



Australian Government

**Australian Commission for
Law Enforcement Integrity**

Review of Police Oversight (NSW)

*Department of Justice
Government of New South Wales*

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

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1. Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the New South Wales Government's Review of Police Oversight.

Due to the high illicit profits to be made from importing contraband into Australia—especially prohibited drugs—tackling corruption enabled border crime is a focus for ACLEI and its partners. In that context, ACLEI enjoys strong operational relationships with NSW Police, the NSW Crime Commission and the Police Integrity Commission. ACLEI regards each agency as professional, capable and willing to partner.

ACLEI does not have a role in the accountability arrangements of NSW law enforcement agencies, unless an officer is or has been seconded to an Australian Government law enforcement agency in ACLEI's jurisdiction. In such a situation, the *Law Enforcement Integrity Commissioner Act 2006* (Cth) provides mechanisms for the Integrity Commissioner to liaise with the head of the secondee's 'home' law enforcement agency and integrity agency, as well as with the secondee's 'host' agency, to manage the various elements of an independent investigation (see sections 29, 36 and 40).

To assist the Review, [Part 2](#) of this submission provides background about ACLEI's role and responsibilities. [Part 3](#) outlines the present operating environment, while [Part 4](#) summarises the law enforcement oversight arrangements that apply in the Commonwealth, and which may be relevant to the Review's consideration of its Terms of Reference.

2. ACLEI's role and responsibilities

Establishment

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

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

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

From 1 July 2015 the Department of Immigration and Border Protection (DIBP)—incorporating the Australian Border Force—will join the integrity Commissioner's jurisdiction (when that department assumes the functions of the ACBPS).

ACLEI's role

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

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

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

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

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

Independence

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

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

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

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

Receiving and disseminating information about corrupt conduct

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

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

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

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

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

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

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

Investigation options

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

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

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

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

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

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

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

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

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

Investigation powers

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

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

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

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

Purpose of coercive powers

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

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

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

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

3. Operating environment

Corruption-enabled border crime

According to data from the Australian Crime Commission and United Nations Office on Drugs and Crime (UNODC), Australia is among the world's most lucrative illicit drug markets (UNODC *World Drug Report 2014*, pp 37–8). Cocaine and methylamphetamine (Ice) are the two illicit drugs (by value) most commonly imported into Australia. Domestically, the 'street' selling price of 1 kilogram of crystalline methylamphetamine can reach up to \$320,000, with one kilogram of cocaine reaching prices up to \$250,000 (Source: ACC, *Illicit Drug Data Report 2013–14*, pp 45, 102). The selling prices achieved in Australia are more than three times those in the United Kingdom, and more than six times those obtained in North America.

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

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

Most corruption risk at the border is connected to the smuggling of contraband, evasion of duties or circumvention of regulations to gain an advantage (including in a commercial context). Due to the nature of those crimes—particularly importations of illicit drugs—corrupt conduct is frequently connected to organised crime, and represents a risk to Australia's national security, economy and community safety.

Organised crime groups must circumvent regulatory and law enforcement controls if they are to successfully import and then distribute contraband. High profit margins make it affordable for illicit drug importers to build extraneous costs into their business models, including the cost of shipments lost to legitimate detections by border agencies. However, the advantage to them of using corrupt insiders to reduce the risk of detection remains significant. Both civilian and government workforces may be the targets of corruption attempts of this kind. In addition, some corrupt officials have themselves been the initiators of corruption enabled border crime.

Since the drug import- and distribution-chain operates without regard for jurisdictional boundaries, it is likely that investigations by State law enforcement and integrity agencies will discover corrupt linkages involving Commonwealth officials. When this situation has occurred in NSW, law enforcement and integrity agencies have brought valuable information to ACLEI's notice. ACLEI has shared similar information with NSW agencies. This level of cooperation has been increasing as agencies move from a 'bad apple' model of investigation, towards a 'corruption enabled border crime' model (focussing on discovering linkages). The participation of integrity agencies in State/Commonwealth taskforces in recent years (eg TF Polaris) has accelerated this transition.

4. Commonwealth arrangements for law enforcement integrity

Current structure and history

Each jurisdiction's integrity framework must balance the various drivers for transparency/public accountability, the need for operational security, and the desirability of agencies taking responsibility for their own integrity.

As the Review would be well aware, there are several dimensions to modern police integrity frameworks—ranging from: inculcating values; code of conduct compliance; complaint management; proactive detection (including professional reporting/whistleblowing and data mining); internal investigation of serious misconduct (usually with external review); external decision-making and/or investigation of serious corruption allegations; external oversight of special or restricted police powers; and, response to critical incidents (often with external management or review).

Internal and external aspects of a law enforcement integrity system also inevitably involve close integration with a police disciplinary system, as well as establishment of specific statutory powers and duties, sometimes including coercive powers. These systems also need to be able to respond easily and flexibly to a wide variety of issues—from incivility matters, to excessive use-of-force complaints, to corruption incidents—with each task requiring different forms of tactical treatment, independence, resources and transparency.

The question of whether a single agency could or should be responsible for all aspects of police integrity in the Australian Government was reviewed by the Australian Law Reform Commission in its 1996 report, *Integrity: but not by trust alone* (Report No 82). While recommending that a single agency be established (the National Integrity and Investigation Commission), the report also noted the special challenges of investigating police corruption, and identified the need to demarcate carefully between complaint handling functions and corruption investigations. The government's consideration of the ALRC report was overtaken by events in other jurisdictions, including the Wood Royal Commission in NSW.

The present Commonwealth law enforcement integrity model is a graduated risk and harm model. For instance, in the AFP's case, minor matters are dealt with at a management level (with internal oversight), more serious matters attract internal investigation (with oversight from the Commonwealth Ombudsman), while any corruption issues must be notified to ACLEI (for decision as to their handling).

The logic of the model is that more-serious matters (usually involving criminality) should tend to receive external treatment, while less serious matters should be dealt with in a managerial or complaint handling context. The model also recognises that the investigation of corrupt conduct is best carried out as a separate and distinguishable enterprise to complaint management, both to retain operational security and to focus specialised resources and coercive powers on significant matters.

The structure described above is reflected primarily in Part V of the *Australian Federal Police Act 1979*, the relevant amendments to which were informed by the 2003 review of the AFP complaint and professional standards arrangements by the Hon William Fisher AO QC.

The establishment of ACLEI in 2006, which occurred in the same package of amendments as the Fisher reforms, recognised that the risk picture for law enforcement was changing rapidly (especially in relation to corruption pressures from serious and organised crime, which were then starting to become apparent).

ACLEI's jurisdiction has twice been extended to take account of changing risk in law enforcement, and it will be extended again in July 2015 to include DIBP, due to changes in that agency's law enforcement corruption risk profile.

Integrity partnership

ACLEI's development—in jurisdiction, resources, capabilities and strategy—has been dictated by changes in the picture of criminality (including the prospect of criminal infiltration and other corrupt collaboration), which is one of the primary drivers of corruption risk in law enforcement.

The 'integrity partnership' model used by ACLEI can be contrasted to police 'external oversight' models, which developed in Australia in the 1970s and 1980s following a lack of community confidence in 'police investigating police'. The LEIC Act model—in which the Integrity Commissioner may exercise effective control of any corruption investigation—enables a partnership model to be successful and give appropriate assurance to government.

A key insight has been that investigation of a corrupt officer is a valuable means to work backwards to criminal entities. Several ACLEI investigations of this type (including with NSW agencies) have led to actionable intelligence for policing agencies, enabling them to arrest and prosecute criminals, including some previously unknown groups.

Accordingly, rather than focusing on a 'bad apple' or trying to resolve a complaint, a corruption investigation should aim to:

- identify all people who may be involved in a potential corrupt network (whether officer, back office administrator or criminal collaborator)
- identify and control the extent of any compromise to law enforcement information or methods
- contribute to the overall intelligence picture about organised crime methods and capability, and
- collect evidence to a criminal standard whenever possible.

5. Conclusion

ACLEI recognises that the Review must balance a number of complex policy objectives to ensure the NSW system of police accountability is able to meet community expectations in a changing operating environment.

To counter the enduring risk of corruption in law enforcement environments, integrity arrangements should be carefully designed and afforded appropriate powers and resources. In particular—having regard to the risk of criminal infiltration and compromise arising from corruption enabled border crime—it will be increasingly necessary to adopt a strategic posture that enables anti-corruption agencies to respond cooperatively to national threats and harms.