



**Australian Government**

**Australian Commission for  
Law Enforcement Integrity**

# ANNUAL REPORT OF THE INTEGRITY COMMISSIONER 2006-07





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Law Enforcement Integrity**

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**Australian Government**  
**Australian Commission for**  
**Law Enforcement Integrity**

15 October 2007

Senator the Hon. David Johnston  
Minister for Justice and Customs  
Parliament House  
CANBERRA ACT 2600

**Dear Minister,**

I have pleasure in submitting the first Annual Report of the Integrity Commissioner and the Australian Commission for Law Enforcement Integrity (ACLEI), as required by s 201(1) of the *Law Enforcement Integrity Commissioner Act 2006* (the Act).

The report covers the period from 30 December 2006 (when the Act commenced operation) to 30 June 2007.

The Minister for Finance and Administration issued a direction under s 51(2) of the *Financial Management and Accountability Act 1997* (the FMA Act) on 2 August 2007 that exempts ACLEI from the requirement to provide separate financial statements under s 49 of the FMA Act for this reporting period. The same direction compels the Attorney-General to report ACLEI's accounts under the Annual Report of the Attorney-General's Department for 2006-07.

During the reporting period, Prof. John McMillan was Acting Integrity Commissioner, and in that sense this report is his.

The report has been prepared in compliance with the *Requirements for Annual Reports*, approved by the Joint Committee of Public Accounts and Audit, and issued in June 2007 by the Department of the Prime Minister and Cabinet.

I have had regard to the provisions of s 206 of the Act in settling the content of this report. No s 149 certificates apply to the relevant period. Care has also been taken to protect the privacy of individuals. The report is therefore suitable to be laid before each House of the Parliament.

I draw your attention to s 202 of the Act that requires you to give a copy of this report to the Inter-Governmental Committee established by s 8 of the *Australian Crime Commission Act 2002*. If the Committee gives you comments in writing in relation to the annual report, you will be obliged to cause a copy of those comments to be laid before each House of the Parliament within 15 sitting days of that House after the day on which you receive those comments.

**Yours sincerely,**

A handwritten signature in blue ink that reads "Philip Moss".

**Philip Moss**  
Integrity Commissioner



# REPORTING CORRUPTION

## HOW TO REPORT A CORRUPTION ISSUE

ACLEI is empowered to investigate corruption issues involving employees of the Australian Federal Police, the Australian Crime Commission and the former National Crime Authority.

➤ ANY INFORMATION PROVIDED TO ACLEI IS RECEIVED IN THE STRICTEST CONFIDENCE.

A person providing information about a corruption issue to ACLEI does not have to give a name, but should be aware that anonymous complaints without detailed information are more difficult to investigate. If a person does not want to give his or her name, they should provide an alias and a way to make contact again. The Integrity Commissioner may refuse to commence an investigation until the information is put in writing.

The Integrity Commissioner seeks to ensure all corruption issues are properly addressed. Sometimes it may be preferable to pass the information provided to ACLEI (or part of it) onto another government agency better suited to investigate it. If that might cause a concern, this issue can be discussed with ACLEI at the time of providing information.

If a person indicates that they wish to be kept advised of the outcome of an investigation, ACLEI staff may (in appropriate circumstances) notify the person of the final result. It may not, however, be possible to provide progress reports during the course of any investigation, as this may jeopardise the effectiveness of the investigation. In some cases it will not be possible for ACLEI to disclose the results of investigations.

Corruption issues can be reported to ACLEI by any of the following means:

- PHONE: (02) 6229 9300
- FAX: (02) 6230 7341
- POST: Australian Commission for Law Enforcement Integrity, GPO Box 305, CANBERRA ACT 2601 AUSTRALIA
- EMAIL: [contact@aclei.gov.au](mailto:contact@aclei.gov.au)
- ONLINE: [www.aclei.gov.au](http://www.aclei.gov.au)

# ACRONYMS

<b>ACC</b>	Australian Crime Commission
<b>ACLEI</b>	Australian Commission for Law Enforcement Integrity
<b>AD(JR) Act</b>	<i>Administrative Decisions (Judicial Review) Act 1977</i>
<b>AFP</b>	Australian Federal Police
<b>AGIS</b>	Australian Government Investigation Standards
<b>ALRC</b>	Australian Law Reform Commission
<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>APS</b>	Australian Public Service
<b>AUSTRAC</b>	Australian Transaction Reports and Analysis Centre
<b>AWA</b>	Australian Workplace Agreement
<b>CEO</b>	Chief Executive Officer (as in, CEO of the ACC)
<b>CTC</b>	Competitive Tendering and Contracting
<b>DPP</b>	Director of Public Prosecutions

<b>FMA Act</b>	<i>Financial Management and Accountability Act 1997</i>
<b>FOI</b>	Freedom of Information (as in, FOI Act)
<b>GST</b>	Goods and Services Tax
<b>ICT</b>	Information and Communication Technology
<b>I&amp;KS</b>	Information and Knowledge Services Group (of the Attorney-General's Department)
<b>IID</b>	Internal Investigations Division (of the AFP)
<b>LEIC Act</b>	<i>Law Enforcement Integrity Commissioner Act 2006</i>
<b>LEIC Regulations</b>	<i>Law Enforcement Integrity Commissioner Regulations 2006</i>
<b>NCA</b>	National Crime Authority
<b>PJC</b>	Parliamentary Joint Committee
<b>PPI</b>	Program for Performance Improvement
<b>SES</b>	Senior Executive Service



# KEY POINTS

## NEW INTEGRITY SYSTEM IN LAW ENFORCEMENT

The commencement of ACLEI heralds a new era in anti-corruption efforts in the Australian Government. For the first time an independent agency has specifically been given responsibility for systematically examining the integrity of the Australian Federal Police (AFP) and the Australian Crime Commission (ACC). Headed by the Integrity Commissioner, ACLEI has a particular focus on detecting serious and systemic corruption.

The new system complements existing measures that deal with misconduct and corruption in Australian Government law enforcement agencies.

## MANDATORY REPORTING OF CORRUPTION INFORMATION

A key feature of the new system is the obligation on heads of law enforcement agencies to report to the Integrity Commissioner all information or allegations that raise a corruption issue. The Integrity Commissioner then decides how each matter will be handled.

## SIGNIFICANT INVESTIGATIVE POWERS

The Integrity Commissioner has significant investigative powers to conduct surveillance operations, intercept telecommunications, acquire false identities for covert operations, undertake controlled operations, examine financial transaction databases, obtain search warrants, make arrests, and to summon witnesses to produce information and answer questions before public or private hearings.

## STRONG ACCOUNTABILITY

The Parliamentary Joint Committee (PJC) on ACLEI, made up of five Senators and five Members of the House of Representatives, oversees the performance of the functions of the Integrity Commissioner, with particular reference to ACLEI's use of coercive powers.

The Commonwealth Ombudsman inspects and reports on ACLEI's exercise of intrusive powers (controlled operations, telecommunications interception and surveillance devices) and is available to investigate complaints about ACLEI.

## CORRUPTION ISSUES

While there is no perception of serious or systemic corruption within either the AFP or ACC, allegations are made from time to time that require independent examination. Current allegations before ACLEI include: providing false evidence in the prosecution process; drug importation, trafficking and supply; and unauthorised access and disclosure of information. ACLEI is currently investigating these matters.

## ACLEI BUILDS CAPACITY

In the first six months of operation, ACLEI has focused on developing its investigative capabilities, underpinned by practices and procedures designed to enhance ACLEI's effectiveness and accountability.

In a 'building block' approach to agency development, ACLEI has been funded at a level that provides for basic operations to commence while further information is gathered about the resources that will be required to meet the corruption environment ACLEI encounters.

The Australian Government has indicated it will consider any recommendations of the Integrity Commissioner about resourcing as part of the normal budgetary process.





# TABLE OF CONTENTS

LETTER OF TRANSMITTAL	iii
HOW TO REPORT A CORRUPTION ISSUE	v
ACRONYMS	vi
KEY POINTS	vii
TABLE OF CONTENTS	ix
FOREWORD	1
1. WHY HAVE AN ACLEI	7
Complaints about police	7
Accountability, but not anti-corruption	8
Integrity concerns	9
Royal Commissions into State police corruption	10
Integrity: but not by trust alone	10
The Harrison Inquiry	11
The Fisher review	12
ACLEI: A new anti-corruption agency	13
2. AGENCY OVERVIEW	15
Role and functions	15
What does the Integrity Commissioner do?	15
What is a corruption issue?	15
Where does information about corruption issues come from?	16
What can the Integrity Commissioner do with information about corruption?	17
What other investigative powers does the Integrity Commissioner have?	19
3. PROGRESS TOWARDS OUTCOMES	21
Social justice and equity	21

# TABLE OF CONTENTS

ACLEI performance	22
Identifying corruption issues	23
ACLEI investigations	25
Use of powers	25
Throughput and timeliness	26
Acceptance of recommendations	26
Reports	26
Patterns and trends in corruption	28
Recommendations for changes to laws or administrative practice	29
Prosecutions	29
Confiscation proceedings	29
Anti-corruption reviews	30
Intelligence gathering	30
Presentations about integrity	31
State integrity agencies	31
International	31
 4. PUBLIC CONFIDENCE IN ACLEI	 33
Independence	33
Powers and accountability	33
Clear procedures	33
Opportunity to be heard	34
Ethical standards	34
Quality review of performance	34
Parliamentary Joint Committee	34
Process accountability	35
Court proceedings involving the Integrity Commissioner	35
Commonwealth Ombudsman	36

Auditor-General	36
Senate Estimates	37
Freedom of Information	37
Privacy management	37
Review of the LEIC Act	37

## 5. CORPORATE AND COMMUNICATION 39

ACLEI's establishment phase	39
Management of human resources	39
Financial accountability arrangements	41
Corporate governance practices	41
Information and Communications Technology	42
Security	42
Advertising and market research	42
Disability strategy	42
Environmental performance measures	43
Internet presence	43

## ANNEX 1 – ADDITIONAL STATISTICS 45

## ANNEX 2 – PAPERS AND PRESENTATIONS BY STAFF 51

## ANNEX 3 – FREEDOM OF INFORMATION STATEMENT 53

## ANNEX 4 – CONSULTANCY SERVICES 57

## ANNEX 5 – CHANGES TO THE OPERATIONAL ENVIRONMENT 59

## COMPLIANCE INDEX 61

## ALPHABETICAL INDEX 63





# FOREWORD

## MESSAGE FROM THE ACTING INTEGRITY COMMISSIONER



**JOHN McMILLAN**  
Acting Integrity Commissioner

It is an honour to write the Foreword to the first annual report of the Australian Commission for Law Enforcement Integrity.

The Commission – ACLEI – commenced on 30 December 2006. I was appointed by the Attorney-General as the Acting Integrity Commissioner, and continued in that role until 22 July 2007. Thereafter, Philip Moss commenced a five year term as Integrity Commissioner.

This Foreword provides an opportunity to reflect on the important role that ACLEI has been established to perform, and the challenges that lie ahead.

## ACLEI'S ROLE IN GOVERNMENT

ACLEI's role is to detect, investigate and prevent corruption in law enforcement in Australian Government agencies that fall within its jurisdiction – currently the Australian Crime Commission and the Australian Federal Police. ACLEI also has a broader role to play, in conjunction with those agencies, in maintaining and improving the integrity of law enforcement officers.

Those are not new functions within government. Each law enforcement agency is committed from inception to ensuring its own integrity. This is a strong theme in induction and training programs in law enforcement agencies. The message is underpinned by laws and policies that punish corruption and misconduct in law enforcement.

What is new, however, is that ACLEI has been established by statute as an independent agency to play a role in curbing corruption and promoting integrity in policing. ACLEI is the first agency of its kind to play that role at a national level in Australia.

A Senate Committee in 2006 noted that the creation of ACLEI had been hailed as 'the most significant reform to the framework of the Commonwealth's core integrity institutions in over twenty years'.<sup>1</sup>

Proposals to create a national agency of this kind go back at least a decade. The Australian Law Reform Commission in a report in 1996, *Integrity: but not by trust alone*, proposed the creation of a National Integrity and Investigations Commission that would discharge a combined function of investigating police corruption and handling complaints about police behaviour and misconduct.

External oversight of police complaints was established earlier still, by the *Complaints (Australian Federal Police) Act 1981*. That Act conferred a role upon both the Commonwealth Ombudsman and an independent Federal Police Disciplinary Tribunal. The Act was framed upon proposals made by the Law Reform Commission, in its first report in 1975, *Complaints Against Police*.

Similar agencies with a responsibility to investigate police corruption have earlier been established in four Australian States. They are – in New South Wales the Police Integrity Commission (established in 1996); in Queensland the Crime and Misconduct Commission (2002, replacing a similar organisation established in 1989); in Western Australia the Corruption and Crime Commission (2004, replacing a similar organisation established in 1988), and in Victoria the Office of Police Integrity (2004).

In three States – Queensland, WA and Victoria – the agency also has responsibility for handling complaints about police, although in each instance a separate division of the agency handles this function. NSW has a similar arrangement to the Commonwealth, in that the NSW Ombudsman is responsible for police complaints.

<sup>1</sup> Senate Legal and Constitutional Legislation Committee, *Report on the Law Enforcement Integrity Commissioner Bill 2006*, May 2006, quoting from a submission from Mr A J Brown, at [3.5].

## A NEW ELEMENT IN THE INTEGRITY FRAMEWORK

Unlike some of its State counterparts, ACLEI was not established in response to a Royal Commission or similar report into police corruption. There was no apparent corruption threat in policing at the national level that preceded or prompted its creation. Rather, ACLEI was created in recognition of the important role that a standing agency, independent of police, and with special investigation powers, can play in upholding the integrity of law enforcement.

A number of lessons, drawn from Australian and international experience, lie behind this development.

- A first lesson is that the law enforcement function in government is especially vulnerable to transgression. That is not to say that law enforcement officers lack the integrity of other government officials, but that they face unusual temptation in different circumstances. By the nature of their function, law enforcement officers associate closely with members of society who see crime, inducement and bribery as a way of life that can bring uncommon reward. Law enforcement activities are sometimes undertaken secretly and away from close supervision. Strong loyalty and peer group influence can develop among officers and overwhelm other obligations.

Another strand of misconduct – that also now comes within the definition of official corruption – is misuse of the exceptional and coercive powers that are granted to law enforcement agencies. Examples are the powers to interrogate, to arrest, to observe, to pry, and to assemble and present evidence before prosecutors and courts. There is a risk in government that any power can be misused. The danger can be greater when the powers are exercised within a career force by officers who become accustomed over decades to deciding when it is appropriate to use the powers.

- A second lesson is that a permanent agency to work with and watch over police is an effective supplement to other established external and internal controls.

External oversight of policing is not a new development. From inception, law enforcement agencies are subject to judicial oversight as to how functions are exercised and as to the veracity of evidence presented in criminal and other proceedings. Royal Commissions and special inquiries into allegations of police corruption are also familiar in Australia. Parliamentary and ministerial oversight is another active control.

There are nevertheless limitations on what those measures can achieve. Parliament, courts and Ministers have many other responsibilities and are usually apprised only of the issues that are selected or presented by others. There is no independent investigation capacity. Royal Commissions have proved effective in highlighting corruption, but their role is intermittent and usually focussed on past misdeeds.

A standing oversight agency, created by statute, can maintain a permanent focus on issues of corruption and integrity in law enforcement. Armed with special investigation powers, the agency can penetrate more deeply into corrupt arrangements and misconduct. Over time, the agency can develop a special understanding of corruption risks, how it flourishes, and how to detect and expose it. The work of the oversight agency is also a salutary reminder to law enforcement officers that their behaviour is under constant scrutiny.

The experience gained by a standing oversight agency also enables it to contribute to the integrity programs developed by law enforcement bodies. This constant emphasis on integrity, coming from within and outside a law enforcement agency, helps to build a culture that is more resistant to wrongful practice.

- A third lesson is that public confidence in the integrity of policing is essential to its success. Police are at the forefront of the administration of justice. It is vital that those who are sworn to uphold the law are scrupulous in observing it. The public must be reassured that effective measures are in place to curb law enforcement corruption and misconduct. That confidence will more easily develop if there is a mixture of internal and external controls applying to law enforcement agencies. Public support will in turn bolster morale within law enforcement agencies and enhance their standing in the community.



Those three lessons coalesce in another lesson that explains the recent establishment of ACLEI. It is prudent not to wait for corruption to penetrate a police force or for the perception to develop that allegations of corruption have substance. Integrity in policing is best preserved, and public confidence enhanced, if a permanent oversight agency is put in place prior to a crisis arising. External oversight should be made an integral part of the framework for managing and controlling the exercise of law enforcement functions.

This theme was prominent in the parliamentary speeches on the Bill to establish ACLEI. In introducing the Bill, the Attorney-General noted that 'putting in place a regime of rigorous external examination [of law enforcement agencies] will ensure that the public can have continuing confidence in their integrity.'<sup>2</sup> The Minister for Justice and Customs noted that the Integrity Commissioner and the Commonwealth Ombudsman would together 'provide the Australian public with a guarantee that the conduct of the key Australian law enforcement agencies are subject to comprehensive external review'.<sup>3</sup> Similarly, the Senate Legal and Constitutional Committee expected that the creation of ACLEI would 'send a powerful message to members of the public, as well as AFP and ACC staff that corrupt behaviour will not be tolerated'.<sup>4</sup>

## THE NEW STRUCTURE

Those lessons about policing, corruption and integrity are reflected in three ways in the provisions of the *Law Enforcement Integrity Commissioner Act 2006* that establish ACLEI.

- The first is in the powers that can be used to investigate corruption. ACLEI investigators can access coercive and other powers used in law enforcement, such as telephone interception, electronic surveillance, undercover and controlled operations, search warrants, arrest, scrutiny of financial transactions, and passport confiscation. The Integrity Commissioner can decide to conduct a private or public hearing, at which a person can be summoned to produce documents or give evidence under oath and be cross-examined. These match the powers that police agencies themselves have to investigate criminal conduct. By way of comparison, they are more extensive than the powers available to an Ombudsman office to investigate police complaints.

The Integrity Commissioner's powers to report the findings of a corruption investigation are equally broad. The Commissioner can, for example, make a public statement on any investigation or inquiry, or report to the Parliament. The Commissioner can also report to the Minister or the Parliament if not satisfied with the response of a law enforcement agency to a corruption investigation.

- A second theme in the Act has to do with the relationship between ACLEI and the law enforcement agencies that it oversees. There is a duty on the head of each such agency to notify the Integrity Commissioner of any corruption issue that relates to the agency, and to provide all relevant information and documents if it is a significant corruption issue. The Integrity Commissioner then decides how the matter will be investigated – by the Integrity Commissioner, by another law enforcement agency, by the agency to which the allegation relates, or by that agency subject to either management or oversight by the Integrity Commissioner. If the Commissioner decides not to investigate a matter notified by an agency, there is a residual duty on the agency to notify the Commissioner as to how the matter was subsequently handled.

In practice it is to be expected that each law enforcement agency will retain its principal role in investigating corruption allegations made about its own officers. An important change, however, is that control over corruption investigations now rests with the Integrity Commissioner supported by ACLEI.

<sup>2</sup> The Hon. Philip Ruddock MP, Attorney-General, Second Reading Speech, *House of Representatives Hansard*, 29 March 2006.

<sup>3</sup> Senator the Hon. Chris Ellison, Minister for Justice and Customs, *Senate Hansard*, 22 June 2006.

<sup>4</sup> Senate Legal and Constitutional Legislation Committee, *Report on the Law Enforcement Integrity Commissioner Bill 2006*, May 2006 at [3.2].

- ▶ Thirdly, the Act is replete with measures to safeguard the integrity and independence of the Integrity Commissioner and ACLEI. The Commissioner is appointed and can only be removed from office by the Governor-General. The appointment cannot be for a term longer than five years. The Minister is to be notified by the Commissioner and ACLEI staff members of any corruption issues concerning either the Commissioner or a staff member; failure to discharge this duty to notify the Minister is a criminal offence. The Minister can appoint a special inquiry into any such corruption issue, utilising the same investigation and reporting powers that are available to ACLEI.

These measures are supplemented by the role to be played by the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity. The Joint Committee is established by the Act, as a permanent element in the new integrity framework. The functions of the Committee include receiving reports from the Integrity Commissioner, monitoring and reviewing the work of ACLEI, and examining trends and changes in corruption in law enforcement.

An independent review of the legislation establishing ACLEI is to be undertaken after three years, by the Joint Parliamentary Committee or as otherwise arranged by the Minister.

## CHALLENGES LYING AHEAD

As the first agency of its kind in the national framework of government, ACLEI faces special challenges in the early years. Five challenges stand out.

- ▶ The first is to grow the capacity of ACLEI to deal with corruption issues. By nature, corruption is usually concealed and difficult to unravel, or even to detect. It can be a painstaking and protracted task to investigate and map a corrupt incident; the difficulty is greater when corruption is systemic. Corruption that is carried on across national borders, or through sophisticated use of technology, poses a special challenge. Preparing a brief of evidence for prosecutors and other law enforcers requires special expertise as well.

The capacity to discharge those tasks must be developed and maintained within ACLEI. The skills that are required are specialist, and more easily found within established investigation units in other government or law enforcement agencies. This places a special onus on ACLEI, in recruiting from that sector, to establish its independence and maintain its own integrity.

A new and smaller agency such as ACLEI also faces a special challenge in retaining staff and preserving its capability to discharge functions consistently over time. A related challenge is to establish systems to support the exercise of the extensive powers that ACLEI has been granted by statute. All those powers can be essential at one time or another in investigating corruption.

- ▶ The second – and unique – challenge facing ACLEI is to discharge its functions on a national basis. Australia is a large country. National law enforcement activity occurs across the continent, and internationally. Even the simple task of interviewing a single complainant or witness in a distant or remote location can be a time-consuming and resource intensive activity for ACLEI, which operates from a single office in Canberra. This geographical dimension in ACLEI's work is not faced to the same extent by State anti-corruption agencies. It will take time for ACLEI to decide how best to operate on a national basis.
- ▶ The third challenge is to develop the role of ACLEI in promoting integrity in law enforcement. One of the objectives stated in the Law Enforcement Integrity Commissioner Act is 'to maintain and improve the integrity of staff members of law enforcement agencies' (s 3(1)(d)). It is significant that 'integrity' is prominent in the title of both the Commissioner and the Commission established by the Act. The strong message is that curbing corruption and promoting integrity go hand in hand.

There has been a limited opportunity for ACLEI to develop this side of its work in the first months of operation. In time, however, this can become a distinct and active part of ACLEI's work.

- The fourth and essential challenge is for ACLEI to earn the support and confidence of law enforcement agencies, Parliament and the public. The creation of ACLEI has been welcomed by the leaders of the agencies that it oversees. They see that their agencies and ACLEI can work in partnership to curb corruption and ensure integrity in law enforcement. The Act establishing ACLEI envisages this cooperation, consistently with ACLEI maintaining its independence.

The creation of ACLEI also sends a message to the Australian public that they should be reassured that a robust integrity framework applying to Australian policing has been put in place. It is ACLEI's responsibility to honour that promise. This must be done by communicating a clear vision both of what it can do and of the limitations that realistically apply to its work. The annual report is one vehicle through which ACLEI can explain its work to a wider audience.

- Finally, it is important that ACLEI establish an effective working relationship with other oversight agencies, both Commonwealth and State.

ACLEI's role will interact closely with that of the Commonwealth Ombudsman, which retains the function of receiving complaints from the public about the Australian Federal Police and the Australian Crime Commission. There can be a link between administrative sloppiness in an agency, serious misconduct and corruption. By working together, oversight agencies will more likely achieve their shared objective of promoting good administration and integrity in government. Cooperation between agencies can span all activities, from the investigation of individual complaints and allegations, to sharing their expertise in corporate functions, training, development of case management systems, and through staff exchanges.

ACLEI also has much to gain by working closely with counterpart State agencies that investigate corruption in State policing. ACLEI has already benefited strongly from the generosity and preparedness of State agencies to share their considerable wisdom, expertise and experience.

Corruption issues have and will continue to arise in law enforcement operations conducted jointly by Australian and State government agencies. The investigation of those corruption issues will require close cooperation between ACLEI and other investigation agencies.

## SIGNING OFF

My formal role in ACLEI ends with the completion of this Annual Report, covering the first six months of ACLEI's work.



**PHILIP MOSS**  
Integrity Commissioner

It was a privilege in that short period to act in the important position of Integrity Commissioner. I received excellent support from the inaugural staff members of ACLEI, who shared the vision to develop ACLEI as a vital new element in the integrity framework of Australian Government. That vision and commitment has been ably taken up by Mr Philip Moss (pictured), as the first appointee to a regular term as Integrity Commissioner.

I am confident that ACLEI will fulfil the promise to work with law enforcement agencies in the essential task of building and maintaining public confidence in the integrity of Australian law enforcement.

**John McMillan**  
Acting Integrity Commissioner



# 1. WHY HAVE AN ACLEI?

The idea of an anti-corruption agency that oversees integrity issues in law enforcement agencies at the Commonwealth level has been around for some time. The establishment of the Australian Commission for Law Enforcement Integrity (ACLEI), headed by the Integrity Commissioner, is the product of evolving thought and experience with law enforcement corruption and models of oversight in Australia over the last 30 years.

In this, the inaugural Annual Report of the Integrity Commissioner, a brief review of this history is useful in understanding and explaining ACLEI's existence, powers and accountability structures.

## COMPLAINTS ABOUT POLICE

In 1975, the newly established Australian Law Reform Commission (ALRC) looked at whether there was a need for an external mechanism for handling complaints about police. Against the international trend of the time, the ALRC recommended that external oversight of complaint handling was a worthwhile idea (similar inquiries in Britain and the United States had rejected the proposition).

That ALRC report of 1975, and a supplementary report in 1979, set out a broad framework for a police complaints system centred on a police internal investigations branch with oversight by an Ombudsman and an independent tribunal.

The Australian Federal Police Act commenced in October 1979. A complaint system was established in April 1981 by the *Complaints (Australian Federal Police) Act 1981* (the Complaints Act). In the interim, the AFP operated with an 'internal investigation' branch by administrative action.

As initially enacted, the Complaints Act:

- established an Internal Investigation Division (IID) within the AFP to investigate matters of conduct, furnished with a capacity to compel AFP members to produce information and answer questions, even though the information may be self-incriminatory
- designated the Ombudsman to investigate complaints that were substantially about the practices and procedures of the AFP, furnished with –
  - a qualified capacity to compel any person to produce information and answer questions, even though the information may be self-incriminatory, and
  - a qualified power to enter AFP or Commonwealth premises without warrant
- made it mandatory for AFP members to refer all complaints about police from members of the public to the IID, with a copy of details of each complaint to be forwarded to the Ombudsman
- mandated that all complaints made to the Ombudsman about the conduct of AFP members be referred to the AFP for internal investigation, with a power for the Ombudsman to seek progress reports, view evidentiary documents and interview relevant people (with the permission of the AFP Commissioner)
- included a conciliation process for simple resolution of less serious complaints
- created a capacity for the AFP Commissioner to discipline AFP members following an adverse investigation report
- provided a mechanism by which the Commonwealth Ombudsman could review all conduct investigations and –
  - recommend further investigation by the AFP
  - initiate an Ombudsman investigation, or
  - otherwise comment on the AFP Commissioner's proposal to discipline or not discipline AFP members



- allowed for 'special investigations' to be conducted by the Ombudsman or another person (where the Commissioner and Ombudsman agree, or the Minister directs) and using the Ombudsman's coercive powers, but only in respect of AFP members
- provided for the Minister to initiate and direct 'special inquiries' and using the Ombudsman's coercive powers, but only in respect of AFP members
- established the Federal Police Disciplinary Tribunal, administered by the Federal Court of Australia, to which could be referred any charge for breach of discipline for a determination of guilt or penalty, or for appeal of such determination, and
- provided for the Federal Police Disciplinary Tribunal to hold public inquiries into matters referred to it by the Minister.

## ACCOUNTABILITY, BUT NOT ANTI-CORRUPTION

Even though there is a relationship between exposing misconduct and providing an avenue for complaint, the Complaints Act was not written with an anti-corruption focus. Rather, it was intended to be a means of safeguarding individual rights and liberties in relation to AFP powers of arrest, search and seizure and the conduct of investigations.

From an anti-corruption perspective, the new system had several limitations. Notably, the Complaints Act:

- did not require the referral to the Ombudsman of an important category of information that could disclose evidence of corrupt activity – the so-called 'allegations' that resulted from information and reports provided internally by AFP members
- did not provide the Ombudsman an entitlement to 'take over' at will any complaint being investigated by the AFP Internal Investigation Division
- did not give the Ombudsman an 'own initiative' power<sup>1</sup> to initiate investigations without a complaint, thereby limiting the inquiries the Ombudsman could make, and
- established the standard of proof<sup>2</sup> in the Federal Police Disciplinary Tribunal as the criminal standard ('beyond reasonable doubt'), instead of the civil standard ('on the balance of probabilities').

<sup>1</sup> The power to undertake an 'own initiative' investigation into the actions of an AFP appointee (s 21A) was provided as an amendment in Act No166 in December 1994.

<sup>2</sup> The original Complaints Act did not specify a standard of proof. The criminal standard (beyond reasonable doubt) applied by Regulation from October 1985. An amendment in 1987 (by Act No 141 of 1987) to s 76(4) of the Complaints Act provided specifically for the Regulations to stipulate the standard of proof. The criminal standard was prescribed until the Regulations were changed again in November 1993 to adopt the civil standard (on the balance of probabilities) following representations by the Ombudsman (Commonwealth and Defence Force Ombudsman *Annual Report 1991-92* at p 99).

These specific concerns had their origin in a more general criticism that had been made from time to time of the police complaints system. They were:

- whether it is appropriate for police managers to have primary responsibility for the investigation of staff conduct matters, and
- whether the model of independent oversight provided for in the Complaints Act provided sufficient reassurance against corruption.

In 1991, the *Review of the Office of the Commonwealth Ombudsman* by the Senate Standing Committee on Finance and Public Administration noted that:

*[5.54] The police complaints area is the most difficult of the Ombudsman's responsibilities. The nature of the complaints differs substantially from most others received by the Ombudsman. Many police complaints involve allegations of criminal behaviour by persons complained against. Most involve claims of betrayal of trust by officers in a special position of power. In many of them there are no independent witnesses.*

The Senate Committee went on to note the insufficient resources available to the Ombudsman to undertake this specific role. It recommended:

*[5.66] ...that unless adequate resources are made available for active investigation by the Ombudsman of a sufficient sample of AFP internal investigations of complaints against police during 1992 and subsequent years and for a substantial reduction in the delays currently experienced in review of IID files, the role of investigating complaints against the police be removed from the Ombudsman's jurisdiction.*

## INTEGRITY CONCERNS

It was acknowledged from the outset that corruption would threaten the newly-established AFP if proper safeguards were not put in place. As former Deputy Commissioner Whiddett reflected<sup>3</sup> on the early years of the AFP:

We also began to take very seriously our ethical condition, putting in place measures, unique at the time, to bring to bear when necessary the arsenal and techniques we use on shrewd criminals against our own relatively few but crooked. Nothing could be more humiliating than to have some external scrutineer surprise us with something very unpleasant about the AFP that we have a clear duty to the public and ourselves to prevent and uncover.

There were some allegations of corruption against law enforcement agencies on the public record at the time the AFP was established in 1979. For example, allegations<sup>4</sup> of corruption had been made against AFP members and other former staff members of the (then) Federal Narcotics Bureau, which had been moved from the Customs portfolio and absorbed into the AFP a month after the AFP began operating.

Other allegations have been raised in public from time to time<sup>5</sup> and many others have been dealt with in private over the years under the AFP and Complaints Acts. The AFP's enthusiasm for seeking to be the first to find misconduct, if there were misconduct to be found, has endured over the years.

There had also been concerns expressed from time to time about the significant powers of the National Crime Authority (NCA), created in 1984 and later replaced by the Australian Crime Commission in 2003.

Those concerns related primarily to the potential for the NCA to act beyond its authority without the special accountability mechanisms that normally applied to police forces. While the NCA was overseen by a Parliamentary Joint Committee (PJC) convened for the purpose, the PJC had expressed concern about the accountability of the NCA. The PJC's First Report in 1985 noted the difficulty it had in obtaining adequate information from the NCA to enable it to properly carry out its work.

While the relationship between the NCA and PJC apparently improved over time, a later Parliamentary Joint Committee on the NCA lamented the lack of external accountability in its 1991 evaluation of the National Crime Authority, '*Who is to Guard the Guards?*'

In that report, the PJC considered giving the Commonwealth Ombudsman an oversight role, a proposition that Parliament had deleted from the original NCA Bill in 1984. The PJC also canvassed the creation of a new agency to perform the oversight task, but finally recommended that the Inspector-General of Intelligence and Security be given jurisdiction over the NCA, its staff and those seconded to it (paragraph 6.77). However, though the accountability concern remained, the PJC's recommendation lay dormant up until the time that the NCA was replaced by the ACC in 2003.

This issue was remedied by the *Australian Crime Commission Establishment Act 2002*, which adopted Recommendation 7 of the Inquiry into the *Australian Crime Commission Establishment Bill 2002* by the Parliamentary Joint Committee on the NCA, November 2002. The result of the legislation was to include the ACC within the jurisdiction of the Commonwealth Ombudsman.

<sup>3</sup> Whiddett (1999) 'Future linked to the preservation of ideals', *Platypus Magazine*, No 64. Australian Federal Police. Canberra.

<sup>4</sup> Cooper (1991) 'The Australian Federal Police: FBI or RIP?' *Polemic*, 2(2), pp 104-107, cited in D Baker (2004) 'The Reinvention of Australian Federal Policing in the Pursuit of National Security' *International Journal of Comparative and Applied Criminal Justice*, 28(2) at p 149.

<sup>5</sup> See, for example, ALRC (1996) '*Integrity: but not by trust alone*', Report No 82, paras 9.9-9.23.



## ROYAL COMMISSIONS INTO STATE POLICE CORRUPTION

Two events, more than any others, changed the way Australians think about police corruption, and changed the way corruption is investigated.

The first, in Queensland, was the '*Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*', chaired by Tony Fitzgerald QC (the Fitzgerald Inquiry), which ran from May 1987 to July 1989.

The final report chronicled police involvement at the highest levels in illegal gambling and prostitution. The former Queensland Police Commissioner, Sir Terrence Lewis, was convicted of corruption, jailed and stripped of his knighthood. Other senior police members admitted to corruption and resigned.

As well as attracting national attention for over two years, the Fitzgerald Inquiry set new standards for corruption investigation. Ten indemnities against prosecution were granted in return for evidence, and 339 witnesses were called over 238 sitting days.

One of Fitzgerald's key recommendations was to establish a permanent anti-corruption commission, which exists today, 20 years later, as the Queensland Crime and Misconduct Commission.

The second event was the '*Royal Commission into the New South Wales Police Service*', chaired by The Hon. Justice James Wood between May 1994 and May 1997.

The Wood Royal Commission confirmed that the corrupt activities identified by Fitzgerald were not simply the result of events peculiar to Queensland. It became clear that corruption could happen anywhere, particularly if there were inadequate controls in place to prevent it happening.

Over three years of investigation and hearings, Justice Wood uncovered a culture of corruption within the NSW Police Service, resulting in a large number of admissions of corruption and resignations from the NSW Police Service. At the same time, Australians deepened their concern and suspicion about police corruption.

One of the lasting legacies of the Wood Royal Commission was the creation of the NSW Police Integrity Commission in 1996, the first permanent agency in Australia dedicated solely to detecting and investigating police corruption. It has since been followed by the Office of Police Integrity in Victoria in 2004.

A third State inquiry into police corruption has since been held: the '*Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers*' (the Kennedy Royal Commission). The Commission ran from December 2001, reported in March 2004, and recommended the establishment of the WA Corruption and Crime Commission, basing it on the Queensland model.

## INTEGRITY: BUT NOT BY TRUST ALONE

The ALRC received a reference in March 1995 to inquire into, and report on, the Complaints Act and the complaints and disciplinary system of the AFP. The Inquiry was the first extensive review of the Complaints Act, which, according to the ALRC, was considered by many to be outdated and ineffective. It is also worthy of note that the Wood Royal Commission into the NSW Police Service, with its focus on alleged corruption, had been established some ten months earlier.

In July 1995, the ALRC's reference was extended to the complaints and disciplinary system of the NCA. At the time, the NCA had no formal complaints system, no coercive internal investigations powers, and was excluded from the jurisdiction of the Commonwealth Ombudsman.

The ALRC inquiry was completed with the tabling of the final report, *Integrity: But Not By Trust Alone* (ALRC 82), in Parliament in December 1996. While the terms of reference had not included a specific reference to corruption, the report noted that:

*...an effective complaints system must also deal specifically with corruption issues and, in response to those issues, provide adequate preventive and proactive measures with effective external scrutiny. (page 9)*

The ALRC recommended the establishment of a new external complaints and anti-corruption authority, to be known as the National Integrity and Investigations Commission (NIIC), to oversee the AFP and NCA integrity framework. The NIIC would have coercive powers akin to those of a Royal Commission and subsume the role previously played by the Ombudsman in complaints about the AFP.

Consideration by Government of the ALRC report was overtaken by events; a Ministerial Inquiry into corruption allegations about the AFP commenced early the following year – the Harrison Inquiry.

## THE HARRISON INQUIRY

Incidental to his inquiry into the NSW Police Service, Justice Wood received several allegations of corruption involving the Australian Federal Police.

The then Attorney-General, the Hon. Daryl Williams AM QC MP, established a Special Inquiry under s 50 of the Complaints Act to investigate and report on the allegations. A barrister, Mr Ian Harrison SC, was duly appointed to conduct the Inquiry.

Mr Harrison found<sup>6</sup> no evidence of systemic corruption within the AFP, nor supporting evidence for many of the allegations. In all, a total of 89 allegations were made in respect of 54 (then) serving members of the AFP. No adverse findings were made in respect of 46 of those 54 officers.

Mr Harrison further examined 20 allegations involving seven of the remaining eight officers. The allegations generally related to isolated acts of improper conduct, and were considered by Mr Harrison not to be indicative of ongoing or systemic conduct.

The AFP Commissioner subsequently commenced dismissal proceedings against six of the seven officers, and against an additional two officers whose conduct had come to notice during the Harrison Inquiry. In the remaining case, the AFP Commissioner concluded there was insufficient basis to lose confidence in the officer.

<sup>6</sup> Attorney-General's Media Release, 'Findings of the Harrison Inquiry into the Australian Federal Police', 8 May 1997.

## Integrity-enhancing strategies

The Harrison Inquiry influenced the Australian Government's policy approach to addressing corruption in its law enforcement agencies. In a media release<sup>7</sup> outlining the findings of the Harrison Inquiry, the Attorney-General noted:

*The Inquiry recognised that a significant ongoing issue is the need for effective external scrutiny of all complaints or allegations of police misconduct or corruption. It was the view of the Inquiry that this role should remain with the Commonwealth Ombudsman. It was also in favour of the Ombudsman's powers being enhanced to provide for a much more active role in complaint handling. These recommendations will be taken into account in the context of the Government's consideration of the Australian Law Reform Commission's recent report about complaints about the AFP and the National Crime Authority.*

The then AFP Commissioner wasted little time in introducing changes that drew on the lessons of Wood and Harrison.

These initiatives included:

- abolishing specialist branches within the AFP and adopting flexible teams with continuous cross-fertilisation of personnel
- improving the control of allocation and use of AFP warrant cards; drug exhibit handling procedures; the management of police informants; the handling of property seized for evidence to ensure a clear, accountable chain of continuity is maintained; and administrative arrangements for professional reporting and internal witness ('whistleblower') protection in the AFP, and
- reinforcing a ban on drinking alcohol whilst on duty by removing bars from AFP operational premises.

<sup>7</sup> Ibid.

In 2000, the Parliament passed the *Australian Federal Police Legislation Amendment Act 2000*, a package of reforms that strengthened the command powers of the AFP Commissioner.

These changes included:

- strengthening the AFP Commissioner's powers to investigate allegations of corruption by removing the privilege against self-incrimination in compulsory interviews
- removing recourse to the Australian Industrial Relations Commission for dismissals based on a finding of serious misconduct
- introducing random illicit drug and alcohol testing of AFP members<sup>8</sup>
- introducing a requirement that AFP officers complete integrity declarations, and
- introducing a system whereby officers could be directed to provide personal financial statements to the AFP

In essence, while the ALRC's more complex recommendation for a new oversight agency was being considered, the approach taken in 2000 was to provide new powers to the Commonwealth Ombudsman and AFP Commissioner for the time being.

As already noted, in January 2003 the Ombudsman's general complaints and own-motion jurisdiction was extended to cover the newly established Australian Crime Commission. The PJC on the NCA, in a report of its consideration of the *Australian Crime Commission Establishment Bill 2002*, recommended that:

...complaints against all staff of the ACC be investigated by the Commonwealth Ombudsman as a minimum.

The PJC's recommendation was in line with the Government's approach of 2000, but perhaps signalled that more substantial changes might be warranted.

<sup>8</sup> Targeted testing for illicit drugs had already been implemented by the AFP as a response to the Wood Royal Commission. The practice was tested in the Federal Court, which affirmed the lawfulness of the AFP's actions: *Anderson v Sullivan* [1997] 1008 FCA (24 September 1997).

## THE FISHER REVIEW

The Complaints Act had been modified by successive governments over time.<sup>9</sup> These various changes had allowed the Ombudsman to engage far more vigorously in police accountability than the original Complaints Act had provided for. However, despite many achievements, the Complaints Act system was not convincing in gaining the confidence of either complainants<sup>10</sup> or police officers<sup>11</sup> subject to complaint.

A further development in the changing approach to police management and discipline was that the Federal Police Disciplinary Tribunal gradually fell into disuse. In practice, its role was overtaken when a legislative amendment in 2000 conferred upon the AFP Commissioner a non-renewable power of summary dismissal for corruption-related matters.<sup>12</sup>

A Senate Committee '*Inquiry into the Management Arrangements and Adequacy of Funding of the Australian Federal Police and the National Crime Authority*' in 2001 noted continuing discontent with the Complaints Act system. It recommended that the AFP complaints procedures be 'simplified and made more transparent'.

This recommendation led, in May 2002, to the AFP Commissioner asking Justice William Fisher AO QC to undertake a review of the AFP's complaint and professional standards regime. Justice Fisher's report was tabled in Parliament in December 2003.

<sup>9</sup> As a notable exception, the 'allegation' issue was never resolved in the Complaints Act, but has been remedied by the LEIC Act. The 1996 ALRC Report No. 82 '*Integrity: but not by trust alone*', para 3.31, and the 1997 '*Inquiry into Allegations of Corruption within the Australian Federal Police*' (the Harrison Inquiry) both recommended an end to the distinction between complaints and allegations. In some years, allegations were routinely shared with the Ombudsman by administrative arrangement, and on occasion the AFP Commissioner requested the Ombudsman to review investigations into allegations to enhance accountability.

<sup>10</sup> See, for example, Commonwealth Ombudsman *Annual Report 2002-03*, pp 86-87.

<sup>11</sup> The AFP Association persistently expressed concerns about the formality and adversarial character of the discipline system, and the inflexibility of the Complaints Act. See Senate Legal and Constitutional References Committee (2001) *Report of Inquiry into the Management Arrangements and Adequacy of Funding of the Australian Federal Police and the National Crime Authority* at pp 135-137.

<sup>12</sup> *Australian Federal Police Legislation Amendment Act 2000*.

Justice Fisher advocated a move away from the existing complaints and disciplinary system. He proposed a model of 'managerial responsibility' centred on a graduated professional standards regime that was responsive to the seriousness of each matter, the ability of managers and supervisors to deal with performance issues raised, and the desirability of external accountability.

Justice Fisher's recommendations were closely based on His Honour's observation of the integrity system that had been set up in the NSW Police Service following the Wood Royal Commission.

In many ways, Justice Fisher's approach also mirrored the ALRC's 1996 report, *Integrity: But Not By Trust Alone*, even though His Honour's model retained the Ombudsman's role. Justice Fisher's intent was to allow the AFP to exercise its managerial role over minor conduct issues, freeing up the Ombudsman's resources to attend to more serious matters involving misconduct as well as practices and procedures issues.

## ACLEI: A NEW ANTI-CORRUPTION AGENCY

In June 2004, six months after receiving the Fisher Review, the Government announced its decision to establish an independent body, with the powers of a Royal Commission, to detect and investigate corruption in the AFP and the Australian Crime Commission.

The announcement was made against the background of continuing public discussion of integrity and external oversight of policing. One issue in the public arena was a request<sup>13</sup> by the Victorian Government to the Australian Government for telephone interception powers to be granted to the new Office of Police Integrity, to be headed by the Victorian Ombudsman. Another issue was a television program<sup>14</sup> about the detection by the NSW Police Integrity Commission of two apparently corrupt secondees to the ACC.

The Government's decision to establish ACLEI culminated a steady progression towards an independent authority to investigate corruption in law enforcement. In June 2006 the Parliament passed the following three pieces of legislation to give effect to the new integrity system:

- the *Law Enforcement Integrity Commissioner Act 2006*
- the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006*, and
- the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*.

In his Second Reading Speech<sup>15</sup> introducing the Bills, the Attorney-General, the Hon. Philip Ruddock MP, said:

*The focus on the AFP and the ACC does not reflect a perception that these bodies currently have a significant problem with corruption. Indeed, there is no evidence of systemic corruption within either body. However, these agencies play a key role in Australian government law enforcement. Putting in place a regime of rigorous external examination now will ensure that the public can have continuing confidence in their integrity.*

<sup>13</sup> Attorney-General and the Minister for Justice and Customs, Media Release (16 June 2004) *Commonwealth to set up independent national anti-corruption body*.

<sup>14</sup> ABC *Four Corners*. 'Corruption Inc.' 14 June 2004.

<sup>15</sup> *Hansard*, 29 March 2006 at p 9.





## 2. AGENCY OVERVIEW

### ROLE AND FUNCTIONS

The *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) establishes the statutory office of Integrity Commissioner.

The Integrity Commissioner is supported by an independent agency, the Australian Commission for Law Enforcement Integrity (ACLEI). ACLEI consists of investigative, legal, policy and corporate staff. ACLEI staff are employed under the *Public Service Act 1999*. The Integrity Commissioner is the Agency Head of ACLEI.

The work of the Integrity Commissioner and ACLEI is overseen by the Parliamentary Joint Committee on ACLEI. The Parliamentary Joint Committee reports to Parliament.

### WHAT DOES THE INTEGRITY COMMISSIONER DO?

The Integrity Commissioner's statutory role is to:

- detect, investigate and prevent corruption in law enforcement agencies
- maintain and improve the integrity of staff members of law enforcement agencies, and
- collect and process intelligence on corruption in law enforcement.

Presently those subject to the scrutiny of the Integrity Commissioner under the LEIC Act are staff members of the Australian Federal Police, the Australian Crime Commission and the former National Crime Authority. Other agencies may be added from time to time by regulation, made under s 224 of the LEIC Act.

ACLEI performs a similar function to the various State police integrity agencies. The LEIC Act provides for corruption matters to be dealt with jointly by ACLEI and the State-based integrity agencies, where required. This approach recognises the high levels of secondment of members and other forms of cooperation between law enforcement agencies, and the need for integrity agencies to share intelligence and assist each other. It also recognises the national and trans-national nature of criminal syndicates.

The Integrity Commissioner cooperates with the Commonwealth Ombudsman (who is also designated by the *Ombudsman Act 1976* as the Law Enforcement Ombudsman in relation to the AFP). This cooperation recognises the Ombudsman's role handling general conduct complaints about AFP members and in scrutinising the AFP's operational practices and procedures. It also recognises the requirement under s 6(17) of the Ombudsman Act for the Ombudsman to notify the Integrity Commissioner of significant corruption issues that come to his or her notice.

### WHAT IS A CORRUPTION ISSUE?

The Integrity Commissioner may investigate a 'corruption issue' relating to a present or former staff member of a law enforcement agency.

A 'corruption issue' is where there is a question about whether a law enforcement officer:

- has engaged in 'corrupt conduct'
- is engaging in 'corrupt conduct,' or
- will or could engage in 'corrupt conduct' in the future.

In determining whether there is a corruption issue, there is no need to identify a particular law enforcement officer.

'Corrupt conduct' is where a staff member of a law enforcement agency:

- abuses his or her office as a law enforcement officer
- perverts the course of justice, or
- in light of his or her duties and powers as a law enforcement officer, otherwise engages in corruption.

It is not necessary that an abuse of office, perversion of the course of justice or corruption has resulted from the conduct. All that is required is that the staff member intended that one or more of those results occur.

See page 21 for examples of corrupt behaviour.

Although the Integrity Commissioner's function relates to 'corruption issues', the Integrity Commissioner must give priority to 'serious corruption' or 'systemic corruption', where:

- 'serious corruption' is 'corrupt conduct' that could result in a law enforcement officer being charged with a criminal offence that has a maximum penalty of 12 months imprisonment or more
- 'systemic corruption' is where there is a pattern of instances of 'corrupt conduct' in a law enforcement agency, or more than one law enforcement agency.

The LEIC Act is intentionally broad in its approach to defining corruption, preserving a connection to the *Criminal Code Act 1995*, the *Crimes (Superannuation Benefits) Act 1989* and Part VA of the *Australian Federal Police Act 1979*. This construction gives the Integrity Commissioner the broadest operational flexibility, and it recognises the shifting nature of corruption over time and in different law enforcement environments.

### WHERE DOES INFORMATION ABOUT CORRUPTION ISSUES COME FROM?

The Integrity Commissioner receives information about corruption issues from various sources. The LEIC Act provides for both voluntary referrals of information to the Integrity Commissioner and for a system of mandatory notifications.

The LEIC Act requires the Chief Executive Officer (CEO) of the ACC and the AFP Commissioner to notify the Integrity Commissioner as soon as practical after they become aware of an allegation, or information, that raises a corruption issue that relates to their agency. The Commonwealth Ombudsman must also refer information or allegations about 'serious corruption' to the Integrity Commissioner.

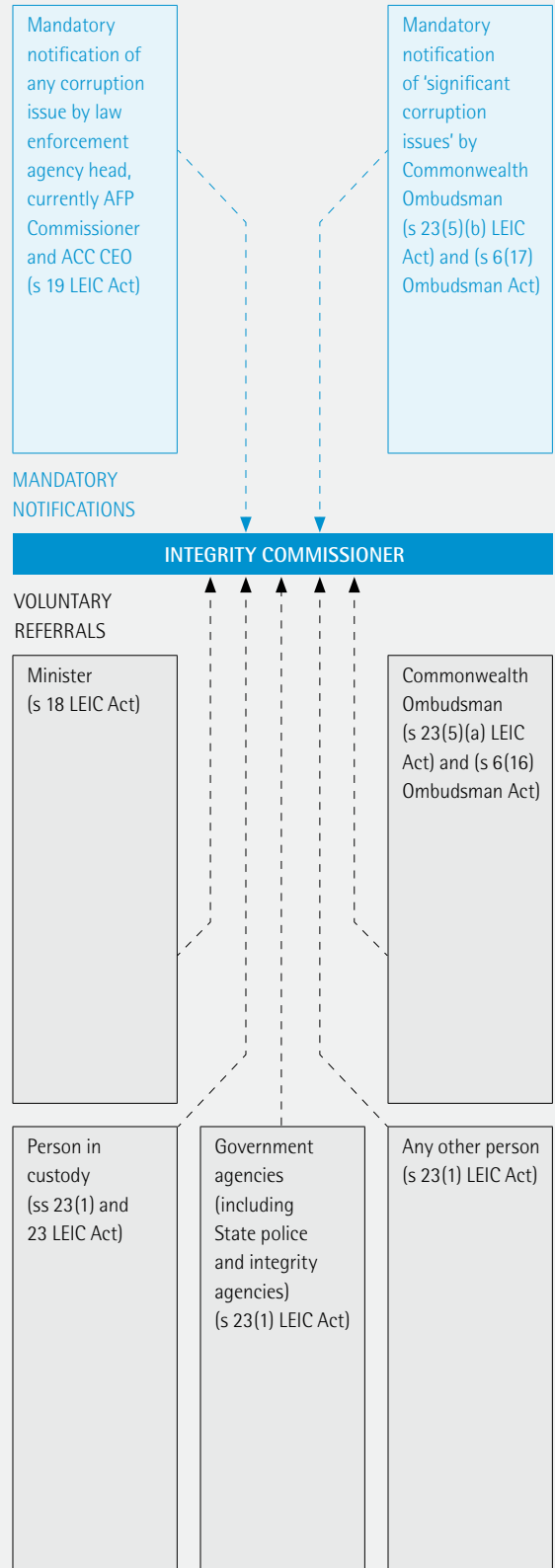
Any person, including the Minister, may refer information or allegations to the Integrity Commissioner for assessment. The LEIC Act makes special provision for people in custody to be able to contact the Integrity Commissioner in confidence to provide information about corruption.

Diagram One illustrates these various sources of information.

To complement the notifications and referrals of information that the Integrity Commissioner receives, the LEIC Act envisages that ACLEI may one day develop a proactive capability to collect intelligence. Such a capability might be used to inform use of the Integrity Commissioner's 'own initiative' investigation power (s 38) or assist in identifying any patterns or trends in the nature and scope of corruption (s 201(2)(c)).

### DIAGRAM ONE:

#### EXTERNAL SOURCES OF CORRUPTION INFORMATION





WHAT CAN THE INTEGRITY COMMISSIONER  
DO WITH INFORMATION ABOUT CORRUPTION?

The Integrity Commissioner differs in style and purpose to a complaint-handling agency such as the Ombudsman. In general, the Integrity Commissioner is not obliged to investigate all matters or to establish the truth of particular allegations.

Table One illustrates the key differences. (next page)

Information given to the Integrity Commissioner may not result in an investigation immediately, or at all. In this way, 'tip-offs' may be a trigger for a process of collecting further information prior to launching a fully-developed investigation into a law enforcement officer's conduct.

The Integrity Commissioner has a number of other options for dealing with information about corruption. All information about corruption is assessed upon receipt by ACLEI investigators and decisions made about how the information will be treated.

The following paragraphs outline some of the options available to the Commissioner.

- The LEIC Act allows the Integrity Commissioner to investigate in private, whether to gather more information or to pursue a matter to finality. Such investigation can be done without significant formality, and may be done covertly.
- The Integrity Commissioner may use formal powers and hold hearings in private or in public, or a combination of both, at which witnesses may be summonsed to appear to be examined under oath or affirmation. This mode of operation is similar to that of a Royal Commission. In addition, the Minister for Justice and Customs may direct that the Integrity Commissioner hold a 'public inquiry' into specific corruption issues.
- The Integrity Commissioner can also refer matters back to relevant agencies for investigation or, where the agency is the ACC, to the AFP for investigation. The Integrity Commissioner may choose to remit the matter entirely, or to manage or oversee the investigation.

- The Integrity Commissioner may refer a matter to a relevant State or Territory government agency (an integrity agency or a police service or another government department) for investigation. This capacity takes particular account of the arrangements between law enforcement agencies to second officers between the various police services. Importantly, the jurisdiction of the Integrity Commissioner to investigate the conduct of State and Territory law enforcement officers does not displace the jurisdiction of the law enforcement officer's home agency, or State and Territory integrity agencies, to investigate and respond to allegations of corruption.
- The Integrity Commissioner may also investigate jointly with another government agency, or with an integrity agency of a State or Territory.

Following an investigation, the Integrity Commissioner may recommend that criminal, civil and/or confiscation proceedings be brought for contraventions of Commonwealth laws by members and former members of law enforcement agencies. The Commissioner may also refer matters direct to prosecutors.

The Integrity Commissioner may make public reports or statements, and in some cases is compelled to do so by the LEIC Act.

The Integrity Commissioner can also make recommendations to the relevant Minister about legislative and administrative action that may be needed or desirable to prevent corruption and preserve integrity in law enforcement agencies.

TABLE ONE:

DIFFERENCES BETWEEN COMPLAINT-HANDLING AND ANTI-CORRUPTION AGENCIES.<sup>1</sup>

	COMPLAINT HANDLING BODY (eg Ombudsman)	ANTI-CORRUPTION BODY (eg ACLEI)
FOCUS	<ul style="list-style-type: none"> <li>➤ Addressing maladministration and customer service standards</li> <li>➤ Dealing with complaints from the public</li> </ul>	<ul style="list-style-type: none"> <li>➤ Exposing and dealing with serious corruption</li> <li>➤ Developing corruption resistance strategies with agencies</li> </ul>
POLICY RATIONALE	<ul style="list-style-type: none"> <li>➤ Ensuring administrative action by government agencies is fair and accountable</li> <li>➤ Correcting administrative deficiencies quickly and efficiently</li> </ul>	<ul style="list-style-type: none"> <li>➤ Providing independent reassurance that staff of law enforcement agencies act with integrity</li> <li>➤ Effective deterrent to corrupt behaviour</li> </ul>
SOURCES OF INFORMATION	<ul style="list-style-type: none"> <li>➤ Complainants (primarily)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Detection by home agency</li> <li>➤ Intelligence from various sources, including:               <ul style="list-style-type: none"> <li>➤ Public interest disclosures ('whistleblowers')</li> <li>➤ Data-mining</li> <li>➤ Persons in custody</li> <li>➤ Members of the public</li> </ul> </li> </ul>
ACCESSIBILITY TO THE PUBLIC	<ul style="list-style-type: none"> <li>➤ Thousands of approaches annually</li> <li>➤ Complainants have certain legal rights to be informed of action taken</li> <li>➤ Regular communication with complaints, including details of final decisions/reports</li> </ul>	<ul style="list-style-type: none"> <li>➤ Few 'complaints'</li> <li>➤ Any 'complaints' received treated as a source of information.</li> <li>➤ Provision of progress reports and investigation outcomes to people providing information is decided on a case-by-case basis</li> </ul>
OPENNESS	<ul style="list-style-type: none"> <li>➤ Relative openness with complainants</li> <li>➤ Prior notification of persons the subject of investigation (natural justice)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Strict security</li> <li>➤ No prior notification given to persons the subject of investigation</li> </ul>
INVESTIGATIVE APPROACH	<ul style="list-style-type: none"> <li>➤ Generally open, face-to-face investigation techniques</li> <li>➤ Informal procedures</li> <li>➤ Coercive investigation powers available where necessary</li> <li>➤ Hearings in private with public reports on public interest matters</li> </ul>	<ul style="list-style-type: none"> <li>➤ Formal hearing procedures</li> <li>➤ Use of informants</li> <li>➤ Hearings in public where an adversarial approach is warranted or there is another public interest</li> <li>➤ Coercive information-gathering powers</li> <li>➤ Intrusive investigation methodologies, such as surveillance and telephone interception</li> </ul>
OTHER MODES TO ACHIEVE OBJECTIVES	<ul style="list-style-type: none"> <li>➤ 'Own-motion' investigation into systemic issues in administration</li> </ul>	<ul style="list-style-type: none"> <li>➤ Integrity testing</li> <li>➤ Controlled operations</li> <li>➤ Reviews of design and effectiveness of home agency anti-corruption programs</li> </ul>
REPORTING	<ul style="list-style-type: none"> <li>➤ To agency and complainant</li> <li>➤ Capacity to make a report public</li> </ul>	<ul style="list-style-type: none"> <li>➤ To agency and Minister (and, where warranted or required, Parliament)</li> <li>➤ Capacity to report to 'complainant'</li> <li>➤ Capacity to make a report public</li> </ul>
RESOURCES	<ul style="list-style-type: none"> <li>➤ Relatively inexpensive per complaint</li> </ul>	<ul style="list-style-type: none"> <li>➤ Resource intensive</li> </ul>

<sup>1</sup> Based on Commonwealth Ombudsman's February 1997 submission to the *Harrison Inquiry into the Australian Federal Police*. Unpublished.

WHAT OTHER INVESTIGATIVE POWERS DOES THE INTEGRITY COMMISSIONER HAVE?

The *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006* sets out various information-gathering powers that are available to the Integrity Commissioner.

The Integrity Commissioner and ACLEI authorised officers can use telecommunications interception and surveillance device technologies, conduct controlled operations,<sup>2</sup> employ assumed identities, and access financial transaction report information.

Other ACLEI powers are to:

- enter the premises of a law enforcement agency without prior warning to carry out an investigation and to seize articles
- apply to a Judge of the Federal Court for an order to confiscate a passport
- apply to a Judge for a warrant for the arrest of a person refusing or attempting to evade giving evidence
- apply for, and subsequently execute, a search warrant issued under the LEIC Act concerning corruption issues
- effect arrests relating to corruption issues.

Details of ACLEI's accountability safeguards are set out in Chapter 4.

<sup>2</sup> ControlledOperations can broadly be described as covert operations carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence. But for the issuing of a certificate under Part 1AB of the *Crimes Act 1914*, these operations may result in law enforcement investigators behaving unlawfully. One example of a controlled operation might involve an undercover operative purchasing or purporting to sell a prohibited substance, such as a drug, for an investigative purpose. But for the existence of a valid controlled operation certificate, the activity would be unlawful.



### 3. PROGRESS TOWARDS OUTCOMES

#### SOCIAL JUSTICE AND EQUITY

The purpose of ACLEI is to facilitate the detection, prosecution and prevention of corruption. As such, ACLEI is intended to be an effective deterrent against corrupt conduct by members of law enforcement agencies.

There is a link between ethical conduct in law enforcement, observance of the rule of law and social justice. Where law enforcement activities are undertaken fairly and according to law, social justice outcomes are maximised.

Conversely, corrupt activity can cause law enforcement outcomes to become skewed with adverse consequences for individual members of the public, as well as for society as a whole. Corruption also leads to wasted resources and a failure to achieve policy outcomes.

Corruption covers a broad spectrum of activities,<sup>1</sup> including:

- ▶ perverting the course of justice and other deceptive practices, such as bribery, extortion and other forms of interfering with testimony or prosecution processes, laying of false charges, falsifying evidence and 'verballing', committing perjury
- ▶ diverting police resources from their legitimate purposes
- ▶ showing favouritism or offering protection to criminal activity ('green-lighting'), for example by frustrating legitimate police investigation or leaking information in exchange for payment or other advantage ('kickbacks')
- ▶ misuse of detention powers, such as unwarranted use of the power of arrest and bail procedures
- ▶ misuse of intrusive powers, such as surveillance or telephone interception or use of search powers

- ▶ theft and other forms of serious criminal behaviour, either as a principal or accessory
- ▶ illicit drug-taking, drug importation, and drug trafficking and supply
- ▶ inappropriate use of force, including assault
- ▶ misuse of office to procure an advantage in matters of promotion, discipline or transfer, through patronage, friendship or personal prejudice
- ▶ seeking to cover-up or conceal corrupt behaviour or other misconduct
- ▶ obstructing inquiries of the Integrity Commissioner and others charged with investigating corruption and misconduct.

Toleration of corrupt activity can send the message that some would-be law enforcers consider themselves to be above, or apart from, the laws they are sworn to uphold.

The shielding or protection of criminal activity from proper investigation also results in unlawful and unjust outcomes, and reduces public confidence in the law and those who enforce it. Such conduct may also lead to weakened observance of the law. Amongst law enforcement members who act with integrity and according to the law, poor morale may result from the corrupt practice of others, further weakening legitimate law enforcement activities.

ACLEI aims to foster a fundamental awareness and appreciation among law enforcement agencies and their members of the requirement to act fairly and ethically.

<sup>1</sup> The typology is drawn from the *Final Report of the Royal Commission into the New South Wales Police Service, May 1997, Volume One* and an article by T. Saed and D. Bruce (1998) 'Inside and Outside the Boundaries of Police Corruption' in *African Security Review*, 7(2).

## ACLEI PERFORMANCE

The LEIC Act passed through Parliament in the period between the 2006-07 Budget (which was tabled by the Treasurer in May 2006) and the 2007-08 Budget (in May 2007). Because of this timing, the funding for establishing ACLEI and providing for its first six months of operation was appropriated to the Attorney-General's Department as a contingency in the 2006-07 Budget papers.

As a result, ACLEI was established within the outcome and output structure of the Portfolio Budget Statements of the Attorney-General's Department for the 2006-07 financial year. The establishment and initial operation of ACLEI comes under Output 2.1 of the Department's Portfolio Budget Statement. The 2006-07 Annual Report of the Attorney-General's Department will account for the Department's expenditure on ACLEI.

### ACLEI budget

The appropriation to establish ACLEI was \$2.465m in 2005-06 (including \$0.6m for the Department's costs), with a provision in Forward Estimates for \$2.001m in 2006-07 and \$2.022m in 2007-08.

In a 'building block' approach to agency development, ACLEI has been funded at a level that provides for basic operations to commence while further information is gathered about the resources that will be required to meet the corruption environment ACLEI encounters.

The Australian Government has indicated it will consider any recommendations of the Integrity Commissioner about resourcing as part of the normal budgetary process.

### Measuring ACLEI's performance

The 2007-08 Budget Papers introduced a separate outcome and output statement for ACLEI which will form the basis of financial accountability and performance reporting from 1 July 2007. The Forward Estimates remained unchanged.

The performance report below is based on the 2007-08 reporting framework. In addition, the report incorporates the performance reporting requirements of s 201 of the LEIC Act.

ACLEI has one outcome and one output, as follows.

<b>OUTCOME</b>	Assurance that Australian Government law enforcement agencies and their staff act with integrity
<b>OUTPUT</b>	Detect, investigate and prevent corruption in prescribed Commonwealth law enforcement agencies; assist law enforcement agencies to maintain and improve the integrity of staff members

ACLEI's performance measures include both quality and quantity indicators as set out in the following tables, and which are expanded upon in the sections below.

<b>QUALITY MEASURES</b>	Serious and systemic corruption in law enforcement is identified and addressed
	The quality of internal investigations into corruption matters by law enforcement agencies is monitored
	Law enforcement agency plans to prevent corruption and improve integrity are oversighted
	Reports by the Integrity Commissioner are accepted by the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
	The public is made aware that corruption allegations can be referred to the Integrity Commissioner for investigation
<b>QUANTITY MEASURES</b>	Number and complexity of investigations
	Amount and complexity of intelligence gathering
	Proportion of recommendations stemming from investigations that are accepted by the relevant agency
	Proportion of recommendations relating to potential criminal charges that proceed to prosecution
	Success rate for confiscation proceedings under the <i>Proceeds of Crime Act 2002</i>
	Number of reports/submissions to Government
	Number of presentations to Government and the community on integrity in law enforcement and the role of ACLEI

The detailed statistics relating to potential corruption issues are included at Annex 1, while a summary is provided in the following pages.



## IDENTIFYING CORRUPTION ISSUES

### Assessments

ACLEI's experience so far is that information about corruption matters comes to the Integrity Commissioner in a variety of forms – assertions, specific allegations, and suspicions. The information is not always about named people, though most relates to specific events. Occasionally, the information will be comprehensive and include evidence founding the allegation, and at other times there is little evidence to reveal how a suspicion has been formed.

Under the LEIC Act, information is received by the Integrity Commissioner in two ways:

- mandatory notifications from heads of law enforcement agencies (in respect of all potential corruption issues) and the Commonwealth Ombudsman (in respect of significant potential corruption issues), and
- voluntary referrals of information or allegations from all other sources.

All information is assessed upon receipt by ACLEI and entered onto a database as a potential corruption issue. Where the information is specific enough, the information is recorded in the form of an allegation that can then be analysed for its susceptibility to investigation.

The purpose of each assessment is to determine the validity of the information, to consider how the information fits with other information held by ACLEI, and to determine whether the information should lead to an investigation or be handled in some other way.

All assessments are documented and include, amongst other things, the decision itself, the reasons for the decision, and a summary of the material reviewed.

### Interpreting statistics

Each source of information has a place in ACLEI's statistics. Just because a potential corruption issue has been brought to the Integrity Commissioner's notice, it should not be inferred that every allegation will have substance.

There is a duty on agencies to notify the Integrity Commissioner of potential corruption issues. When ACLEI was established, the ACC thought it prudent to send a summary of the current major matters under consideration either by the ACC or another agency. These matters have been included in ACLEI's statistics for the year.

### Sources of information

From 30 December 2006 to 30 June 2007, the Integrity Commissioner received 18 notifications or referrals of allegations or information that raised potential corruption issues.

Table Two shows the sources of information that led to case assessments in 2006–07.

As Table Two indicates, ten of these related to the AFP and eight related to the ACC (some of which also incorporate matters involving the former NCA). The AFP Commissioner notified the Acting Integrity Commissioner of five corruption issues and the CEO of the ACC notified seven.

Six of the issues notified by the ACC were matters that had arisen prior to the establishment of ACLEI, but the ACC decided to bring them to the attention of the Acting Integrity Commissioner.

This year, no investigations were commenced on the Acting Integrity Commissioner's own initiative. However, the Acting Integrity Commissioner decided on his own initiative to expand the scope of a matter that had been notified to him.

**TABLE TWO:**  
SOURCES OF INFORMATION THAT LED TO CASE ASSESSMENTS  
IN 2006–07

	AFP	ACC*	FORMER NCA	TOTAL
<b>MANDATORY NOTIFICATION BY AFP COMMISSIONER OR ACC CEO</b> [s 19(1)]	5	7	0	12
<b>REFERRAL BY COMMONWEALTH OMBUDSMAN</b> [s 23(5)]	1	1	0	2
<b>OTHER PEOPLE OR GOVERNMENT AGENCIES</b> [s 23]	2	0	0	2
<b>PEOPLE IN CUSTODY</b> [ss 23 and 24]	2	0	0	2
<b>MINISTER</b> [s 18]	0	0	0	0
<b>ACLEI INTELLIGENCE/ 'OWN INITIATIVE' INVESTIGATION</b> [s 38]	0	0	0	0
<b>TOTAL</b>	<b>10</b>	<b>8</b>	<b>0</b>	<b>18</b>

\* Definition includes members and former members of the ACC who were also members of the former NCA.

### Case handling

In dealing with corruption issues, the Integrity Commissioner must consider a number of criteria set out in s 27 of the LEIC Act. Broadly speaking, these criteria guide the Integrity Commissioner to reach a decision that has regard to:

- the investigative resource distributed across government
- the desirability of law enforcement agencies retaining responsibility for the conduct of their staff, and
- the public interest in demonstrating that investigations into corruption are not compromised.

The LEIC Act also obliges the Integrity Commissioner to give priority to corruption issues that relate to corrupt conduct that constitutes serious corruption or systemic corruption (s 16).

Table Three summarises how cases were handled in 2006-07.

After assessing the 18 matters received, in nine instances the Acting Integrity Commissioner decided that investigation by ACLEI was not warranted. Three of these matters, none of which is identified as a significant corruption issue, were returned to the relevant agency for its investigation to continue. Two other matters were not investigated as they had already been the subject of proceedings before a court. In four other instances, it was decided that investigation was not warranted having regard to all the circumstances.

The Integrity Commissioner may oversee agency investigations by providing general guidance about the planning, and carrying out, of an investigation.

Two of the 18 matters were referred back to the agency with the Integrity Commissioner overseeing the investigation, pursuant to s 62 of the LEIC Act. One of the investigations oversighted was concluded to the satisfaction of the Integrity Commissioner within the reporting period.

Investigations into four matters are being undertaken by ACLEI and are continuing.

Three of the 18 matters received were still under assessment at the end of the reporting year.

TABLE THREE:

HOW CASES WERE HANDLED IN 2006-07

	AFP	ACC*	FORMER NCA	TOTAL
ACLEI INVESTIGATION [s 26(1)(a)]	1	3	0	4
ACLEI JOINT INVESTIGATION [s 26(2)]	0	0	0	0
PUBLIC INQUIRY AT REQUEST OF MINISTER [s 71]	0	0	0	0
AGENCY INVESTIGATION MANAGED BY ACLEI [s 26(1)(b)(i) or 26(1)(d)]	0	0	0	0
AGENCY INVESTIGATION OVERSEEN BY ACLEI [s 26(1)(b)(ii) or 26(1)(e)]	1	1	0	2
ACLEI SATISFIED THAT AGENCY SHOULD HANDLE WITHOUT SUPERVISION [s 26(1)(b)(iii)]	3	0	0	3
REFER TO AFP FOR INVESTIGATION [s 26(1)(c)]	N/A	0	0	0
REFER TO ANOTHER GOVERNMENT AGENCY TO INVESTIGATE A SECONDEE [s 29(6)]	0	0	0	0
DECIDE TO TAKE NO FURTHER ACTION (AFTER ASSESSMENT) [s 31(2)(b) or 32(2)]	3	3	0	6
REFUSE TO INVESTIGATE FOLLOWING A REQUIREMENT TO PUT ALLEGATION IN WRITING [s 23(4)]	0	0	0	0
STILL UNDER ASSESSMENT AT CLOSE OF REPORTING YEAR	2	1	0	3
<b>TOTAL</b>	<b>10</b>	<b>8</b>	<b>0</b>	<b>18</b>

\* Definition includes members and former members of the ACC who were also members of the former NCA.

## ACLEI INVESTIGATIONS

As noted above, ACLEI commenced four investigations into corruption issues during the reporting year and those investigations are continuing.

Table Four sets out the nature of the corruption issues being investigated by ACLEI.

Beyond the requirements of annual reporting, and the desirability of reporting on the Integrity Commissioner's use of powers, ACLEI will not normally report publicly on investigations that are incomplete.

**TABLE FOUR:**  
TYPE OF POTENTIAL CORRUPTION ISSUES INVESTIGATED

	AFP	ACC*	FORMER NCA	TOTAL
<b>ABUSE OF OFFICE</b> [s 6(1)(a)]	1	2	0	3
<b>PERVERT THE COURSE OF JUSTICE</b> [s 6(1)(b)]	0	1	0	1
<b>CORRUPTION OF ANY OTHER KIND</b> [s 6(1)(c)]	0	0	0	0
<b>TOTAL</b>	1	3	0	4

\* Definition includes members and former members of the ACC who were also members of the former NCA.

## USE OF POWERS

In investigating a matter under s 26(1)(a) of the LEIC Act or conducting a public inquiry under s 71, the Integrity Commissioner may access certain investigative powers. These powers, known as 'coercive information-gathering powers', are set out in Part 9 of the LEIC Act.

The Acting Integrity Commissioner's exercise of powers is set out in Table Five.

During the reporting year, the Acting Integrity Commissioner exercised coercive information-gathering powers in relation to three matters.

Two hearings were held in private during the period. A total of five witnesses appeared, of whom one was legally represented. No witnesses applied to the Attorney-General for financial assistance in respect of their attendance (s 103, LEIC Act).

**TABLE FIVE:**  
USE OF COERCIVE INFORMATION-GATHERING POWERS

	TOTAL
<b>NOTICE TO GIVE INFORMATION</b> [S 75(1)(A)]	3
<b>NOTICE TO PRODUCE DOCUMENTS OR THINGS</b> [S 75(1)(B)]	3
<b>SUMMONS TO ATTEND A HEARING TO GIVE EVIDENCE AND/OR PRODUCE DOCUMENTS OR THINGS</b> [S 83]	5

No applications were made to the Federal Court for delivery of a witness's passport or for their arrest (ss 97-101, LEIC Act).

No applications were made for a search warrant (Part 9, Division 4, LEIC Act).

No applications were made for warrants under the *Telecommunications (Interception and Access) Act 1979* or the *Surveillance Devices Act 2004*.

No controlled operations certificates were issued under Part 1AB of the *Crimes Act 1914*.

No applications were made for acquisition of an assumed identity under Part 1AC of the *Crimes Act 1914*.

## THROUGHPUT AND TIMELINESS

ACLEI considers that a matter is closed when an investigation is finalised or discontinued, when a matter is referred to another agency under ACLEI management or oversight and is subsequently completed, when a matter is referred to an agency without further oversight or management by the Integrity Commissioner, or when a decision is made that no investigation by ACLEI is warranted.

Open matters include ongoing investigations, investigations being managed or oversighted by ACLEI under s 26 of the LEIC Act not yet completed, and matters still under assessment.

Table Six shows the number of cases carried forward to 2007-08.

**TABLE SIX:**  
SUMMARY OF CASE THROUGHPUT IN 2006-07

	AFP	ACC*	FORMER NCA	TOTAL
OPEN (CARRIED FORWARD TO 2007-08)	4	4	0	8
CASES CLOSED	6	4	0	10
TOTAL	10	8	0	18

\* Definition includes members and former members of the ACC who were also members of the former NCA.

Due to the varying nature and complexity of corruption investigations, it is not possible or desirable to apply strict timelines on the completion of assessments or investigations. Many factors that affect timeliness are outside of the control of ACLEI. Examples are the availability of witnesses or delay in gaining access to necessary files.

The Integrity Commissioner is mindful of the need to ensure that matters are dealt with efficiently and has established a management reporting regime to ensure all matters are progressed appropriately. The initial assessment is a key component of this approach. Case management strategies for investigations are also reviewed periodically. Agency investigations being managed or oversighted by ACLEI are also subject to periodic review.

At 30 June 2007, no ACLEI investigations had been finalised. Given that ACLEI has only operated for six months, this result is not unexpected. The majority of reports on investigations held over from this year will be finalised in the first half of the 2007-08 reporting period.

## ACCEPTANCE OF RECOMMENDATIONS

One of ACLEI's performance measures relates to the value that ACLEI can add by making recommendations and offering observations to heads of law enforcement agencies as a result of assessments and investigations. Matters that might be canvassed relate to improving internal investigation performance, identifying emerging corruption risks, building resilience to corruption through strengthening agency processes, and enhancing accountability systems.

During the year, one matter relating to a particular operation undertaken by a law enforcement agency was notified to ACLEI. The matter had been investigated by the agency and the results provided to ACLEI for review. The Acting Integrity Commissioner determined that no further investigation was required. However, observations about the case were offered to the agency to assist in improving its search warrant procedures.

## REPORTS

Under the LEIC Act, investigation reports are to be provided to the Minister and, in relevant circumstances, to the head of a law enforcement agency. Where an investigation relates to a person seconded from another government agency, the report should also be provided to the head of the government agency or to a State or Territory integrity agency, as the circumstances warrant.

If a public hearing has been held, the LEIC Act requires the Minister to present the report to both Houses of Parliament within 15 sitting days of receiving it. It follows that a report of a public inquiry requested by the Minister (s 73) must also be presented to Parliament by the Minister.

The Integrity Commissioner may also give the Minister a special report at any time for presentation to Parliament (s 204). A special report can relate to the operations of the Integrity Commissioner, or to the performance of the Integrity Commissioner's functions or exercise of powers.

Finally, the LEIC Act empowers the Integrity Commissioner to disclose information to the public, or to a section of the public, when it is in the public interest to do so (s 209).

Table Seven summarises these arrangements.

**TABLE SEVEN: REPORTING REQUIREMENTS**

	REPORT TO:	AND TO:
<b>ACLEI INVESTIGATION</b> [s 54]	Minister [s 55]	Head of law enforcement agency, government agency, or head of a State or Territory integrity agency, as relevant. [s 55]  Minister to lay report before each House of Parliament (if a public hearing was held) [s 203]
<b>PUBLIC INQUIRY REQUESTED BY THE MINISTER</b> [s 73]	Minister [s 74]	Minister to lay report before each House of Parliament [s 203]
<b>INTEGRITY COMMISSIONER INVESTIGATION INTO AN ACLEI CORRUPTION ISSUE</b> [s 162]	Minister [s 163]	Minister to lay report before each House of Parliament (if a public hearing was held) [s 203]
<b>SPECIAL INVESTIGATION INTO AN ACLEI CORRUPTION ISSUE</b> [s 169]	Minister [s 170]	Minister to lay report before each House of Parliament (if a public hearing was held) [s 203]
<b>SPECIAL REPORT FOR PRESENTATION TO PARLIAMENT</b> [s 204]	Minister [s 204(1)]	Minister to lay report before each House of Parliament [s 204(2)]  If a special report relates to the ACC, the Minister is to provide a copy to the Inter-Governmental Committee* for an opportunity to provide comments to Parliament. [s 205]  Parliamentary Joint Committee on ACLEI, for an opportunity to provide comments to Parliament. [215(1)(c)(ii)]
<b>DISCLOSURE IN THE PUBLIC INTEREST</b> [s 209]	The public, or a section of the public [s 209(1)]	–
<b>DISCLOSURE TO THE PARLIAMENTARY JOINT COMMITTEE ON ACLEI</b> [s 216]	The Parliamentary Joint Committee on ACLEI [s 216(1)]	–

\* The Inter-Governmental Committee is established by s 8 of the *Australian Crime Commission Act 2002*.

As no investigations were completed in the reporting period, no investigation reports were presented to the Minister. No special reports were prepared under s 204.

The Integrity Commissioner does not propose to report on disclosures made under s 209 where the disclosure was made to a person or to a section of the public only.

During the reporting year, the Acting Integrity Commissioner appeared once before the Parliamentary Joint Committee on ACLEI (s 216).

## PATTERNS AND TRENDS IN CORRUPTION

The LEIC Act (s 204(2)(c)) requires the Integrity Commissioner to report on any patterns and trends in corruption in law enforcement that have come to the Integrity Commissioner's attention in the performance of his functions.

At this early stage of ACLEI's operations, when investigation of any matter notified to ACLEI has yet to be concluded, it is possible only to report in broad terms about patterns and trends.

The following are examples of matters brought to the notice of the Integrity Commissioner.

### Evidence before courts

Of the 18 potential corruption issues ACLEI has dealt with, five allegations related to the veracity of evidence presented by law enforcement officers before courts.

The common concern raised by these cases underlines the importance of the accuracy and completeness of the evidence that law enforcement officers give before courts, and of proper processes to ensure the continuity of evidence. The LEIC Act recognises the potential for wrongful convictions to occur, as a result of false evidence given by police, and provides the Integrity Commissioner with a specific power (s 147) to bring evidence to the notice of the Minister.

Much has been done in the last 15 years to protect against false evidence being presented to courts. One example of this in the Commonwealth sphere is the enactment of the *Evidence Act 1995* which introduced uniform standards for evidence and other important safeguards. Nevertheless, the potential remains for tainted evidence to be put before a court.

ACLEI is cautious that unmeritorious corruption allegations of this type should not become a vehicle for people wishing to improperly delay or hinder the judicial process. Consequently, ACLEI carefully manages each case to assess the value of the information provided. As part of this assessment, the Integrity Commissioner considers whether the allegations have already been raised before a court or, if proceedings are ongoing, if it is preferable for the allegations to be tested in the judicial process.

ACLEI will discuss these issues with the Commonwealth Director of Public Prosecutions over the coming year to develop appropriate protocols for discussing such cases and to foster a common understanding of the corruption risk inherent in the prosecution process.

### Information from people in custody

The LEIC Act has special provisions to enable people in custody to communicate in confidence with ACLEI (s 24).

Two matters have been referred to ACLEI from people in prison for criminal offences. Information relating to one of these matters was referred by two different persons in custody. Another matter was notified by an agency after the matter was first raised with the agency by a person in custody.

The Integrity Commissioner will consider options for making prisoners more aware of ACLEI's role.

### Unauthorised disclosure

Three matters reported to ACLEI alleged unauthorised access and or release of personal or confidential information by law enforcement officers. This issue has figured prominently in the work of other police oversight agencies, and therefore is a special category of interest for ACLEI.

One authority<sup>2</sup> in the United Kingdom has recognised an increase in unauthorised access and disclosure of police information in that country, relative to other forms of corruption. The researcher noted also a concomitant increase in information held in police, government and other regulatory databases.

The value to criminals of confidential law enforcement information has been well understood for over a century. More 'traditional' manifestations featured 'tip-offs' ahead of police raids, disclosing the identity of police informants, or the falsification of police records. While those apprehensions persist in policing, contemporary concerns also include unauthorised release of information about counter-surveillance, and other law enforcement methodologies.

### Illicit drugs

Four corruption matters referred to ACLEI this year were allegations relating variously to the importation and trafficking of illicit drugs and their supply.

Drugs have featured prominently in police corruption cases in Australia since the 1960s and continue to cause concern. The trade in illicit drugs has provided what some researchers have termed an 'invitational edge'<sup>3</sup> at which the temptations to corruption are particularly acute. In the case of drugs, this is largely because of the high monetary values involved, the influence of organised crime, and an historical lack of supervision of police activities.

This aspect of law enforcement is likely to attract the Integrity Commissioner's interest in future years.

<sup>2</sup> Miller (2003) 'Police Corruption in England Wales: An assessment of current evidence'. *Home Office Online Report* 11/03. U.K. p.13.

<sup>3</sup> Manning and Redlinger (1979), cited in Newham (2000) 'Towards Understanding and Combating Police Corruption'. *Crime and Conflict*, No. 19, pp. 21-25.



RECOMMENDATIONS FOR CHANGES TO LAWS OR ADMINISTRATIVE PRACTICE

Section 201(2)(d) of the LEIC Act provides the Integrity Commissioner with the opportunity to comment upon and, if warranted, make recommendations for changes to the laws of the Commonwealth or administrative practices of Commonwealth government agencies.

The provision is a potentially powerful one, and reflects the experience of major corruption inquiries elsewhere (such as the Fitzgerald Inquiry in Queensland and the Wood Royal Commission in NSW). Such inquiries noted that legislation and administrative practices can create the preconditions for police corruption to occur.

While consideration will need to be given by the incoming Integrity Commissioner to potential changes to the LEIC Act that are of an administrative nature, there is no cause to make recommendations about other matters in this report.

PROSECUTIONS

Since no investigations have been finalised during the reporting year, no prosecution briefs have been referred by the Acting Integrity Commissioner.

CONFISCATION PROCEEDINGS

The objects of the *Proceeds of Crime Act 2002* include depriving offenders of the proceeds of their crimes, preventing the reinvestment of those proceeds into further criminal activities, punishing offenders and deterring others from breaching Commonwealth laws.

Section 213 of the *Proceeds of Crime Act* enables the Integrity Commissioner (amongst other Commonwealth officers) to issue notices requiring financial institutions to provide information about accounts and transactions. Such notices can be issued in order to decide whether to take action under the *Proceeds of Crime Act* or in relation to proceedings commenced under it.

In addition, the Integrity Commissioner and other officers authorised by the *Proceeds of Crime Act* can exercise a range of powers, including making an application for a restraining order on a person's property and obtaining search warrants relating to proceeds of crime investigations.

No matters were commenced under the *Proceeds of Crime Act* during the reporting period.

## ANTI-CORRUPTION REVIEWS

The nature of corruption is to seek to remain undetected. Corruption is susceptible to detection where behavioural anomalies or unexpected outcomes are apparent, where accountability procedures reveal aberrations, or where people, such as 'whistleblowers', informants or complainants, supply information about corruption. Targeting high-risk corruption areas has been shown to be beneficial.

It is anticipated that ACLEI will review the anti-corruption plans of law enforcement agencies, conduct assessments of high-risk corruption areas of operation, and appraise the adequacy of agency safeguards to detect corrupt activity.

At this point, it is difficult to know how much of ACLEI's resources will need to be devoted to assessing and investigating notified or referred corruption information, and how much can be directed at ensuring the notification system is working as effectively as it can.

To date, no anti-corruption reviews have been commenced.

## INTELLIGENCE GATHERING

One of the functions of the Integrity Commissioner is to collect, correlate, analyse and disseminate information and intelligence in relation to corruption in law enforcement agencies (s 15(e)).

A Manager Intelligence position has been established to implement ACLEI's intelligence gathering and dissemination capacity.

During the year, ACLEI purchased and implemented a case management and intelligence system. This system has the capacity to store and retrieve a wide range of investigation and intelligence data.

A Memorandum of Understanding is being negotiated with the Australian Transaction Reports and Analysis Centre (AUSTRAC) to provide ACLEI with access to financial transaction information under the *Financial Transactions Reports Act 1988*. ACLEI is also discussing arrangements with the Australian Electoral Commission to gain access to electoral roll information. These arrangements will be finalised early in the 2007-08 year. Access to these and other systems will enhance ACLEI's intelligence gathering capability.

The current intelligence holding is small, but as the data accumulates ACLEI will be in a position to correlate, analyse and disseminate relevant information and intelligence about corruption in law enforcement agencies, as required by the LEIC Act.

## PRESENTATIONS ABOUT INTEGRITY

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The Acting Integrity Commissioner made three addresses in the reporting period, primarily to introduce the new law enforcement integrity framework. Further details of these are set out in Annex 2 of this report.

Talking about integrity and the new anti-corruption framework serves many purposes. Importantly, doing so supports those who seek to maintain standards of good behaviour. For those who may be tempted to act corruptly, being made aware of the anti-corruption program – and the chance of being caught – can be an effective deterrent. In addition, imparting an understanding of how confidential matters would be handled can improve the likelihood of corruption concerns being brought forward.

During 2007-08, ACLEI and the Integrity Commissioner intend to develop a communication strategy to engage directly with members of law enforcement agencies. The purpose will be to advertise ACLEI's existence and to ensure that its processes are known.

## STATE INTEGRITY AGENCIES

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A strong, ongoing working relationship with each of the State agencies is vital to achieving a coordinated effort to ensure police integrity.

Early in 2007, the Acting Integrity Commissioner visited each of the State anti-corruption bodies to establish liaison, discuss operational matters and explore potential partnerships and resource sharing. These visits included the Crime and Misconduct Commission of Queensland, the Corruption and Crime Commission of Western Australia, the Police Integrity Commission of New South Wales, and the Office of Police Integrity of Victoria.

As ACLEI is the smallest of the law enforcement integrity agencies in Australia, the visits were valuable in setting ACLEI's initial operational priorities. While each of these agencies differs in terms of jurisdiction, powers and scope of work, each was able to provide helpful guidance concerning the establishment and development of ACLEI.

## INTERNATIONAL

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Australia ratified the United Nations Convention Against Corruption in December 2005 and was among the first of the Asia-Pacific Economic Cooperation (APEC) members to do so. The Acting Integrity Commissioner participated in the meeting of the Anti-Corruption and Transparency Taskforce in Cairns in June as part of APEC 2007. The titles of the Acting Integrity Commissioner's speeches to the meeting can be found at Annex 2.

This year, the Acting Integrity Commissioner also assisted the International Program of the Commonwealth Ombudsman by hosting the Director of the Leadership Branch, Ombudsman Commission of Papua New Guinea, during his visit Australia in June 2007. The visit provided an opportunity to reflect on ongoing law enforcement initiatives in the Ombudsman Commission and measures to stem police corruption.



## 4. PUBLIC CONFIDENCE IN ACLEI

### INDEPENDENCE

The statutory office of Integrity Commissioner has an independent relationship with government. The Governor-General appoints the Integrity Commissioner. The appointment can only be terminated by the Governor-General by reason of misbehaviour or physical or mental incapacity.

ACLEI and the Integrity Commissioner are not subject to direction from the Minister. Nor does the Integrity Commissioner require the prior authority of Government to exercise any of his or her discretionary powers.

While reports of the Integrity Commissioner are normally presented to the Parliament by the Minister, the Integrity Commissioner has an independent capacity to disclose information to the public (s 209, qualified by s 149 of the LEIC Act) where he or she considers it is in the public interest to do so.

As a measure to ensure the continuing independence of the Integrity Commissioner from any undue influence from any person or agency, the LEIC Act limits the tenure of the Integrity Commissioner to a total of five years (s 175(3)). The same limit applies to the appointment of any Assistant Integrity Commissioner (s 185(3)).

### POWERS AND ACCOUNTABILITY

The powers and authorities provided by Parliament to the Integrity Commissioner are substantial. The safeguards on the exercise of these powers are designed to ensure that they are used lawfully, fairly and appropriately.

The expectation of Government is that the Integrity Commissioner should ensure that ACLEI maintains the highest standards in investigation practice and accountability. This principle has guided the development of policies and practices during ACLEI's establishment phase.

### CLEAR PROCEDURES

One of ACLEI's priorities has been to establish policy and procedures manuals.

Consistent with a recommendation<sup>1</sup> of the Senate Legal and Constitutional Legislation Committee, the Acting Integrity Commissioner published a comprehensive set of 'Practice Notes' in May 2007 on the ACLEI website. The Practice Notes set out the procedures for conducting hearings, whether in private or in public, including the rights of witnesses and their legal counsel.

ACLEI has also put in place interim operational guidelines relating to surveillance devices, telecommunications interception, controlled operations, assumed identities, informant management, exhibit handling, forensic procedures and witness protection. The interim guidelines take into account the experience of similar agencies and guidance provided by prosecutorial authorities. They also comply with the Australian Government Investigation Standards (AGIS).

A review process will occur in 2007-08 to ensure that the operational guidelines match ACLEI's specific circumstances, prior to being submitted for approval to the new Integrity Commissioner.

<sup>1</sup> Senate Legal and Constitutional Legislation Committee. *Report on the Law Enforcement Integrity Commissioner Bill 2006*, May 2006, Recommendation 6.

## OPPORTUNITY TO BE HEARD

A report, whether to the Minister or to Parliament, follows an investigation by the Integrity Commissioner under Part 6 of the LEIC Act.

The LEIC Act (ss 51 and 210) prohibits the Integrity Commissioner from making findings or expressing opinions that are critical of individuals or government agencies unless an affected person has been given a reasonable opportunity to make a submission about the proposed finding or opinion. This approach is a protection against improper use of the Integrity Commissioner's reporting power.

In recognition of the Integrity Commissioner's law enforcement role, the opportunity to be heard does not extend to cases which might compromise ongoing investigations or the criminal justice or agency disciplinary processes (s 51(2)).

## ETHICAL STANDARDS

As an integrity agency, ACLEI sets high standards with regard to operational security. All ACLEI positions are Designated Security Assessed Positions and ACLEI staff are required to maintain appropriate security clearances relevant to their access to operational information.

ACLEI staff are also required upon commencement to submit a Declaration of Private Interests to the Integrity Commissioner and to update that declaration as their personal circumstances change. This requirement ensures that any potential conflicts of interest associated with ACLEI employment, real or perceived, are identified and appropriate action taken.

The LEIC Act, at Part 12, provides for dealing with 'ACLEI corruption issues' (as defined by the Act) that relate to the conduct of the Integrity Commissioner and ACLEI current and former staff members. For example, all allegations of corruption that implicate the Integrity Commissioner must be directed to the Minister.

To reinforce this requirement, s 174 creates an offence (with a penalty of imprisonment for 6 months) where the Integrity Commissioner or ACLEI staff fail to report an ACLEI corruption issue.

The provisions of Part 12, as well as the confidentiality requirements for ACLEI staff (s 207, LEIC Act), are brought to the attention of staff at the commencement of employment or secondment to ACLEI. So too are the relevant provisions of the *Public Service Act 1999*, including the Australian Public Service (APS) Values (s 10) and APS Code of Conduct (s 13) and related misconduct procedures.

Underlining ACLEI's commitment to ethical standards, a comprehensive set of Agency Policy Advices are in preparation. At the end of the reporting year, the Acting Integrity Commissioner had approved a number of Advices designed to address part of ACLEI's corruption risk profile. They include: conflicts of interest, managing harassment in the workplace, acceptance of gifts and benefits, managing breaches of the APS Code of Conduct, 'whistleblowing', outside employment, email and internet policy, recruitment, use of mobile phones, and approved use of ID cards and badges.

## QUALITY REVIEW OF PERFORMANCE

Maintaining the confidence of government, law enforcement agencies and the public in the integrity and efficiency of ACLEI is essential to its role.

ACLEI recognises the need to ensure adherence to operating procedures approved by the Integrity Commissioner and to demonstrate the responsible exercise of the powers that are provided for in legislation. There is also a need to learn from key operations, make assessments about how well ACLEI performed in response, and to address any shortcomings in ACLEI's performance.

There are several models of quality assurance that ACLEI might adopt, and these will be evaluated in the coming year.

## PARLIAMENTARY JOINT COMMITTEE

In accordance with Part 14 of the LEIC Act, a Parliamentary Joint Committee (PJC) has been established. The duties of the PJC include:

- monitoring and reviewing the Integrity Commissioner's performance of his or her functions, with particular reference to use of coercive powers
- reporting to both Houses of Parliament, with such comments as it thinks fit, on any matter connected with the performance of the Integrity Commissioner's functions or relating to ACLEI that the Committee considers should be directed to the attention of Parliament
- examining each annual report and any special reports and report to the Parliament on any matter appearing in, or arising out of, any of those reports
- examining trends and changes in law enforcement in so far as they relate to corruption, corruption generally in Australian Government agencies with law enforcement functions, and
- reporting to the Parliament on any changes that the Committee thinks desirable to the Integrity Commissioner's functions or powers, the procedures followed by the Integrity Commissioner or ACLEI's structure.



The PJC is an essential element in ACLEI's accountability framework, by which the Integrity Commissioner can work with the Parliament, but also be subject to active Parliamentary oversight.

The PJC provides a strategic counter-balance to ACLEI's exemption from accountability mechanisms that normally apply to Government agencies, such as the *Archives Act 1983* and the *Privacy Act 1988*, and s 13 of the *Administrative Decisions (Judicial Review) Act 1977* concerning the requirement to give a statement of reasons.

The Acting Integrity Commissioner attended a meeting of the PJC on 14 June 2007 to brief Committee members on the establishment of ACLEI and to answer questions.

## PROCESS ACCOUNTABILITY

Many of ACLEI's powers and authorities require the prior approval of an external issuing officer, usually a Judge, a Federal Magistrate or a nominated Member of the Administrative Appeals Tribunal. Examples include applying for:

- a search warrant (s 108 of the LEIC Act or Part 3-5 of the *Proceeds of Crime Act 2002*)
- a warrant to use or retrieve a data surveillance device, a listening device, an optical surveillance device or a tracking device (Part 2, *Surveillance Devices Act 2004*)
- a warrant to intercept telecommunications or access stored communications (ss 46, 46A & 116 *Telecommunications (Interception and Access) Act 1979*), and
- an order that a person deliver his or her passport to the Integrity Commissioner (s 97, LEIC Act) or for an arrest warrant following a failure to surrender a passport (s 99, LEIC Act).

The approval to exercise other powers may be given to authorised ACLEI officers by the Integrity Commissioner. In such cases, the relevant legislation also authorises the Commonwealth Ombudsman to inspect records relating to the authorisation and other matters surrounding the exercise of the power. In some circumstances, the admissibility of the evidence collected through the exercise of a power may also be subject to review in a court. Examples in this class include:

- undertaking controlled operations (Part 1AB of the *Crimes Act 1914*), and
- emergency authorisations to use or retrieve surveillance devices (Part 3, *Surveillance Devices Act 2004*).

Laws applying to ACLEI also provide that the use of some powers must be reported to the Attorney-General, and in some cases to the Parliament. These include:

- a warrant to use or retrieve a data surveillance device, a listening device, an optical surveillance device or a tracking device (*Surveillance Devices Act 2004*)
- a warrant to intercept telecommunications or access stored communications (*Telecommunications (Interception and Access) Act 1979*);
- undertaking controlled operations (Part 1AB of the *Crimes Act 1914*), and
- utilising assumed identities (Division 6, Part IAC of the *Crimes Act 1914*).

In combination, these processes ensure that the granting of intrusive powers is subject to a rigorous process that provides safeguards against their misuse.

In addition, the exercise of intrusive powers is restricted to a person specifically authorised by the Integrity Commissioner. Under the LEIC Act, such a person must be a staff member of ACLEI and either a member of an Australian police force or a person who the Integrity Commissioner considers has suitable qualifications or experience.

As an additional safeguard, relevant legislation also provides for a range of offences for making false statements to obtain warrants or authorisations, and executing unauthorised warrants.

## COURT PROCEEDINGS INVOLVING THE INTEGRITY COMMISSIONER

The authorities and powers of ACLEI and the Integrity Commissioner are open to review before the courts, as with any other government agency exercising law enforcement powers.

In consideration of ACLEI's coercive powers and integrity oversight role, a staff member of ACLEI is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith in the exercise of the staff member's powers or duties (s 222 of the LEIC Act). For similar reasons, an ACLEI staff member is not compellable to give evidence in third party court proceedings (s 211).

There were no court or tribunal proceedings involving ACLEI or the Integrity Commissioner in the reporting period.

There were also no applications made under the *Administrative Decisions (Judicial Review) Act 1977* for orders of review in respect of matters arising under the LEIC Act.

## COMMONWEALTH OMBUDSMAN

The Commonwealth Ombudsman contributes to the accountability of ACLEI in three ways: independent review of ACLEI's complaint handling on complaint from a member of the public; 'own motion' investigation into matters of ACLEI's administration; and monitoring ACLEI's compliance with legislation relating to use of certain intrusive and covert powers.

### Complaint handling

A person dissatisfied with their interactions with ACLEI may complain to the Integrity Commissioner. Should the matter remain unresolved, the person may refer the complaint to the Commonwealth Ombudsman who will decide how the matter will be handled. There is no fetter in either the *Ombudsman Act 1976* (Ombudsman Act) or the LEIC Act that prevents the Ombudsman from considering complaints about the performance of the Integrity Commissioner's functions by ACLEI staff.

ACLEI is developing a Client Service Charter which will set out what ACLEI does, and what people can expect in their dealings with ACLEI. The Charter will include information about how to raise a complaint with the Integrity Commissioner.

No investigations into complaints about ACLEI were notified to the Acting Integrity Commissioner by the Commonwealth Ombudsman in the reporting period.

### Own motion investigations

The Commonwealth Ombudsman may also decide to inquire into matters of administration on his or her own motion. In doing so, the Ombudsman may use the coercive information-gathering powers provided for in the Ombudsman Act. The Ombudsman can provide an investigation report to the portfolio Minister, and may also decide to make public an investigation report.

No own motion investigations involving ACLEI were notified to the Acting Integrity Commissioner by the Commonwealth Ombudsman in the reporting period.

## Inspections and monitoring

ACLEI's use of particular intrusive or covert powers is subject to the inspection and monitoring of the Commonwealth Ombudsman. Inspections are made at least annually, and the Ombudsman may also inspect ACLEI's records at any time. The Ombudsman is required to report annually to the Parliament on the comprehensiveness and adequacy of ACLEI's records relating to these powers.

The records that are subject to inspection relate to powers exercised under the following Acts:

- ▶ *Surveillance Devices Act 2004*
- ▶ *Telecommunications (Interception and Access) Act 1979*
- ▶ Part 1AB of the *Crimes Act 1914* (controlled operations).

In addition, s 218 of the LEIC Act requires the Ombudsman to provide a briefing every 12 months to the PJC about the Integrity Commissioner's involvement in controlled operations. The PJC meets in private for this purpose.

During the year, discussions were held between ACLEI and the Commonwealth Ombudsman's office to ensure that ACLEI is aware of its record-keeping and reporting obligations, and to enable the Ombudsman to conduct efficient inspections.

As ACLEI has not yet used powers that are subject to inspection, formal inspections by the Ombudsman returned a 'nil result'.

## AUDITOR-GENERAL

The Auditor-General is responsible under the *Auditor-General Act 1997* for providing auditing services to the Parliament and public sector entities such as ACLEI. The Australian National Audit Office (ANAO) supports the Auditor-General, who is an independent officer of the Parliament.

As well as financial audits, the ANAO may conduct performance audits of selected areas of public administration. The ANAO has recourse to extensive powers of access to Commonwealth documents and information to support its role.

ACLEI was not subject to a performance audit by the Auditor-General in the reporting period.

## SENATE ESTIMATES

Estimates of government expenditure are referred to Senate committees as part of the annual Budget cycle. This opportunity to examine the operations of government plays a key role in the parliamentary scrutiny of the executive.

ACLEI responds to the Senate Standing Committee on Legal and Constitutional Affairs. At a public hearing, agency officials are questioned directly by members of the Senate Committee about the objectives, operational procedures and efficiency of the programs for which they are responsible.

The Senate Committee has no power to take evidence in private and all documents officially received as evidence by the committees become public documents.

The Acting Integrity Commissioner appeared before the Senate Committee on 23 May 2007. The proceedings of the hearing are published on the Parliament of Australia website, [www.aph.gov.au](http://www.aph.gov.au).

## FREEDOM OF INFORMATION

The *Freedom of Information Act 1982* (FOI Act) extends the right of every person to access to information in the possession of the Australian Government and its authorities. The FOI Act requires agencies:

- to publish information about their operations and powers affecting members of the public as well as their manuals and other documents used in making decisions and recommendations affecting the public, and
- to provide access to documents in their possession unless the document is within an exception or exemption specified in the legislation.

Public access to all documents in the possession of ACLEI and the Integrity Commissioner is not possible. Confidentiality must be maintained to protect essential public interests and the private and business affairs of persons and organisations about whom information is collected. A disagreement about decisions relating to FOI can be heard by the Administrative Appeals Tribunal, or a complaint (for example, about delay) can be made to the Commonwealth Ombudsman.

ACLEI contributes quarterly and annuals returns for the Attorney-General's report to Parliament under s 93 of the FOI Act.

In the reporting year, ACLEI did not receive any requests for access to documents, or for their correction or amendment, under the FOI Act.

See Annex 3 for ACLEI's *Freedom of Information Statement*, made under s 8 of the FOI Act.

## PRIVACY MANAGEMENT

The acts and practices of ACLEI, including those of the Integrity Commissioner, are exempt from investigation by the Privacy Commissioner under the *Privacy Act 1988*. This situation also means that ACLEI is not bound by the Information Privacy Principles of the *Privacy Act*.

The Integrity Commissioner recognises the importance of appropriate handling of personal information. As far as possible, the Information Privacy Principles and the Privacy Commissioner's Guidelines form an important part of ACLEI's management of personal information.

The principles and Guidelines inform the Integrity Commissioner's decisions about collecting, storing, updating and releasing personal information, and undertaking data-matching programs with other agencies. They also complement ACLEI's stringent confidentiality obligations under ss 207-211 of the LEIC Act, the applicable secrecy provisions of other specific Acts under which ACLEI operates, and s 70 of the Crimes Act, which creates an offence for unauthorised disclosure of information by public officers.

## REVIEW OF THE LEIC ACT

To ensure the effectiveness of ACLEI, s 223A of the LEIC Act provides for a formal review of the first three years of the operation of the Act. The review may be conducted by the Parliamentary Joint Committee on ACLEI or, if they prefer, another person appointed by the Minister. In either case, the report of the review is to be tabled in the Parliament.



## 5. CORPORATE AND COMMUNICATION

### ACLEI'S ESTABLISHMENT PHASE

The LEIC Act commenced on 30 December 2006, establishing the statutory position of Integrity Commissioner. The LEIC Act also established the Australian Commission for Law Enforcement Integrity (ACLEI) as an Australian Government agency in support of the Integrity Commissioner.

ACLEI's first day of operation was Tuesday, 2 January 2007.

### The Integrity Commissioner

Professor John McMillan was appointed by the Attorney-General as Acting Integrity Commissioner under s 177 of the LEIC Act, effective from 30 December 2006. Prof. McMillan took leave from his position as Commonwealth Ombudsman, bringing with him extensive experience as a lawyer, academic and senior public servant.

Prof. McMillan was appointed on an acting basis to guide the establishment of ACLEI while the Australian Government identified a suitable person to take up a substantive appointment as Integrity Commissioner. Prof. McMillan's appointment as Acting Integrity Commissioner continued through 30 June 2007.

On 22 June 2007, the Attorney-General announced the appointment by the Governor-General of Mr Philip Moss as Integrity Commissioner. Mr Moss has significant experience in the law enforcement environment and a strong background in public sector administration. Mr Moss' appointment is effective from 23 July 2007 and is for five years.

### Support from Attorney-General's Department

Prior to the LEIC Act coming into effect, the Attorney-General's Department was responsible for planning and procuring for ACLEI to commence operations.

During the reporting period, the Department continued to assist ACLEI by providing payroll and accounts services, as well as advice and assistance on a range of Human Resource, Financial Management and Information Technology matters.

During the next twelve months, ACLEI will progressively assume full responsibility for its own accounts and financial management and let contracts independently for provision of other services not able to be provided in-house.

ACLEI is grateful to the Attorney-General's Department for the valuable assistance it has provided in ACLEI's establishment phase.

### MANAGEMENT OF HUMAN RESOURCES

In a small workplace, the background, skills, talents and viewpoints of each employee are recognised and highly valued.

Each member of ACLEI's staff is committed to fostering and demonstrating values and behaviour within the workplace that respect and encourage each individual's contribution to the goals of the agency.

### Recruitment of staff members

Eight vacant positions were advertised in June 2006. All positions have been filled with the exception of the Director Operations position. That position was filled on a non-ongoing basis from 31 January 2007 by an officer seconded from the Commonwealth Ombudsman's office.

During the early part of 2007, five staff members left ACLEI. This staff movement was due to the decision to employ staff on a non-ongoing basis pending the appointment of the Integrity Commissioner, combined with a competitive employment market for staff with law enforcement and investigation experience.

In response, the Acting Integrity Commissioner decided that staffing of all ACLEI positions on an ongoing basis should proceed. During April 2007, three officers were appointed as ongoing ACLEI employees and recruitment action was undertaken to fill three other vacancies.

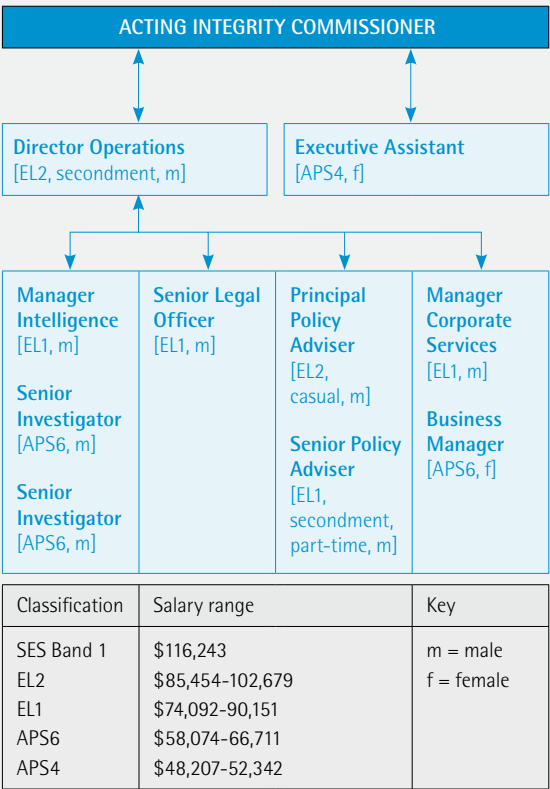
As at 30 June 2007, all substantive positions were filled on an ongoing basis, except the positions of Director Operations and Executive Assistant to the Integrity Commissioner.



Organisational structure

At the close of the reporting period, ACLEI operated with the following organisational structure:

DIAGRAM TWO:  
ACLEI ORGANISATIONAL STRUCTURE



Senior Executive Service

ACLEI had no permanent Senior Executive Service (SES) employee during the reporting period.

To facilitate the efficient running of ACLEI during absences of the Acting Integrity Commissioner, the Director Operations acted for short periods at the SES Band 1 level.

Australian Workplace Agreements

The *Workplace Relations Act 1996* establishes a framework in which agencies are able to negotiate agreements on pay and conditions matters directly with staff.

All ACLEI staff, with the exception of the Integrity Commissioner, are employed under Australian Workplace Agreements (AWAs). ACLEI's employment conditions were based initially on employment conditions in the Attorney-General's Department.

During May and June 2007, ACLEI management consulted staff about the current AWAs to ensure they reflected the ACLEI operational environment. Revisions will ensure that ACLEI is competitive in the labour market and can better meet operational requirements. The revised AWAs take effect from 1 July 2007.

Training and development

Under ACLEI's Program for Performance Improvement (PPI), staff have the opportunity to identify preferred training and workplace development. Staff will attend relevant, agreed courses and information sessions in line with the performance assessment discussions held as part of the PPI.

As part of ACLEI's staff development strategy, staff may be eligible for support under a studies assistance policy. The policy provides for study leave where study is relevant to the work of ACLEI and is consistent with the individual's work responsibilities or where it assists with career development.

Performance pay

ACLEI did not offer performance-based pay during the reporting period.

Payroll

During 2006-2007, the Attorney-General's Department paid staff on ACLEI's behalf. It is expected that the ACLEI payroll function will transfer to an outsourced provider by the end of September 2007.

Occupational Health and Safety

As a small agency, all employees have direct access to corporate services staff to raise health and safety issues, which are then dealt with as a priority.

An Occupational Health and Safety officer has not yet been appointed. Selection of, and training for, an officer and workplace assessments will take place during 2007-2008 to ensure a safe working environment.

All staff members were provided access to influenza vaccination during the reporting period. ACLEI also provided access to limited financial assistance for health and wellbeing activities and equipment for all staff. An appropriately trained First Aid Officer has also been appointed.

There were no incidents reported to Comcare Australia under s 68 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

There were no investigations into Occupational Health and Safety matters during the reporting period.



## FINANCIAL ACCOUNTABILITY ARRANGEMENTS

Funding to establish ACLEI was appropriated to the Attorney-General's Department as part of the 2006-07 Budget. As a result, ACLEI operated under Outcome 2.1 of the Attorney-General's Department's Portfolio Budget Statement for the 2006-07 reporting year. This situation arose because ACLEI's enabling legislation, the LEIC Act, had not been enacted at the time of the 2006 Budget.

ACLEI was prescribed in the *Financial Management and Accountability Regulations 1997* as a separate *Financial Management and Accountability Act 1997* (FMA Act) agency in December 2006. However, for the reasons stated above, financial and accountability reporting for ACLEI for the 2006-2007 financial year will be included in the consolidated financial reports of the Attorney-General's Department.

On 2 August 2007, the Minister for Finance and Administration issued a direction under s 51(2) of the FMA Act exempting ACLEI from the requirement to provide separate financial statements for the reporting period.

The same direction compels the Attorney-General to report ACLEI's accounts in the Attorney-General's Department annual report for 2006-07.

A transfer of appropriations to ACLEI under section 32 of the FMA Act is expected to occur during the early part of the 2007-2008 financial year.

### Purchasing

All procurement and purchasing activities conducted by ACLEI were in accordance with the Commonwealth Procurement Guidelines.

### Consultancy services

ACLEI engaged two consultants during 2006-2007:

- Mr Graeme Hope (Hope Reviews) was engaged to provide an independent assessment of capabilities and resources required to perform the functions and exercise the powers provided to the Integrity Commissioner and ACLEI under the LEIC Act.
- Yarrimbah Consulting was engaged to provide assistance to an investigation.

The combined value of the two consultancy services contracts was \$49,023.11 (including GST). Both consultancies were completed during the reporting year.

A consultancy services table can be found at Annex 4.

General information about expenditure on contracts and consultancies is available on the AusTender website, [www.tenders.gov.au](http://www.tenders.gov.au).

## Competitive tendering and contracting

ACLEI is not involved in competitive tendering and contracting (CTC). CTC activity relates only to the contracting out of government activities, previously performed by a government agency, to another organisation.

### Exempt contracts

No contracts that cost more than \$10,000 including GST have been exempted by the Integrity Commissioner from being published in AusTender on the basis that it would disclose exempt matters under the *Freedom of Information Act 1982*.

## CORPORATE GOVERNANCE PRACTICES

During the reporting period, all ACLEI financial transactions were processed within the Attorney-General's Department and subject to that Department's governance measures.

As part of the transition to corporate independence, ACLEI is establishing an Internal Audit Committee which will be chaired by the Integrity Commissioner and will include an external member. The committee will consider corporate governance issues such as internal and external audit findings, fraud and risk management, occupational health and safety, significant financial issues, and ACLEI's compliance with legislation and government policy directives.

The small size of the office lends itself to a collegiate approach to dealing with workplace and corporate issues. Whole-of-agency meetings are held regularly and all staff have direct access to the Integrity Commissioner.

### Fraud prevention and control

Consistent with the principles of good corporate governance and the requirements of the FMA Act, ACLEI has a number of strategies to identify and address threats and risks to ACLEI, including fraud risk.

The *ACLEI Fraud Control Plan 2007-2009* has been developed and fraud risk assessments will continue in 2007-08.

The Acting Integrity Commissioner is satisfied that for the reporting period ACLEI had in place appropriate fraud control mechanisms that met the needs of the agency and complied with the Commonwealth Fraud Control Guidelines.

There were no cases of suspected fraud in the reporting period.

### Business continuity planning

ACLEI has Information Technology disaster recovery and business continuity arrangements with the Attorney-General's Department to ensure the retention of agency information in the event of a disaster. ACLEI will continue to develop business continuity plans in 2007-2008 to ensure uninterrupted operations under various scenarios.

## INFORMATION AND COMMUNICATIONS TECHNOLOGY

During the establishment of ACLEI, it became apparent that management of Information and Communications Technology (ICT) requirements could be problematic for a small agency. During 2006-2007, the Acting Integrity Commissioner asked the Secretary of the Attorney-General's Department for continued ICT support.

In March 2007, the Acting Integrity Commissioner signed a Memorandum of Understanding with the Information and Knowledge Services Group (I&KS) of the Attorney-General's Department relating to ACLEI's ICT requirements. Under that agreement, ACLEI will procure and own the necessary infrastructure and equipment, while I&KS will provide the Help Desk services, technical expertise, file backups and secure systems management required for ACLEI to operate. I&KS also provides assistance with ACLEI's electronic records management and technical maintenance of the ACLEI website.

This service arrangement with the Attorney-General's Department provides several advantages to ACLEI, including:

- access to the full range of ICT expertise available within Information and Knowledge Services Group (I&KS)
- a high level of service provision at reasonable cost
- access to high level computer applications which otherwise would be financially out of reach of an agency of ACLEI's size, and
- a level of assurance with regard to ICT security that would perhaps not be available through an outsourced arrangement with a private sector provider.

As an interim arrangement, ACLEI funds the cost of an additional Help Desk Officer in return for the ICT support provided. The actual provision of services will be costed over time to calculate an appropriate cost recovery amount for the services provided.

Staff of the Attorney-General's Department and ACLEI have commenced work on an internal secure ICT network that will enable storage of classified information at higher security levels than are currently possible. The project is due for completion in 2007-08.

## SECURITY

Due to the nature of ACLEI's work and the potential sensitivity of information held, physical security measures have been implemented to protect ACLEI staff, information and assets. ACLEI occupies secure premises and operates under an Agency Security Plan based on the requirements of the *Commonwealth Protective Security Manual 2005* and has been independently assessed by competent government agencies against ACLEI's security risk profile.

## ADVERTISING AND MARKET RESEARCH

ACLEI did not conduct any general advertising, market research, polling, direct marketing or any other form of advertising campaign during the reporting period.

## DISABILITY STRATEGY

The Commonwealth Disability Strategy (CDS) seeks to ensure that Government policies, programs and services are accessible to people with disabilities. More information about the CDS can be found on the Department of Family and Community Services website at [www.facs.gov.au/disability/cds](http://www.facs.gov.au/disability/cds).

ACLEI is committed to its responsibilities under the *Disability Discrimination Act 1992* and the Commonwealth Disability Strategy.

As a new agency, ACLEI has yet to compile baseline data for an agency Disability Action Plan. ACLEI will develop a Disability Action Plan during 2007-2008.

## Provider

One of ACLEI's roles is to receive information from members of the public about possible corruption issues in law enforcement agencies. ACLEI does not provide a complaint service about the agencies, or offer a review function to revisit decisions or actions of law enforcement agencies.

It is not anticipated that ACLEI will have many interactions each year with members of the public. ACLEI's interactions will largely be with other government agencies and their staff. Against this background, ACLEI has in place the following strategies:

- ACLEI's website has been designed to be accessible to as large a proportion of the community as possible. The website design has achieved a benchmark of *Conformance Level A*, that is, all Priority 1 checkpoints are satisfied. This benchmark uses the World Wide Web Consortium (W3C) *Web Content Accessibility Guidelines v1.0* to assess standards of accessibility
- All public announcements about ACLEI – for example notices about public hearings, invitations for submissions to inquiries (s 72, LEIC Act), or the release of reports – will take into consideration the needs of people with disabilities

- Individual communication with ACLEI can occur via post, website, email, facsimile or telephone. ACLEI does not currently have a TTY service
- ACLEI is establishing an internal complaints and review process which will allow complaints about ACLEI's decisions to be resolved quickly, fairly and informally. These measures are being developed as part of a broader project to finalise ACLEI's Service Charter, and
- Where hearings are held in public, ACLEI will seek to ensure that they take place in facilities that are accessible to people using wheelchairs or who are hearing-impaired.

### Policy adviser role

ACLEI and the Integrity Commissioner have no role in forming policy or program proposals that are likely to have an impact on people with disabilities.

### Regulator

ACLEI and the Integrity Commissioner have no role in enforcing disability discrimination legislation in a regulatory capacity.

### Employer

ACLEI seeks to ensure that all members of staff are committed to understanding, fostering and demonstrating values and behaviours which respect and encourage both diversity and inclusion in the workplace.

ACLEI has in place the following measures to assist the inclusion of staff who may have particular needs:

- ACLEI's office is wheelchair accessible and accessible toilets and parking are close by
- All recruitment information is routinely made available electronically and in hard copy
- All employment policies and procedures are communicated in a manner that is responsive to the needs of employees
- Managers and recruiters apply 'reasonable adjustment' principles and a flexible approach to managing employees with special needs, and
- Complaint and grievance mechanisms, including access to external mechanisms, are in place to address issues and concerns raised by staff.

## ENVIRONMENTAL PERFORMANCE MEASURES

ACLEI employs energy saving methods to make the best use of resources. ACLEI has implemented a number of environmental initiatives to ensure that issues of environmental impact are addressed.

ACLEI uses an 80–20 (80 per cent recycled–20 per cent new/ virgin paper) for photocopying non-corporate documents and purchases recycled paper writing pads. Where possible documents are printed or reproduced double-sided (that is, using both sides of the paper).

The empty toner cartridges from the unclassified facsimile are recycled. ACLEI uses waste recycling services for all unclassified paper waste.

Preference is given to environmentally sound products when purchasing office supplies. Purchase/leasing of 'Energy Star' rated office machines and equipment is encouraged, as are machines with 'power save' features.

## INTERNET PRESENCE

The ACLEI website, [www.aclei.gov.au](http://www.aclei.gov.au), provides information about ACLEI and the Integrity Commissioner.

Inquiries about ACLEI, including reporting a corruption issue, can be sent to our e-mail facility, [contact@aclei.gov.au](mailto:contact@aclei.gov.au).



# ANNEX 1: ADDITIONAL STATISTICS

The *Law Enforcement Integrity Commissioner Regulations 2006* set out the particulars required to be included in the annual report. The relevant statistics are presented in the following pages.

\* Note that in all tables the definition of ACC includes members and former members of the ACC who were also members of the former NCA.

## REGULATION 17 –

*Prescribed particulars relating to corruption issues notified to the Integrity Commissioner by Heads of Law Enforcement Agencies under s 19 during 2006–07*

### REGULATION 17(a), (b) AND (c)

TYPE & NUMBER OF POTENTIAL CORRUPTION ISSUES

	AFP	ACC*	FORMER NCA	TOTAL
ABUSE OF OFFICE [s 6 (1)(a)]	1	1	0	2
PERVERT THE COURSE OF JUSTICE [s 6 (1)(b)]	1	1	0	2
CORRUPTION OF ANY OTHER KIND [s 6 (1)(c)]	3	5	0	8
GRAND TOTAL	5	7	0	12

### REGULATION 17(d) AND (e)

REASONS FOR TAKING NO FURTHER ACTION

	AFP	ACC*	FORMER NCA	TOTAL
ISSUE NOT IDENTIFIED AS SIGNIFICANT UNDER s 22:				
INTEGRITY COMMISSIONER SATISFIED THAT ACLEI INVOLVEMENT NOT WARRANTED [s 22 (1)]	3	0	0	3
ISSUE IDENTIFIED AS SIGNIFICANT UNDER s 20:				
INTEGRITY COMMISSIONER SATISFIED THAT ANOTHER AGENCY SHOULD INVESTIGATE [s 31(4)(a)]	0	0	0	0
REFERRAL OF ALLEGATION OR INFORMATION IS FRIVOLOUS OR VEXATIOUS [s 31(4)(b)]	0	0	0	0
CONDUCT TO WHICH THE ISSUE RELATES HAS BEEN OR WILL BE SUBJECT OF PROCEEDINGS BEFORE A COURT [s 31(4)(d)]	0	0	0	0
INVESTIGATION NOT WARRANTED IN ALL THE CIRCUMSTANCES [s 31(4)(e)]	0	3	0	3
TOTAL	3	3	0	6

**REGULATION 17(f)****INVESTIGATIONS MANAGED BY INTEGRITY COMMISSIONER**

	AFP	ACC*	FORMER NCA	TOTAL
<b>MANAGED INVESTIGATIONS</b> [s 26(1)(b)(i) or 26(1)(d)]	0	0	0	0
<b>INVESTIGATIONS UNDERTAKEN BY AFP AND MANAGED BY ACLEI</b> [s 26(1)(c)(i)]	N/A	0	0	0
<b>TOTAL</b>	0	0	0	0

**REGULATION 17(g)****INVESTIGATIONS OVERSEEN BY INTEGRITY COMMISSIONER**

	AFP	ACC*	FORMER NCA	TOTAL
<b>INVESTIGATIONS OVERSEEN</b> [s 26(1)(b)(ii) or 26(1)(e)]	1	1	0	2
<b>INVESTIGATIONS BY AFP OVERSEEN BY ACLEI</b> [s 26(1)(c)(ii)]	N/A	0	0	0
<b>TOTAL</b>	1	1	0	2

**OTHER WAYS (s 19) MATTERS WERE HANDLED**

	AFP	ACC*	FORMER NCA	TOTAL
<b>ACLEI INVESTIGATION</b> [s 26(1)(a)]	0	2	0	2
<b>REFERRALS TO OTHER GOVERNMENT AGENCIES</b> (see Regulation 21)	0	0	0	0
<b>UNDER ASSESSMENT</b> at 30 June 2007	1	1	0	2
<b>TOTAL</b>	1	3	0	4

**REGULATION 18 –**

*Prescribed particulars relating to corruption issues raised by allegations or information referred to the Integrity Commissioner under s 18 (by the Minister) and 23 (by other people) during 2006-07*

**REGULATION 18(a), (b) AND (c)****TYPE & NUMBER OF POTENTIAL CORRUPTION ISSUES**

	AFP	ACC*	FORMER NCA	TOTAL
<b>ABUSE OF OFFICE</b> [s 6 (1)(a)]	4	1	0	5
<b>PERVERT THE COURSE OF JUSTICE</b> [s 6 (1)(b)]	1	0	0	1
<b>CORRUPTION OF ANY OTHER KIND</b> [s 6 (1)(c)]	0	0	0	0
<b>GRAND TOTAL</b>	5	1	0	6



## REGULATION 18(d) AND (e)

### REASONS FOR TAKING NO FURTHER ACTION

	AFP	ACC*	FORMER NCA	TOTAL
ISSUE NOT IDENTIFIED AS SIGNIFICANT UNDER s 22:				
INTEGRITY COMMISSIONER SATISFIED THAT ACLEI INVOLVEMENT NOT WARRANTED [s 22 (1)]	0	0	0	0
ISSUE IDENTIFIED AS SIGNIFICANT UNDER s 20:				
INTEGRITY COMMISSIONER SATISFIED THAT ANOTHER AGENCY SHOULD INVESTIGATE [s 31(4)(a)]	0	0	0	0
REFERRAL OF ALLEGATION OR INFORMATION IS FRIVOLOUS OR VEXATIOUS [s 31(4)(b)]	0	0	0	0
CONDUCT TO WHICH THE ISSUE RELATES HAS BEEN OR WILL BE SUBJECT OF PROCEEDINGS BEFORE A COURT [s 31(4)(d)]	2	0	0	2
INVESTIGATION NOT WARRANTED IN ALL THE CIRCUMSTANCES [s 31(4)(e)]	1	0	0	1
<b>TOTAL</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>3</b>

## OTHER WAYS (ss 18 & 23) MATTERS WERE HANDLED

### INVESTIGATIONS MANAGED BY INTEGRITY COMMISSIONER

	AFP	ACC*	FORMER NCA	TOTAL
MANAGED INVESTIGATIONS [s 26(1)(b)(i) or 26(1)(d)]	0	0	0	0
INVESTIGATIONS UNDERTAKEN BY AFP AND MANAGED BY ACLEI [s 26(1)(c)(i)]	N/A	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### INVESTIGATIONS OVERSEEN BY INTEGRITY COMMISSIONER

	AFP	ACC*	FORMER NCA	TOTAL
INVESTIGATIONS OVERSEEN [s 26(1)(b)(ii) or 26(1)(e)]	0	0	0	0
INVESTIGATIONS BY AFP OVERSEEN BY ACLEI [s 26(1)(c)(ii)]	N/A	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

### OTHER MATTERS

	AFP	ACC*	FORMER NCA	TOTAL
ACLEI INVESTIGATION [s 26(1)(a)]	1	1	0	2
REFERRALS TO OTHER GOVERNMENT AGENCIES (see Regulation 21)	0	0	0	0
UNDER ASSESSMENT AT 30 JUNE 2007	1	0	0	1
<b>TOTAL</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>3</b>

## REGULATION 19 –

*Own initiative investigations*

	AFP	ACC*	FORMER NCA	TOTAL
<b>OWN INITIATIVE INVESTIGATIONS</b> [s 38]	0	0	0	0

## REGULATION 20 –

*Corruption issues investigated by the Integrity Commissioner*

### REGULATION 20(a), (c) AND (d)

TYPE & NUMBER OF POTENTIAL CORRUPTION ISSUES INVESTIGATED

	AFP	ACC*	FORMER NCA	TOTAL
<b>ABUSE OF OFFICE</b> [s6 (1)(a)]	1	2	0	3
<b>PERVERT THE COURSE OF JUSTICE</b> [s6 (1)(b)]	0	1	0	1
<b>CORRUPTION OF ANY OTHER KIND</b> [s6 (1)(c)]	0	0	0	0
<b>TOTAL</b>	1	3	0	4

### REGULATION 20(b)

	AFP	ACC*	FORMER NCA	TOTAL
<b>INVESTIGATIONS COMPLETED</b> AT 30 JUNE 2007	0	0	0	0
<b>TOTAL</b>	0	0	0	0

## REGULATION 21 –

*Corruption issues referred to  
government agencies for investigation*

### REFERRALS TO OTHER GOVERNMENT AGENCIES

	AFP	ACC*	FORMER NCA	TOTAL
<b>REFERRAL TO LAW ENFORCEMENT AGENCY</b> [s 26(1)(b)]	0	0	0	0
<b>REFERRAL TO AFP</b> [26(1)(c)]	N/A	0	0	0
<b>REFERRAL TO 'HOME AGENCY'</b> [s 29(6)(a)]	0	0	0	0
<b>REFERRAL TO STATE OR TERRITORY INTEGRITY AGENCY</b> [s 29(6)(b)]	0	0	0	0
<b>TOTAL</b>	0	0	0	0

REGULATION 22 –

ACLEI corruption issues	
	TOTAL
INVESTIGATED BY INTEGRITY COMMISSIONER	0
INVESTIGATED BY SPECIAL INVESTIGATOR	0
TOTAL	0

REGULATION 23 –

Section 149 Certificates	
	TOTAL
SECTION 149 CERTIFICATES ISSUED BY THE ATTORNEY-GENERAL	0

Section 149 certificates may be issued by the Attorney-General on the grounds that, were the information disclosed it would prejudice the security, defence or international relations of the Commonwealth, prejudice the proper performance of the ACC, an investigation, fair trial, a person's life or physical safety or disclose the identity of a confidential source, amongst other reasons (s 149, LEIC Act).





# ANNEX 2: PAPERS AND PRESENTATIONS BY STAFF

The following presentations were made by the Acting Integrity Commissioner, Prof. John McMillan:

- ▶ 'The new Australian Commission for Law Enforcement Integrity', address to the Police Accountability Round Table, Victorian Office of Police Integrity, Melbourne, 28 February 2007
- ▶ 'Curbing Public Sector Corruption – Australian Lessons', address to the APEC Anti-Corruption and Transparency Taskforce Meeting, Cairns, 22 June 2007
- ▶ 'Best Practice and Ways Forward', address to the APEC Anti-Corruption and Transparency Taskforce Meeting, Cairns, 24 June 2007





# ANNEX 3: FREEDOM OF INFORMATION STATEMENT

Section 8 of the *Freedom of Information Act 1982* (the FOI Act) requires each Australian Government agency to publish information about the way it is organised, its powers, the kinds of decisions it makes, the documents it holds, the way members of the public can obtain access to these documents, and any arrangements for members of the public to participate in the policy formulation or administration of the agency.

This annual report explains the organisation and major functions of the Integrity Commissioner and ACLEI. This statement supplements that general information to meet the requirements of section 8 of the FOI Act. It is correct at 30 June 2007.

To assist members of the public, this information also appears on the ACLEI website which is updated as relevant information changes.

## WHAT IS ACLEI?

The *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) establishes the office of Integrity Commissioner. The Integrity Commissioner is supported by a statutory agency, the Australian Commission for Law Enforcement Integrity (ACLEI).

The Integrity Commissioner is the Agency Head of ACLEI. ACLEI consists of investigative, legal, policy and corporate personnel. The Integrity Commissioner and ACLEI are based in Canberra.

The Integrity Commissioner is a statutory officer appointed under the LEIC Act. ACLEI staff are employed under the *Public Service Act 1999*.

## FUNCTIONS AND DECISION-MAKING POWERS

The Integrity Commissioner's role is to detect, investigate and prevent corruption in law enforcement agencies. Presently those agencies subject to the scrutiny of the Integrity Commissioner under the LEIC Act are the Australian Federal Police, the Australian Crime Commission and the former

National Crime Authority. Others agencies may be added from time to time by Regulation.

The Integrity Commissioner also has a role to maintain and improve the integrity of staff members of law enforcement agencies, and to process intelligence on corruption in law enforcement.

The Integrity Commissioner may investigate a 'corruption issue' relating to a present or former staff member of a law enforcement agency. The Commissioner may do so on referral or notification of a corruption issue by the head of a law enforcement agency, the Minister, the Commonwealth Ombudsman, or another government agency (Commonwealth, State or Territory). The Commissioner can also investigate information raising a corruption issue from a member of the public, or commence an investigation using his or her own initiative.

The Integrity Commissioner can decide not to investigate or act on referrals or notifications.

The Act confers coercive information-gathering powers on the Integrity Commissioner, such as the power to compel an individual or agency to produce documents, or to examine witnesses under oath. These powers are similar to those of a Royal Commission.

The *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006* sets out various other intrusive powers available to the Integrity Commissioner.

The Integrity Commissioner can investigate in private and may also hold public hearings.

Investigations may result in recommendations for prosecution being referred to competent agencies. The Integrity Commissioner may also make public reports, and in some cases is compelled to do so by the LEIC Act.

The Integrity Commissioner can also make recommendations to the relevant Minister on legislative and administrative action that may be needed or desirable to prevent corruption and preserve integrity in law enforcement agencies.

## INFORMATION HELD BY ACLEI

The Integrity Commissioner holds information related to:

- Investigations and inquiries, including information about corruption issues; correspondence and records of consultations with people providing information, with agencies and other information sources; records related to ACLEI's use or proposed use of coercive, covert and intrusive powers for investigative purposes; background material; records of conversations; analysis and advice; and reports
- Legal matters, including legal documents, opinions, advice and representations
- Policy matters, including minutes of meetings, research, administrative and operational guidelines
- Administrative matters, including the Integrity Commissioner's role as the chief executive of an Australian Government agency with a particular set of responsibilities, and in terms of the development or implementation of administrative process, policy or legislation, and
- Corporate and management matters, including staffing, contracting and financial records, and information about asset management.

A list of ACLEI's files can be found on the ACLEI website, [www.aclei.gov.au](http://www.aclei.gov.au).

## FOI REQUESTS

### General process

Inquiries about information held by ACLEI may be made to ACLEI in writing, by telephone or via email.

In accordance with the *Law Enforcement Integrity Commissioner Act 2006*, the Integrity Commissioner has agreed that ACLEI 'authorised officers' may provide information to a person if requested by, or on behalf of, that person in respect to information which the person has previously referred to ACLEI. Such information might include documents previously and lawfully provided by or to the person by ACLEI or someone else, or records of telephone conversations between the person and ACLEI staff. All other requests for access to documents are dealt with by ACLEI's FOI Coordinator.

### Exemptions

The FOI Act recognises that it may not be in the public interest to release all information held by a government agency. Therefore, the FOI Act provides a number of exclusions to the general requirement to release documents. For this reason, it is possible that not every request for release of information can be fully, or even partially, met.

### Consultation with others

Many of the documents held by ACLEI will have come either from members of the public or from a person or agency subject to investigation, and may be speculative in nature or carry an expectation that the document will remain confidential. Some documents may be internal working documents that contain expressions of opinion that may change and should not be disclosed publicly.

For these reasons, it may be necessary to give affected people or agencies an opportunity to comment on some FOI requests, or to transfer some or all of an FOI request to an affected agency. This practice is common in many Australian Government agencies, and is consistent with the principles of procedural fairness, privacy and the FOI Act. The practice also recognises that there may be cases where another agency is better placed to make an informed decision about a document's content and context.

### Viewing documents on site

Given the restricted access environment in which ACLEI operates, a person wishing to view documents held by ACLEI must first contact ACLEI's FOI Coordinator.

## MAKING A FORMAL FOI REQUEST

The request must:

- be made in writing
- provide enough information for ACLEI to identify the documents sought
- specify a name and an address within Australia for notices to be sent, and
- be accompanied by a \$30 application fee, unless a remission of fee is applied for.

### FOI requests should be sent to:

The FOI Coordinator

Australian Commission for Law Enforcement Integrity

**Post:** GPO Box 305, CANBERRA, ACT 2601

**Tel:** (02) 6229 9333

**Fax:** (02) 6230 7341

**Email:** [contact@aclei.gov.au](mailto:contact@aclei.gov.au)

## FEES AND CHARGES

An application fee of \$30 applies to all requests made under the FOI Act and there may be further charges for processing applications. There is a separate fee of \$40 for applications for an internal review of an FOI decision.

Further information concerning additional charges, payment and information relating to exemptions and remissions are contained within the 'Section 8 FOI Statement' on ACLEI's website, [www.aclei.gov.au](http://www.aclei.gov.au).

## REVIEW OF DECISIONS

The FOI Act provides three forms of review for those people who have sought access to documents and are not satisfied with the response to their request:

- Internal review by the agency to which the FOI request was made
- Complaint to the Commonwealth Ombudsman about a decision, a delay in providing information, or any other aspect of the agency's handling of the FOI request, and
- Appeal to the Administrative Appeals Tribunal about an adverse internal review decision made by the agency.

If you seek a review of an FOI decision that ACLEI has made, ACLEI recommends that, in the first instance, you discuss your needs with the FOI Coordinator.



# ANNEX 4: CONSULTANCY SERVICES

ACLEI engages consultants when the expertise required is not available within the organisation or when the specialist skills required are not available without diverting resources from other high priority tasks. In accordance with procurement guidelines, consultants are selected by advertisement, panel arrangements or selective tendering.

The security requirements of ACLEI and the specialist nature of the consultancy work often means that consultants are sourced direct. Where the work is more general in nature ACLEI will, where possible, access consultants selected through an open tender or panel selection process.

During 2006–07, two consultancy contracts were entered into at a cost of \$49,023.11.

One consultant was engaged to undertake a capability requirements study and prepare a document to inform the ACLEI strategic planning process. The selection method was direct sourcing with the consultant selected on the basis of experience, independence and specialist expertise in conducting this type of work.

Another consultant was engaged to continue an investigation which had been commenced by that person under consultancy to the Australian Crime Commission. The selection method was direct sourcing with the consultant selected on the basis of experience and his previous involvement in the particular investigation.

The table below provides details of consultancy services let by ACLEI during 2006–07 with a contract value (GST inclusive) of \$10,000 or more.

- 1 Explanation of selection process drawn from the Commonwealth Procurement Guidelines (January 2005):  
  
**Open tender**—procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the marketplace using national and major metropolitan newspaper advertising and the Australian Government AusTender internet site.  
  
**Select tender**—procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. Tenders are invited from a short list of competent suppliers.  
  
**Direct sourcing**—form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.  
  
**Panel**—arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency as specified in the panel arrangements. Tenders are sought from suppliers that have prequalified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the consultant offers to supply goods and services for a predetermined length of time, usually at a prearranged price.
- 2 Justification for decision to use consultancy  
  
**A**—skills currently unavailable within agency  
**B**—need for specialised or professional skills  
**C**—need for independent research or assessment

CONSULTANT NAME	DESCRIPTION	CONTRACT PRICE (GST INCLUSIVE)	SELECTION PROCESS <sup>1</sup>	JUSTIFICATION <sup>2</sup>
HOPE REVIEWS	INDEPENDENT REVIEW OF AGENCY CAPABILITY	\$19,151.35	DIRECT SOURCING	C
YARRIMBAH CONSULTING	INVESTIGATION	\$29,871.76	DIRECT SOURCING	B
TOTAL		\$49,023.11		







# ANNEX 5: CHANGES TO THE OPERATIONAL ENVIRONMENT

## ALRC Inquiry into Client Legal Privilege and Federal Investigatory Bodies

During the reporting period, the Acting Integrity Commissioner provided a written submission to the Australian Law Reform Commission (ALRC) inquiry relating to 'Client Legal Privilege and Federal Investigatory Bodies'. The submission was a response to *ALRC Issues Paper 33*, published in April 2007.

The submission addressed the relationship between 'client legal privilege' and partial abrogation of that privilege by the provisions of the *Law Enforcement Integrity Commissioner Act 2006*.

The submission argued for clarification of the circumstances in which legal professional privilege should apply within the Commonwealth investigatory context, and gave general support to harmonisation of laws in order to achieve clarity rather than to introduce the privilege into new areas.

## Relevant decisions of courts and administrative tribunals

There were no decisions of courts or administrative tribunals in 2006-07 that affected ACLEI's operational environment.



# COMPLIANCE INDEX

This guide relates to the report's compliance with the *Law Enforcement Integrity Commissioner Act 2006*, the *Law Enforcement Integrity Commissioner Regulations 2006* and the 'Requirements for Annual Reports' as provided by the Joint Committee of Public Accounts and Audit (June 2007).

AIDS TO ACCESS	PAGE
Letter of transmittal	iii
Table of contents	ix–xi
Acronyms	vi
ACLEI contact details	ii
Internet homepage	ii

INTEGRITY COMMISSIONER'S REVIEW	PAGE
Summary of significant issues and developments	1–4
Outlook for 2007–08	4–5

ORGANISATIONAL OVERVIEW	PAGE
Role and functions	15–19
Organisational structure	40
Outcome and output structure	22

REPORT ON PERFORMANCE	PAGE
Review of performance	22
Discussion and analysis of performance	22–27
Factors, events and trends influencing organisational performance	22
Social justice and equity	21

FINANCIAL PERFORMANCE	PAGE
Financial statements	41
Resources for outcome and outputs	22
Purchasing policy	41
Consultancy services and contracts	41, 57
Competitive tendering and contracting	41

CORPORATE GOVERNANCE	PAGE
Corporate governance practices	41
Risk management and fraud control	41
Ethical standards	33–37

EXTERNAL SCRUTINY	PAGE
Significant developments in external scrutiny	59
Judicial decisions and decisions of administrative tribunals	33, 59
Parliamentary Joint Committee on ACLEI	34–35
Ombudsman inspections	36

HUMAN RESOURCE MANAGEMENT	PAGE
Effectiveness in managing and developing human resources	39–40
Statistics on staffing	40
Workplace relations and AWAs	40
Performance pay	40

OTHER	PAGE
Service charter	36, 43
Commonwealth Disability Strategy	42–43
Occupational Health and Safety	40–41
Freedom of information statement	37, 53–55
Ecologically sustainable development and environmental performance	43
Advertising and market research	42
Discretionary grants	n/a

LEIC ACT REQUIREMENTS	PAGE
Statistics pursuant to LEIC Regulations [s 201(2)(a)]	45–49
Significant issues in law enforcement affecting integrity [s 201(2)(b)]	25
Patterns and trends in corruption [s 201(2)(c)]	28
Recommendations for changes to laws of the Commonwealth [s 201(2)(d)(i)]	29
Recommendations for changes to administrative practices of Australian Government agencies [s 201(2)(d)(ii)]	29
Prosecutions [s 201(2)(e)]	29
AD(JR) Act applications [s 201(2)(g)]	35
Other court proceedings involving the Integrity Commissioner [s 201(2)(g)(ii)]	35



# ALPHABETICAL INDEX

## A

Access and equity, 21

Accountability of ACLEI, 4, 33-37

### ACLEI

challenges ahead, 4-5

establishment, 1-3, 13, 39

ethical standards, 4, 34, 49

performance of, 22

role and functions, 15, 21

staff, 39

Acting Integrity Commissioner, 1, 31, 33, 39

Advertising and market research, 42

Anti-corruption reviews, 30

Asia-Pacific Economic Cooperation (APEC), 31, 51

Assessment process for corruption issues, 23

Assumed identities, 19, 25, 35

Attorney-General, 2, 11, 13, 15

previous, 6

s 149 certificates, 33, 49

Attorney-General's Department, support from, 39

Auditor-General, 36

Australian Crime Commission (ACC), 5, 9, 12, 15, 16, 17

notifications, 23

potential corruption issues, 1, 13

Australian Federal Police (AFP), 5, 7-13, 15, 16, 17

notifications, 23

potential corruption issues, 1, 13

Australian Government Investigation Standards (AGIS), 33

Australian Law Reform Commission (ALRC), 7, 9, 10, 12, 59

Australian National Audit Office (ANAO), 36

Australian Transaction Reports and Analysis Centre (AUSTRAC), 30

Australian Workplace Agreements (AWAs), 40

## B

Business continuity planning, 41

## C

Case management approach, 23, 26

Challenges facing ACLEI, 4-5

Client legal privilege, 33, 59

Client service charter, 36, 43

Committees, Parliamentary, appearances before, 27, 35, 37

Commonwealth Disability Strategy, 42

Commonwealth Fraud Control Guidelines, 41

Commonwealth Ombudsman, 3, 5, 9, 10, 12, 15, 16, 18, 23, 31, 35

inspections by, 35, 36

investigations by, 36

new role, 3, 5, 13, 15, 16, 18, 23

previous role, 7-9, 10, 12, 13

Competitive tendering and contracting, 41

Complaint handling

ACLEI, about, 34, 36, 43

law enforcement agencies, about, 17-18

Compliance index, 63

Confiscation proceedings, 29

Consultancy services, 41, 57

Controlled operations, 3, 19, 25, 35, 36

Cooperation

Commonwealth Ombudsman, with, 5, 15

other integrity agencies, with, 5, 15, 31

Corporate governance see Governance

Corruption issues

assessment of, 23

case handling, 24

definition, 15



examples, 21

information, sources of, 16, 23

notifications by agencies, 23, 45–46

patterns and trends, 28

reporting, (v)

Court, matters before, 35, 59

## D

Department, Attorney-General's, (i), 39, 41

Disability strategy, 42

Disaster recovery plan, 41

Documents held by ACLEI, 54

## E

Ecologically sustainable development, 43

Employment conditions, 40

Environmental performance measures, 43

Establishment of ACLEI, 1–3, 13, 39, 41

Ethical standards, 4, 21, 34

Evidence before courts, 2, 28

External scrutiny of ACLEI, 4, 34–37

## F

Financial management, 41

competitive tendering and contracting, 41

consulting services, 41, 57

exempt contracts, 41

Financial statements

reporting exemption, (i), 22, 41

Fisher review, 12–13

Fraud control, 41

Freedom of information, 37, 53–5

applications, 37

statement under s 8, 53

Functions of ACLEI, 15, 21, 30

Future directions, 4–5, 30, 31, 33, 34, 37

## G

Governance, 41

business continuity plan, 41

disability strategy, 42

environmental matters, 43

fraud prevention and control, 41

senior executive, 40

service charter, 36, 43

## H

Harrison Inquiry, 11

Health and safety, 40

History of ACLEI, 1–5, 7–13

Human resources management, 39–40

## I

Illicit drugs, 28

Information

access to under FOI Act, 37, 54

personal, privacy of, 35, 37

providing (about corruption issues), (v), 23

Information technology, 42

Integrity agencies, cooperation with, 5, 15, 31

Integrity Commissioner, 3–4, 5, 15–19, 39

independence of, 33

Intelligence gathering, 16, 22, 30

Internal Audit Committee, 41

International cooperation, 31

Internet presence, 43

Investigations by ACLEI, 25, 45–49

## L

*Law Enforcement Integrity Commissioner Act 2006*,  
3, 13, 15–17, 23–29, 33–37, 39

proposals to change, 29

review of, 4, 37

*Law Enforcement Integrity Commissioner  
(Consequential Amendments) Act 2006*, 19

Litigation responded to by ACLEI, 35

## M

Managed investigations, 24, 26, 46, 47

Market research, 42

McMillan, Prof. John, 5, 39, 51

Minister,

previous, 3, 13

reports to, 3, 17, 26–27, 29

Moss, Mr Philip, 1, 5, 39

## N

Notification of potential corruption issues, 3, 16, 23, 45–46



## O

Occupational health and safety, 40

Opportunity to be heard, 34

Organisational structure, 40

Outcome, 22

Output, 22

Oversighted investigations, 24, 26, 46, 47

Own initiative investigations, 23, 48

## P

Papua New Guinea Ombudsman Commission, liaison with, 31

Parliamentary Joint Committee on ACLEI, 4, 22, 34–5, 36

appearances before, 27, 35

Patterns and trends in corruption issues, 28

People in custody, 16, 23, 28

Performance indicators, 22, 26

Performance pay, 40

Powers,

accountability for, 33–37

ACLEI's use of, 25

of ACLEI, 3, 4, 17–19, 30

of law enforcement agencies, 2

justification for, 2, 3, 8

Practice Notes, 33

Presentations given by staff, 31, 51

Privacy of personal information, 35, 37

Process accountability, 35

Prosecutions, 22

Public awareness of ACLEI, 5, 22, 31

Public interest disclosures ('whistleblowing'), 11, 18, 30, 34

Public interest reports, 33

Purchasing, 41

## Q

Quality measures, 22

Quantity measures, 22

## R

Recommendations, acceptance of, 22, 26, 29

Remuneration of staff, 40

Reports,

public, 26, 27

to Minister, 3, 17, 26–27, 29

Reviews, of investigation quality, 34

Role of ACLEI, 1, 15, 21

Royal Commissions into State police corruption, 10

## S

Search warrants, 3, 25, 35

Section 51(2) direction (FMA Act), (i), 41

Section 149 certificates (LEIC Act), 33, 49

Security

assessments of ACLEI staff, 34

information held by ACLEI, of, 42

Senate Estimates, 37

Senate Legal and Constitutional Committee, 1, 3, 33

Service charter, 36, 43

Social justice, 21

Staff, 39

accountability of, 4, 33–37

papers and presentations by, 31, 51

profile, 40

remuneration, 40

senior executive, 40

training and development, 40

State integrity agencies, 1, 4, 5, 10, 13, 15, 24, 31

Statistics, 23–29, 45–49

interpreting, 23

Surveillance device warrants, 25, 35, 36

## T

Telecommunications interception and access warrants, 25, 35, 36

Tendering and contracting, 41

Timeliness in investigations, 26

Trends in corruption issues, 28

## U

Unauthorised disclosure of protected information, 28

United Nations Convention Against Corruption, 31

## W

Website, 43

Whistleblowing, see Public interest disclosures

Witness management, 33