



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

Accountability and Beyond: Using integrity partnerships to combat organised crime

Philip Moss, Integrity Commissioner
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CHECK AGAINST DELIVERY

Acknowledgements

Thank you, for those words of introduction.

I am glad to be here, speaking to a group of people from around the globe whose interests align closely with the aims of my organisation.

Global context for corruption

The focus of these last two days is to consider the global context of organised crime. My own interest is what contribution corrupt conduct (by law enforcement officers) makes to facilitating organised crime, particularly transnational organised crime.

My own view is that, in Australia at least, this connection has been poorly explored, and that there has been a reluctance to acknowledge the specific risk. Here, largely for historical reasons, corrupt conduct often has been seen as a local problem—even a problem of the frailty of individuals. The topic has also attracted sensationalist media coverage, which detracts from rational debate.

Accordingly, as with discussion about organised crime and its methods, it can be helpful to examine corruption in a broader context.

In December 2005, the *United Nations Convention against Corruption*, or UNCAC, entered into force. It is a landmark document, although its full effect has yet to be realised. It has since been ratified by 145 countries, including Australia. It is the first legally binding international anti-corruption instrument, effectively obliging States Parties to criminalise corruption, introduce asset recovery measures, make arrangements for corruption to be investigated and prevented, and to cooperate with other nations to transfer skills and information about defeating corruption.

The UNCAC complements the *UN Convention against Transnational Organised Crime*, and the work of the *OECD Financial Action Task Force*, and to some degree remedies the 'missing link', namely addressing the role that corruption plays in facilitating the activities of organised crime groups.

Last month, the UN Secretary-General, Mr Ban Ki-moon, opened the International Anti-Corruption Academy,¹ which is based in Austria.

Before 800 Heads of State and other dignitaries, Mr Ban noted:

Across the world, intolerance of corruption is growing. The establishment of this Academy responds not only to this increasing sense of outrage and injustice, but also to an urgent need to train the experts we need to counter this global menace.

Mr Ban also observed that:

Although we have come to understand more about the causes and effects of corruption, combating it has proved to be difficult... Fighting corruption is a shared responsibility that requires cooperation among many stakeholders.

¹ UN Secretary-General, *Remarks to Inaugural Conference of the international Anti-Corruption Academy*, Vienna, 2 September 2010.

The United Nations estimates the annual cost of corruption to be between 1 and 3 trillion US Dollars worldwide.

Accordingly, in Europe, Canada, the United States of America, in many Asian countries and elsewhere, there is unprecedented international attention being given to understanding and addressing corruption. This focus is driven by a new appreciation of the role that corruption plays in terrorist financing, destabilising vulnerable states, undermining development goals and facilitating organised crime. In short, the view is, these menaces cannot be solved without also addressing corruption.

As I have indicated, Australia has had a somewhat parochial view about corruption—more informed by our punctuated history of crises than by our present situation as a lucrative market targeted by transnational organised crime.

In my address to you today, I would like to explore some options for the way ahead. In doing so, I will draw on lessons learned from those whose role it is to fight organised crime. First, I will give you a brief introduction to the work of my agency, and a short description of the genesis of anti-corruption agencies in Australia.

ACLEI

The Australian Commission for Law Enforcement Integrity, or ACLEI, is a relatively new agency, which came into operation in January 2007. I am the inaugural Integrity Commissioner and head of ACLEI.

I commenced my five-year term as Integrity Commissioner in July 2007 and hence have completed just over three of the five years of my appointment.

As Integrity Commissioner, I am responsible for providing independent assurance to the Australian Government that Commonwealth law enforcement agencies and their staff act with integrity. These agencies are the Australian Crime Commission (the ACC) and the Australian Federal Police (the AFP), and from January 2011, the Australian Customs and Border Protection Service.

I provide this assurance by detecting, investigating and preventing corrupt conduct in those agencies. ACLEI's role is to assist me in this task.

I note here that I do not have responsibility for dealing with misconduct. That function is performed by the agencies themselves and the Commonwealth and Law Enforcement Ombudsman.

You may note that the agencies in my jurisdiction are those that have significant responsibilities for the detection, investigation and disruption of organised crime. Accordingly, they have an essential role, with their State and international counterparts, in protecting the integrity of Australia's borders.

Under the Law Enforcement Integrity Commissioner Act, I am required to focus on serious and systemic corruption. Accordingly, in the last two years, I have aligned ACLEI's strategic direction to focus on those issues that pose the highest risks to the integrity of law enforcement.

At a general level, ACLEI is part of the accountability framework of the Government, which seeks to ensure that the Australian Public Service maintains its high standards of integrity, conduct and accountability.

ACLEI has a specialist role in this framework, as it is the only Australian Government agency which has as its sole purpose the defeat of corruption. It is the specialist nature and necessities of its task that puts ACLEI also into the law enforcement framework.

Accountability

If the staffs of law enforcement agencies were found to be corrupt, severe consequences would ensue for the effectiveness of policing, the rule of law would be undermined, and public confidence would be tested. The public policy role of accountability agencies is to avert these consequences.

Anti-corruption agencies of various descriptions have been established, or are being established, in five out of the six of Australia's States. Out of crisis and doubt about public sector integrity, two of these States—New South Wales and then Queensland—established their first anti-corruption agencies more than 20 years ago and set the initial pattern.

Crisis and loss of confidence has led since to the creation of a general anti-corruption agency in Western Australia, and specialist police integrity agencies in New South Wales and Victoria. Concern and doubt in Tasmania has also led to the recent creation there of an Integrity Commission, with broad responsibilities for assuring the integrity of public sector leaders.

The genesis of ACLEI is far different. The details don't matter for today's purposes, other than to observe that there was no concern or perception on the part of the Government of a serious problem with corruption in either the ACC or the AFP.

While this beginning has meant that ACLEI is smaller than most of its State counterparts, it has also meant that ACLEI was cast in a different mould. ACLEI was not faced with the public accountability, purging and reconciliation role that followed political crisis and significant breaches of trust by public officials. Neither was ACLEI thrust into an adversarial position to oversee or inspect unwilling agencies.

Rather, at the centre of the unique ACLEI model is the principle of 'integrity partnership', whereby the responsibility for the integrity of law enforcement agencies is shared between the Integrity Commissioner and the heads of the agencies that make up ACLEI's jurisdiction.

This context has led recently to interesting developments in relation to organised crime, which I will outline for you.

Organised crime and corruption

Australia's response to the threat of organised crime is driven by the *Commonwealth Organised Crime Strategic Framework*, which was launched jointly in November last year by the Commonwealth Attorney-General, the Hon. Robert McClelland MP, and the Minister for Home Affairs (as he then was), the Hon. Brendan O'Connor MP, who is now the Minister for Home Affairs and Justice.

The Framework notes that organised criminal networks engage use facilitators to undertake and conceal illicit activities and to launder the proceeds of crime. Those facilitators include, among others listed in the Framework, corrupt law enforcement officials.

In the Australian context, this acknowledgement is ground-breaking, and demonstrates Australia's looking into the global experience and facing up to real risks.

To focus attention on the problem, I use the term 'corruption handshake' to describe the potential relationship between organised crime and corrupt officials. The phrase connotes willingness, and breach of trust. But I mean it also to include targeted infiltration and corrupt relationships begun as a result of subornation by organised crime.

Accountability and beyond

As I observed earlier, ACLEI, like its State counterparts, is part of Government's accountability framework, which in most jurisdictions typically includes agencies such as ombudsmen, human rights authorities, auditors-general, privacy and information commissioners, and public sector standards commissioners, to name a few.

Yet the function and information collection methods of anti-corruption agencies differ in a significant way to those accountability agencies. For instance, ACLEI may use law enforcement methods and powers—including intelligence gathering, physical and technical surveillance, assumed identities and controlled operations—to achieve its objectives. As Integrity Commissioner, I may exercise the additional tool of coercive hearing powers. Further, my independence gives people the necessary confidence to 'blow the whistle' or otherwise to provide information to me in-confidence.

Despite these clear differences in mode and capability, stereotypes shape how others see you: if you expect a one-dimensional accountability agency, that is all you will see when you look at ACLEI.

To explain, ACLEI in its accountability role would encompass its dealing with corruption issues notified to me by agency heads. That is, ACLEI would be a reactive organisation. As this is how ACLEI operated when it first commenced, one could be excused for not seeing immediately the potential of an accountability agency like ACLEI to join the fight against organised crime.

When ACLEI commenced, our relationships with the ACC and the AFP were directed through their Professional Standards areas. At that time, the notion of integrity partnership was expressed solely in that context. But as those agencies engage with, and implement, the *Organised Crime Strategic Framework*, we find that there is intense interest in what information and intelligence integrity agencies may be able to contribute to the picture of criminality and the related corruption risk. This situation is especially so in the case of ACLEI as it begins to develop its detection capability.

Again, the 'corruption handshake' describes the picture: law enforcement agencies are interested in who may be the 'corruptors', rather than being solely occupied with finding and removing from the barrel the corrupt 'bad apples'. We all retain an interest in who else the 'bad apples' may have rubbed against while in the barrel, as this line of inquiry tells us more about corruption risk, compromise and threat.

Accordingly, much is changing for us as a consequence of the *Organised Crime Strategic Framework*. The 'core business' areas of law enforcement agencies—those that collect intelligence about, and investigate and disrupt, organised crime groups—are starting to engage with ACLEI. These areas see us not only as an accountability agency, but also as a partner in their fight against organised crime. It is refreshing, and demonstrates their forward-looking commitment to a 'joined-up' response to countering organised crime.

This new dimension to the integrity partnership—which I call the 'two-level approach'—gives ACLEI better information about the overall threat picture, and directs our detection efforts. Naturally, we have to ensure our efforts are coordinated appropriately to protect our respective operations from compromise.

My staff continues to work cooperatively with the professional standards areas of the ACC and the AFP to identify issues concerning individuals, and to manage risks to agency integrity. These areas remain the primary point of contact and exchange.

From January next year, I expect to be working in a similar way with the Australian Customs and Border Protection Service, which of course works so closely with the ACC and the AFP in policing the border, and also has significant dealings with Australia's neighbours.

What next for accountability?

Integrity agencies in Australia have done great work, and it is unlikely that their full contribution to improving integrity will ever be known publicly.

However, the threat from organised crime is challenging anti-corruption agencies to lift our respective gazes beyond the accountability framework, while keeping our feet on the floor in relation to integrity assurance.

I believe that integrity models should continue to develop in their practices and approaches in order to remain matched to the particular environments and risks which they may encounter. I am encouraged in this respect by the new models of accountability agencies that are emerging in Tasmania and Victoria, which are considered efforts to design new agencies to address specific problems.

I also expect the ACLEI model to develop over time, so that it may stay forward-looking and able to shape its environment and respond flexibly to changes to the threat picture.

I see no set pattern or timetable for these developments to occur. I merely observe that it should be expected that no agency or model should necessarily stay static.

What next for accountability? Here is a quick survey of possible futures.

- The dynamic organised crime threat picture will be an intelligence tool to direct anti-corruption resources, and vice versa. While globalisation means that it is more challenging to target organised crime groups, it may be that detecting the corruption handshake will be an investigation method that helps to inform the bigger 'picture of criminality'.
- I foresee less focus will be on 'finding the bad guy', and more effort will be directed to the detailed identification of public sector corruption-risk than is presently the case. This increased attention will ensure that the corruption deterrence framework stays matched to the corruption risk.
- Decision-making concerning integrity investigations might include 'risk of harm to the economy' (or to 'society') as a criterion, to encourage targeting of systemic vulnerabilities connected to high-impact criminal activities.
- If integrity agencies were to link more closely with law enforcement operations, some nuance may be required in modes of operation. For instance, ACLEI's focus has been on investigation-in-private and avoiding the sensationalism that can sometimes accompany public corruption investigations. I expect that, if law enforcement agencies were to partner with integrity agencies, this mode of investigation would become more common-place.
- Similarly, in future, there may be a preference for anti-corruption agencies to report their conclusions to designated Ministers and agency heads, rather than to the Parliament, while keeping in reserve an unfettered discretion to make public any matter that is not suitably dealt with or otherwise deserves to be ventilated.
- There will need to be much greater international cooperation and coordination of integrity efforts, in particular in sharing information about patterns and trends, and of the methods used by corruptors. In this regard, ACLEI is already building relations with anti-corruption agencies in our near region, for instance with the Corruption Eradication Commission, or KPK, of the Republic of Indonesia.

- I also expect there will be more reasons for Australian integrity agencies to partner with each other in investigations, whether because of an overlap of jurisdictional interest, or because of the desirability of rationalising and sharing resources.
- I see efforts will be made to meet the challenge of 'career-tracking', to counter the practice of corrupt officials moving between jurisdictions and being 'passed' or traded from one organised crime group to another.
- Finally, I observe the steps being taken by law enforcement agencies under the *Organised Crime Strategic Framework* to form task forces among, and build coalitions with, non-traditional partners. I see the same 'fusion future' for the work of integrity agencies, and I expect one day soon to see ACLEI staff working in such environments with law enforcement staff, feeding in intelligence and working cooperatively to identify the corruption handshakes and infiltration attempts that undoubtedly are occurring.

Conclusion

After crisis, the social and political requirement is for an inquiry to examine forensically 'what happened and why'. Significant breaches of trust by public officials and law enforcement officers will still require a remedy, and wrongs done will still need recognition and reconciliation. Accountability will always be needed.

So too will anti-corruption agencies need to retain their autonomy from law enforcement agencies, and to have an independent capability to use all modern investigative methods. There will always be those few cases which might be investigated without being disclosed upfront to the agencies concerned, to protect their integrity. It is good for everyone that this capacity for independence is safeguarded.

At the same time, I think the moment is right to rethink anti-corruption mechanisms, and to unlock their further potential (in the right circumstances). A number of Australian integrity agencies operate in this way, or are headed in that direction. ACLEI is now moving this way too.

As an audience that consists mainly of law enforcement officers, that challenge is to you as much as to anyone. Fighting organised crime is your job, not ACLEI's. Yet, our roles overlap when the corruption handshake occurs.

How could you make an integrity partnership work in your case, and what would be your own pre-conditions? Perhaps I have outlined some of these today.

I thank you for your attention this afternoon and I welcome any questions or comments.