



Australian Government

**Australian Commission for
Law Enforcement Integrity**

Parliamentary Joint Committee on Law Enforcement

*Inquiry into the gathering and use of
criminal intelligence*

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

3 August 2012

1. Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Law Enforcement (the Committee) concerning its *Inquiry into the gathering and use of criminal intelligence*.

To assist the Committee, Part 2 of this submission provides background about ACLEI's role and responsibilities, Part 3 provides comments about corruption risks relating to handling sensitive law enforcement information, and Part 4 provides comments relating to ACLEI's experience as a client, user of, and contributor to Australian Crime Commission (ACC) criminal intelligence holdings.

2. Role and responsibilities of ACLEI

Establishment

The office of 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.*

The agencies subject to the Integrity Commissioner's jurisdiction under the LEIC Act are the Australian Crime Commission (ACC), the Australian Customs and Border Protection Service, the Australian Federal Police (AFP) and the former National Crime Authority.

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

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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 Home Affairs, 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 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 enables any other person, including members of the public or 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 "whistleblowers" to provide information about corruption direct to ACLEI. The LEIC Act provides for ACLEI to arrange protection for witnesses.

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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;
- investigate the corruption issue jointly with another agency;
- 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 another agency, such as a State integrity agency, the AFP, or another government agency, for investigation; 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:

- involve a suspected link between law enforcement and organised crime;
- 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 also 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.

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;
 - 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 contempt¹ of ACLEI.

¹ See, section 96B (Federal Court or Supreme Court to deal with contempt), *Law Enforcement Integrity Commissioner Act 2006*.

3. Corruption risks relating to sensitive law enforcement information

This Part discusses ACLEI's role in detecting, disrupting and deterring corrupt conduct concerning the handling of sensitive law enforcement information.

ACLEI notes that criminal intelligence collection— particularly management of human sources—is associated with a number of corruption risks (e.g. inducements, over-familiarity and desensitisation, corrupt compromise, and noble-cause corruption relating to obtaining collection-related warrants). Noting the Inquiry's Terms of Reference, this submission concentrates on one strategic risk, namely unauthorised disclosure.

The “need to share” information

The [Commonwealth Organised Crime Strategic Framework](#) (OCSF) establishes a coordinated approach to combatting organised crime, by identifying key risk factors, allocating responsibility for deliverables, and nominating five capabilities to be developed over time. “Intelligence, Information Sharing and Interoperability” is the first capability identified by the OCSF, which perhaps underscores the importance of gathering and sharing law enforcement information in order to develop a complete intelligence picture.

The OCSF seeks to achieve advances in *what* information is gathered and *how* it is shared. Since the collection and storage of criminal intelligence is distributed among many Commonwealth, State and Territory agencies with varying responsibilities—that is, it has many different potential originators and owners—coordination and information exchange poses a number of practical problems.

One of the less tangible challenges is the degree to which there can be trust between agencies and confidence in the systems that safeguard information.

Protecting information from unauthorised disclosure

In a corruption context, sensitive law enforcement information is a commodity that is of value to criminal groups and to others, such as members of the media. Accordingly, one challenge to achieving better sharing of intelligence between agencies is to ensure that appropriate arrangements exist to protect intelligence from unauthorised disclosure.

Allegations relating to breaches of operational security through inappropriate disclosure of information are among the corruption issues most frequently raised with the Integrity Commissioner. Investigations of this type of issue are complex and rely for their success on the use of covert methods, including surveillance.

On 30 March 2012, the Minister for Home Affairs, Minister for Justice, the Hon Jason Clare MP, [announced](#) that the government will introduce legislation to enable integrity tests to be conducted on Commonwealth law enforcement officers who are suspected of corrupt conduct. The announcement followed consideration of a [report](#) by the Parliamentary Joint Committee on ACLEI, which recommended the measure be introduced.

One application of the new investigation method would be to allow ACLEI (or another authorised agency) to place false information onto a Commonwealth database—an action that would otherwise be unlawful unless it were part of a controlled operation—to see if the subject of an investigation misuses the information, such as by communicating it outside of the agency. ACLEI considers that targeted integrity testing will be a particularly effective deterrence measure concerning unauthorised access and disclosure of official information, and thereby a significant enhancement to the integrity regime that protects sensitive information.

Corruption prevention: building stronger and more resistant systems

The Australian Crime Commission and the Australian Federal Police—and to a lesser extent the Australian Customs and Border Protection Service—have established electronic auditing of staff access to information databases. This capability is a key feature of assuring the integrity and security of sensitive information.

As part of its corruption prevention role, and often in light of observations from investigations, ACLEI assists agencies to identify vulnerabilities and strengthen integrity arrangements.

In 2008, following apparent lapses in internal document security, ACLEI assisted the ACC to review its electronic document handling system. As a result of the joint review, the ACC instigated new document security arrangements and gave prominence to information handling risks in the context of the agency's professional standards training program for staff.

In 2010, ACLEI investigated the suggestion that an officer or officers of the AFP may have been involved in corrupt conduct concerning the handling of sensitive official information about Operation Neath, which was a multi-agency, multi-jurisdictional counter-terrorism operation into an alleged terrorist cell in Melbourne. The investigation, which exonerated the AFP, highlighted the risk that members of media organisations may seek to cultivate relations with staff members of law enforcement agencies, in order to obtain information unofficially.

In 2012, ACLEI provided strategic and technical assistance to the Australian Customs and Border Protection Service "Integrity Project", which identified several practical and achievable measures to protect information holdings.

Summary

ACLEI seeks to provide a basis for the law enforcement community to share information with confidence with agencies in the Integrity Commissioner's jurisdiction. It fosters this confidence by:

- assuring integrity through investigations of corruption issues;
- applying innovative investigation tools; and
- assisting agencies to strengthen control and accountability frameworks.

4. ACLEI as a client and contributor of criminal intelligence

This Part addresses ACLEI's experience as a user and contributor of criminal intelligence.

ACLEI's role in criminal intelligence

Under section 15(e) of the LEIC Act, one of the Integrity Commissioner's functions 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.*

Division 5 of the LEIC Act codifies strict confidentiality arrangements to protect official information held by ACLEI, including intelligence. The same arrangements provide for the Integrity Commissioner to disclose relevant information to various agencies, including law enforcement agencies, in appropriate circumstances.

The 'corruption handshake' and the 'corruptor approach'

The Organised Crime Strategic Framework recognises that corruption of public officials and infiltration of government agencies are tactics used by organised crime groups to establish, further or conceal illicit enterprises and activities.

The Integrity Commissioner uses the term 'corruption handshake' to describe the potential relationship between corrupt law enforcement officials and organised crime groups. The term encapsulates the idea that, in most cases, corrupt conduct will involve a dishonest transaction between two parties which, to bystanders, may be invisible or appear normal.

Accordingly, one approach to detecting corrupt law enforcement officials is to analyse intelligence about people or groups—potential "corruptors"—who may have an interest in compromising officials or infiltrating agencies. Similarly, information about the activities of corrupt officials can inform law enforcement agencies about the activities of criminal entities and their methods.²

ACLEI and several law enforcement agencies—including the ACC, the AFP and Customs and Border Protection—liaise on a case-by-case basis at an operational level to collect and disseminate criminal intelligence that may be of mutual interest. The value of these exchanges has created a business case for regularising such information sharing.

To build on the present model, ACLEI is exploring possibilities with the ACC for on-going involvement in the National Criminal Intelligence Fusion Centre, and discussing with them improved standing access to criminal intelligence data stores owned or administered by the ACC that would be of high intelligence value to ACLEI. ACLEI is also discussing similar arrangements with a range of other law enforcement agencies.

² For further discussion of this concept, see [Accountability and Beyond: using integrity partnerships to combat organised crime](#) (2010).

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As the 'corruptor approach' to detecting corruption develops further, ACLEI will consider what arrangements may be put in place to ensure that intelligence generated by State integrity agencies about corruption and corruption risk can be captured systematically to inform the national picture of criminality. The recently founded Australian Anti-Corruption Commissions Forum may be the vehicle for advancing such cooperation.

Cooperation on intelligence and evidence collection

The ACLEI model is one of "integrity partnership". ACLEI is a small agency and, for any medium or large scale investigation, obtains assistance from Federal and State partner agencies (usually in the context of joint investigations or task force arrangements which involve 'corruptor' targets). The services provided to ACLEI include physical and electronic surveillance capabilities relating to the collection of information and evidence to inform the Integrity Commissioner's investigations.

The provision of these services is supported, in part, by \$2.56 million allocated to ACLEI from the Confiscated Assets Account by the then Minister for Home Affairs and Justice, the Hon Brendan O'Connor MP. These additional resources, which comprise assets recovered from the proceeds of crime, were provided to trial and evaluate a physical surveillance capability for ACLEI during 2012 and 2013.

The resources provided to ACLEI by the ACC, the AFP and State agencies are highly regarded and valued by the Integrity Commissioner.

Sharing intelligence products

As noted, ACLEI has for some time disseminated intelligence products to relevant law enforcement and integrity agencies on a case-by-case basis. These disseminations may relate to corruption and crime risks identified (for instance, concerning commodities of interest to organised crime) or to places or people of interest in investigations.

In 2011 and 2012, for the first time, ACLEI also contributed intelligence products to inform the ACC's Harms Assessment and the ACC's Organised Crime Threat Assessment.

Summary

Since its commencement in 2007, ACLEI has established intelligence-gathering and sharing arrangements with a number of State and Federal agencies. To date, these arrangements have been exercised on a case-by-case basis. Some recent instances have established the mutual value of these exchanges and underscored the importance of the Organised Crime Strategic Framework as a basis for improving information exchange in the criminal intelligence and anti-corruption contexts.