

WHEN DOES AN ALLEGATION FALL WITHIN ACLEI'S JURISDICTION?



Australian Government
Australian Commission for
Law Enforcement Integrity

An allegation will fall within ACLEI's jurisdiction if it is a corruption issue.

This document explains the two or three limbs that need to be satisfied for an allegation to be a corruption issue, according to the *Law Enforcement Integrity Commissioner Act 2006*.

What is a corruption issue

An allegation will fall within ACLEI's jurisdiction if it is a corruption issue. A corruption issue is defined in section 7 of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) as:

- (1) For the purposes of this Act, a corruption issue is an issue if a person who is, or has been, a staff member of a law enforcement agency:
 - (a) has, or may have, engaged in corrupt conduct
 - (b) is, or may be, engaging in corrupt conduct
 - (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.

Designated law enforcement agencies:

Australian Competition and Consumer Commission (ACCC)

Australian Criminal Intelligence Commission (ACIC)

Australian Federal Police (including ACT Policing) (AFP)

Australian Prudential Regulation Authority (APRA)

Australian Securities and Investments Commission (ASIC)

Australian Taxation Office (ATO)

Australian Transaction Reports and Analysis Centre (AUSTRAC)

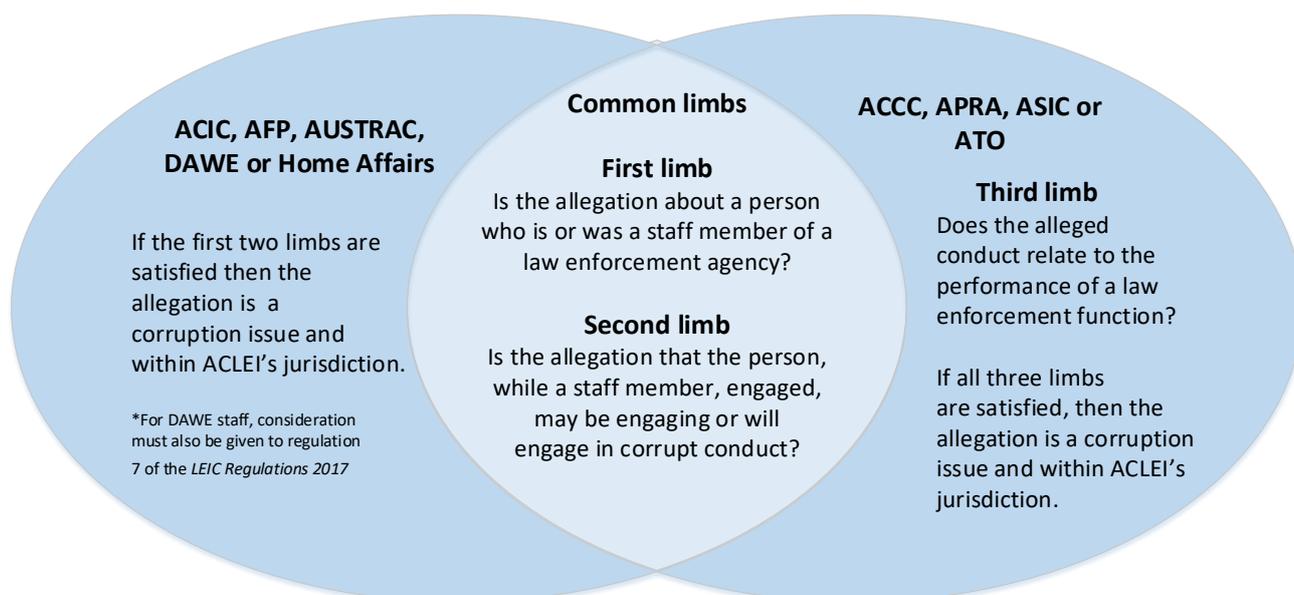
Department of Agriculture, Water and the Environment (DAWE)

Department of Home Affairs (Home Affairs) including the Australian Border Force

Two or three limb test

For the AFP, Department of Home Affairs, ACIC, AUSTRAC and DAWE, the LEIC Act provides two limbs that need to be satisfied for an allegation to be a corruption issue.

For the ATO, ACCC, ASIC and APRA, the LEIC Act provides three limbs that need to be satisfied for an allegation to be a corruption issue.



An allegation that relates to AFP, Home Affairs, ACIC, AUSTRAC or DAWE

(1) Is the allegation about a person who is or was a staff member of a law enforcement agency?

- Section 10 of the LEIC Act sets out the definition of staff members for each agency.
- For DAWE staff, consideration must also be given to regulation 7 of the *LEIC Regulations 2017*.

(2) Is the allegation that the person, while a staff member, engaged, may be engaging or will engage in corrupt conduct?

Engages in corrupt conduct is defined in section 6 of the LEIC Act. A staff member of a law enforcement agency engages in corrupt conduct if, while a staff member of that agency, they engage in:

- an abuse of office
- perverting the course of justice
- corruption of any other kind.

If both of these two limbs are satisfied, then the allegation is a corruption issue and within ACLEI's jurisdiction.

An allegation that relates to ATO, ASIC, APRA, or ACCC

The ATO, ASIC, APRA and ACCC have been prescribed by the regulations to be a law enforcement agency under section 5 of the LEIC Act. In these circumstances, there is an additional limb that needs to be satisfied before an allegation is a corruption issue and within ACLEI's jurisdiction.

(1) Is the allegation about a person who is or was a staff member of a law enforcement agency?

- Section 10(4) of the LEIC Act sets out the definition of staff members for agencies that are prescribed for the purposes of paragraph (d) of the definition of law enforcement agency are the class of persons prescribed by the regulations.
- Regulation 7A of the *LEIC Regulations 2017* sets out the definition of staff members of each agency.

(2) Is the allegation that the person, while a staff member, engaged, may be engaging or will engage in corrupt conduct?

Engages in corrupt conduct is defined in section 6 of the LEIC Act. A staff member of a law enforcement agency engages in corrupt conduct if, while a staff member of that agency, they engage in:

- an abuse of office
- perverting the course of justice
- corruption of any other kind.

(3) Does the alleged conduct relate to the performance of a law enforcement function?

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 function (see section 6(2) of the LEIC Act).

Law enforcement function is defined in section 5 of the LEIC Act. A law enforcement function ‘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; or
- Dealing with information to assist with the enforcement of a law of the Commonwealth.

Investigations about whether an offence has been committed against the law of the Commonwealth relates to the commission of criminal offences.

Investigations about whether a civil penalty proceeding can be brought involves legislative civil penalty provisions. Civil penalties are distinct from other action which may be undertaken by an agency where they are the Decision Maker. Civil penalties, like criminal offences, are decided by a court.

If these three limbs are satisfied, then the allegation in a corruption issue and within ACLEI’s jurisdiction.

To find out more, visit aclei.gov.au

