpose of, perverting the course of justice.

The term ‘pervert the course of justice’ has a settled legal meaning. It generally includes conduct that obstructs, hinders, impairs or prevents the exercise of the administration of justice by a court or competent judicial authority.⁶

c. *Corruption of any other kind* –

This means conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of corruption of any other kind.

This category captures conduct that does not fall within categories at (a) and (b) above. The conduct must still be corrupt or involve corruption. The phrase ‘corruption’ connotes moral impropriety in, or in relation to, public administration, and has never acquired a more precise meaning in the language of the law or in ordinary speech.⁷

4.8 The conduct may be present, future, or past conduct, including conduct that took place before the commencement of the LEIC Act.⁸

⁴ *Law Enforcement Integrity Commissioner Act 2006* (Cth), ss 7(1), 6(1).

⁵ See *Criminal Code* (Cth), s 142.2(1).

⁶ See discussion in *R v Rogerson* (1992) 174 CLR 268 at 276 per Mason CJ.

⁷ See discussion in *Independent Commission Against Corruption v Cunneen* [2015] HCA 14 at [76] per Gaegler J.

⁸ *Law Enforcement Integrity Commissioner Act 2006* (Cth), ss 7(1), 6(4)(a).

- 4.9 The conduct may be constituted by an act or an omission to do an act.⁹ Where the alleged conduct is an omission to do an act, it must be an omission that contravenes a legal duty.¹⁰
- 4.10 The conduct must be engaged in by the person **while they are a staff member of the agency**¹¹. The referral must concern the staff member's conduct as a staff member of the agency. ACLEI does not have power to deal with referrals that allege conduct engaged in before a person became a staff member of a relevant agency or after they ceased being a staff member of a relevant agency.¹²

Practical and policy considerations

- 4.11 Whether a person's alleged acts and omissions can be characterised as corrupt conduct, as defined under the LEIC Act, is a question of fact and degree.
- 4.12 ACLEI does not require referrers to nominate which of the categories listed at paragraph 4.7 the allegation falls. ACLEI will make its own determination.
- 4.13 When reaching a view whether the alleged conduct can be characterised as corrupt conduct, as defined by the LEIC Act, the matters to which ACLEI will have regard include:
- a. *Nature of the alleged acts and omissions –*
- ACLEI will pay close attention to the nature of the alleged conduct and surrounding circumstances, rather than labels that may be applied to any acts and omissions disclosed by the referral. In other words, ACLEI will not conclude that because a person's conduct has been described as "corrupt", then it satisfies the definition under the LEIC Act. Careful consideration will be given to what the person of interest has done or omitted to do, so far as that is disclosed in any allegation or information.
- In the case of referrals alleging abuse of office, ACLEI will also take into account whether the person of interest exercised influence or used information to obtain a benefit or cause a detriment. The benefit or detriment may be intangible, such as social capital.
- b. *Degree to which the alleged acts and omissions depart from relevant legal obligations, guidelines and usual practice –*
- Ordinarily, the greater the departure from norms, the more likely the acts and omissions are to be characterised as corrupt conduct.
- In the case of referrals alleging corruption of any other kind, ACLEI will also take into account whether the alleged conduct departed from general norms in the sense that it involved a moral impropriety, dishonesty, or abuse of trust or power.¹³
- c. *Context in which the acts and omissions were alleged to have taken place –*

⁹ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 5 (definition of engages in conduct).

¹⁰ By analogy to similar provisions in the *Criminal Code* (Cth), see *Director of Public Prosecutions (Cth) v Poniatowska* (2011) 244 CLR 408.

¹¹ *Law Enforcement Integrity Commissioner Act 2006* (Cth), ss 6(1).

¹² *Law Enforcement Integrity Commissioner Act 2006* (Cth), ss 7(1), 9.

¹³ See paragraph 1.4.7(c) above.

In reaching a view whether the alleged acts and omissions can be characterised as corrupt conduct, the factual context in which they are alleged to have taken place is considered, to the extent that it is disclosed in the referral.

Relevant contextual matters include the person of interest's awareness of relevant legal obligations and government norms, whether the person had access to power and information by virtue of their position, the involvement of third parties, the deliberateness of the conduct and the degree of planning involved.

d. *Agreement between the referring agency and ACLEI –*

In the case of referrals from heads of agency, ACLEI will have regard to any agreement with the referring agency under s 17 of the LEIC Act when characterising the significance of corrupt conduct.

C. The person must be a staff member of a law enforcement agency

4.14 A staff member in relation to a law enforcement agency has the meaning set out in s 10 of the LEIC Act, which lists several categories of staff member as they relate to several types of law enforcement agency.¹⁴

4.15 The staff member the subject of the referral must be a current or former staff member of a law enforcement agency.

4.16 It is not necessary for a person of interest to be named in an allegation.¹⁵

4.17 A law enforcement agency means either a law enforcement agency listed in the LEIC Act,¹⁶ or any other Commonwealth government agency that has a law enforcement function and that is prescribed by regulations made under the LEIC Act.¹⁷

4.18 The following agencies are listed in the LEIC Act:

- a. Australian Federal Police.
- b. Australian Criminal Intelligence Commission (including the former Australian Crime Commission, the former CrimTrac Agency and the former National Crime Authority).
- c. Department of Home Affairs (including Australian Border Force).
- d. Australian Transaction Reports and Analysis Centre.
- e. Department of Agriculture, Water and the Environment.

4.19 The following are prescribed Commonwealth government agencies that have a law enforcement function:

¹⁴ Law Enforcement Integrity Commissioner Act 2006 (Cth), s 5 (definition of *staff member*) and s 10.

¹⁵ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 7(2).

¹⁶ Law Enforcement Integrity Commissioner Act 2006 (Cth), s 5 (definition of *law enforcement agency*, paragraphs (a) to (c)).

¹⁷ Law Enforcement Integrity Commissioner Act 2006 (Cth), s 5 (definition of *law enforcement agency*, paragraph (d)).

- a. Australian Competition and Consumer Commission.
- b. Australian Prudential Regulation Authority.
- c. Australian Securities and Investments Commission.
- d. Australian Taxation Office.
- e. Office of the Special Investigator.

Practical and policy considerations

- 4.20 Establishing whether a person is or was a staff member of a law enforcement agency is a question of fact. In most cases, documentation held by the agency will allow an assessment of whether a person falls into any of the categories mentioned in s 10 of the LEIC Act.
- 4.21 Where the identity of the person of interest is known, and the referral is made by a law enforcement agency, and the referral concerns that agency's own staff member, ACLEI will ordinarily request documents that establish the employment status of the staff member concerned. If not already in ACLEI's possession, ACLEI expects to be provided with enough information concerning staffing practices at the agency to make sense of any employment-related documentation.
- 4.22 In all other cases, ACLEI will require information to establish a basis for the referrer's assertion that the person of interest was a staff member of a law enforcement agency. This may include information about:
- a. the person of interest's physical appearance,
 - b. the timing and location of the alleged conduct,
 - c. the functions that the person of interest performed within the agency,
 - d. the relationship of the referrer to the person of interest.

D. For allegations relating to an ATO, ASIC, APRA, ACCC or OSI staff member, the alleged conduct relates to the performance of a law enforcement function of the agency

- 4.23 The definition of *engages in corrupt conduct* provides that if a law enforcement agency comes into ACLEI's jurisdiction through regulation, the conduct must relate to the performance of a law enforcement function¹⁸.
- 4.24 *Law enforcement function* is defined in section 5 of the LEIC Act and 'relates to':
- The investigation into whether an offence has been committed against the law of the Commonwealth;
 - The investigation into whether there has been a contravention of a law of the Commonwealth to which a civil penalty proceeding may be brought;
 - Dealing with information to assist with the enforcement of Commonwealth laws.

Practical and policy considerations

- 4.25 In the case of referrals that relate to ATO, ASIC, APRA, ACCC or OSI, determining the law enforcement function of the agency, for the purposes of s 5 of the LEIC Act,

¹⁸ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 6(2).

is a question of fact. In some cases it may be a simple task to identify whether a function involves investigation of an offence or civil penalty proceeding. In other instances, it will require deeper consideration. The relationship to the investigation can be both direct and indirect. It is generally not relevant whether an investigation actually results in the agency taking action. The fact that such an investigation is possible may be sufficient.

- 4.26 In considering this issue, ACLEI will focus on the factual relationship between the conduct and the function, as opposed to formalities such as job titles, position descriptions. Referrals should provide as much information about the staff member's function, practice and procedure within the agency as is reasonably practicable.

5. Second stage: Should ACLEI deal with the corruption issue?

- 5.1 After ACLEI has received a referral that raises a corruption issue, ACLEI must then decide whether to deal with the corruption issue or take no further action.¹⁹
- 5.2 ACLEI may only decide to take no further action if reasonably satisfied that one of the following circumstances exists:²⁰
- a. The corruption issue is already being, or will be, investigated by a law enforcement agency, a government agency or an integrity agency for a State or Territory.
 - b. The referral is frivolous or vexatious.
 - c. The corrupt conduct to which the corruption issue relates has been, is or will be the subject of proceedings before a court.
 - d. The investigation of the corruption issue is not warranted having regard to all the circumstances.
- 5.3 When making a decision to deal with the corruption issue or take no further action, ACLEI must take into account the following matters:²¹
- a. The need to ensure that the corruption issue is fully investigated.
 - b. The rights and obligations of the agency to investigate the corruption issue.
 - c. The resources that are available to the relevant agency and ACLEI to investigate the corruption issue.
 - d. The need to ensure a balance between ACLEI's role in dealing with corruption issues and ensuring that the heads of agencies take responsibility.

¹⁹ *Law Enforcement Integrity Commissioner Act 2006* (Cth), ss 31(2), 32(2).

²⁰ See *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 31(4) (with respect to significant corruption issues originating from law enforcement agency heads and corruption issues originating from the Minister or another person), s 32(8) (with respect to corruption issues notified by law enforcement agency heads) or s 42 (with respect to any referral at any time). Note that if a non-significant corruption issue was referred by a law enforcement agency head, a decision to take no further action must be made under s 42 if the basis for the decision is that the referral was frivolous or vexatious.

²¹ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 27.

- e. The likely significance of the corruption issue for the law enforcement agency.
- 5.4 In carrying out its functions, ACLEI is required to give priority to serious and systemic corruption. Serious corruption means corrupt conduct engaged in by a staff member of a law enforcement agency that could result in the staff member being charged with an offence punishable, on conviction, by a term of imprisonment for 12 months or more. Systemic corruption means instances of corrupt conduct (which may or may not constitute serious corruption) that reveal a pattern of corrupt conduct in a law enforcement agency or in law enforcement agencies.²²

Practical and policy considerations

- 5.5 Even if a referral raises a corruption issue, ACLEI retains a wide discretion to take no further action. The guiding principle at this stage is whether investigation of the corruption issue is warranted in all the circumstances.
- 5.6 When assessing whether a referral is frivolous or vexatious, ACLEI will pay careful attention to the objective seriousness of the allegation, and the referrer's history with ACLEI and other government agencies. Referrals in this category will result in a decision that no further action be taken unless exceptional circumstances justify proceeding with the referral.
- 5.7 When assessing whether a referral has been or will be the subject of court proceedings, ACLEI will pay careful attention to whether further investigation may hinder ongoing court proceedings, result in a contempt of court or amount to an abuse of process. Referrals that may hinder court proceedings, result in contempt of court or amount to an abuse of process will result in a decision that no further action be taken.
- 5.8 When assessing whether the investigation of a referral that otherwise raises a corruption issue is nevertheless not warranted, ACLEI will necessarily take into account all the circumstances including:

a. *Nature of the allegation, including its objective seriousness –*

The substance of an allegation is relevant to whether it should be investigated. ACLEI is under an obligation to give priority to serious and systemic corruption.²³ The more serious the allegation, the more weight will be given to the need to ensure the matter is investigated and the significance of the corruption issue.

ACLEI will regard the following as serious:

- i. Conduct that significantly harms the efficacy of government.
- ii. Conduct that undermines the community's confidence in the administration of law enforcement functions.
- iii. Conduct that facilitates the conduct of serious criminality.

²² *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 16 and s 5 (definition of *serious corruption* and *systemic corruption*).

²³ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 27(2)(a), (f).

- iv. Conduct that raises significant implications for the relevant law enforcement agency beyond the individual staff member implicated by the allegation.
- v. Conduct that results in a significant loss of public revenue or a significant financial benefit to the staff member concerned.
- vi. Conduct that gives rise to a high risk of ongoing compromise to the law enforcement agency.
- vii. Conduct that relates to law enforcement activities that have a higher inherent corruption risk.

Allocation of scarce resources to the investigation of less serious allegations is, conversely, less justifiable.²⁴

However, the entirety of the allegation and context will be taken into account. For example, even where the substance of a matter is objectively less serious, taken in context, it may nevertheless be viewed as an indicator of a systemic problem or as something around which a corrupt process of collusion, evasion and dishonesty has grown.

Similarly, it is relevant to take into account the inherent corruption risk associated with a particular activity or business practice that is the subject of the corruption issue. Examples include undeclared conflicts of interest in procurement and recruitment processes, drug and exhibit handling, human source management, and proximity to organised crime groups.

- b. *The completeness of any internal investigations undertaken by the law enforcement agency –*

The availability of further review mechanisms within a law enforcement agency inform the need to ensure that the issue is fully investigated, the obligations of law enforcement agencies and the need to ensure balance in ensuring that that agency heads take responsibility for managing their agencies.²⁵

Where such avenues exist, consideration will be given to whether it is appropriate to make a decision to take no further action or to deal with the corruption issue by referring the corruption issue back to the agency to complete its investigation (discussed below).

- c. *The strength of existing evidence and evidence that may be obtained if the matter is investigated –*

Just as the investigative history and availability of investigative pathways is relevant to assessing whether a referral raises an issue (see sub-paragraphs 4.6(d) and (e) above), the substance of the evidence that has already been obtained, and evidence that is likely to be obtained if available investigative pathways are explored, is relevant to ensuring that the matter is fully investigated and whether resourcing considerations justify the expense

²⁴ *Law Enforcement Integrity Commissioner Act 2006* (Cth), sub-s 27(2)(d). Note also that a decision to take no further action may also be made in circumstances where the matter has been, or will be, investigated by another agency: ss 31(4)(a), 32(8)(a), 42(3)(a).

²⁵ *Law Enforcement Integrity Commissioner Act 2006* (Cth), sub-ss 27(2)(a), (b) and (e).

of investigation, or further investigating.²⁶ The practical concerns of resourcing an investigation that is unlikely to be able to be progressed or where the available evidence is or is likely to be weak will weigh against taking action.

An assessment of the strength of the available information requires an assessment of the credibility and reliability of existing information and any information that is likely to be obtained in any investigation.

Where witness evidence is probative of a fact, matters such as the particularity of the evidence, its age, and inherent cogency when viewed in light of the fact asserted will be relevant to its reliability. The apparent motivations witnesses will be relevant to the credibility.

Where documentary evidence and business records are probative of a fact, the reliability of the underlying business processes will be relevant to the reliability of the documentary evidence.

An assessment of the strength of the available information also requires a consideration of the range of available findings. It is reasonable to consider that there may be plausible, more benign alternative explanations for a set of events occurring, other than corrupt motive.

d. *The views of the law enforcement agency –*

ACLEI will consider the views of the law enforcement agency as to the significance of the corruption issue.²⁷

e. *The public interest –*

The public interest will inform all decisions whether to deal with a referral or take no further action.²⁸

6. Third stage: What action should ACLEI take?

6.1 Available options for dealing with a referral that raises a corruption issue

6.1 When a referral is made to ACLEI that raises a corruption issue and a decision is made to deal with the corruption issue, then ACLEI must make a further decision how to deal with the corruption issue.

6.2 Section 26 of the LEIC Act sets out the options for dealing with corruption issues and the matters which ACLEI must have regard to in deciding how to deal with

²⁶ *Law Enforcement Integrity Commissioner Act 2006* (Cth), sub-ss 27(2)(a) and (d).

²⁷ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 27(2)(f).

²⁸ The matters referred to at s 27(2) of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) and the circumstance described under ss 31(4)(e), 32(8)(c) and 42(3)(e) suggest a broad discretion. At a general level, the objects of the Act include maintaining and improving integrity within law enforcement agencies: s 3(1)(d). As administrators of the Act, ACLEI achieves this objective by embodying, in its own decision-making, the objective of integrity. This necessarily involves making decisions that are in the public interest and support good government.

corruption issues. ACLEI must choose to deal with the corruption issue in one of the following ways:²⁹

- a. By investigating the corruption issue (either alone or jointly with another government agency or an integrity agency for a State or Territory).
- b. By referring the corruption issue to the law enforcement agency for investigation (with or without management or oversight of the investigation).
- c. By managing or overseeing an investigation of the corruption issue that is being conducted by the law enforcement agency.
- d. If the law enforcement agency is not the AFP, by referring the corruption issue to the AFP for investigation (with or without management or oversight of the investigation).

6.3 When deciding how to deal with a corruption issue, ACLEI must have regard to the matters set out at paragraph 5.3 above. Additionally, when considering a joint investigation, ACLEI must also have regard to the extent to which the other agency is able to cooperate in the investigation.³⁰

Practical and policy considerations

Approach to the discretion

- 6.4 Within the framework of the LEIC Act, a decision-maker is required to apply judgement according to the facts and circumstances that the corruption issue raises. ACLEI may not have sufficient resources to conduct its own investigations into every notification or referral. This requires consideration of additional factors that, when applied consistently, will assist in the prioritisation of matters under consideration.
- 6.5 Generally, when making a decision how to deal with a corruption issue taking into account all the relevant considerations referred to above, ACLEI will:
 - a. Characterise and prioritise of the referral.
 - b. Determine what options are available for dealing with the referral, both within and outside of the LEIC Act framework.
 - c. Devise a way of dealing with the corruption issue raised by the referral that is proportional and represents a responsible use resources.

Characterisation of the referral – preference is given to serious and systemic corruption

- 6.6 The LEIC Act construes corrupt conduct broadly, from direct involvement in frustrating the most serious operations of a law enforcement agency (e.g. participating in or facilitating drug importations) through to an individual law enforcement official browsing official information without a specific personal interest in or use for that information. The LEIC Act requires that priority be given to serious corruption and systemic corruption.

²⁹ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 26. Note also s 29(6) which allows for arrangements to be made with respect to conduct of secondees.

³⁰ *Law Enforcement Integrity Commissioner Act 2006* (Cth), s 27(2)(c).

- 6.7 ACLEI will give greater priority to matters where the alleged conduct falls into one of the categories of more serious corruption described at sub-paragraph 5.8(a) above.

Available options within the LEIC Act framework

- 6.8 It will commonly be the case that an agency can be expected to conduct and manage investigations at all but the most serious end of this spectrum without supervision, and to take appropriate action when the investigation is concluded. Equally, where more serious corruption is alleged, it may be preferable for ACLEI to be involved directly (as part of a joint investigation or through managing or overseeing the investigation), so that ACLEI can be confident that the investigation is conducted appropriately. ACLEI will also take into account the powers available to the referring agency and ACLEI, in particular whether powers are available to ACLEI (such as compulsory examination) that are not available to the referring agency, and vice-versa.

Available options outside of the LEIC Act framework

- 6.9 Law enforcement agencies engage in many of the same administrative processes as other government agencies or businesses. For example, they engage and pay their staff, promote and discipline them, pay allowances and provide access to entitlements such as workers' compensation and superannuation, and procure and administer contracts.
- 6.10 Accordingly, in some instances a corruption issue may also involve administrative or misconduct matters that could be dealt with under a framework more suited to the situation, for example, a complaints, audit, training or disciplinary mechanism.

Resource allocation

- 6.11 ACLEI's decision-making is informed by its obligation to use Commonwealth resources properly, for legitimate purposes and in a manner that is sustainable.³¹ ACLEI will have regard to resourcing of both ACLEI and other agencies when making a decision how to deal with a corruption issue.

Reporting and transparency

- 6.12 ACLEI must give due weight to transparency when considering the administrative and resource burden imposed by reporting requirements under Div 2 of Pt 6 of the LEIC Act.
- 6.13 Noting the requirement to consider the individual circumstances associated with each matter:
- a. Allegations referred to other agencies for investigation and assessed as being non-significant corruption issues, will ordinarily not require the provision of s 64 or s66 reporting,
 - b. Allegations referred to other agencies for investigation and assessed as significant corruption issues, will ordinarily not require the provision of s 64 reporting but will require s66 reporting.

³¹ See the *Public Governance, Performance and Accountability Act 2013* (Cth), s 15.

Proportionality

6.14 An investigation necessarily involves some intrusion into the activities and lives of the people whose conduct is under scrutiny, and of those who may be incidentally involved. ACLEI will consider whether the use of statutory powers and deployment of government resources is proportionate to the issue being investigated.

Agreement with referring agency

6.15 ACLEI will have regard to any agreement under s 17 of the LEIC Act when determining how to deal with a corruption issue.

7. Reconsideration and own motion referrals

- 7.1 At any time after making a decision to deal with a matter, ACLEI may reconsider whether to take further action and if so, how. ACLEI may also take action in response to information that raises a corruption issue.³²
- 7.2 The characterisation of a referral as one that does not raise a corruption issue, or a decision that no further action should be taken, or to deal with a matter in a particular way, should not be understood as binding on the future consideration or reconsideration of information.

8. Review or variation of this policy

8.1 This policy will be reviewed every two years, or more regularly as needed to ensure consistency with legislation, government policy, organisational changes within ACLEI and change of working environment.

9. Definitions

9.1 For ease of reference, this policy uses a number of LEIC Act terms interchangeably.

9.2 In this policy:

“ACLEI” means the Integrity Commissioner and staff of ACLEI.

“Information” means an allegation or information containing an allegation.

“Referral” means a notification, referral or communication brings an allegation to the attention of the Integrity Commissioner.

“Referrer” means the Minister, head of a law enforcement agency or person who makes a referral.

³² *Law Enforcement Integrity Commissioner Act 2006 (Cth)*, s 42.

Assessment of corruption allegations policy



Jaala Hinchcliffe
Integrity Commissioner
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Relevant material

Title	Type	File Ref	Author	Date added
Assessment Board Terms of Reference	Terms of reference			
Assessment Board Decision Minute	Form			
Assessment Board Evaluation Form	Form			

Version history

Version	Authorised by	Revision date	Author	Description of change
1	Jaala Hinchcliffe, Integrity Commissioner	9 February 2022	Judith Lind	Initial version.