



**Australian Government**

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**Australian Commission for  
Law Enforcement Integrity**

**Inquiry into State-based law  
enforcement integrity agencies**

**Submission by the  
Australian Commission for Law  
Enforcement Integrity (ACLEI)  
to the Parliamentary Joint  
Committee on ACLEI**

**June 2008**

## 1. Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to present a submission to the Parliamentary Joint Committee on ACLEI (the Committee) regarding the *'Inquiry into State-based law enforcement integrity agencies'*.

Since ACLEI is the basis of comparison for this Inquiry, this submission is designed to assist the Committee by providing:

- general advice about how ACLEI operates in relation to each of the Inquiry's terms of reference; and
- an introduction to the law enforcement and anti-corruption environment in which ACLEI operates.

ACLEI would be pleased to make further submissions during the course of the Inquiry, should the Committee wish.

## 2. Responsibilities and powers of ACLEI

### *The Role of the Integrity Commissioner*

The *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) commenced on 30 December 2006. The 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).

The Integrity Commissioner's 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 (AFP), the Australian Crime Commission (ACC) and the former National Crime Authority (NCA). Other agencies with a law enforcement function may be added by regulation (s 5, definition of *law enforcement agency*).

### *Receiving corruption information*

One important feature of the LEIC Act is that it provides for the mandatory notification, by the relevant law enforcement agency head to the Integrity Commissioner, of information and allegations concerning corruption, irrespective of the source of that information (s 19).

In this way, the LEIC Act establishes an arrangement whereby the Integrity Commissioner and the agency heads, prevent and deal with corruption jointly and cooperatively. The arrangement recognises both the considerable work of the ACC and AFP to introduce internal corruption controls (including detection and deterrence mechanisms) and the prime responsibility that the law enforcement agency heads have for the integrity of their staffs.

This arrangement recognises also that much of the high-value information about corruption is likely come from within each agency, for example thorough 'professional reporting' (aka 'whistle-blower') programs. It should be recognised, however, that the efficacy of this regime relies to a large extent on the efforts of the law enforcement agencies themselves (discussed further in Section 7 of this submission).

In addition, the LEIC Act provides also for the Minister to refer corruption issues to the Integrity Commissioner (s 18), as well as for any other person, including state law enforcement integrity agencies, to provide information about corruption (s 23).

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

### **Assessment process**

The analysis of corruption issues (s 7) can be a resource-intensive task. ACLEI's assessment of the veracity of information, its relative significance to operational priorities, as well as the practicalities of investigation, results in a decision about how a particular issue will be handled.

Under present arrangements, the Integrity Commissioner determines all such matters in accordance with the LEIC Act, following a recommendation from ACLEI investigators.

### **Criteria for handling matters**

The LEIC Act, at s 27, sets out the criteria to which the Integrity Commissioner must have regard in determining how to deal with a corruption issue, including whether to take no further action.

While the LEIC Act establishes that the Integrity Commissioner's role is to decide how a matter will be handled, section 27 makes it plain that there are several issues to be balanced, namely:

- the need to ensure a matter is fully investigated;
- the relative resources of the agencies that could investigate the matter;
- the significance of a matter; and
- the desirability of ensuring that the heads of law enforcement agencies take responsibility for managing corruption risks in their agencies.

The Integrity Commissioner is to give priority to dealing with serious corruption and systemic corruption (s 16).

These criteria highlight the principle that agency heads should take primary responsibility for integrity matters in their agency. These criteria highlight also that an oversight agency, because of size and resourcing, must deploy its resources strategically and carefully.

One operational consideration that is often decisive in how a corruption issue will be handled is the Integrity Commissioner's access to the coercive information-gathering or 'hearing' power, as well as to intrusive investigation powers, eg telecommunications interception and covert surveillance.

While the AFP and ACC have access to intrusive powers, practicalities of corruption investigation can prevent them from using these powers to investigate their own staff. Also, while the AFP has a coercive information-gathering power (s 40VE, *Australian Federal Police Act 1979*), it can be used only in relation to AFP members, while the ACLEI hearing power has much broader application and is exercised in a more formal setting.

***In what ways may ACLEI deal with corruption issues?***

Under s 26, the Integrity Commissioner can decide how a corruption issue may be dealt with, that is:

- as an ACLEI investigation;
- by referring matters to another agency (such as the AFP or a State integrity agency or police force, as appropriate); or
- by a joint investigation with another government agency, or with an integrity agency of a State or Territory.

ACLEI has utilised all of these methods of investigation.

***What are ACLEI's investigative powers?***

A challenge that faces ACLEI is that those law enforcement officers subject to the inquiries of the Integrity Commissioner are themselves well-versed in law enforcement methodologies, and may be skilled at countering them to seek to avoid scrutiny.

ACLEI's key investigative powers are:

- coercive information-gathering, such as in response to Notices to produce evidence or information, or under oath or affirmation in response to a summons (ss 75, 76);
- telecommunications interception;
- electronic and physical surveillance;
- controlled operations;
- assumed identities;
- search warrants (Part 9, Division 4);
- right of entry onto law enforcement premises and associated seizure powers (ss 105, 106)
- arrest (s 139);
- scrutiny of financial transactions; and
- access to law enforcement and other databases for law enforcement purposes.

ACLEI may also collect intelligence about corruption in support of its functions.

Of the options available to ACLEI, to date ACLEI has used financial transaction analysis, compulsory notices and private coercive hearings, supported by the collection of background information and collaborative evidence.

ACLEI has considered using covert methodologies in a small number of cases, but has not proceeded. In one case, where ACLEI sought the assistance of the AFP to place an AFP member under covert surveillance, the request had to be refused because of the risk that the surveillance would be discovered.

ACLEI has discussed this problem with our State integrity agency colleagues, and we are confident that requests for covert resources will be considered favourably, subject to the priorities of those agencies. Based on current understandings, these services

would be provided to ACLEI on a cost recovery basis, and facilitated using the provisions of s 199 of the LEIC Act (relating to secondments of staff to assist the Integrity Commissioner).

***What findings can the Integrity Commissioner make?***

After completing an investigation, the Integrity Commissioner must prepare a report that includes findings and the evidence or material on which those findings are based (s 54). The LEIC Act provides for the Integrity Commissioner to make findings of fact, but not of guilt.

In addition, the Integrity Commissioner can make recommendations regarding, for example, the commencement of disciplinary action or termination processes against a member of a law enforcement agency.

A feature of the LEIC Act is its focus on measures to remedy deficient practices that can give rise to corruption, or hamper its early discovery. The Integrity Commissioner is authorised to explore such issues in reports and recommendations (s 54(3)(d)).

***How does the Integrity Commissioner communicate his findings?***

ACLEI investigations must culminate with a report to ACLEI's Minister, currently the Minister for Home Affairs (s 55). A copy of the report is also provided to the head of the relevant law enforcement agency (s 55). A supplementary report can also be provided in certain circumstances (s 54).

A report made only to the Minister and head of agency can be publicly released by the Integrity Commissioner where the Integrity Commissioner considers it to be in the public interest (s 209). This could also happen as part of the Integrity Commissioner's annual report.

Where a public hearing was held as part of the investigation, or if a public inquiry were requested by the Minister, the Minister must lay the substantive report before each House of the Parliament (s 203).

The Integrity Commissioner may provide a special report to the Minister, that is also required to be laid before each House of the Parliament. Special reports may relate to investigations or to other matters (s 204).

Further, with limited exception, the Integrity Commissioner must give to the Parliamentary Joint Committee on ACLEI information it requests about an investigation (s 216).

***What can be done with evidence?***

Where the Integrity Commissioner discovers evidence of an offence, a liability to civil penalty, or evidence that would be admissible in a proceeding under the *Proceeds of Crime Act 2002* (or a State or Territory equivalent), the assembled evidence must be given to the AFP or to the relevant public prosecution agency (s 142, 143).

With limited exceptions, information compulsorily provided by a witness who was subject to a summons and who claimed a 'use immunity' prior to giving evidence, is inadmissible in evidence against the person in criminal proceedings, or any other proceedings for the imposition or recovery of a penalty (s 96).

Evidence about a breach of duty or misconduct by a staff member that might justify terminating the employment of a law enforcement officer, or initiating disciplinary proceedings against them, must be provided to the head of the relevant law

enforcement agency (s 146). This provision extends also to secondees, and allows the Integrity Commissioner to provide the information to a secondee's home agency. The s 96 'use immunity' does not apply to disciplinary proceedings.

***What are the Integrity Commissioner's other functions?***

The Integrity Commissioner has a role in reviewing the structural and governance arrangements of law enforcement agencies, as well as of the laws of the Commonwealth, that might contribute to corrupt practices, or prevent their early detection.

For example, as part of the Annual reporting process, the Integrity Commissioner must describe the nature and scope of corruption in the agencies oversighted, as well as any patterns and trends (s 201(2)(c)).

The Integrity Commissioner may also include in the annual report any recommendations for changes to the laws of the Commonwealth, or to the administrative practices of government agencies (s 201(2)(d)).

### **3. Organisational structures and internal governance of ACLEI**

***Context: Size of ACLEI***

In contrast to ACLEI's State counterparts, ACLEI was not established in response to a crisis in public confidence of the agencies whose integrity they were set up to oversee. At the time the LEIC Bill was debated,<sup>1</sup> and currently, there was no perception of a significant or systemic problem with corruption in either the ACC or the AFP. The possibility that corruption could develop is ever present, particularly if sufficient deterrence and detection measures were not in place.

ACLEI's creation can be explained as 'precautionary' policy – recognition of the high corruption-risk activities undertaken by the AFP and ACC, and of the reliance that Government has placed on those agencies, as demonstrated by their expanding functions and increasing budgets in recent years.

In its present form, ACLEI is a balance of the risk perceived by Government against what is considered appropriate and necessary to control the risk. In that calculation, ACLEI is seen as one element of the anti-corruption framework that also properly includes the efforts the AFP and ACC have taken to control their own risks.

Also, the ability for the Government to add other agencies with a law enforcement function to ACLEI's jurisdiction by regulation, recognises that other agencies are also involved, to varying degrees, in activities that might 'invite'<sup>2</sup> corruption.

One of the functions of the Integrity Commissioner, and of the Parliamentary Joint Committee, is to advise Government and the Parliament on trends and changes in corruption risks in law enforcement, and to report on changes that might be desirable,

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<sup>1</sup> See Second Reading Speech of the Attorney –General, the Hon. Philip Ruddock MP, *Hansard*, 29 March 2006, at p 9.

<sup>2</sup> Corruption researchers have referred to the 'invitational edge' of corruption, at which temptations to corruption are particularly acute. See, eg, Manning and Redlinger (1979), cited in Newham (2000) 'Towards Understanding and Combatting Police Corruption', *Crime and Conflict*, No. 19, pp 21-25.

based on evidence. This is the reason behind the 'building block approach' to agency development (which is discussed further in the next section).

Other factors explain the other obvious differences between ACLEI and its counterparts, but perhaps mask some problems with economies of scale that challenge smaller autonomous agencies like ACLEI. These differences relate to function and jurisdiction, specifically:

- the number of agencies oversights;
- the size of the risk to be controlled in those agencies; and
- the scope of the functions performed by the oversight agency.

For example, the Office of Police Integrity (OPI) in Victoria, established in 2004, oversees the operations of Victoria Police, a force of 10762 sworn police and 2683 civilians.<sup>3</sup> OPI's functions now include oversight of complaints about Victoria Police, as well as serious misconduct and corruption investigations. A separate Commissioner for Law Enforcement Data Security (CLEDS) oversees the collection, storage, use and disclosure of data by Victoria Police. OPI's grant from Government for the year ended June 2007 was \$13.456m. Victoria does not have a separate Crime Commission, but has a Chief Examiner whose role under the *Major Crime (Investigative Powers) Act 2004* (Victoria) is to use coercive information-gathering powers in relation to organised crime in that State.

As a second example, in New South Wales the Police Integrity Commission (PIC), established in 1996 to take over the work of the Wood Royal Commission that was itself established in 1994, investigates serious and systemic corruption in the New South Wales Police Force, the latter comprising 14634 sworn police officers and 3936 civilians.<sup>4</sup> Complaints about NSW police that do not have a corruption connection are overseen separately by the NSW Ombudsman. In 2006/07, PIC's grant from Government was \$16.816m. PIC will shortly have jurisdiction to investigate corruption issues in the NSW Crime Commission, a Bill to that effect having passed the NSW Parliament on 25 June 2008.

As a comparison, at June 2006, the AFP comprised 1742 sworn members and 1430 unsworn members, and 1467 Protective Services officers. The ACC had 430 employees and 151 secondees at that time.

At June 2007, the AFP's sworn staff numbered 2501, unsworn staff 2194, and Protective Services 1341. The ACC had grown to 666 employees and 126 secondees in the same period.

While these statistics compare gross size, they do not illuminate the differing functions performed by these State and Federal agencies. It is premature for ACLEI to comment on what might be the relative corruption risks of the various agencies.

Finally, other differences between ACLEI and the comparator State-based integrity agencies are attributable to the length of time each of the agencies has been

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<sup>3</sup> Australian Institute of Criminology (2007) *Facts & Figures*. Table 12: Composition of state and territory police services by jurisdiction, 30 June 2006, p97.

<sup>4</sup> Ibid.

established. ACLEI's experience, and that of other integrity agencies, is that it takes time to build an effective anti-corruption capability that is matched to its task.

***Building block approach to ACLEI's development***

ACLEI's 2006-07 Annual Report (at page 22) described ACLEI's organisational development approach, as follows:

"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 reference to 'building blocks' includes consideration of what basic level of resources are needed as workloads are established, as well as to issues of investigation capabilities and jurisdiction.

It may assist the Committee if ACLEI were to set out some of the investigation capability 'building blocks' that the Committee will encounter as it compares ACLEI with other agencies. These are:

- Infrastructure for hearings and investigations
  - Perimeter security
  - Secure hearing room, interview rooms, and waiting rooms
  - Task force facilities
  - Evidence vault
- Legal support services
  - Counsel assisting
  - Answering legal challenges
- Operations and covert information-gathering
  - Target identification program (including financial analysis and profiling)
  - Telecommunications and data interception capability
  - Covert investigation (physical and technical surveillance) capability
  - Covert Human Information Source (CHIS) capability
  - Controlled operation capability
  - Assumed identity capability
  - Integrity testing capability
  - Computer forensics capability
  - Specialist corporate support services for covert activities
  - Specialist information technology services to support covert activities
  - Personnel security considerations
  - Operational training program
  - 'Whistle-blower' arrangements

- Witness protection arrangements
- Prevention
  - Corruption risk assessment capability
  - Research, publishing and communication program
- Strategic direction
  - Parliamentary & Policy program
  - Corporate governance and internal assurance programs

Corruption, as with other forms of serious criminality, may occur across borders and at any time of the day or night. Corruption also occurs in ways that make it difficult to detect. There is an enormous capacity and ability to cover it up.

ACLEI has an additional challenge compared to its State counterparts in that it may need to conduct investigations that have inter-State and international dimensions.

It is not ACLEI's assessment that it needs to develop in identical ways to the State-based agencies, not least because, under the LEIC Act, ACLEI, the ACC and the AFP should work cooperatively to identify and investigate corruption. Where it would be unwise or impractical to rely solely on that cooperation, ACLEI may source key services from other agencies. Future assessments will need to consider the extent to which such reliance is well-placed and sustainable.

## 4. Relationships with other key agencies

### ***Commonwealth Ombudsman***

ACLEI shares the oversight of the AFP with the Commonwealth Ombudsman. This manifests in several ways, as follows:

- ACLEI relies on the Ombudsman to identify complaints that disclose corruption issues, or matters that on the face were serious misconduct (Category 3 complaints, s 40RP, AFP Act) but on investigation reveal corruption;
- The Ombudsman may advise ACLEI of other matters that raise corruption issues (s 23(5)(a) of the LEIC Act; s 6(16) of the *Ombudsman Act 1976*); and
- The Ombudsman must advise ACLEI of any 'significant corruption issues' (s 23(5)(b) of the LEIC Act; s 6(17) of the *Ombudsman Act 1976*).

ACLEI and the senior officers of the Commonwealth Ombudsman's Law Enforcement Team meet regularly, primarily to ensure that issues do not fall 'between the cracks' of the shared oversight system.

ACLEI has found no difficulty in co-managing the integrity system with the Commonwealth Ombudsman.

### ***Parliamentary oversight***

An important aspect of the LEIC Act regime is parliamentary oversight.

In ACLEI's experience, the Parliamentary Joint Committee on ACLEI adds significant value to ACLEI's work, for example by focussing on the need for ACLEI, the AFP and

the ACC to cooperate closely to achieve policy outcomes. The Committee's existence underlines the importance the Parliament has placed on ensuring its law enforcement agencies, including those that might be added to ACLEI's jurisdiction, approach their integrity programs with appropriate rigour.

One of the Committee's duties is to monitor and review the Integrity Commissioner's performance of his or her functions. As a contrast, the Western Australian Corruption and Crime Commission and the NSW Police Integrity Commission each have a form of 'Parliamentary Inspector' to fulfil or supplement this review role.

ACLEI does not believe that there is a case to support the establishment of a Parliamentary Inspector for ACLEI since it would be unduly burdensome.

Additionally, in the event of an ACLEI corruption issue, the Minister may appoint a Special Investigator to inquire (Part 12, LEIC Act).

Further, in the Federal sphere, the Commonwealth Ombudsman inspects each law enforcement agency's use of Telecommunications Interceptions and Controlled Operations, including ACLEI's, and handles complaints that cannot be satisfactorily managed internally.

### ***Intelligence agencies***

The Australian Intelligence Community (AIC) can sometimes provide information that is relevant to ACLEI's functions.

There is no requirement for this kind of information to be provided to ACLEI. ACLEI has been exempt from the requirements of the Privacy Act, and accordingly that legislation provides no impediment for the intelligence agencies to provide information to ACLEI. In this way, methodologies sometimes used by the AIC are less likely to be compromised.

Mainly for this reason,<sup>5</sup> ACLEI has suggested to the Australian Law Reform Commission's Review of the Privacy Act that ACLEI should remain exempt from the Privacy Act.

### ***Other agencies***

ACLEI has entered into a number of Memorandums of Understanding with various Federal agencies that can provide ACLEI with access to services or information for operational purposes.

## **5. State and Territory officers seconded to Federal agencies**

### ***ACC secondments***

The ACC employment environment<sup>6</sup> consists of:

- The Chief Executive Officer (CEO) of the ACC;
- ACC Examiners;

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<sup>5</sup> Another important reason relates to ACLEI's ability to provide for its own internal security, for example to protect against ACLEI staff being able to ascertain ACLEI's own use of internal surveillance measures.

<sup>6</sup> See, for example, ACC Annual Report 2006-07, p 101.

- ACC employees, including those that may be seconded to AFP as special members to give them police powers;
- ACC employees without police powers (eg intelligence, technical or administrative staff);
- Formal secondees from other agencies ( for example from police forces, bringing their own police powers with them);
- Consultants engaged under s 48(1) of the ACC Act;
- General Counsel appointed under s 50 of the ACC Act;

In relation to all of these categories, the LEIC Act provides a means for corruption issues to be dealt with externally in a way that extends beyond the Public Service Act disciplinary regime.

From time to time the ACC also hosts joint task forces with other agencies. Members of these task forces who are not formally seconded to the ACC are not within the Integrity Commissioner's jurisdiction.

***'Informal secondments' to AFP and ACC***

ACLEI is interested in the extent to which State and Territory government agencies provide staff resources on an informal basis to the AFP and ACC, such as in a task force context. Such arrangements can be responsive to the operational needs of the AFP, ACC and other law enforcement agencies, but can introduce accountability gaps where:

- Different law enforcement cultures mix, and deterrence systems (such as compulsory drug testing or financial declaration) might not apply across the board;
- The donor agency does not communicate corruption-risk concerns to the receiving agency (or vice-versa, upon return); or
- Adequate supervision of task force staff is not provided.

The worst case scenario is where a task force might introduce corrupt officers to each other, creating a new corruption network across agencies.

This situation is controlled to some extent by donor agency awareness of these risks, and the high level of cooperation between the State integrity agencies and ACLEI. Indeed, one of the benefits of LEIC Act has been to allow information about Federal law enforcement corruption to be provided to an independent federal agency, namely ACLEI.

The Committee might consider whether it would be feasible and appropriate to require State and Territory law enforcement agencies, and other Federal government agencies with law enforcement powers, to provide information to the Integrity Commissioner about corruption issues concerning staff who are working with, or who may recently have worked with, the ACC or AFP. Such a measure might ensure that ACLEI can remain aware of corruption 'hot-spots' affecting the integrity of the ACC and AFP and other Federal agencies with law enforcement functions.

## 6. Corruption prevention programs

Currently, ACLEI has little capacity so far to advertise widely its existence, whether to those law enforcement officers who work in its jurisdiction or to others (for example the Federal prison population) who might wish to bring information to ACLEI's attention. Nevertheless, it is apparent that as our role becomes known, ACLEI is beginning to attract information reports directly from law enforcement officers pointing to the importance of ACLEI being able to engage in strategic marketing.

The Integrity Commissioner and ACLEI staff have commenced a program of speaking to recruits and other courses at the AFP College, as a modest beginning. The Integrity Commissioner gives a number of other addresses to provide some prominence to anti-corruption matters in the Federal environment.

ACLEI would like to produce information for publication in AFP and ACC staff newsletters to reach our target audience more systematically, and to publish articles in other contexts also.

## 7. Internal corruption controls of Federal law enforcement agencies

The most important element of any law enforcement integrity system is the efforts an agency head makes to ensure the integrity of his or her own agency. The extent to which external oversight mechanisms are active can be a measure of the success of those internal controls (noting that there is a separate legitimate role for external agencies because of their unique combination of coercive information-gathering and intrusive investigation powers).

Some internal controls remain controversial within law enforcement agencies, often due to workplace relations concerns. Examples include integrity testing, compulsory drug testing, compulsory DNA sampling, and mandatory financial declarations. For separate reasons, Queensland agencies do not have access to Telecommunications Interception powers.

Other practical impediments include the extent to which it is viable for physical surveillance to succeed when surveillance officers are from the same police force.

The AFP is an agency at the forefront of most aspects of internal corruption control, and resources its Professional Standards portfolio with over \$11m annually.<sup>7</sup> The ACC is implementing a new anti-corruption plan, and has recently appointed a Manager of Professional Standards, as the ACC engages further with its anti-corruption challenges.

Some States are experimenting with new methods of corruption control, for example the NSW Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission commenced an inquiry in March 2008 to evaluate '*Early Intervention Systems to Identify Officers at Risk of Corruption*'.

A summary of anti-corruption controls that are in use in Australian law enforcement agencies appears at **Annexure One**.

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<sup>7</sup> Evidence of AFP Deputy Commissioner Lawler, *Examination of the Annual Report of the Integrity Commissioner 2006-07*, 10 April 2008, Hansard p 20.

## 8. Comparing State integrity agencies with ACLEI

Each State integrity agency represents a unique response to the challenges faced in its jurisdiction. Accordingly, the design of each system varies considerably:

- Queensland and Western Australia have combined a 'crime commission' function with a 'police complaint and misconduct' function and a 'public-sector wide anti-corruption' function.
- Victoria has established a single office to oversee police complaints and corruption investigation, a separate Commissioner for Law Enforcement Data Security (CLEDS), and a Chief Examiner who may use coercive information-gathering powers in relation to organised crime in that State.
- New South Wales has separate agencies for the investigation of police corruption, police complaints, and public-sector wide anti-corruption, as well as a separate crime commission. As noted in Section 3 of this submission, the Police Integrity Commission will shortly have jurisdiction to investigate corruption matters in the NSW Crime Commission.

Other integrity agency functions can include:

- Witness protection;
- Responsibility for 'public interest disclosures', also known as 'whistle-blower' disclosures; and
- Oversight of 'critical incidents', such as injuries or deaths in custody or that arise as a result of police pursuits.

There is no 'right' answer, but each solution most certainly requires regular review to remain relevant and responsive to the corruption issues they are designed to address. ACLEI's own review will occur in 2010 (s223A).

ACLEI's discussion with other integrity agencies has indicated that the unique difficulties of investigating police corruption are most efficiently addressed by dedicated attention and resources, even where the oversight agency also performs other roles.

## 9. The future

### *Anti-corruption reviews*

The current implementation of the LEIC Act regime is premised on an expectation of close cooperation between ACLEI and the agencies it oversees – an expectation that is currently being met in respect of matters notified to ACLEI by the Chief Executive Officer of the ACC and the AFP Commissioner. This premise stems from the 'policy balance' (referred to in Section 2 – Receiving Corruption Information; and in Section 3 – Context: Size of ACLEI), between the rights and obligations of the heads of agencies to be responsible for the integrity of their staffs, and the added assurance that attracts to external visibility of corruption issues.

However, at this point ACLEI is not fully confident that it understands sufficiently the scope and nature of the corruption risks that the ACC and AFP each face, and how

those risks are controlled. As a result, ACLEI cannot be sure that our own resources are sufficient or targeted to where they will be most effective.

Both the AFP and the ACC expend considerable resources on controlling corruption risk. The AFP in particular enjoys a strong reputation for its deterrence programs. However, it is yet to be independently established whether the ACC's and AFP's anti-corruption resources are of appropriate size and strategically directed to meet current and emerging risks.<sup>8</sup> As a result, it is not possible for ACLEI to conclude that the appropriate balance has been struck between agency autonomy and external oversight.

To bring focus to this issue, the CEO of the ACC and the AFP Commissioner have agreed to a pilot project, scheduled for the later half of 2008, in which ACLEI will conduct a cooperative review of the AFP and ACC's anti-corruption plans.

### ***Jurisdiction***

ACLEI notes that the Committee "supports the widening of ACLEI's reach to other Commonwealth agencies with a law enforcement function in the longer term".<sup>9</sup> The Committee further notes that it is vital that any expansion should be undertaken in a systemic and incremental manner.<sup>10</sup>

The current inquiry, by examining and comparing the various models of integrity agencies extant in Queensland, New South Wales, Western Australia and Victoria, is a useful step in the Committee's consideration of the jurisdiction question. It also provides the Committee with the opportunity to familiarise itself with the differences in risk profile (and response) of the various State and Territory law enforcement agencies.

- ACLEI suggests that one further step towards consideration of the Integrity Commissioner's jurisdiction might usefully be to determine criteria that would lead to the prioritisation of agencies that could be added, based on each agency's corruption-risk profile and ACLEI's ability to make a cost-effective difference to that profile.

Such a project would complement ACLEI's 'Anti-Corruption Review' pilot program.

### ***Investigation support capabilities***

ACLEI's current strategy for obtaining covert investigative support is to purchase services from other integrity or law enforcement agencies.

To this point, there has been no need for ACLEI to establish a permanent covert investigative capability. Were that situation to change, for example were ACLEI to suffer substantial impediment to obtaining sufficient support services in a timely way, other solutions may need to be explored, and any resource implications discussed with Government.

ACLEI notes that a major expense of technical support for operations is the cost of keeping pace with technological change. Presently that cost is borne separately by each agency. One possible solution might be to formalise a cooperative program in coming years amongst the integrity agencies.

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<sup>8</sup> The AFP last reviewed its Professional Standards area in 2002, with a report by the Hon. William Fisher tabled in Parliament in December 2003. The review did not address squarely the adequacy of resources, or their operational focus, addressing instead the legislative environment of the AFP's disciplinary and complaint handling frameworks.

<sup>9</sup> Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2006-07*, June 2008, paragraph 2.101.

<sup>10</sup> *Ibid.*

The establishment of ACLEI has provided an opportunity for enhanced anti-corruption efforts between the States and the Commonwealth. Already good informal cooperation exists. Further efforts could see efficiency gains in the way physical and technical surveillance and other operational support capabilities are organised and deployed.

***Cooperation with the state integrity agencies***

ACLEI acknowledges the leadership in corruption investigation and integrity measures commenced by State agencies, and their help in providing support, advice and assistance to ACLEI.

There is every indication that further cooperation and coordination is both possible and desired.

## Annexure One – internal corruption controls in use in law enforcement agencies

- Values-based organisation (to make corruption 'offensive', not just 'offensive')
- Process accountability in high risk activities
  - Eg, controlled operations, telecommunications and data interception, and surveillance devices
    - Access by warrant only
    - Strict accountability regime comprising, inspection of records by the Commonwealth Ombudsman, and annual reporting by agencies on the effectiveness of operations to the Attorney-General
  - Evidence Act requirements for fair interviews with police, such as the 'caution rules' or 'Judge's rules'
  - Strict internal controls for Covert Human Information Source (CHIS) Management
  - 'Letter of comfort' – strict internal controls
- Policy and practices
  - Formal 'release of information' protocol
  - Drug-handling policy and drug registry practices
  - Property handling controls
  - Video and audio taping of searches and seizures
  - Video and audio taping of interviews
  - 'Use of force' forms
  - Secondary work policy
  - Regular rotation of staff in high corruption risk task areas
  - Mobile phone usage auditing
- Detection/Deterrence/'Early Warning' program
  - IT security audits, data security standards, 'red flagging' analysis
  - Mandatory random alcohol and drug testing, and targeted testing following critical incidents;
  - Personnel financial assets declarations;
  - Personnel 'Conflict of Interest' declarations;
  - Personnel security and risk assessments;
  - A quality review program targeting high corruption risk investigations;
  - Officer profiling
- Risk-based supervision
  - Operational risk assessment and attentive management of corruption-vulnerable areas;
  - Reduce operational discretion in high corruption risk areas
- Recruitment
  - Pre-recruitment suitability testing;
  - Recruiting for diversity;
- Information-gathering
  - A 'professional reporting' internal whistleblower scheme;
  - Obligation for staff members to report misconduct and suspected misconduct.
- Internal investigation powers and practices
  - Coercive interview powers for internal investigators, including a disciplinary offence for failing to attend or answer questions;
  - 'Sunshine' policy (controlled, formal release of information about the outcome of corruption and misconduct investigations; investigation debriefs for affected staff; capturing of 'lessons learned')
  - Integrity testing program
- Commissioner's employment power
  - A Commissioner's 'no-confidence' or other power to dismiss, with limited appeal right in cases of misconduct.