



Australian Government

**Australian Commission for
Law Enforcement Integrity**

**Queensland Organised Crime
Commission of Inquiry**

**Submission by the
Australian Commission for
Law Enforcement Integrity**

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1. Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the Queensland Organised Crime Commission of Inquiry.

Due to the high illicit profits to be made from importing contraband into Australia—especially prohibited drugs—tackling corruption enabled border crime is a focus for ACLEI and its partners. In that context, ACLEI enjoys strong operational relationships with Queensland Police.

As an anti-corruption agency, ACLEI also has interests in common with the Crime and Corruption Commission. For instance, both agencies are foundation members of the Australian Anti-Corruption Commissions Forum, and ACLEI is a ‘partner agency sponsor’ of the Australian Public Sector Anti-Corruption Conference, which is co-hosted by the CCC, along with the Independent Commission Against Corruption (NSW) and the Corruption and Crime Commission (Western Australia). ACLEI also shares operational information with the CCC, such as intelligence briefings and assessments relating to law enforcement corruption. ACLEI looks forward to more opportunities for the two agencies to partner in an operational context.

To assist the Review, [Part 2](#) of this submission provides background about ACLEI’s role and responsibilities. [Part 3](#) summarises issues which may be relevant to the Commission of Inquiry’s consideration of its Terms of Reference.

2. ACLEI’s role and responsibilities

Establishment

The office of Integrity Commissioner, and ACLEI, are established by the LEIC Act. The objects of the LEIC Act (at section 3) are:

- (a) *to facilitate:*
 - (i) *the detection of corrupt conduct in law enforcement agencies and*
 - (ii) *the investigation of corruption issues that relate to law enforcement agencies and*
- (b) *to enable criminal offences to be prosecuted, and civil penalty proceedings to be brought, following those investigations and*
- (c) *to prevent corrupt conduct in law enforcement agencies, and*
- (d) *to maintain and improve the integrity of staff members of law enforcement agencies.*

The agencies subject to the Integrity Commissioner’s jurisdiction under the LEIC Act are the Australian Crime Commission (ACC), the Australian Federal Police (AFP), the Australian Transaction Reports and Analysis Centre (AUSTRAC), the CrimTrac Agency, prescribed parts of the Department of Agriculture, and the former National Crime Authority.

On 1 July 2015, the Department of Immigration and Border Protection (DIBP)—incorporating the Australian Border Force—joined the Integrity Commissioner’s jurisdiction (when that department assumed the functions of the Australian Customs and Border Protection Service (ACBPS)).

ACLEI's role

ACLEI's primary role is to investigate law enforcement-related corruption issues, giving priority to systemic and serious corruption. ACLEI also collects intelligence about corruption in support of the Integrity Commissioner's functions.

The Integrity Commissioner must consider the nature and scope of corrupt conduct revealed by investigations, and report annually on any patterns and trends concerning corruption in law enforcement agencies.

ACLEI also aims to understand corruption and prevent it. When, as a consequence of performing his or her functions, the Integrity Commissioner identifies laws of the Commonwealth or the administrative practices of government agencies with law enforcement functions that might contribute to corrupt practices or prevent their early detection, he or she may make recommendations for these laws or practices to be changed.

Under section 71 of the LEIC Act, the Minister may also request the Integrity Commissioner to conduct a public inquiry into all or any of the following:

- a corruption issue
- an issue about corruption generally in law enforcement, or
- an issue or issues about the integrity of staff members of law enforcement agencies.

Independence

ACLEI is a statutory authority, and part of the Attorney-General's portfolio. The Minister for Justice is responsible for ACLEI.

Impartial and independent investigations are central to the Integrity Commissioner's role. Although the Minister may request the Integrity Commissioner to conduct public inquiries, the Minister cannot direct how inquiries or investigations will be conducted.

The LEIC Act contains measures to ensure that the Integrity Commissioner and ACLEI remain free from political interference and maintain an independent relationship with government agencies. Accordingly, the Integrity Commissioner:

- is appointed by the Governor-General and cannot be removed arbitrarily
- is appointed for up to five years, with a maximum sum of terms of seven years
- can commence investigations on his or her own initiative, and
- can make public statements, and can release reports publicly.

Receiving and disseminating information about corrupt conduct

The LEIC Act establishes a framework whereby the Integrity Commissioner and the relevant agency heads can prevent and deal with corrupt conduct jointly and cooperatively. The arrangement recognises both the considerable work of the agencies in the Integrity Commissioner's jurisdiction to introduce internal corruption controls (including detection and deterrence-focussed mechanisms) and the continuing responsibility that the law enforcement agency heads have for the integrity of their staff members.

An important feature of the LEIC Act is that it requires the head of an agency in ACLEI's jurisdiction to notify the Integrity Commissioner of any information or allegation that raises a corruption issue in his or her agency (section 19).

The LEIC Act also enables any other person, including members of the public, other government agencies or the Minister, to refer a corruption issue to the Integrity Commissioner.

Further, ACLEI is authorised under the *Telecommunications (Interception and Access) Act 1979* to receive information about any corruption issue involving an agency within the LEIC Act jurisdiction that may be identified by other integrity agencies or law enforcement agencies as a result of their telecommunications interception activities.

Special legislative arrangements make it lawful for ‘whistle-blowers’ to provide information about corruption direct to ACLEI. The LEIC Act provides for ACLEI to arrange protection for witnesses.

The Integrity Commissioner may disclose information to the head of a law enforcement agency, or other government agency, if satisfied that, having regard to the functions of the agency concerned, it is appropriate to do so.

The Integrity Commissioner is exempt from the operation of the *Privacy Act 1988*, reflecting the importance of ACLEI’s collection and intelligence-sharing role.

Investigation options

The Integrity Commissioner decides independently how to deal with any allegations, information or intelligence about corrupt conduct concerning the agencies in ACLEI’s jurisdiction.

The Integrity Commissioner is not expected to investigate every corruption issue that arises in Commonwealth law enforcement. Rather, the Integrity Commissioner’s role is to ensure that indications and risks of corrupt conduct in law enforcement agencies are identified and addressed appropriately.

The Integrity Commissioner can choose from a range of options in dealing with a corruption issue. The options are to:

- investigate the corruption issue
- refer the corruption issue to the law enforcement agency for internal investigation (with or without management or oversight by ACLEI) and to report findings to the Integrity Commissioner
- refer the corruption issue to the AFP (if the corruption issue does not relate to the AFP)
- investigate the corruption issue jointly with another government agency or an integrity agency for a State or Territory, or
- take no further action.

Section 27 of the LEIC Act sets out the matters to which the Integrity Commissioner must have regard in deciding how to deal with a corruption issue.

With these matters in mind, the Integrity Commissioner will investigate when there is advantage in ACLEI’s direct involvement. Under the LEIC Act, the Integrity Commissioner must also give priority to serious or systemic corruption. Accordingly, the Integrity Commissioner gives priority to corruption issues that may:

- indicate a link between law enforcement and organised crime
- involve suspected conduct, such as the private use of illicit drugs, which would undermine an agency’s law enforcement functions
- bring into doubt the integrity of senior law enforcement managers
- relate to law enforcement activities that have a higher inherent corruption risk
- warrant the use of the Integrity Commissioner’s information-gathering powers, including hearings, or
- would otherwise benefit from independent investigation.

ACLEI prioritises corruption issues that have a nexus to the law enforcement character of the agencies in its jurisdiction, having regard to the objects of the LEIC Act.

In this way, ACLEI aims to pursue those investigations which are most likely to yield the highest strategic contribution to maintaining and improving integrity in law enforcement agencies.

Investigation powers

A challenge facing ACLEI is that law enforcement officers subject to investigation by the Integrity Commissioner are likely to be familiar with law enforcement methods, and may be skilled at countering them in order to avoid scrutiny. As a consequence, ACLEI has access to a range of special law enforcement powers.

The key investigative powers available to the Integrity Commissioner and ACLEI are:

- notices to produce information, documents or things
- summons to attend an information-gathering hearing, answer questions and give sworn evidence, and/or to produce documents or things
- intrusive information-gathering (covert)
 - telecommunications interception
 - electronic and physical surveillance
 - controlled operations
 - assumed identities
 - integrity testing (only in relation to the ACC, AFP and DIBP/ABF)
 - scrutiny of financial transactions, and
 - access to specialised information databases for law enforcement purposes
- search warrants
- right of entry to law enforcement premises and associated search and seizure powers, and
- arrest (relating to the investigation of a corruption issue).

It is an offence not to comply with notices, not to answer truthfully in hearings, or otherwise to be in contempt of ACLEI.

Purpose of coercive powers

Investigations of law enforcement corruption often involve suspects and witnesses who are well-versed in law enforcement methods and therefore may be skilled in avoiding or countering them to avoid detection. Indeed, their counter-surveillance skills or an ability to hide their tracks may be the commodity that makes a criminal conspiracy possible or attractive to undertake.

A particular challenge in this context is to ensure that anti-corruption investigations are able to uncover the full network of people involved (law enforcement officials and their criminal counterparts) rather than stop at the point of having identified a 'bad apple'. It is also important to seek to gain contemporary information about what methods are being exploited to compromise systems, so that 'target hardening' can then take place.

To help meet these challenges, Part 9 of the LEIC Act establishes arrangements for the Integrity Commissioner to use coercive information-gathering powers during an ACLEI investigation or joint investigation. These powers require a person to produce documentary evidence or appear as a witness and answer questions truthfully at a hearing. It is an offence not to comply with a notice or summons, not to answer questions, or not to answer truthfully. The Integrity Commissioner may also issue a confidentiality notation in relation to notices, summonses and any information provided. This measure assists ACLEI to continue to investigate a matter covertly.

Coercive powers are an important part of the suite of investigation powers available to the Integrity Commissioner. ‘Notices to produce’—for instance, to obtain bank account details—assist ACLEI to build an intelligence picture early in an investigation. Hearings—particularly when combined with other law enforcement investigation methods—then enable ACLEI to further investigations that might otherwise be stymied through lack of investigation options.

3. Response to the Terms of Reference

Future Trends—Corruption-enabled border crime (TOR 3a–d, h)

ACLEI’s development since commencement in December 2006—in jurisdiction, resources, capabilities and strategy—has been dictated by changes in the picture of criminality (including the prospect of criminal infiltration and other corrupt collaboration), which is one of the primary drivers of corruption risk in law enforcement. In particular, corruption-enabled border crime is an ongoing threat to law enforcement integrity in Australia.

According to data from the Australian Crime Commission and United Nations Office on Drugs and Crime (UNODC), Australia is among the world’s most lucrative illicit drug markets (UNODC *World Drug Report 2014*, pp 37–8). Cocaine and methylamphetamine are the two illicit drugs (by value) most commonly imported into Australia. Domestically, the ‘street’ selling price of one kilogram of crystalline methylamphetamine (Ice) can reach up to \$320,000, with one kilogram of cocaine reaching prices up to \$250,000 (Source: ACC, *Illicit Drug Data Report 2013–14*, pp 45, 102). The selling prices achieved in Australia are more than three times those in the United Kingdom, and more than six times those obtained in North America.

In its *Organised Crime in Australia 2015* report, the ACC notes:

“... the large profits available in Australia’s illicit drug markets are a strong motivator for organised crime groups to develop the capability to corrupt in order to facilitate access to those markets.” (p 29).

Most corruption risk at the border is connected to the smuggling of contraband, particularly importations of illicit drugs. Due to the nature of those crimes, corrupt conduct is frequently connected to organised crime groups, which must circumvent regulatory and law enforcement controls if they are to import and then distribute contraband successfully to end users. High profit margins make it affordable for illicit drug importers to build extraneous costs into their business models, including the cost of shipments lost to legitimate detections by border agencies. However, the advantage to them of using corrupt insiders to reduce the risk of detection remains significant.

Both civilian and government workforces may be the targets of corruption attempts of this kind. In addition, some corrupt officials have themselves been the initiators of corruption enabled border crime, as the following example shows.

Case Study: Operation Heritage-Marca

Operation Heritage-Marca was a joint ACLEI-AFP investigation into corrupt collaboration between the (then) Australian Customs and Border Protection Service (ACBPS) officers and others, to import illicit drugs through Sydney International Airport.

The corrupt conduct observed in Operation Heritage-Marca involved long-term collusion between a small number of ACBPS officers at Sydney International Airport. So far as can be ascertained, these officers commenced unauthorised importations of steroids in 2007, an enterprise which expanded in the intervening years to include more officers and the importation of the precursor chemical pseudoephedrine.

The criminal conspiracy grew out of a confluence of circumstances, including a weak integrity culture and changes in the risk environment. These preconditions combined to permit a number of individuals to move from enabling each other's friends to exceed duty-free limits when arriving on overseas flights (in 2007), to an orchestrated importation of steroids and pseudoephedrine with assistance from a criminal syndicate (until arrests commenced in August 2012).

Looking back, the evidence gathered over more than two years of investigation reveals a concerning picture. Some officers used their inside knowledge to defeat surveillance and interdiction systems. This knowledge included information about law enforcement techniques and systemic vulnerabilities. They had privileged access to the secure border environment, and access to law enforcement databases. By working together, they exploited weaknesses in the supervision system at Sydney International Airport to manipulate rosters and job placements, thereby increasing their capacity to facilitate larger importations of drugs. They used their official positions and made use of friendships and other connections that they had developed at Sydney International Airport to gather information, and to cover their tracks.

Operation Heritage-Marca illustrates what may happen when individuals take advantage of systemic vulnerabilities in a high-risk operating environment that lacks adequate safeguards.

To date, 22 people have been found guilty of perjury, corruption- or drug-related offences arising from Operation Heritage-Marca (including seven ACBPS officials and a Department of Agriculture border official).

Commonwealth–State cooperation (TOR 3f)

Corruption-enabled border crime creates an incentive for criminals and corrupt officials to form networks across different agencies in a jurisdiction (*horizontal collusion*) or between Commonwealth and State jurisdictions (*vertical collusion*). Accordingly, ACLEI seeks to foster cooperative partnerships with law enforcement and integrity agencies in the States and Territories.

Since the drug import- and distribution-chain operates without regard for jurisdictional boundaries, it is likely that investigations by State law enforcement and integrity agencies will discover corrupt linkages also involving Commonwealth officials, and vice versa. Consequently, ACLEI has arrangements in place to share operational information with State agencies, such as Queensland Police.

Reflecting similar arrangements in Victoria and New South Wales, ACLEI would welcome participation in similar joint State–Commonwealth organised crime taskforces in Queensland, when there is the prospect for jurisdictional overlap. ACLEI's experience is that such arrangements increase law enforcement effectiveness through information sharing between agencies, joint use of assets and information-gathering priorities, and 'de-conflicting' related operations.

As a general statement, this level of cooperation has lately been increasing in Australia as law enforcement agencies move from a 'bad apple' model of investigation, towards a 'corruption-enabled border crime' model—focussing on discovering *vertical* and *horizontal collusion*. A key insight has been that investigation of a corrupt officer is a valuable means to work backwards to find evidence about criminal entities. This insight means that instances of corrupt conduct can be approached in the same way as any other enabler (such as money-laundering) would be.

Several ACLEI investigations of this type (including investigations involving law enforcement and integrity agencies in various States) have led to actionable intelligence for policing agencies, and the arrest and prosecution of criminals, including some previously unknown groups.

The LEIC Act framework—in which the Integrity Commissioner may exercise effective control of any corruption investigation in his or her jurisdiction—enables the partnership model to be successful and gives appropriate assurance to government and the community that corruption issues are being dealt with appropriately, even when a cooperative investigation model is chosen. The ‘integrity partnership’ model used by ACLEI can be contrasted to police ‘external oversight’ models, which developed in Australia in the 1970s and 1980s following a loss of community confidence in ‘police investigating police’.

Corruption Prevention (TOR 3e)

ACLEI’s corruption prevention goal is to work with partner agencies to make it as expensive and risk-laden as possible for their officials to collude with organised crime groups to smuggle drugs, or other contraband and illicit commodities, or otherwise to assist parties to evade law enforcement, regulation, biosecurity and taxation obligations.

Having regard to its operational observations, ACLEI achieves this objective by:

- contributing to knowledge and understanding of current and emerging themes and risks
- facilitating or contributing to the capability of partners and stakeholders in anti-corruption and integrity practice, and
- advising the Australian Government on changes to policy or legislation.

For instance, ACLEI was closely involved in strengthening the ACBPS integrity framework after ACLEI and the AFP identified corruption vulnerabilities at Sydney International Airport in 2011. In that instance, ACLEI advised on changes to internal ACBPS frameworks and played a key role in the introduction of integrity testing, drug testing and mandatory reporting of misconduct within that agency.

ACLEI has since similarly advised on measures to strengthen the DIBP integrity regime.

Legislation (TOR 3g)

ACLEI notes the following legislative arrangements and powers available to ACLEI that the Commission of Inquiry may consider suitable in the Queensland context:

- Part IABA of the *Crimes Act 1914* (Cth), which establishes a legislative framework for Integrity Testing (essentially enabling a lower offence threshold to be used when seeking a Controlled Operations authorisation, when used in the context of an integrity test)
- Section 16 of the LEIC Act, which requires the Integrity Commissioner (in carrying out his or her functions) to give priority to corrupt conduct that constitutes serious corruption or systemic corruption.

4. Conclusion

ACLEI recognises that any review of measures to counter corruption and organised crime threats must balance a number of complex policy objectives to meet community expectations in a rapidly changing operating environment.

Having regard to the risk of criminal infiltration and compromise of government agencies arising from corruption enabled border crime, it will be increasingly necessary for anti-corruption agencies (as well as law enforcement agencies) to retain a strategic posture that enables them to respond cooperatively and strategically to national threats and harms. Disrupting criminal capability, including their ability to use corruption as an enabling method, is a key future strategy to safeguard communities from economic and social harms.

In particular, broadening the way that integrity issues are thought of and dealt with may open new avenues for discovering criminal links and thereby improving corruption prevention, law enforcement and accountability outcomes overall.