



Australian Government

**Australian Commission for
Law Enforcement Integrity**

**The Senate Standing Committee on
Legal and Constitutional Affairs**

***Inquiry into the Telecommunications
Interception and Intelligence Services
Legislation Amendment Bill 2010***

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

18 November 2010

**ACLEI Submission: Inquiry into the Telecommunications Interception and
Intelligence Services Legislation Amendment Bill 2010
(November 2010)**

1. Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs (the Committee) *Inquiry into the Telecommunications Interception and Intelligence Services Legislation Amendment Bill 2010*.

This submission is intended to assist the Committee by providing:

- general information about ACLEI's anti-corruption role (section 2); and
- ACLEI's perspective on Schedule 1 of the proposed Bill (section 3).

2. Responsibilities and powers of ACLEI

Establishment

The office of the 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.*

Presently, those agencies subject to the Integrity Commissioner's jurisdiction under the LEIC Act are the AFP, the ACC and the former National Crime Authority (NCA). Other agencies with a law enforcement function may be added by regulation.

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.

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 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.

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

- 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 Justice is responsible for the administration of the LEIC Act.

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. Accordingly, the Integrity Commissioner:

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

Receiving information about corruption

The LEIC Act establishes a framework whereby the Integrity Commissioner and the agency heads can prevent and deal with corruption jointly and cooperatively. The arrangement recognises both the considerable work of the ACC and the AFP 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 staffs.

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, irrespective of the source of that information (section 19).

Also, the LEIC Act enables the Minister to refer a corruption issue to the Integrity Commissioner (section 18), and any other person, including members of the public or other government agencies (section 23), may refer a corruption issue. In addition, the Integrity Commissioner may deal with corruption issues on his or her own initiative (section 38).

Further, ACLEI is authorised under the *Telecommunications (Interception and Access) Act 1979* to receive information about any corruption issue involving the ACC or the AFP that may be identified by other integrity agencies or police forces 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 makes provision for ACLEI to arrange protection for witnesses.

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Investigation powers

A challenge facing ACLEI is that law enforcement officers subject to investigation by the Integrity Commissioner are likely to be well-versed in 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:

- coercive information-gathering;
 - notices to produce information, documents or things; and
 - summonses to attend a 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 seizure powers; and
- arrest (relating to the investigation of a corruption issue).

Information and intelligence

One of the Integrity Commissioner's functions (at section 15(e) of the LEIC Act), is:

...to collect, correlate, analyse and disseminate information and intelligence in relation to corruption generally in, or the integrity of staff members of, both:
(i) law enforcement agencies; and
(ii) other Commonwealth government agencies that have law enforcement functions;

Section 208 of the LEIC Act also authorises the Integrity Commissioner to disclose information to the heads of other government agencies if the Integrity Commissioner were satisfied that, having regard to the functions of the agency concerned, it is appropriate to do so.

These provisions allow the Integrity Commissioner to share information or intelligence, for instance about links to organised crime, that may be collected as a result of ACLEI assessments or investigations with: Australian Government law enforcement agencies; State and Territory police forces or integrity agencies; and, if necessary, other government agencies.

3. Comments about the Bill

Schedule One of the Bill proposes to extend the range of agencies which may assist another interception agency to exercise an authority conferred by a telecommunications interception warrant. Specifically, the Bill would extend this authority to relevant officers or employees of the Australian Security Intelligence Organisation (ASIO).

As in law enforcement generally, so too is telecommunications interception an important tool in investigations concerning possible corrupt conduct. Intercepted material can be used to supplement or corroborate evidence, information and intelligence gathered through other means. Accordingly, ACLEI is a potential beneficiary of any enhanced arrangement to share expertise and resources for the execution of warrants that may be obtained by ACLEI.

As the Attorney-General's Department submission to this Inquiry explains (see Submission 3, section 1.2.1), "interception agencies face challenges from rapid technological changes that impact on their ability to gain lawful access to highly valuable evidence through telecommunications interception". ACLEI is no different in this regard, and since its commencement has relied upon other law enforcement agencies to provide interception services on its behalf. As a small agency, it would be impracticable for ACLEI to keep abreast of technical changes and advances in telecommunications interception. Accordingly, the proposal would limit unnecessary duplication of services.

By sharing resources and expertise with other agencies, ACLEI can (and does) achieve greater flexibility in its operations. Under existing arrangements, ACLEI has access to a telecommunications interception capability when necessary for an investigation (provided another agency has spare capacity when required), without having to establish a full specialist technical capability for this purpose.

The proposed amendments would broaden the number of agencies to which ACLEI could go for assistance in executing telecommunications interception warrants. Broadening the choice of partners for individual investigations would assist ACLEI to preserve the independence and integrity of corruption investigations. Specifically, this 'capability independence' would provide the advantage of distance from the agencies within the LEIC Act jurisdiction, when such distance may be needed to protect an investigation from possible compromise.

ACLEI is mindful of security requirements for all its investigations, and the need to protect sensitive and personal information from unauthorised disclosure. In ACLEI's assessment, there would be no diminution in security arrangements were the proposed amendment to be legislated for and implemented.

Further, ACLEI would make all possible and practical efforts to ensure that the Commonwealth Ombudsman's inspection of records concerning ACLEI's access to and use of telecommunications interceptions is not adversely affected.