

PARLIAMENTARY JOINT COMMITTEE ON THE
AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

Senator Scarr (Chair) asked the following question at the hearing on 11 September 2020:

Question 1:

Chair: On that point—that concept of staff—presumably, there's an issue if departments such as DAWE use contractors as to whether or not they fall within the definition of staff. Is that correct? Is that something that needs to be looked at as well?

Ms Hinchcliffe: I'll need to go back through the quite complex definitions about who falls in and who falls out. I know that we do have coverage in Department of Home Affairs for some of their contract services providers, when they use certain powers under the Migration Act. So could you leave that one with me, and I'll come back to you on notice on that? I'm sorry, I can't give you a direct answer on that straightaway.

Chair: Yes, if you could Commissioner. Just to widen the scope of the question you're taking on notice, I think the committee would be very keen to learn if there are any other gaps in terms of the definitions which the committee needs to be informed of so that, if it does consider it appropriate to make a recommendation in relation to this matter, it can make sure that the scope of the recommendation is sufficiently wide to address the problem.

The answer to the honourable senator's question is as follows:

With respect to the Department of Agriculture, Water and the Environment (**DAWE**), a staff member is defined in s 10(2E) of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (**LEIC Act**) and includes the Secretary and a person in a class of persons prescribed by regulation.

Section 7 of the *Law Enforcement Integrity Commission Regulations 2017* (Cth) (**LEIC Regulations**) prescribes 'staff members' of DAWE to include:

- a) persons who hold, or are acting in, the position of Regional Manager of the Agriculture Department;
- b) members of staff of the Agriculture Department whose duties include undertaking assessment, clearance or control of vessels or cargo imported into Australia;
- c) members of staff of the Agriculture Department who have access to the Integrated Cargo System.

ACLEI's jurisdiction is limited to these prescribed staff members, all of whom work within the cargo operations of the department, including desk-based staff with access to the Integrated Cargo System and those who undertake inspections of cargo at ports and other sites for the purpose of releasing cargo into Australia.

A determination of whether contractors are in fact staff members of the DAWE ultimately turns on whether the individuals fall within one of the specified classes of 'staff member' as prescribed in the LEIC Regulations.

As the term 'staff member' is not generally defined in the LEIC Act, the determination of whether contractors would be considered 'staff members' of the DAWE is not straightforward. As a result, ACLEI must analyse each contractor or group of contractors on a case-by-case basis.

This analysis includes consideration of the manner by which the contractors are engaged by the DAWE and whether or not the task or project the contractors are required to complete relates to DAWE's prescribed law enforcement functions.

With respect to contractors and staff members generally, unless they are provided for in the definitions of staff member of law enforcement agencies at s 10 of the LEIC Act, there will be staff members of agencies that are not within the Integrity Commissioner's jurisdiction.

For example, where ACLEI is considering a referral of a contractor from the Department of Home Affairs, ACLEI must consider whether the contractor is encompassed by s 10(2A) of the LEIC Act.

Section 10(2A) provides the following are staff members:

- a) the Secretary of the Immigration and Border Protection Department;
- b) the Australian Border Force Commissioner (including in his or her capacity as the Comptroller-General of Customs);
- c) an APS employee in the Immigration and Border Protection Department;
- d) a person covered by paragraph (d), (e) or (f) of the definition of **officer of Customs** in subsection 4(1) of the *Customs Act 1901*;
- e) a person covered by paragraph (f) or (g) of the definition of **officer** in subsection 5(1) of the *Migration Act 1958*.

Where the person is not an APS employee, to be within ACLEI's jurisdiction, they must be covered by (d) or (e).

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Senator Bilyk asked the following question at the hearing on 11 September 2020:

Question 2:

- a) How many active investigations did you inherit when you became commissioner?
- b) How many have you decided to discontinue?
- c) Can you provide a short summary of the investigations you decided to discontinue and why.

The answer to the honourable senator's question is as follows:

Ms Jaala Hinchliffe was appointed as the Integrity Commissioner on 10 February 2020. On that date, 70 corruption issues were under investigation by ACLEI (either alone or jointly with a LEIC Act agency). Table 1 below shows the status of those investigations at 30 September 2020.

Table 1 Corruption issues under investigation by ACLEI (alone or jointly) at 10 February 2020 – Status at 30 September 2020

	ACIC	AFP	AUSTRAC	DAWE	Home Affairs	Total
Corruption issues under investigation by ACLEI at 10 February 2020						
• ACLEI alone investigation	0	1	1	0	20	22
• Joint ACLEI/LEIC Act agency investigation	3	14	0	5	26	48
Total ACLEI investigations	3	15	1	5	46	70
Corruption issue investigations closed since 10 February 2020						
• Discontinued – person not a staff member of a LEIC Act agency	0	0	0	0	1	1
• Reconsidered under s42 – further investigation not warranted in all the circumstances	0	2	1	0	13	16
• Investigation complete – awaiting s54 report/underway	1	1	0	0	12	14
Total ACLEI investigations closed	0	3	1	0	22	28

Further detail in relation to question 3 is at [Attachment A](#).

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Senator Scarr asked the following question at the hearing on 11 September 2020:

Question 3:

I just have one further question, Commissioner. This is an interesting concept, which I think caused me some reflection. Your submission states:

ACLEI advocates that agencies in shared environments consider constructing corruption control plans for an entire operating environment—

That's interesting in terms of the focus of the corruption control plan being on a particular airport or a particular seaport rather than on what a particular agency does. Have any of these sorts of corruption plans tied to an individual operating environment been prepared or implemented?

The answer to the honourable senator's question is as follows:

ACLEI is not aware of any whole site or sector corruption control plans that Agencies may have in place. This question is best directed to specific Agencies.

As noted in ACLEI's submission to the Inquiry, a challenge arises from having multiple agencies with similar responsibilities and access to the same systems operating in border locations under different integrity regimes. ACLEI believes that a coordinated approach to managing integrity risk in these locations would be beneficial.

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Senator Bilyk asked the following question at the hearing on 11 September 2020:

Question 4: (relating to Operation Angove)

- a) What were the dates of the two hearings that were conducted under Operation Angove?
- b) How many individuals in total appeared before the commission during the two hearings?
 - i. Who were they – were they current or former Border Force or Home Affairs employees?
 - ii. Were any of the individuals current or former employees at Crown?
 - iii. Why would there be so few people appearing? What about the Border Force and Home Affairs officials that were summoned to give evidence—were any summoned to give evidence?
 - iv. Were any of them Border Force or Home Affairs officials?
 - v. Can you also take on notice the question about why so few or maybe no Crown employees or officials were summoned to give evidence?
- c) How many current and former Border Force and Home Affairs officials were interviewed by your investigators over the course of Operation Angove?
- d) How many current and former employees of Crown were interviewed by your investigators over the course of Operation Angove?
- e) Did the key witness ever give evidence?
- f) Can you tell me who the junket agent was?

The answer to the honourable senator's question is as follows:

- a) The former Integrity Commissioner held private hearings on 20 August 2019 and 5 December 2019.
- b) Two individuals appeared at the hearings on 20 August 2019 and 5 December 2019. Confidentiality directions apply to their identities and the evidence they provided.

Hearings pursuant to the *Law Enforcement Integrity Commissioner Act 2006* (Cth) are undertaken judiciously. One of the reasons for this is at s 83 of the LEIC Act, which provides the Integrity Commissioner may summon a person to give evidence if there are reasonable grounds to suspect that their evidence will be relevant to the investigation.

To satisfy the legislative test, a basis for the required 'reasonable grounds to suspect' must be present. For example, in *Williams v Keelty* [2001] FCA 1301, Hely J noted if there is material to show that an act was committed in suspicious circumstances, that could be the basis to raise a reasonable suspicion.

In Operation Angove, following the two hearings in 2019 and the extensive document and record analysis that followed, the investigation did not identify a basis to support the issuing of further summons.

- c) One person, a former ABF employee, was formally interviewed during the course of Operation Angove. ACLEI investigators spoke with a number of other current ABF staff – for example, to gather information relating to Off Terminal Clearance processes at Melbourne and Perth airports.
- d) Based on the information received, there was no evidence that Crown employees were involved in the corruption of staff within ACELI's jurisdiction. As such, no Crown employees were interviewed.
- e) Yes. The person ACLEI considered to be the key witness gave evidence before the former Integrity Commissioner at one of the private hearings convened under s82 of the LEIC Act.
- f) As Operation Angove did not identify any corrupt or criminal conduct, the Integrity Commissioner determined under section 209 of the LEIC Act that it was not in the public interest to disclose the names of those people who were of interest to this investigation.

Attachment A Details relating to ACLEI investigations reconsidered under s42 since 10 February 2020

Ref	Date Opened	Date Closed	Agency/ allegation	Reason for discontinuation
1	16/05/2016	24/03/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
2	25/05/2016	24/08/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
3	7/10/2016	24/03/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
4	16/02/2017	29/06/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
5	19/04/2017	30/06/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
6	7/07/2017	25/05/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
7	3/08/2017	20/07/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
8	17/08/2017	3/07/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
9	4/10/2017	21/04/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
10	26/02/2018	20/07/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
11	23/07/2018	29/06/2020	AUSTRAC, Corruption vulnerability examination	Further investigation not warranted having regard to all the circumstances
12	17/08/2018	14/05/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
13	9/04/2019	10/08/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
14	16/05/2019	10/03/2020	Home Affairs, Abuse of Office	Further investigation not warranted having regard to all the circumstances
15	8/10/2019	27/08/2020	AFP, Corruption of any other kind	Further investigation not warranted having regard to all the circumstances
16	25/10/2019	5/08/2020	AFP, Corruption of any other kind	Further investigation not warranted having regard to all the circumstances