



Australian Government

Australian Commission for
Law Enforcement Integrity

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Mr Russell Matheson MP
Chair
Parliamentary Joint Committee on the
Australian Commission for Law Enforcement Integrity
Parliament House
CANBERRA ACT 2600

Dear Mr Matheson

Examination of the Integrity Commissioner's Annual Report 2012–13

Following my appearance before the Committee on 13 February 2014, in the context of its examination of the Integrity Commissioner's 2012–13 Annual Report, I wish to bring two other matters to your attention.

1. Australian Customs and Border Protection Service reform program

In my opening statement to the Committee, I acknowledged the commitment of the Australian Customs and Border Protection Service (ACBPS) Chief Executive Officer, Mr Michael Pezzullo, to integrity reform—flowing from ACLEI's Operation Heritage, which was a joint investigation of alleged corrupt conduct among ACBPS officers at Sydney International Airport.

My Annual Report described some of the steps taken by the ACBPS in 2012–13 to professionalise and strengthen its resistance against corrupt compromise and criminal infiltration which could threaten its capacity to protect Australia's borders—namely, the:

- development of the ACBPS *Blueprint for Reform 2013–2018*;
- strengthening of the ACBPS professionals standards capability;
- (following the passage through the Parliament of the *Law Enforcement Integrity Legislation Amendment Act 2012*), issue of CEO Orders on Professional Standards and Mandatory Reporting, to make it a legal requirement for staff members to report suspected serious misconduct or criminal conduct;
- establishment of the Integrity Support and Referral Network to provide staff with support in relation to integrity reporting;
- introduction of Program Integrity Risk Assessments, to identify corruption risks and allow programme-specific mitigation strategies to be put in place;

- revision of the ACBPS Fraud and Corruption Control Plan; and
- introduction of mandatory corruption-awareness training for all staff, at induction and annually.

I draw the Committee's attention to the ACBPS' continuing focus on integrity reform in 2013–14, including the:

- appointment in November 2013 of a Special Integrity Adviser—reporting directly to the CEO—to implement anti-corruption reforms and manage the Integrity and Professional Standards Branch, including end-to-end management of all disciplinary, professional conduct and integrity matters;
- introduction in July 2013 of an ACBPS-wide drug and alcohol testing programme (following the pilot programme conducted between March and May 2013);
- development of an ACBPS integrity testing capability;
- strengthening of organisational suitability assessments and of secondary employment policies to guard against infiltration and compromise; and
- ongoing use of Program Integrity Risk Assessments to ensure that anti-corruption measures remain well-targeted in a changing operational environment.

Further, in November 2013, the Minister for Immigration and Border Protection, the Hon. Scott Morrison MP, and the ACBPS CEO announced the establishment of *Taskforce Pharos* to target hard-to-detect corruption.

These steps—among the others proposed in the ACBPS *Blueprint for Reform*—address the issues discussed in my *Interim Report into Operation Heritage* and the joint ACLEI / Australian Federal Police (AFP) assessment of vulnerabilities at Sydney International Airport, and are important and necessary measures to counter the prospect of recurring corrupt conduct.

Moreover, the ACBPS CEO's present emphasis on anti-corruption reform and professionalisation draws on the insight that an agency's ability to deliver sustainable outcomes is linked directly to the integrity of its staff and the strength of its governance arrangements.

2. Law Enforcement Integrity Commissioner Regulations 2006—review of reporting requirements

In my 2012–13 Annual Report, I outlined ACLEI's response to the "Detection Challenge"¹—that is, in the current threat environment, corrupt conduct is likely to become harder to detect.

I described my intention to establish a cooperative framework within the integrity partnership formed by the agencies in ACLEI's jurisdiction to bring together and analyse information that might indicate that corrupt conduct is occurring. I am pleased to report that ACLEI is working with the ACBPS on *Taskforce Pharos* and engaging more broadly with the Australian Crime Commission in relation to its *National Criminal Intelligence Fusion Capability* to develop corruption detection methods and identify emerging leads.

Among other factors, this approach has caused me to consider how the present reporting regime under the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) and Regulations may need to be modified to remain relevant in a changed model of operation. The following points reflect my present thinking.

¹ Integrity Commissioner's review, page 5, Annual Report of the Integrity Commissioner 2012–13.

- a) Regulations 17 to 22 of the LEIC Regulations prescribe what particulars about corruption issues must be included in the Integrity Commissioner's Annual Report. When the LEIC Act framework was first contemplated, the concept of "corruption issue" was based on the now out-dated concepts of "allegation" and "complaint". These concepts were imported from the *Complaints (Australian Federal Police) Act 1981*, which was repealed when the LEIC Act commenced. Under that model, each corruption issue is akin to a unit of measurement.

These sources of information were at their most important seven years ago, but are now less so. I have found that notifications and referrals—while in many instances still valuable—are not by themselves sufficient to meet the challenges of identifying sophisticated attempts by organised crime to subvert the legitimate outcomes of law enforcement agencies. Accordingly, ACLEI's detection strategy is increasingly moving to a more free exchange of data and information which by itself—unaggregated—would not raise a corruption issue in every instance. In that sense, the Regulations are no longer measuring ACLEI's input or impacts.

- b) A second factor to consider is that, under the present statutory regime established by the LEIC Regulations, "corruption issues" (as a unit of measurement) include the many pieces of information and allegations received by ACLEI that—upon assessment or preliminary investigation—are found to have no basis. The likelihood arises that those agencies that participate more fully in the transfer of information with the Integrity Commissioner may be subject to public penalty through the perception that they have "a corruption problem", as opposed to well-developed corruption risk management frameworks and a preparedness to contribute to ACLEI's intelligence holdings.

Accordingly, I am seized to remove any distinction—real, perceived or misdirected—that may dissuade agencies from bringing forward information at the earliest possible opportunity to the Integrity Commissioner.

- c) As the LEIC Act jurisdiction has been extended to include smaller agencies with low numbers of notifications and referrals, a possibility has arisen that the present Annual Report requirements would force ACLEI to "tip off" the subject or subjects of an investigation by making public prematurely that it is in receipt of information about possible corrupt conduct, or that the Integrity Commissioner is investigating an issue relating to a particular agency.

A case in point is a recent investigation relating to AUSTRAC, which concluded in January 2014 with the conviction of a public official for offences relating to unlawful disclosures and theft of property belonging to a Commonwealth entity. Had the timing been otherwise, or the investigation protracted, there would have been a material risk that the Annual Report requirements would have alerted the officer whose conduct was in question.

For these reasons, ACLEI is in discussion with the Attorney-General's Department and the Commonwealth Ombudsman—and with the AFP, whose Commissioner has also raised similar issues with me—to examine alternatives that may achieve a more appropriate and contemporary balance between transparency (on the one hand) and ensuring the most effective operation of the LEIC Act (on the other). I expect that such a review would establish a reporting arrangement that is more akin to way that law enforcement agencies are required to manage such balances—that is, by reporting on outcomes, rather than inputs.

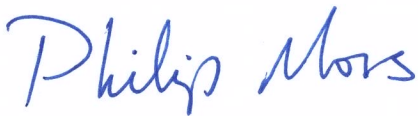
I also expect that ACLEI would continue to report on the effectiveness of the LEIC Act framework—including on the level of cooperation received from agencies—as is presently the case under the performance reporting requirements set out in the Portfolio Budget Statements.²

As a statutory safeguard, I envisage that the concept of 'corruption issue' would be retained as the threshold for the Integrity Commissioner to consider commencing an investigation, thereby maintaining a minimum requirement for the use of the coercive powers available under the LEIC Act.

I will keep the Committee informed as this topic develops.

Thank you for the opportunity to provide these comments in relation to the Committee's examination of the Annual Report of the Integrity Commissioner 2012–13.

Yours sincerely



Philip Moss
Integrity Commissioner

² See Portfolio Budget Statements 2013–14, Key Performance Indicator One: *the corruption notification and referral system is effective*.