



**Australian Government**

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**Australian Commission for  
Law Enforcement Integrity**

**Parliamentary Joint Committee on the  
Australian Crime Commission**

*Inquiry into the adequacy of aviation and  
maritime security measures to combat  
serious and organised crime*

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

**6 November 2009**

**ACLEI Submission: Inquiry into the adequacy of aviation and maritime  
security measures to combat serious and organised crime  
(November 2009)**

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## **1. Introduction**

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on the Australian Crime Commission (the Committee) *Inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime*.

As ACLEI's jurisdiction is presently limited to the Australian Crime Commission (ACC) and the Australian Federal Police (AFP) and does not include all the agencies that operate in Australia's airports and ports, ACLEI's comments are designed to address terms of reference (a) and (d) of the Inquiry.

This submission is intended to assist the Committee by providing:

- general information about ACLEI's integrity role (section 2); and
- information about ACLEI's perspective on corruption risks in the aviation and maritime security environment, and potential links to organised crime (section 3).

Suggestions are also made on certain other points for the Committee's consideration.

Attachment One describes some of the indicators of law enforcement corruption.

A copy of *Resistance to Corruption*, ACLEI's report into the anti-corruption arrangements of the ACC and the AFP is at Attachment Two.

## **2. Responsibilities and powers of ACLEI**

### ***Establishment***

The office of the Integrity Commissioner, and ACLEI, are established by the *Law Enforcement Integrity Commissioner Act 2006* (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.*

Presently, those agencies subject to the Integrity Commissioner's jurisdiction under the LEIC Act are the ACC, the AFP and the former National Crime Authority (NCA). Other agencies with a law enforcement function may be added by regulation.

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### ***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 corruption 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 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.

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

- 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 Home Affairs 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. Accordingly, the Integrity Commissioner:

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

### ***Receiving information about corruption***

The LEIC Act establishes a framework whereby the Integrity Commissioner and the agency heads can prevent and deal with corruption jointly and cooperatively. The arrangement recognises both the considerable work of the ACC and the AFP 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 staffs.

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, irrespective of the source of that information (section 19).

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Also, the LEIC Act enables the Minister to refer corruption issues to the Integrity Commissioner (section 18), and any other person, including members of the public or other government agencies (section 23), may refer a corruption issue. In addition, the Integrity Commissioner may deal with corruption issues on his or her own initiative (s 38).

Further, ACLEI is authorised under the *Telecommunications (Interception and Access) Act 1979* to receive information about any corruption issue involving the ACC or the AFP that may be identified by other integrity agencies or police forces as a result of their telecommunications interception activities.

Special legislative arrangements make it lawful for whistleblowers to provide information about corruption direct to ACLEI. The LEIC Act provides for ACLEI to arrange protection for witnesses.

### ***Investigation powers***

A challenge facing ACLEI is that law enforcement officers subject to investigation by the Integrity Commissioner are likely to be well-versed in 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:

- coercive information-gathering;
  - notice to produce information, documents or things; and
  - summons to attend a 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;
  - 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 seizure powers; and
- arrest (relating to the investigation of a corruption issue).

### ***Information and intelligence***

One of the Integrity Commissioner's functions (at section 15(e) of the LEIC Act), is:

*...to collect, correlate, analyse and disseminate information and intelligence in relation to corruption generally in, or the integrity of staff members of, both:*  
*(i) law enforcement agencies; and*  
*(ii) other Commonwealth government agencies that have law enforcement functions;*

Section 208 of the LEIC Act also authorises the Integrity Commissioner to disclose information to the heads of other government agencies if the Integrity Commissioner is satisfied that, having regard to the functions of the agency concerned, it is appropriate to do so.

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These provisions allow the Integrity Commissioner to share information or intelligence, for instance about links to organised crime, that may be collected as a result of ACLEI assessments or investigations with: Australian Government law enforcement agencies; State and Territory police forces or integrity agencies; and, if necessary, other government agencies.

### **3. ACLEI's perspective on corruption risk in the aviation and maritime security environment**

#### ***Countering the 'corruption handshake'***

Corrupt conduct can take many forms – conflicts of interest, improper associations, nepotism and cronyism, abuses of office or power, perjury, inappropriate disclosure of information, fabrication or destruction of evidence, fraud and theft, to name just a few. Some types of corrupt conduct involve the commission of criminal offences, although many do not. See *What is law enforcement corruption?* at [Attachment One](#) for further examples.

ACLEI's focus and priority is directed towards serious and systemic corruption and towards countering the possible relationship between willing or vulnerable law enforcement agency staff members, including former staff members, who may cooperate with, or facilitate, the illicit activities of organised criminal groups. ACLEI describes this potential relationship between corrupt law enforcement officials and organised crime as the 'corruption handshake'.

It would be a serious matter if such a relationship were found to exist. ACLEI's focus takes its lead from the National Security Statement,<sup>1</sup> made to the Parliament in December 2008, in which the Prime Minister drew attention to the threat posed to Australia by transnational and organised crime. That threat is presently estimated to cost the Australian economy – individuals, businesses and governments – between \$10-15 billion each year.

By pursuing the law enforcement end of a potential corruption handshake, ACLEI complements and supports the efforts of the ACC, the AFP and State law enforcement agencies, whose primary responsibility it is to investigate and collect intelligence about organised crime.

#### ***Organised crime and corruption at the border***

The infiltration of public sector agencies and the compromise and corruption of public officials are known methods used by organised crime to hide or facilitate illicit enterprises.

Due to their role in curbing the importation of illicit goods or substances, Government agencies that regulate movement at the border operate in high corruption-risk environments.

In his evidence<sup>2</sup> to the Parliamentary Joint Committee on ACLEI on 23 October 2009, the Chief Executive Officer of the Customs and Border Protection Service, Mr Michael Carmody, acknowledged such a risk:

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<sup>1</sup> *The First National Security Statement to the Parliament*, Address by the Prime Minister of Australia, The Hon. Kevin Rudd MP, 4 December 2008, [http://www.pm.gov.au/media/speech/2008/speech\\_0659.cfm](http://www.pm.gov.au/media/speech/2008/speech_0659.cfm) (Accessed 27 June 2009).

<sup>2</sup> Parliamentary Joint Committee on ACLEI, Inquiry into the operation of the *Law Enforcement Integrity Commissioner Act 2006*,

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*“...Given our role at the border—particularly if you think of the significant consequences of attempts by criminal syndicates to bring illicit drugs, or other items of concern to the community, across the border—I would be surprised if there were not syndicates who felt that they would be advantaged by compromising one of my officers or otherwise, or even trying to gain employment. I am not suggesting we have any evidence of any systematic attempts in that way, but it is obviously a concern to me. My officers make decisions about what goods should be inspected and so on. That is a major concern to me.”*

Other than the ACC and the AFP, ACLEI’s jurisdiction does not include agencies that operate in Australia’s airports and ports.

Twenty-six of the 147 corruption issues that have been notified or referred to ACLEI, from its commencement in early 2007 to date, have a possible connection to serious and organised crime. Taken at face value, a number of these issues comprise information or allegations linked to regulating Australia’s border.

***Suggestions for consideration***

During 2009, ACLEI undertook a joint pilot review of the anti-corruption arrangements of the ACC and the AFP. *Resistance to Corruption*, the product of the project, mapped the broad corruption-risk profile of the ACC and the AFP, and surveyed the arrangements in place (or planned) to address corruption risks in each agency. A copy of *Resistance to Corruption* is at [Attachment Two](#) of this submission.

In *Resistance to Corruption*, ACLEI suggested that both agencies should undertake a systematic ‘stocktake’ to identify areas of high corruption risk, and also to review the resources that are directed to integrity assurance measures so that they remain matched to both general and specific risks.

Given the inherent risk of corruption attempts being made by transnational and organised criminal groups, ACLEI considers that there would be benefit in developing seamless anti-corruption arrangements among the highest corruption risk agencies that operate in the aviation and maritime security environment.

Such arrangements may include a joint regular stocktake of corruption risks and measures among all Australian Government agencies that operate in Australia’s airports and ports, with a realistic assessment of the effectiveness of controls and acceptance of residual risk.

## ***What is law enforcement corruption?***

'Corruption' is a nebulous term, and is frequently misunderstood and misapplied. ACLEI uses a descriptive approach to give the term meaning in the law enforcement context.

Corruption involves improper actions or abuse of power and trust by an official. It entails conduct that undermines or misuses the legitimate functions of a law enforcement agency, or of a position within an agency, for criminal, political or personal purposes.

Identifying what makes conduct *corrupt* rather than simply *unlawful* or *unethical* is difficult. Corrupt conduct may involve a crime, but not always. A person could act lawfully, but corruptly. A person's intention in acting in a particular way is relevant, but is not always the final factor in deciding if conduct were corrupt.

'Corrupt conduct' is defined in section 6 of the LEIC Act as applying to three categories of improper activity by a public official with law enforcement functions, namely conduct that is engaged in for the purpose of:

- abusing his or her office as a staff member of a law enforcement agency;
- perverting the course of justice; or
- corruption of any other kind, having regard to the duties and powers of the staff member.

The definition in the LEIC Act is deliberately broad, because corruption may involve a broad range of misconduct or behaviour, and because corruption is adaptable – like crime, it changes to take advantage of new opportunities.

The special role and powers of law enforcement agencies mean that corruption may manifest in particular ways within those agencies.

Examples of behaviour that may indicate corruption in a law enforcement context are listed below.

### ***Abuse of office***

#### **1. Conduct that seeks to gain profit or benefit for self or others**

- accepting, receiving or seeking illegitimate rewards, 'kickbacks' and/or bribes for any service (including services that would normally be provided free of charge in the course of normal duties);
- providing preferential treatment in expectation of a reward;
- accepting, receiving or seeking rewards on behalf of another person, with or without that person's consent;
- accepting, receiving or seeking payment for any corrupt act;
- improperly selling services or information to any person;
- extorting, or attempting to extort, benefits of any kind; or
- stealing money, property or drugs during arrests, execution of search warrants or other contact with the public.

Profits and benefits do not need to be of a high value. They may include: money, drugs, sexual favours or any other items. Advantages or favours may be for self or other people or groups.

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**2. Conduct that uses proper powers and discretions for an improper purpose**

- misusing legitimate authority to apply discretion such as:
  - ‘turning a blind eye’ to the criminal actions of friends, family or criminal associates;
  - punishing or investigating other people without adequate cause;
  - favouritism in the discharge of duties (for example issuing fines or other penalties to one group, but not to another).
- misusing detention powers, such as unwarranted arrest or misuse of bail procedures;
- misusing surveillance, telephone interception or search powers;
- knowingly providing incorrect information in an affidavit to obtain access to intrusive powers;
- using powers to blackmail, extort or threaten individuals or organisations;
- excessive use of force (or threats) with a purpose to elicit information or prevent information from coming forward (see also 5); or
- using privileged access to information for personal purposes.

**3. Conduct that uses law enforcement functions to support or assist criminal activity**

- participating in criminal activity, including using agency property, for example vehicles, uniforms, firearms or surveillance devices;
- offering or providing protection to criminal activity;
- offering or providing information to one or more criminal groups (see also 4);
- engaging in any activity that sabotages law enforcement efforts (see also 5);
- diverting law enforcement efforts or attention to, or away from, an activity in order to advantage one criminal group over another; or
- using poor investigation practices to evade scrutiny of criminal activity.

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**4. Conduct that misuses information to support or assist criminal activity**

- seeking or obtaining classified, sensitive, confidential or personal information, for any improper purpose;
- improperly seeking or obtaining information about law enforcement investigations, methods, processes or plans;
- providing or leaking information to unauthorised persons about individuals, witnesses, investigations or any aspect of law enforcement (including 'backroom' information not directly related to an investigation);
- providing or leaking information to unauthorised persons that may assist them in a criminal act or that may advantage one criminal group over another; or
- making unauthorised public comments about law enforcement methods, practices or targets.

'Information' may include:

- the personal or financial affairs of a colleague or law enforcement employee;
- witnesses, informers or anyone connected with an investigation or prosecution;
- criminal intelligence;
- assumed identities;
- detection or investigation methods;
- criminal methods;
- planned law enforcement actions or investigations (for example, 'tip-offs' about a pending execution of search warrants or a timetable for regulatory inspections or interdictions);
- information technology or computer databases (that may assist hackers); or
- anything else that could provide an advantage to criminal activity.

<b><i>Perversion of the course of justice</i></b>
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**5. Conduct that sabotages the impartial detection, investigation and prosecution of crimes**

- agreeing to 'look the other way' when crime is committed;
- interfering with evidence, including failure to collect or document evidence properly;
- planting, falsifying evidence or 'verballing' to get a conviction or to 'frame' a person;
- destroying evidence which could incriminate a suspect or clear another;
- withholding criminal intelligence or information from an investigation;
- laying false charges, not laying charges or laying lesser charges;
- committing perjury; or
- interfering with witness testimony or prosecution processes using bribery, extortion, blackmail or other promise, threat or inducement.

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***Corruption of other kinds, having regard to the duties and powers of the staff member***

**6. Conduct that may assist infiltration of an agency by criminal or corrupt groups**

- 'grooming' or introducing others to corruption opportunities;
- forging qualifications or references to get a job or help place a person in an agency;
- favouritism or nepotism in recruitment, promotion or transfer;
- passing on information about recruitment or promotion practices; or
- leaking information about individuals engaged in investigations, joint operations, taskforces, etc.

**7. Conduct that places at risk the impartial function of an agency**

- improperly associating with criminals;
- engaging in criminal or suspect activity, such as illicit drug-taking or heavy gambling;
- using the uniform to support private business, for example, to imply law enforcement support for a questionable activity; or
- using a police vehicle, firearm or other law enforcement-related property for private or illegitimate purposes.

**8. Conduct that facilitates corruption**

- failure to declare conflicts of interest or improper associations;
- failure of supervisor to manage or treat conflicts of interest raised or declared by staff;
- accepting a 'share' of profit or benefits from others' corrupt activities;
- failing to report corrupt activity or misconduct;
- attempting to cover up or hide misconduct or corrupt behaviour of self or others; or
- obstructing inquiries of the Integrity Commissioner and others responsible for investigating corruption and misconduct.