



**Australian Government**

**Australian Commission for  
Law Enforcement Integrity**

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

*Inquiry into the Crimes Legislation  
Amendment (Serious Drugs, Identity  
Crime and Other Measures) Bill 2012*

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

**25 October 2012**

## 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. This submission relates to the Committee's inquiry into the Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Bill 2012 (the CLA Bill).

To assist the Committee, Part 2 of this submission provides background about ACLEI's role and responsibilities. ACLEI's comments about Part 1 of Schedule 3 of the CLA Bill are in Part 3 of this submission. ACLEI has no comments to make at present on other aspects of the CLA Bill.

**In summary, ACLEI supports all of the proposed amendments in Part 1 of Schedule 3, and the proposed date of commencement.**

## 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 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 also 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 'whistle-blowers' to provide information about corruption direct to ACLEI. The LEIC Act provides for ACLEI to arrange protection for witnesses.

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;
- 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 the AFP (if the corruption issue does not relate to the AFP);
- investigate the corruption issue jointly with another government agency or an integrity agency for a State or Territory; 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 contempt<sup>1</sup> of ACLEI.

### **3. Comments on the CLA Bill**

In summary, ACLEI supports all of the proposed amendments in Part 1 (Integrity Commissioner functions) of Schedule 3 (Other measures) of the CLA Bill 2012.

- Items 1, 2, 4 and 5, which are discussed in detail below, give effect to the Australian Government's response to recommendations five, six and seven of the Parliamentary Joint Committee on ACLEI's Interim report into the operation of the *Law Enforcement Integrity Commissioner Act 2006*. These changes reflect experience gained in the administration of the LEIC Act and developments in ACLEI's approach to strengthening integrity in law enforcement agencies.
- Item 3 clarifies a point of ambiguity in the present legislation about delegation of authority to an Assistant Integrity Commissioner.
- Item 6 deals with the application of Item 4 (How Minister may deal with ACLEI corruption issues), for the avoidance of doubt.
- It is proposed that these items commence the day after the Act receives Royal Assent.

#### ***Items 1 and 2—Amendment to section 15 (Functions of the Integrity Commissioner)***

Corrupt conduct can distort legitimate law enforcement objectives and undermine public confidence in the justice system. ACLEI is part of the Australian Government's integrity framework, and has a particular role in detecting, disrupting and deterring possible corrupt conduct in Commonwealth law enforcement agencies.

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

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ACLEI commenced operations in 2007, based on a model primarily directed to the investigation of allegations. In response to recent changes in corruption risk, and in light of experience gained, the ACLEI model has developed towards an holistic approach to the challenges of building resistance to corruption.

Accordingly, and leveraging ACLEI's investigation experience and observations, the Integrity Commissioner uses complementary strategies such as:

- improving the intelligence picture about where corrupt conduct may be detected—for instance, by joining up sources of information, and being alert to relevant indicators of hidden corruption;
- engaging in a 'two-level' approach to corruption detection, whereby ACLEI works with the operational areas of law enforcement agencies, as well as their professional standards areas, to identify and investigate possible corrupt conduct;
- making awareness-raising presentations to the staffs of agencies in the LEIC Act jurisdiction, to ensure staff members are alert to the indicators of corrupt conduct and give prominence to the role of supervisors (the 'front-line of corruption control') and individuals in reporting suspicions about corrupt conduct;
- convening of the Community of Practice for Corruption Prevention, which brings together the corruption prevention practitioners in the agencies in the LEIC Act jurisdiction to share lessons and practices to prevent corrupt conduct;
- providing advice—based on policy, research and practitioner expertise—to strengthen systems against corruption risk; and
- developing conceptual models and training tools to assist agencies to identify the early indicators of corrupt conduct or to take measures to prevent its occurrence;

In its *Interim report*, the Parliamentary Joint Committee on ACLEI commented that the benefits arising from ACLEI's corruption detection and prevention activities augment the investigation process and contribute to building a culture of integrity. The Committee observed that:

*...it is essential that ACLEI continues and, ideally, expands the range of corruption detection and prevention activities currently undertaken. It is the Committee's view, therefore, that the matter should be put beyond any doubt by the explicit inclusion of such functions in the Act. The insertion of these functions would be entirely consistent with the objects of the Act, which make specific mention of detection and prevention of corrupt conduct in law enforcement agencies.*

Successive reviews of ACLEI have made similar observations. Most recently, in February 2012, at the Minister's request, Mr Peter Hamburger PSM conducted an independent *Review of the implementation of ACLEI's jurisdiction to deal with corruption issues within the Australian Customs and Border Protection Service*. In his report, Mr Hamburger suggested that a priority for ACLEI should be to contribute more to developing and acting on lessons from its initial casework in the Customs and Border Protection jurisdiction.

In response, the Australian Government provided ACLEI with additional funds of \$0.750m per year from 2012–13, in part to enable ACLEI to contribute strategically to law enforcement corruption awareness and prevention programs and related policy development.

The proposed amendments support this measure and will clarify and give prominence to the complementary roles of the Integrity Commissioner, namely detecting, investigating and preventing corrupt conduct in the agencies in the LEIC Act jurisdiction.

***Item 3—Amendment to section 104 (Protection of Integrity Commissioner etc)***

This amendment aligns a reference in section 104 of the LEIC Act to that in section 219, which relates to delegation of authority to an Assistant Integrity Commissioner.

***Items 4 and 6—How Minister may deal with ACLEI corruption issues***

Maintaining confidence in the integrity of ACLEI is central to the achievement of its objectives. Accordingly, as a matter of principle, the Integrity Commissioner supports mechanisms that enable transparent investigation of information that may suggest corrupt conduct by an ACLEI staff member.

The LEIC Act contains a number of safeguards to assure the integrity of ACLEI staff. Among these safeguards are a mandatory reporting obligation (at sections 153 and 174 of the LEIC Act) and a framework whereby the decision as to how any ACLEI corruption issue should be dealt with is made by the Minister (section 156 of the LEIC Act).

In the five and a half years' since ACLEI's commencement, three ACLEI corruption issues have been investigated. In each case, the Minister authorised a Special Investigator to conduct an independent investigation. No corrupt conduct by any ACLEI staff member was found in any of these investigations.<sup>2</sup>

The proposed amendment to sub-section 156(3) of the LEIC Act would make it possible for the Minister, at his or her discretion, to refer an allegation of corrupt conduct relating to an ACLEI staff member to the Integrity Commissioner for investigation. This measure would provide the Minister with additional flexibility when making decisions on how to deal with ACLEI corruption issues, and to take account of factors that may affect the proportionality of the response.

No matter who investigates an ACLEI corruption issue, the LEIC Act contains provisions to ensure the transparency of such investigations. For instance, in addition to the statutory obligation at sections 163 and 169 of the LEIC Act to give a report to the Minister at the conclusion of an investigation, section 201 of the LEIC Act provides that the Integrity Commissioner's Annual Report must contain prescribed particulars of each investigation into an ACLEI corruption issue.

These particulars are listed at Regulation 22 of the Law Enforcement Integrity Commissioner Regulations 2006. In brief, the Annual Report must contain the number of investigations conducted by the Integrity Commissioner or a Special Investigator, a description of the kinds of corrupt conduct to which these investigations relate, and a summary of the outcome of the investigation. The summary must include any recommendations made, any action taken as a result, and the outcomes of any disciplinary, criminal or civil penalty proceedings resulting from the investigation.

Item 6 (Application of amendment [at Item 4]) removes doubt about the proposed application of the amendment. This measure is reasonable, in order to avoid ambiguity.

***Item 5—Delegation to an Assistant Integrity Commissioner***

The effect of repealing sub-section 219(2) would be to permit the Integrity Commissioner, were the action necessary, to delegate to an Assistant Integrity Commissioner the power to hold a hearing for the purpose of conducting a public inquiry (under section 71 of the LEIC Act).

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<sup>2</sup> Summaries of these investigations can be found in the 2008–09 and 2011–12 Annual Reports of the Integrity Commissioner, at Chapter 9—*Accountability*.

To date, no public inquiry has been held. However, ACLEI considers that the proposed amendment to section 219 of the LEIC Act would provide operational flexibility, were it required. For instance, it is desirable that the ongoing work of ACLEI—which is a small agency of which the Integrity Commissioner is the statutory head—not be impacted adversely by the management of a public inquiry.

As yet, no Assistant Integrity Commissioner has been appointed. Under the LEIC Act, any Assistant Integrity Commissioner must have equivalent qualifications to an Integrity Commissioner, and would be subject to the same, or more stringent, restrictions as the Integrity Commissioner. For example, an Assistant Integrity Commissioner may hold office for up to five years (two years fewer than an Integrity Commissioner) and may exercise powers under the LEIC Act only if delegated them by the Integrity Commissioner under section 219 of the LEIC Act.

Accordingly, the Integrity Commissioner would retain responsibility for the outcomes of any public inquiry that is conducted under the LEIC Act.