



Australian Government

**Australian Commission for
Law Enforcement Integrity**

**Parliamentary Joint Committee on the
Australian Commission for Law
Enforcement Integrity**

*Inquiry into the integrity of overseas
Commonwealth law enforcement
operations*

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

29 February 2012

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overseas Commonwealth law enforcement operations
(February 2012)**

1. Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on ACLEI (the Committee) concerning its *Inquiry into the integrity of overseas Commonwealth law enforcement operations*.

To assist the Committee, Part 2 of this submission provides background about ACLEI's role and responsibilities, Part 3 provides ACLEI's comments relating to the Inquiry's Term of Reference (a) and Part 4 provides comments in relation to Term of Reference (c).

ACLEI's submission discusses, in the context of overseas law enforcement operations:

- the strategic corruption risks to law enforcement outcomes; and
- how ACLEI presently engages with these risks.

Risks relating to agencies outside the Integrity Commissioner's jurisdiction are beyond ACLEI's remit and are not canvassed in this submission.

2. Role and responsibilities of ACLEI

Establishment

The office of 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.*

The agencies subject to the Integrity Commissioner's jurisdiction under the LEIC Act are the Australian Crime Commission (ACC), the Australian Customs and Border Protection Service, the Australian Federal Police (AFP) and the former National Crime Authority.

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.

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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 Home Affairs and 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 five¹ 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 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, irrespective of the source of that information (section 19).

¹ Note that a government amendment to the Crimes Legislation (Powers and Offences) Bill 2011, proposes to increase to seven years the maximum sum of periods of appointment of an Integrity Commissioner. See http://www.apf.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill_crime_legislation/exposure%20draft%20integrity%20commissioner%20amendments.pdf

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The LEIC Act enables any other person, including members of the public or 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 “whistleblowers” 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;
- investigate the corruption issue jointly with another agency;
- refer the corruption issue to the law enforcement agency for internal investigation (with or without management or oversight by ACLEI);
- refer the corruption issue to another agency, such as a State integrity agency, the AFP, or another government agency, for investigation; 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.

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Accordingly, the Integrity Commissioner gives priority to corruption issues that may:

- involve a suspected link between law enforcement and organised crime;
- 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 also 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.

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;
 - 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, or not to answer truthfully in hearings.²

² The Crimes legislation (Powers and Offences) Bill 2011, which is presently before the Parliament, proposes to introduce a contempt referral power in relation to hearings conducted by the Integrity Commissioner. If passed, the amendment will provide the Integrity Commissioner with a mechanism to refer a person in contempt of ACLEI to the Federal Court or Supreme Court of a State or Territory, to be dealt with as if the person were in contempt of that court. The purpose of a contempt referral power is to speed up the management of any non-compliance with the Integrity Commissioner's coercive powers.

3. Corruption risks facing Commonwealth law enforcement agencies involved in international operations

This Part addresses the Inquiry's term of reference (a) and discusses the higher level strategic risks to Australian law enforcement outcomes that may arise as a consequence of overseas Commonwealth law enforcement operations.

Threat environment

In 2008–09, reflecting a change in the threat picture articulated in the then Prime Minister's *National Security Statement to the Parliament* in December 2008 and the 2009 *Commonwealth Organised Crime Strategic Framework*, the Integrity Commissioner oriented ACLEI's strategic focus to corruption issues related to organised crime. To highlight this change, and to explain in an engaging way the emerging risk, the Integrity Commissioner used the term 'the corruption handshake' to describe the potential relationship between corrupt law enforcement officials and organised crime.

Chapter 7 of the Integrity Commissioner's 2010–11 Annual Report discusses a number of emerging risk factors that came to the Integrity Commissioner's notice during the year. The Integrity Commissioner lists among those factors the recent increase in strength of the Australian dollar.

Strong Australian dollar³

In 2010–11, the strength of the Australian dollar increased significantly the potential profitability to be gained by smuggling illicit drugs and other contraband through Australia's border. This situation has attracted new criminal syndicates from illicit markets in other countries and presents new intelligence collection and interdiction challenges for law enforcement agencies at the border.

A corruption risk is that organised crime gangs may be prepared to pay bribes, or larger bribes, in these circumstances. In particular, new entrants to the illicit importation market, including those who are less sophisticated in avoiding detection, may seek to introduce their experience of bribing public officials in other countries.

ACLEI, which is working in partnership with other agencies at the border, notes the potential for corrupt compromise of public officials to facilitate illicit importations, or frustrate their detection.

³ Annual Report of the Integrity Commissioner 2010–11, p.72.

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The ACC Organised Crime Threat Assessment 2010 describes in more detail the increasingly global scope of organised crime activities, and the threat posed by international organised crime to Australia, as follows:

The contemporary face of organised crime⁴

Opportunities for organised crime today are unprecedented — increased globalisation, escalating cross-border movement of people, goods and money, emerging international markets and rapidly developing and converging technologies provide a fertile operating environment for organised crime.

...

...Organised crime groups are entrepreneurial and unrestrained by legislation, borders, morality or technology. They are adaptable, innovative and fluid— infiltrating a wide range of industries and markets, well beyond areas generally considered vulnerable.

...

International trends⁵

Organised crime has moved well beyond a simple law and order problem within the remit of an individual agency, jurisdiction or country.

Organised crime today is a transnational, highly capable and multi-dimensional threat, inextricably linked to global economic activity and national security issues.

Transnational crime and corruption threaten global interests by undermining security and stability, the rule of law and legitimate business activities.

The international dimension to corruption risk

ACLEI considers that strategic risks to law enforcement objectives are those that could entail staff of law enforcement agencies acting in collusive relationships overseas that lead to criminal outcomes in Australia, or that import corruption risk to Australia.

Lower-level risk

Australian staff members posted or deployed overseas sometimes operate at a distance from their usual supervisory arrangements and may face personal temptations for corrupt activity that they would not normally encounter in Australia—for instance, bribes or ‘facilitation payments’ for personal purposes, or so-called ‘speed money’ to fast-track legitimate administrative decisions. Similar challenges may confront locally-engaged staff, whose position is complicated by differing experiences and cultural expectations about integrity and loyalty.

These types of low-level activity, while they may involve corrupt conduct,⁶ do not in themselves pose a systemic risk to law enforcement operations. Although not a strategic priority for ACLEI, any compromise of this type to the integrity of officials while serving overseas may leave an individual vulnerable to further compromise and, for that reason, remain a corruption risk for agencies to be aware of and manage.

⁴ ACC Organised Crime in Australia 2010, Introduction, p.3.

⁵ ACC Organised Crime in Australia 2010, p.18.

⁶ Such conduct may also breach Australia’s foreign bribery laws (see Divisions 70, 140 and 141 of the *Criminal Code Act 1995*).

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Strategic risk

At the strategic level, a number of factors presently coincide in a way that increases corruption risk to certain types of overseas operation, as follows:

- The strength of the Australian Dollar and resilience of the economy (relative to other illicit drug markets), and domestic demand for illicit drugs, means that large returns are possible for organised crime groups that arrange the importation of illicit goods.
- The Australian Customs and Border Protection Service uses state-of-the art border protection technology to detect illicit imports, increasing the risk of detection.
- Australian ports of entry are experiencing record levels of legitimate transactions, which means that law enforcement interventions need to be intelligence-led.
- Commonwealth law enforcement agencies rely to an increasing extent on information gathered from overseas agencies, and Australian officers posted overseas, that inform intelligence-led border detection strategies.
- High returns for illicit importations means that there is more capacity to circumvent detection strategies through making corrupt payments.

This set of circumstances means that there is a heightened risk⁷ that corrupt compromise methods, especially bribery, may be used to avoid or circumvent established detection systems.⁸ Accordingly, Australian Government agencies need to be alert to the possibility of both on-shore and off-shore compromise to these strategies.

Accordingly, the higher-order law enforcement integrity question is how corrupt approaches to staff stationed or otherwise working offshore could be used to facilitate the importation into Australia of drugs or other illicit or border-controlled substances, by:

- selling information about law enforcement methodologies—for example, how to circumvent border controls and detection systems;
- actively facilitating passage of illicit goods through collusive relationships and personal contacts;
- involving or engaging other Australians in corrupt collaboration; and
- manipulating intelligence collection and dissemination.

⁷ This theme was also explored in the Integrity Commissioner's address on International Anti-Corruption Day, 9 December 2011, pp.4-5. See, *Corruption trends and issues in the 21st Century—where to from here?*, see

<http://www.aclei.gov.au/Documents/Reports%20submissions%20and%20speeches/Commissioner+-+panel+address+-+International+Anti-Corruption+Day+-+Developing+the+National+Anti-Corruption+Plan.pdf>

⁸ One reported matter involves allegations that an Australian Government official was the target of a bribery attempt relating to the importation of illicit tobacco, see <http://www.dailytelegraph.com.au/news/sydney-nsw/smokes-ring-chopped-as-cops-seize-tobacco/story-e6freuzi-1226127670944>.

4. The extent to which ACLEI is able to respond to corruption in international operations

This Part addresses the Inquiry's term of reference (c) and discusses how ACLEI engages with corruption risk relating to international law enforcement operations.

Investigation of corruption issues with an overseas aspect or footprint

Some of the Integrity Commissioner investigations may have an international aspect. The provisions of the LEIC Act which are relevant in this context include:

- section 10, which defines staff members of law enforcement agencies to include, at subsection 10(1)(fa), 'a person engaged overseas under section 69A of the *Australian Federal Police Act 1979* to perform duties overseas as an employee of the AFP';
- pursuant to section 84, the Integrity Commissioner may take evidence outside Australia and use it for the purpose of performing his or her functions, or exercising his or her powers under the LEIC Act, in circumstances where arrangements have been made between Australia and another country for a hearing to be held pursuant to Division 2 of the LEIC Act.
- subsection 87(2) makes provision for the Integrity Commissioner to administer an oath or affirmation to a person appearing as a witness in another country, in accordance with any arrangement between Australia and the other country and the laws of that country;
- section 199 provides that the Integrity Commissioner may make an arrangement to second a member of a police force or an integrity agency of a foreign country to perform services in connection with the performance or exercise of any of the Integrity Commissioner's functions.

Some of the Integrity Commissioner's investigations to date have involved law enforcement staff members who have travelled to, or been posted to, other countries. In these cases, ACLEI was able to gather any necessary information and evidence from sources within Australia. It follows that the Integrity Commissioner has not yet had cause to make use of these provisions.

Supporting integrity in overseas deployments

Law enforcement staff members deployed or posted overseas sometimes work in environments that have specific corruption-risk challenges, or they may work at a distance from normal supervisory arrangements. It is important for Australian agencies with staff deployed or who work in international environments to demonstrate that their integrity is valued highly by the Australian Government.

Due to the footprint of its international engagements, the AFP has particular risks in this category. Accordingly, the Integrity Commissioner has included in ACLEI's work program in recent years a number of in-country inspections. The Integrity Commissioner uses these occasions to raise awareness about ACLEI's place in the integrity framework, familiarise himself with local integrity challenges, receive in-country briefings about the arrangements that are being applied to mitigate particular corruption risks, and to give prominence to integrity issues and risks. The timings and locations of such visits are determined in consultation with the AFP Commissioner.

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In the last two years, the Integrity Commissioner and other ACLEI staff have travelled for this purpose to the Solomon Islands and East Timor.

Fostering relationships to support anti-corruption efforts

The Integrity Commissioner's 2010–11 Annual Report notes the importance of international cooperation in combating corruption

As with organised crime, to which it is often linked, corrupt conduct is not restrained by national or state boundaries. The eradication of corruption cannot be achieved by countries in isolation, and requires cooperative law enforcement efforts and collaboration in the development of integrity frameworks. Accordingly, the Integrity Commissioner intends that ACLEI both contribute to, and learn from, the international experience in corruption control.⁹

Accordingly, ACLEI engages with integrity agencies in other countries as opportunities arise in order to exchange knowledge about combating and preventing corruption.

The Integrity Commissioner's present strategy of international engagement is to focus ACLEI's efforts on Australia's region and, in particular, on four countries, close to our borders, and where the Australian Government has a significant link or presence—East Timor, Indonesia, Papua New Guinea and the Solomon Islands. This strategy also serves to raise ACLEI's profile to allow direct reporting of integrity matters.

Accordingly, the Integrity Commissioner has developed relationships with:

- the Commissioner of the East Timor Anti-Corruption Commission;
- the Corruption Eradication Commission of the Republic of Indonesia (Komisi Pemberantasan Korupsi, or KPK);
- the Chief Ombudsman of the Ombudsman Commission of Papua New Guinea; and
- Solomon Islands Government representatives in Australia.

The Integrity Commissioner appreciates the assistance provided by the Attorney-General's Department, AusAID and the Department of Foreign Affairs and Trade in keeping ACLEI informed of international developments in integrity arrangements, and for supporting ACLEI's contact with integrity agencies in other countries.

East Timor

The Integrity Commissioner has developed a relationship with the Commissioner of the East Timor Anti-Corruption Commission, which was established in 2010. The Integrity Commissioner provides assistance to the East Timor Anti-Corruption Commission as opportunities allow, for example by providing training opportunities as they arise.

Indonesia

The Integrity Commissioner, together with the Attorney-General's Department and the Australian Public Service Commission, is a signatory to the *Memorandum of Understanding for bilateral cooperation on combating corruption* with the Corruption Eradication Commission of the Republic of Indonesia (Komisi Pemberantasan Korupsi, or KPK). ACLEI has provided training through ACLEI's *Behavioural Interviewing Skills Enhancement Program* (BISEP) to four KPK staff in the last three years and continues to seek opportunities to develop the relationship between the two agencies, for example by meeting with officials when they visit Australia to familiarise them with ACLEI.

⁹ Annual Report of the Integrity Commissioner 2010–11, p.47.

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ACLEI also participates in the Australia Indonesia Partnership for Justice (AIPJ), coordinated by AusAID. It is envisaged that ACLEI's involvement will capitalise on the peer-to-peer linkages that have already been established with the KPK.

Papua New Guinea

The Chief Ombudsman of the Ombudsman Commission of Papua New Guinea has a broad mandate to investigate corruption and misconduct in Papua New Guinea at all levels, including in politics, the judiciary and the public service. The Integrity Commissioner has established a relationship with the Chief Ombudsman's office. In 2011, ACLEI also provided BISEP training to two of the Ombudsman Commission's anti-corruption staff.

Solomon Islands

The Integrity Commissioner has established links with the Solomon Islands Government representatives in Australia. During visits to the AFP deployment in that country, the Integrity Commissioner and ACLEI staff visit key agencies, such as the internal investigations unit of the Royal Solomon Islands Police Force and the Solomon Islands Ombudsman's Office, to share information about the integrity arrangements in both countries.

Other countries

ACLEI is the only Commonwealth agency whose sole purpose is to combat corruption and the Integrity Commissioner and ACLEI have specialist roles in Australia's national integrity framework.

Accordingly, ACLEI often receives requests to provide briefings to international delegations with an interest in Australia's anti-corruption framework. Between July 2011 and February 2012, the Integrity Commissioner and other ACLEI staff have met with delegations from Bangladesh, Indonesia, the Maldives, Thailand and Vietnam. ACLEI collaborates with the Anti-Corruption Section of the Attorney-General's Department in relation to such requests.

Gathering information about risk

The three agencies in ACLEI's jurisdiction have varying degrees of overseas engagement and deployment, but each is involved in monitoring trends in crime overseas that may affect the Australian law enforcement environment. Accordingly, they are also sources of information about corruption risk, and ACLEI asks for and receives briefings from them on relevant topics from time to time.

ACLEI attends the Australian Government Inter-Agency Anti-Corruption Meetings, convened quarterly by the Attorney-General's Department. In this forum, and others, ACLEI contributes its operational experience and makes observations about corruption risk and possible implications for control arrangements. Other agencies contribute from their own perspective to update the Department about emerging issues in corruption risk and control.

ACLEI also seeks to maintain links with key agencies involved in the international movement against corruption. This engagement is intended to keep ACLEI informed about developments in the international picture, including about emerging risks. For this reason, and to contribute to consultations about Australia's obligations, two ACLEI staff members attended the fourth Conference of States Parties to the *United Nations Convention against Corruption* in October 2011—with officials from the Attorney-General's

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Department, the Department of Foreign Affairs and AusAID—as part of the Australian Government delegation.

In 2011, a senior ACLEI staff member participated in the *Lafia Pacific Program*, which involved a course of lectures and site visits relating to the Australian Government's engagement in the Pacific region. The program, which is presented annually by the Australian Public Service Commission and the Australian National University, was an efficient way for ACLEI to gain further insight into integrity topics in neighbouring countries.

Corruption prevention initiatives

ACLEI and the three LEIC Act agencies comprise the *Community of Practice for Corruption Prevention*—a forum which meets quarterly to share information, innovate and collaborate on corruption prevention initiatives and research. As this forum develops, it is intended that it will link with and foster corruption prevention practices in related areas of Australian Government administration.

In addition, ACLEI may disseminate information to relevant Australian agencies about corruption risks observed during investigations. In this way, in 2010–11, ACLEI provided corruption prevention advice to an agency about the security of diplomatic bags.¹⁰

¹⁰ Annual Report of the Integrity Commissioner 2010–11, p.27.