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Australian Government

**Department of Immigration
and Border Protection**

Parliamentary Joint Committee on the Australian
Commission for Law Enforcement Integrity

Inquiry into the integrity of Australia's border arrangements

Submission by the
Department of Immigration and Border Protection

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Introduction

1. The Department of Immigration and Border Protection (the Department) is pleased to make this submission to Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (ACLEI) Inquiry into the integrity of Australia's border arrangements.
2. On 1 July 2015, two large and complex organisations fully integrated into a new Department with one mission: to protect Australia's border and manage the movement of people and goods across it.
3. The Department, including the Australian Border Force, manages a system of border processes that oversee the flow of people and goods to and from our nation.
4. The Department is the gateway between Australia and the world, facilitating trade, travel and migration while protecting Australia from threats to the border. In everything we do, we must uphold the trust of the Australian people, and the government that stems from the privileged place we hold at the border and in the community.
5. The Secretary of the Department is responsible for its overall administration, resources and performance of its functions. The *Australian Border Force Act 2015* (ABF Act) established the role of the ABF Commissioner from 1 July 2015. The ABF Act also enables the operation of the ABF as a single operational enforcement arm within the Department.
6. In a dual role, the Commissioner has control of the operations of the ABF and undertakes responsibility as the Comptroller-General of Customs, accountable for the enforcement of customs laws and the collection of revenue. The Commissioner has the same standing as other heads of national security and law enforcement agencies and will report to the Minister for Immigration and Border Protection directly on operational matters.
7. The executive of the ABF includes senior ranking officers from the Australian Defence Force and the Australian Federal Police. These appointments represent the strong cooperation between agencies with key responsibility for the integrity of Australia's borders.
8. The Department's Strategy 2020, released in July 2015, details our focus on the integrity of our staff, information, property and systems, knowing that we will only be successful in carrying out our mission if we continue to earn and maintain the trust of the public we service. The pursuit of complete transparency, organisational integrity and a higher standard of professional performance will further strengthen the public's trust in us¹.
9. The ABF Act further strengthened the integrity and professional standards of the Department by enabling the Secretary and the ABF Commissioner to issue legally-binding directions on aspects of professional integrity to Immigration and Border Protection (IBP) workers² and other workers performing functions or exercising powers on behalf of the Department or the ABF.
10. The professional integrity measures include the requirement to successfully gain and hold an agency specific employment suitability clearance and a Commonwealth security clearance as essential qualifications for employment. IBP workers are obliged to report serious misconduct, corrupt conduct or criminal activity and are subject to drug and alcohol testing.

¹ Department of Immigration and Border Protection Strategy 2020

² IBP workers include individuals working on Departmental premises or who have non-public access to Departmental information and other assets. IBP workers may include employees, secondees, contractors and consultants.

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11. Additionally, internally developed behaviours to complement the Australian Public Service (APS) values form an articulation of the expected professional standards of the new Department. The behaviours are the minimum to demonstrate the professional standards required.
12. The Department's Integrity Framework is based largely on initiatives implemented in the former Australian Customs and Border Protection Service (ACBPS) and reflects the expertise in public sector integrity that has been developed over several years. The measures are strengthened by the strong cooperative relationship between the Portfolio and ACLEI. Importantly, from 1 July 2015 the Department came under ACLEI's jurisdiction.

The border context

13. The Australian border is a complex continuum stretching ahead of and behind the geographic border. It is a space that enables and controls the flow of people and the movement of goods through complex supply chains.
14. Treating the border as a continuum allows an integrated, layered approach to provide border management ahead of and behind the border, as well as at the border, to manage threats and take advantage of opportunities to improve efficiency and effectiveness of operations.
15. Legitimate activity needs to be facilitated as efficiently as possible, while protecting the border against those seeking to circumvent or exploit it, either for profit or harm.
16. At its core, border protection involves the continual and deliberate adjustment of policies, controls, resources and systems to foster legitimate trade and travel – which represents the majority by volume – while also pinpointing and intervening to prevent fraud, crime and the illegal movement of people and goods.
17. The Department and ABF will continue to be central to the Government's mission to efficiently facilitate legitimate activity while protecting the border against those seeking to circumvent or exploit it, either for profit or harm.

Airports and Seaports

18. In 2013–14, the former Portfolio³ facilitated movement across Australia's border of:
 - 35 million travellers
 - 128,550 permanent skilled migrants
 - 61,112 family migrants and 13,768 humanitarian migrants
 - 30.6 million air and sea cargo consignments.
19. The former Portfolio seized over four tonnes of illicit drugs and 42 million illegal cigarettes in 2013–14. It collected over \$16 billion revenue on behalf of the Government.

³ The Department of Immigration and Border Protection and former Australian Customs and Border Protection Service prior to the establishment of the new Department of Immigration and Border Protection, including the Australian Border Force from 1 July 2015

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20. The former Portfolio also:
- located 17,185 unlawful non-citizens and 2,550 illegal workers
 - removed 10,585 unlawful non-citizens from Australia
 - was responsible for 27,721 people held in onshore detention.
21. Issues in the Department's operating environment that impact on the discharge of its core functions include:
- rising volumes of trade and passenger movements
 - increasingly complex supply chains and travel routes
 - increasingly sophisticated criminal activity
 - threats caused by geopolitical events including terrorism, pandemics, and people smuggling.
22. The Department manages eight major international airports and over 60 seaports. In the airport and seaport environment through 2013–14⁴, the former ACBPS:
- processed 53,514 international vessel movements
 - inspected 1.59 million and examined 85,810 air cargo consignments resulting in 2,806 detections
 - inspected 102,288 and examined 14,788 sea cargo TEUs⁵ resulting in 571 detections
 - inspected 52.1 million and examined 212,142 mail items resulting in 54,630 detections
 - made 11,316 detections of major illicit drugs and precursors totalling 4,196 kilograms⁶
 - made 1,737 detections of undeclared conventional firearms and firearm parts, accessories and magazines.
23. The major challenges to Australia's border in the current operating environment are:
- an increasing volume of trade and passenger movements
 - international air and sea passengers and crew forecast to increase by 23 per cent by 2017–18⁷
 - imported sea cargo reports forecast to increase by 17 per cent by 2017–18
 - imported air cargo consignments forecast to increase by 54 per cent by 2017–18
 - increasing complexity of supply chains and travel routes
 - greater geographical dispersion of entry and exit points – both physical and electronic

⁴ ACBPS Annual Report 2013-14.

⁵ Twenty-foot equivalent container. Sea cargo containers can be 20 foot or 40 foot long. One TEU is an agreed international standard that refers to the storage capacity of a 20 foot sea cargo container. A 40 foot sea cargo container is counted as two TEU.

⁶ Major illicit drugs include heroin, cocaine, cannabis, MDMA (Ecstasy) and ATS (methamphetamines and amphetamines excluding MDMA)].

⁷ Increase forecasts based on 2013-14 statistics.

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- a continuing need to manage the stay in, settlement in and/or departure from Australia of non-citizens, and the departure and re-entry of citizens
 - a continuing need to provide support and services to refugees and people in humanitarian need.
24. Without the capacity to respond flexibly and innovatively to workload growth stemming from this rapid increase in cargo and travel to Australia, there is a risk of decreased capacity to deploy resources to high risk areas. This will lead to damage to Australia's reputation as a trading partner and a destination of choice for tourists and skilled migrants – all of which are vitally important to the Australian economy and national security.

Response to Terms of Reference

The nature of corruption risk facing Commonwealth agencies involved in border operations

25. In any organisation, corruption has the potential to seriously damage its ability to perform its mission and undermine confidence and trust. The threat of corruption enabled border crime is very real and while the Department has a competent, hardworking and honest workforce, our staff are necessarily the target of people who would seek to subvert the legal frameworks we uphold.
26. The Department has adopted the definition of corrupt conduct cited in the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act). The LEIC Act defines corruption as:
- conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency
 - conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or
 - conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind.
27. The Department's Fraud Control and Anti-Corruption Plan 2015-17 acknowledges in its overall risk profile that the Department is subject to significant fraud and corruption risk in terms of security at the Australian border and managing its responsibilities for people and goods in the pre and post-border environment
28. The Department manages both the initial permissions to enter Australia by persons and goods (i.e. import licensing and visas) and the clearance of those entities before or when they hit the physical border. Importantly, and particularly in relation to people, the Department has responsibility for ensuring that non-citizens maintain their lawful status to remain in Australia or indeed become an Australian through citizenship.
29. There is also additional exposure in airport and seaport border operations, environments that are traditionally associated with some level of criminal infiltration. In these environments, staff operate in close proximity to seaport and stevedoring operations undertaking activities such as screening or examining cargo; and in airport operations including baggage handling, catering, and close interaction with travellers.

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30. Staff are often embedded in the environment they regulate and, as such, may generate social relationships in addition to the strong collaborative operational networks required to effectively perform their roles.
31. The Department acknowledges that interactions with parties that form part of the full supply chain into Australia are critical to the delivery of its services. However, the physical proximity and ongoing nature of the relationships between staff and these external parties is a potential risk and given the value of these assets it is likely that the Department will be subject to ongoing attempts to corrupt staff seeking to make a personal gain.
32. The Department has implemented controls to reduce the opportunities for fraud, however due to the large number of transactions dealt with on a daily, weekly and monthly basis: decision making is delegated across a large staffing footprint. While this delegated decision-making structure is complemented by quality assurance mechanisms, it would not be possible to eliminate corruption entirely.

The extent to which the Department is able to prevent and investigate corruption at the Australian border

33. As outlined in this submission, the Department is responsible for managing significant volumes of transactional activity. Due to the need to maintain high levels of productivity, the Department needs to balance fraud and corruption prevention mechanisms with high volume processing, screening and verification activities.
34. Fraud and corruption controls will generally decrease individual decision-making authority and impact efficiency and productivity. For example, the inclusion of a separation of duties on high volume decisions or transactions will require either an increase in staffing to manage the same volumes (efficiency) or a decrease in the number of transactions (productivity).
35. To compensate for the potentially lower level of prevention controls required by high volume processes, the Department has implemented two key mechanisms:
 - Measures that establish and support a high performance and professional culture resistant to corruption.
 - Quality assurance mechanisms including risk based sampling that includes fraud and corruption risk detection.
36. Based largely on the experiences of the former ACBPS through its internal reform programme, the Department has established an Integrity Framework based on a suite of inter-dependent policies, including:
 - employee suitability screening⁸
 - requiring all officers to have and maintain a baseline national security clearance
 - requiring officers to declare any changes in circumstances
 - maintaining an alcohol free workplace and zero tolerance for the use of prohibited drugs
 - integrity testing

⁸ Implemented through a risk-based priority model

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- restricting certain outside (secondary) employment and volunteer activities
37. Several provisions of the ABF Act and the *Customs and Other Legislation Amendment (Australian Border Force) Act 2015* (Amendment Act) support the new integrity related measures applicable to IBP workers, including:
- provisions that allow for drug and alcohol testing and screening
 - reporting of serious misconduct or criminal activity where the conduct or activity is likely to affect the operations, responsibilities or reputation of the Department
 - determining essential qualifications or requirements, for example holding a baseline national security clearance and employment suitability screening.
38. The measures operate collectively to control risk and create the professional standards culture for the Department. They will limit the opportunity for unsuitable people to enter the Department and assist IBP workers to maintain their suitability throughout their career. The measures also heighten staff's awareness about associations in their personal lives and assist them to reduce the risks that may be associated with their social activities or secondary employment.
39. These measures seek to provide an appropriate balance for staff to have active social, volunteering and secondary employment opportunities. The Integrity Framework is supported by internally designed behaviours, consistent with the overarching APS values, and a range of ongoing training and education from induction to leadership development, which will include scenario based facilitated 'Integrity Gyms' to improve consideration of integrity matters by staff.
40. There are also mechanisms in place to monitor and audit system access to safeguard the security and integrity of information systems and the appropriate handling of the data they contain.

Internal integrity functions

41. Within the Department, the prevention and investigation of corruption is centralised within the Integrity, Security and Assurance Division (ISA Division). The ISA Division is responsible for the design and delivery of Departmental-wide corporate risk, assurance, integrity and security policy and frameworks.
42. The ISA Division works in close partnership with all other Divisions in the Department and is accountable for providing the Executive with oversight of the Department's organisational integrity. The ISA Division's partnership and collaboration with all areas across the Department is an important aspect of this assurance, as is its role in managing the relationship with ACLEI and other law enforcement activities.
43. The Division's Risk and Assurance Branch is responsible for the design and development of policy, practice and compliance related to enterprise risk and assurance, incorporating the internal audit program and management of audit committee arrangements. It is focussed on motivators for corruption and understanding the modus operandi of incidents. The Branch is also responsible for the development of and compliance related to the Department's Fraud Control and Anti-Corruption Plan 2015-17.
44. The Integrity and Professional Standards Branch within ISA Division conducts integrity-related enquiries and investigations as tasked by an (internal) Integrity Assessment Committee. Tasks can be initiated through a range of mechanisms, including: mandatory reporting, Public

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Interest Disclosures or other agency referrals. Given the allegations and the unstructured way in which they may present, a triaging model has been implemented to ensure appropriate action is taken against each allegation. Any allegation which raises a corruption issue is referred to ACLEI.

45. The Branch also undertakes analysis and lead generation activities to identify emerging integrity threats. In addition it also provides the liaison function and support to other integrity and law enforcement agencies, particularly ACLEI.
46. The Branch's Special Investigations Unit (SIU) is responsible for complex integrity investigations and joint integrity and corruption operations with ACLEI and other law enforcement agencies. The SIU is headed by an experienced secondee from the Australian Federal Police (AFP), ensuring that investigations into criminal or corrupt behaviour are at a high standard. The SIU is also responsible for integrity testing.

The extent to which the Australian Commission for Law Enforcement Integrity is able to assist in corruption prevention and to successfully investigate or otherwise respond to corruption in border operations

47. The former ACBPS came under ACLEI's jurisdiction on 1 January 2011 in recognition of the potential corruption risk associated with its role in safeguarding Australia's borders. In accordance with the requirements of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act), the former ACBPS referred all corruption issues to ACLEI.
48. The former ACBPS developed a strong strategic, operational and collaborative working relationship with ACLEI both in terms of minimising risks to the ACBPS and also dealing with threats to both the organisation and its officers. These relationships are expected to continue and mature with the advent of the new Department and ABF.
49. ACLEI provides a unique contribution to the protection of the border's integrity which will inform the Department's overall response to our mission. Some particular examples include:
 - establishing and maintaining the *Community of Practice for Corruption Prevention*, which is a quarterly forum for sharing information and collaborating on corruption prevention initiatives and research.
 - providing a specific skill set and focus on the detection and investigation of serious misconduct and corruption.
 - enhancing the collection of intelligence and evidence about corrupt activities at the border through ACLEI's coercive powers.
50. A significant example of ACLEI's ability to assist in addressing corruption was through the joint ACLEI/AFP Operation Heritage/Marca. This operation highlighted a combination of contributing corruption factors, including collusion of officers at an airport, inadequate preparation for the management of a changing border risk, vulnerabilities associated with a changed business model, misplaced loyalty and compromise, poor standards and a breakdown in supervision.
51. The benefit of the Operation was not only the detection and disruption of corrupt activity, but also insight of the modus operandi and risk indicators to monitor. In developing integrity measures for its internal reform programmes, the former ACBPS actively sought the advice of

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ACLEI to ensure their effectiveness. Building on this, during the integration process, the Department has been, and continues to, consult with ACLEI to identify and address corruption risks which may arise from this consolidation of functions and responsibilities.

52. The Amendment Act, effective from 1 July 2015, extended ACLEI's jurisdiction to the new Department in its entirety, a workforce of more than 14,000 staff (approximately 5,000 being former ACBPS officers).
53. The functions and operational activities that will fall under ACLEI's scrutiny will reflect the complexity of border management and the interactions required to facilitate the passage of people and goods across Australia's border continuum.
54. The Department welcomes the application of ACLEI jurisdiction to all staff, and agrees that ACLEI should be enabled and assisted to investigate suspected corrupt activity in all aspects of the Department's functions regardless of the role, location or job title of any individual staff member.
55. The Department and ACLEI will continue to develop strong triage and assessment protocols in order to manage the expected increase in reports and referrals. Where needed, staff from the Department can be deployed to ACLEI to assist in intelligence, liaison and investigation functions. This cooperation, enhanced by cooperation with other Australian law enforcement bodies, will ensure that there is capacity to respond to the issues that may be identified through the application of the Department's strong internal integrity framework and the external oversight of ACLEI.
56. An appropriation of Departmental funds is provided to ACLEI in the current and forward years. The Department agrees that additional appropriation is required and would be supportive for ACLEI to be funded directly in future budget appropriations to limit any perception of bias or undue influence from agencies coming under ACLEI's jurisdiction, and maintain a sustained degree of independence.
57. In the longer term, ACLEI's independence could be reinforced with a funding model akin to other integrity and accountability bodies in the Australian Government (such as the Commonwealth Ombudsman, the Inspector-General of Intelligence and Security and the Privacy Commissioner). These agencies report to a Department of State but are funded through their own budget appropriation.

The nature and effectiveness of integrity measures, models and legislation adopted by other jurisdictions, for their border operations and high corruption risk agencies

58. The Department works closely with ACLEI, AFP and other federal, state and territory law enforcement agencies in relation to addressing the ongoing threat from corruption. It participates in the ACLEI-led Community of Practice for Corruption Prevention. It also actively works with the Border 5 Group (B5) border control counterparts in the United States, the United Kingdom, Canada and New Zealand, and, in many cases, has action plans to share learnings, insights and emerging issues.
59. As part of international collaboration on integrity related matters, the Portfolio recently hosted Integrity Dialogues as part of the B5 and World Customs Organization agency heads meetings in Melbourne (February 2015) which provided members with an opportunity to share

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how they use, or are planning to use, their organisational culture and emerging technologies to help minimise integrity risks to their respective organisations.

60. In the context of the former ACBPS, the outcomes of Operation Heritage/Marca, and in particular the custodial sentences afforded to former staff of ACBPS, had a significant deterrent effect on the workforce. The majority of staff are dedicated, hard-working and professional, but these events underscored for everyone that corruption can and does happen.
61. Corruption is always going to be a risk for the new Department because of the profit gains and risk tolerance of organised crime. The Department's Integrity Framework seeks to provide the elements to build, protect and preserve the integrity of the Department and staff resistance to corruption.
62. The overall protection of Australia's border integrity will, however, continue to rely on the cooperative arrangements between the new Department, Australia's law enforcement agencies and ACLEI. Combined intelligence sharing and investigative capacity will be vital to reducing known potential risks and predicting future risks and in responding to hard to detect corruption.

Authorised by:

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