

Chapter 3

Key issues

3.1 This chapter considers the key issues of concern to the committee, namely the addition of AUSTRAC, CrimTrac and aspects of the Department of Agriculture within ACLEI's jurisdiction in late 2012, as well as phases of Operation Heritage and the opening of a second office for ACLEI in Sydney. This chapter also considers the impact of ACLEI's widened jurisdiction on its prioritised workload and the timeliness of its assessment and investigative functions.

Inclusion of three new agencies under ACLEI's jurisdiction

3.2 In November 2012, legislation was enacted to include AUSTRAC, CrimTrac and aspects of the Department of Agriculture in the Integrity Commissioner's jurisdiction.¹

3.3 In the Report, the Integrity Commissioner stated that there was a high level of interaction and cooperation between the existing LEIC Act agencies and the new agencies. The reports states that this helped to develop the arrangements that take account of each separate agency's risks, while 'developing innovative approaches to understand corruption risk, assess the resilience of governance systems, and respond in targeted ways to common challenges.'²

3.4 In evidence regarding the 2012-13 annual report, the Integrity Commissioner informed the committee that Operation Heritage highlighted that 'the integrity partnership enables a high degree of cooperation between agencies, with the common objective of safeguarding the integrity of people, assets, decisions and information that are related to the Commonwealth's law enforcement interests.'³

3.5 The integrity partnership includes a combination of commitments from six agencies that are now included in the framework of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act). These agencies include the Australian Crime Commission, the Australian Customs and Border Protections Service (ACBPS), the Australian Federal Police (AFP), AUSTRAC; CrimTrac and prescribed aspects of the Department of Agriculture.⁴

3.6 The prescribed aspects of the Department of Agriculture that come under ACLEI's jurisdiction principally include the frontline biosecurity areas of the Department:

1 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 2.

2 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 6.

3 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 2.

4 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 2.

(b) members of staff of the Agriculture Department whose duties include undertaking assessment, control and clearance of vessels and cargo imported into Australia, and

(c) members of staff of the Agriculture Department who have access to the Integrated Cargo System.⁵

3.7 To determine the effectiveness of this extension, a review will be held in 2014 that examines the inclusion of the Department over its first 12 months. The review will also consider whether other aspects of the Department of Agriculture should be included in ACLEI's jurisdiction.⁶

3.8 The committee queried whether the current inclusion of aspects of the Department of Agriculture were adequate or if there were other aspects of the Department where integrity issues are still a risk but are outside of ACLEI's jurisdiction. The Integrity Commissioner stated that from his own experience 'a broader approach, rather than a more restricted one, is the better way.'⁷ The Integrity Commissioner agreed that if the entire Department of Agriculture was included within ACLEI's jurisdiction, nothing would inhibit ACLEI from investigating support staff that could possibly be implicated in corruption issues.⁸ In addition, it was raised that the addition of the Australian Taxation Office (ATO) and the law enforcement aspects of the Department of Immigration could be a beneficial addition to the jurisdiction of ACLEI.⁹

3.9 ACLEI maintained its focus in relation to the other agencies within its jurisdiction, noting that during 2012-13, 78 corruption issues were notified or referred to the Integrity Commissioner for assessment. Two more issues were identified by ACLEI and dealt with on an 'own initiative' basis. The reported total number of corruption issues is fewer than the 106 issues in 2011-12 and the 90 issues in 2010-11.¹⁰ The Report states that it was too early to attribute a probable cause for the decrease in the numbers of notification of corruption issues but it was stressed that there 'is no indication that this decline indicates a reticence to notify the Integrity Commissioner about corruption issues' and that it could be a consequence of the 'detection challenge'.¹¹ The sources of information about corruption issues in 2012-13 are outlined in the following table.

5 Regulation 8, Law Enforcement Integrity Commission Regulations 2006.

6 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 3. The committee is currently conducting an inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity.

7 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 3.

8 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 3.

9 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 4.

10 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 51.

11 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 22.

Table 1—Sources of information about corruption issues 2012-13 (2011-12 figures)¹²

		ACC	ACBPS	AFP	TOTAL
Notifications	Notification by law enforcement agency heads	3 (8)	27 (29)	26 (36)	56 (73)
Referrals	Minister	0 (0)	0 (0)	0 (0)	0 (0)
	Other people or government agencies	1 (1)	9 (14)	11 (23)	21 (38)
Own initiative	ACLEI intelligence/ own initiative identifications	0 (0)	2 (0)	0 (3)	2 (3)
Sub total		4 (9)	38 (43)	37 (62)	79 (114)
Less duplicates		0 (0)	1 (8)	0 (0)	1 (8)
TOTAL		4 (9)	37 (35)	37 (62)	78 (106)

The detection challenge

3.10 The Integrity Commissioner's opening statement detailed a new priority for ACLEI, referred to as the 'detection challenge'.¹³ This was described as a situation where:

The increased sophistication of organised crime, combined with sustained pressure on law enforcement agencies, means that corruption is likely to continue to occur, and may become less susceptible of discovery than is already the case.¹⁴

12 Numbers in (brackets) are for the 2011-12 reporting year. ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 51.

13 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 2.

14 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 2.

3.11 ACLEI is therefore collaborating with other agencies, including the Australian Crime Commission, to shape a concerted response to this challenge. Through this collaboration, ACLEI has access to the National Criminal Intelligence Data Fusion Capability, which consists of:

...a capability which the ACC has developed and...is, seemingly, coming into great demand from the whole range of agencies, including state agencies, wanting to use that capacity. It is an area of data mining, matching various known actors and bring them into a process whereby they match up. [By using the ACC's Fusion Capability] you do have...the capacity to get into the area of corruption detection.¹⁵

3.12 A cooperative framework is being established within the integrity partnership, to combine and analyse information that could point to a heightened corruption risk or an occurrence of corruption. Precursors of the chance of corruption in one agency 'will continue to inform detection and prevention activities in all other LEIC Act agencies, and perhaps several others beyond.'¹⁶

Operation Heritage-Marca

3.13 Operation Heritage-Marca is a joint operation between ACLEI and the AFP that commenced in January 2011 when the ACBPS was shifted into the LEIC Act jurisdiction, and the ACBPS notified ACLEI of multiple corruption issues.¹⁷

3.14 The committee was informed that Operation Heritage-Marca had resulted in the arrest of 17 criminal entities that were a part of organised crime and were linked to Customs officers.¹⁸ In addition, prosecution has commenced against four officers of the ACBPS and one officer of the Department of Agriculture.¹⁹

3.15 The Integrity Commissioner noted that the majority of the investigation had been completed, however, there are outstanding matters requiring further investigation. The Integrity Commissioner mentioned that an interim report on the investigation had already been provided to the Minister and that a final report would be submitted once the operation was completed, including the prosecution phase of the investigation.²⁰ The committee was told that it was unlikely that there would be any further arrests as a result of the investigation.

Opening of a second office

3.16 The Integrity Commissioner raised the possibility of opening a second ACLEI office outside of Canberra in the near future. ACLEI proposed Sydney as a prime location, as it would serve as a good location for initiating interstate operations, as

15 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 4.

16 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 51.

17 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 4.

18 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 4.

19 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 2.

20 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, pp 3–4.

well as providing a good selection of the kind of staff that ACLEI needs without the competition that other agencies usually create in Canberra.²¹ Another office in Sydney would also create the opportunity of further liaison with state agencies in New South Wales that undertake similar work to the Integrity Commissioner and that participate in joint operations.²²

Coercive information-gathering powers

3.17 Part 9 of the LEIC Act sets out the Integrity Commissioner's information-gathering powers. These powers require a person to produce documentary evidence or appear as a witness and answer questions truthfully at a hearing. A 'notice to produce' or a summons to attend a hearing can be issued only in relation to ACLEI investigations or joint operations.²³

3.18 During 2012-13, the Integrity Commissioner exercised information-gathering powers in 5 investigations and held 20 hearings. The Integrity Commissioner also issued 28 notices to produce information, documents or things, in relation to four investigations (including two investigations that also included hearings). In contrast, there were 15 such notices issued in 2011-12.²⁴

3.19 The number of summonses issued to witnesses to attend hearings in order to provide information, documents or things under section 83 of the LEIC Act increased to 21 instances in 2012-13, up from 13 instances in 2011-12.²⁵

Intrusive information-gathering powers

3.20 The Integrity Commissioner has intrusive and covert powers for the purpose of investigating possible corrupt conduct. During the year, these powers were used 16 times as part of investigation strategies relating to three investigations.²⁶

3.21 The context in which intrusive and covert powers were used during the review period include:

- Ten telecommunications (interception and access) warrants compared to nine in 2011-12;
- Six surveillance device warrants (may include multiple devices) compared to seven in 2011-12.²⁷

21 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 5.

22 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 5.

23 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 62.

24 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 62.

25 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 62.

26 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 62.

27 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 63.

Workload

3.22 In 2012-13, the totality of ACLEI's assessment and investigation workload amounted to 204 corruption issues.²⁸ These issues comprised 78 notifications and referrals (including two own initiative investigations) and 126 other corruption issues carried forward from previous years. In comparison, the total number of corruption issues before ACLEI in 2011-12 was 161.²⁹

Corruption issues carried forward

3.23 In 2012-13, there were 126 corruption issues carried forward from the previous years of which 3 were concluded after assessments determined that they did not raise a corruption issues within the meaning of the LEIC Act.³⁰ Of the remaining 123 corruption investigations carried over from previous years, the annual report notes that:

- 4 matters were carried over from 2008-09 (down from 12 in 2011-12);
- 10 matters were carried over from 2009-10 (down from 22 in 2011-12);
- 32 matters were carried over from 2010-11 (down from 42 in 2011-12);
- 80 matters were carried over from 2011-12.³¹

3.24 In 2012-13 and 2013-14, 126 issues and 125 issues were carried forward from the previous years respectively.³² In previous reports, the committee has expressed concerns about the increasing number of issues carried over from one year to the next and ACLEI's ability to manage the volume of work within existing resources. During the 2010-11 review period, the Integrity Commissioner reported that several initiatives together with an overall increase in the budget and staffing had enabled ACLEI to manage its assessment and review function.³³ However, the committee notes that there was only one fewer corruption issue carried over during the reporting period than the year before. The committee intends to continue to monitor this issue in the future, to ensure that ACLEI is adequately resourced and able to undertake its current workload effectively.

3.25 The 125 issues identified for the reporting period include:

- 22 investigations by ACLEI including 12 investigations conducted jointly with other agencies;
- 68 internal investigations conducted by LEIC Act agencies, without ACLEI supervision (ACC-6; ACBPS-28 and AFP-34);

28 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 53.

29 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 53.

30 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 55.

31 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 61.

32 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 53.

33 PJC-ACLEI, *Examination of the Annual Report of the Integrity Commissioner 2010-11*, March 2012, p. 11.

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- one ACBPS internal investigation with ACLEI oversight;
 - one AFP internal investigation with ACLEI oversight;
 - one AFP investigation relating to the ACBPS, without supervision by ACLEI; and
 - 32 notifications and referrals under assessment.³⁴

Drop in notifications

3.26 Under KPI 1, concerning notifications by agency heads, there were 55 notifications of corruption issues in 2012-13 compared to 66 in the previous year (a decrease of 16.6 per cent in the volume of notifications).³⁵ The report noted that the decrease in notifications was difficult to attribute to one particular factor:

There is no indication that this decline indicates a reticence to notify the Integrity Commissioner about corruption issues. It is too early to pinpoint a probable cause—which may, for instance, reflect a strengthening of deterrence measures. As a safeguard, ACLEI will emphasise the 'detection challenge' in 2013-14, and direct additional resources towards the discovery of corrupt conduct.³⁶

Monitoring and addressing workload challenges

3.27 The Integrity Commissioner emphasised that ACLEI has systems in place to manage workloads effectively:

Some major investigations are underway, which continue to stretch the agency. The concertina model, which describes ACLEI's ability to draw on resources from other agencies on an as-needs basis, continues to provide a cost-effective mechanism to respond to workload variation, and the challenge of ensuring that ACLEI has access to leading-edge skill and technology.³⁷

3.28 ACLEI is also responsible for undertaking a review process when provided with a report under section 66 of the LEIC Act where the agency has conducted an investigation and reports back to the Integrity Commissioner. During the reporting period, ACLEI reviewed 38 reports (compared with 25 in 2011-12, 18 in 2010-11 and six in 2009-10) and found no basis to provide comments to agencies.³⁸

34 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 61.

35 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 52.

36 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, p. 22.

37 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 13 February 2014, p. 2.

38 ACLEI, *Annual Report of the Integrity Commissioner 2012-13*, pp 58-59.

Integrity reforms at Customs in 2013-14

3.29 In the context of this inquiry, the committee received correspondence from ACLEI outlining additional integrity reforms undertaken by the ACBPS.³⁹

3.30 In addition to the reforms that the ACBPS has undertaken that were outlined in the Annual Report, the Integrity Commissioner identified other actions that the ACBPS initiated in the 2013-14 reporting period that highlighted its continuing focus on integrity reform. The Integrity Commissioner maintained that the ACBPS was a good model for other agencies:

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.⁴⁰

ACLEI's reporting regulations

3.31 The correspondence from ACLEI also outlined possible changes to the Law Enforcement Integrity Commissioner Regulations 2006 (LEIC regulations) to amend reporting requirements.⁴¹

3.32 The Integrity Commission raised issues with the current terminology used in the LEIC regulations, stating that the notions of 'allegation' and 'complaint' are out-dated and that reporting on outcomes rather than inputs may be of more benefit.⁴²

3.33 It was also raised that the expansion of ACLEI's jurisdiction to include smaller agencies with low number of notifications could lead to a 'tip off' in the Annual Report for the subjects of a corruption investigation once the information of the investigation is published in a report.⁴³

3.34 The committee notes that ACLEI is in discussion with the Attorney-General's Department and the Commonwealth Ombudsman to examine alternatives. If these

39 Joint Parliamentary Committee on the Australian Commission for Law Enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2012–13*, Additional information, received 4 March 2014, www.aph.gov.au/~media/Committees/Senate/committee/aclei_ctte/annual/2014/hearings/Integrity_Commissioner_additional_issues.PDF, (accessed 6 June 2014).

40 Joint Parliamentary Committee on the Australian Commission for Law Enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2012–13*, Additional information, received 4 March 2014.

41 Joint Parliamentary Committee on the Australian Commission for Law Enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2012–13*, Additional information, received 4 March 2014.

42 Joint Parliamentary Committee on the Australian Commission for Law Enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2012–13*, Additional information, received 4 March 2014.

43 Joint Parliamentary Committee on the Australian Commission for Law Enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2012–13*, Additional information, received 4 March 2014.

discussions result in proposed regulations amendments, the committee will consider the proposed changes to determine if they will achieve a satisfactory balance between transparency and the effective operation of the LEIC Act.

Ombudsman's report

3.35 In the usual manner, the committee received a report from the Commonwealth Ombudsman regarding the Integrity Commissioner's involvement in controlled operations under Part 1AB of the *Crimes Act 1914* during the preceding 12 months. The report was provided in accordance with section 218 of the *Law Enforcement Integrity Commissioner Act 2006*. The committee noted the report and has received it as confidential correspondence in adherence to the LEIC Act.⁴⁴

Committee view

3.36 As noted in the introduction, the committee congratulates ACLEI on the quality and readability of its annual report and on another highly significant and productive year of operation. The committee also congratulates ACLEI for winning the bronze award in the small FMA agency—hardcopy category of the Institute of Public Administration Australia (IPAA) awards for its 2012-13 Annual Report. The awards aim to promote better practice and improve the standard of reporting for governing bodies' annual reports. The IPAA stated that the report 'is very clear in showing the environment driving corruption and resulting concerns as well as the Commission's responsiveness to this changing environment.'⁴⁵

3.37 The committee appreciates the challenges before ACLEI in terms of expanding its jurisdiction and managing a greater workload. At the same time, the committee recognises that these challenges provide an opportunity for ACLEI to widen the integrity framework and its influence.

3.38 Finally, the committee commends the Integrity Commissioner and his staff for their hard work over the reporting period and for an informative annual report. The 2012-13 annual report reflects the fact that ACLEI is now strongly embedded within the Commonwealth's integrity landscape and is able to adapt to respond appropriately to the rapidly transforming corruption landscape.

Mr Russell Matheson MP Chair

44 *Law Enforcement Integrity Commission Act 2006*, s. 218.

45 Institute of Public Administration Australia, ACT Division, *IPPA Annual Report Awards: 2012-13 Judges' report*, p. 16.