

Chapter 5

Conclusion and recommendations

5.1 As discussed in chapter 2, the integrity models vary considerably across the states. In part, the establishment of each state law enforcement integrity agency has drawn on the structure and experience of agencies that came before it.¹ Equally, the four state integrity agencies have been tailored to respond to the specific context in which they were founded. Professor Ross and Ms Tucker told the committee that this has taken place with little support in the form of research into good practice models for police oversight:

A review of the literature has revealed that there is no agreement, or indeed little discussion as to what would constitute a good model for police oversight although the issue has been well recognised.

...The history of external police oversight models, such as those mentioned above, is not a long one. As a consequence, there are no longitudinal studies and little information to assist decision makers in the development of legislation and governance arrangements.²

5.2 Notwithstanding the absence of substantial comparative data on the different models, evidence presented to the committee suggests that there is not necessarily a best model and that each approach has its advantages and disadvantages as well as forming a unique response to local circumstances.³

5.3 At the same time, the committee believes that there is much to be gained from cross-agency discussion. The opportunity to meet with ACLEI's counterparts and other stakeholders in the Australian integrity systems through the course of the inquiry greatly enriched the committee's understanding of law enforcement integrity and anti-corruption programs. More specifically, through its examination of the various state models the committee gained insight into a range of issues, which it believes usefully inform the future directions of ACLEI.

5.4 In chapter 3 it was explained that a 'building block' approach was adopted for the creation of ACLEI. As the corruption-risk environment is better understood and basic operations are up and running, ACLEI's capabilities could be added to and its jurisdiction expanded to include other Commonwealth agencies with a law enforcement function.

1 Associate Professor Glenn Ross and Ms Bernadine Tucker, *Submission 15*, p. 2.

2 Associate Professor Glenn Ross and Ms Bernadine Tucker, *Submission 15*, p. 3.

3 The committee recognises that this is a relatively new field of study and will follow with interest research that aims to understand good practice in law enforcement oversight. In particular, the committee looks forward to the results of Ms Bernadine Tucker's research, as outlined in Submission 15.

5.5 Whilst the committee supports the 'building block' approach, it does so with several qualifications. First, it is essential that there are sufficient resources to establish procedures and recruit an adequate number of staff to meet the current work load. Second, where capabilities are yet to be established it is imperative that these capabilities can be accessed by other means without compromising investigations. Third, building blocks must be set in place as they are required. This means that the timely allocation of additional resources is critical. Fourth, the expansion of ACLEI's jurisdiction to other agencies would need to be accompanied by commensurate resources.

5.6 The Hon. Len Roberts-Smith, Commissioner of the CCC, outlined seven 'essential preconditions' for the purging and prevention of corruption:

- political will
- independence
- appropriate powers
- adequate access to information
- sufficient resourcing
- the capacity to report publicly on findings
- a dedicated corruption prevention program

5.7 He explained:

[F]irst, the political will. Political will is absolutely imperative to dealing effectively with corruption and, indeed, with public sector misconduct. Second is the independence of the organisation. We have, in the Corruption and Crime Commission, complete independence. We are not responsible to the executive government. This commission reports directly to the parliament and is overseen by a parliamentary joint committee and a parliamentary inspector who is also responsible to that committee.

The third essential requirement for such an anticorruption agency, I would suggest, is to have appropriate powers. ... Information is the point I would list fourth there. ... And, very importantly, the fifth consideration I would suggest is adequate resourcing. An anticorruption agency of whatever name cannot operate effectively without adequate resourcing. That is tied in with the first point I mentioned, namely political will. The last two I would say are reporting—the anticorruption agency must be able to report in a public fashion upon the conduct of its investigations and the things which it has found or the processes which it has put in place or helped agencies put in place to deal with corruption or misconduct—and, the final point, a program of corruption prevention.⁴

4 The Hon. Len Roberts-Smith, Commissioner, CCC, *Committee Hansard*, 17 November 2008, pp 2-3.

5.8 While the committee is confident of the existence of several of these preconditions in ACLEI's case, there are at least two preconditions about which the committee has its concerns: adequate resourcing and the existence of a corruption prevention program.

5.9 Along with these two preconditions, the committee identified a number of other issues that demand further attention. Each of these is discussed below with recommendations for action, as appropriate.

Adequate resourcing

5.10 The committee is confident that ACLEI has made significant in-roads in investigating potential corruption and promoting integrity in the agencies under its oversight. However, in spite of funding increases in the previous budget, the committee does not consider that ACLEI is sufficiently resourced to meet its increasing workload⁵ or to deliver adequately on its designated output.

5.11 The committee will examine further the apparent variance between ACLEI's workload and the resources allocated to it in its examination of ACLEI's 2007-08 Annual Report.⁶ The committee believes that ACLEI's funding should be reviewed as a matter of urgency. The committee notes in particular, the resourcing constraints on ACLEI to fulfil effectively the requirement to prevent corruption. This is discussed in the following section.

Recommendation 1

5.12 The committee recommends that the Australian Government undertake a review of the Australian Commission for Law Enforcement Integrity's funding levels, as a matter of urgency.

Corruption prevention and education

5.13 As discussed in chapter 3, during the set-up of ACLEI attention was principally focused on its role as an investigatory body. And, as reflected in the LEIC Act, limited consideration was given to a prevention and education function.

5.14 The committee recognises that the Integrity Commissioner does devote some resources to prevention and education and notes, in particular, that anti-corruption reviews of the ACC and AFP will be undertaken in the first half of 2009.⁷

5 ACLEI notes that its actual workload has exceeded the workload forecast during the planning of the size of the agency, *Annual Report of the Integrity Commissioner 2007-2008*, p. 64.

6 The committee will report on the *Annual Report of the Integrity Commissioner 2007-08* in the first half of this year.

7 ACLEI, *Annual Report of the Integrity Commissioner 2007-2008*, p. 30.

5.15 The committee commends the emphasis the Integrity Commissioner has given to prevention and education and advocates the expansion of activities taken under the umbrella of this function.

5.16 However, the committee is concerned that ACLEI is not currently sufficiently resourced to undertake existing prevention and education activities, and that the Integrity Commissioner is placed in the difficult position of having to allocate resources to one function at the expense of another.

5.17 The committee holds the view that corruption prevention and education is an integral function of law enforcement integrity bodies and, therefore, a priority building block for ACLEI. Accordingly, the committee believes that a prevention and education unit with dedicated resources should be established.

Recommendation 2

5.18 The committee recommends that, as a matter of priority, the Australian Government fund the establishment of a prevention and education unit in the Australian Commission for Law Enforcement Integrity. Further, the committee recommends that the prevention and education unit undertakes, but is not limited to, the following activities:

- education of law enforcement personnel
- public education and awareness-raising
- corruption-risk reviews
- research

Recommendation 3

5.19 The committee recommends that the corruption prevention and education function be strengthened in the *Law Enforcement Integrity Commissioner Act 2006* following the review of the operation of the Act, which is due to report no later than 30 June 2010. Specifically, it is recommended that a corruption prevention and education function be included under section 15 (Functions of the Integrity Commissioner) of the Act.

Real-time access to complaints system

5.20 Law enforcement agencies' complaints or case management systems can provide a vital source of data for corruption investigations and corruption detection. The committee therefore endorses ACLEI's decision to pursue access to the AFP's case management system PRS-PROMIS. The committee will follow with interest ACLEI's negotiations with the AFP on this matter.

Expanding ACLEI's jurisdiction

5.21 The merits of limiting ACLEI's jurisdiction to the AFP and the ACC during ACLEI's set-up phase have been noted. However, the committee believes that to

continue this limited oversight in the longer term would be undesirable. Other Commonwealth agencies with law enforcement powers and the corruption risks associated with these powers should be subject to external scrutiny.

5.22 The committee recognises that the broadening of ACLEI's jurisdiction presents challenges: notably, determining which Commonwealth agencies have the power to exercise law enforcement as defined under the LEIC Act⁸ and distinguishing the law enforcement function from the other functions of agencies.

5.23 On this second point, the committee makes note of the potential difficulties forecast by Dr A J Brown when the *Law Enforcement Integrity Commissioner Bill 2006* was under review. Dr Brown stated:

it is highly likely that the distinction between the 'law enforcement' functions, and non-law enforcement functions, will become operationally problematic; and that some agencies will naturally use the 'law enforcement' distinction to seek to avoid scrutiny even when the government feels it desirable to initiate an inquiry into them – necessitating either legislative amendment or establishment of a separate inquiry.⁹

5.24 The committee notes that further work is needed to determine a systematic and workable process for extending ACLEI's jurisdiction to other Commonwealth agencies with a law enforcement function.

Specialist or generalist model

5.25 ACLEI is founded on a specialist model, however the committee received substantial evidence concerning the arguments for a generalist or all-encompassing public sector integrity model.

5.26 Expanding ACLEI's jurisdiction to include the broader public sector has the dual appeal of achieving a critical mass of resources for ACLEI and overcoming the potential difficulties identified by Dr Brown above. Under its terms of reference, the committee did not enquire specifically into this question, and has not evaluated this option.

5.27 The committee notes the Government's recent initiative to establish an Ethics Advisory Service within the Australian Public Service Commission, and also that the House of Representatives Standing Committee on Legal and Constitutional Affairs is currently inquiring into whistleblower protections within the Australian Government public sector. It is not yet known what effects these events are likely to have on

8 LEIC Act, s. 5.

9 Dr A J Brown, *Submission 8*, p. 3, Senate Standing Committee on Legal and Constitutional Affairs, Inquiry into the provisions of the Law Enforcement Integrity Commissioner Bill 2006, the Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006 and the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006.

strengthening public sector accountability. Accordingly, the committee remains open on this point.

A national forum

5.28 It was evident during the inquiry that there is already significant cooperation and discussion between the various state and Commonwealth integrity agencies. In spite of their structural differences, there are a number of areas of common interest between the agencies that call for mutual exchange.

5.29 ACLEI explained that it:

has much in common with each of the State integrity agencies. These common aspects include shared challenges, as well as opportunities to achieve efficiencies and avoid duplication.¹⁰

5.30 ACLEI identified these challenges:

- keeping pace with technological change, particularly in acquiring and updating electronic surveillance capabilities;
- having available a pool of covert operatives who are skilled at overcoming counter-surveillance techniques and who are unlikely to be recognised in a jurisdiction;
- staying up to date with best practice relating to the use of coercive powers;
- keeping up to date with, and driving forward, relevant research agendas to improve practices; and
- in ACLEI's case, the need to access secure and technically-appropriate hearing room facilities in various States.¹¹

5.31 The committee believes that it would be of mutual benefit for all integrity agencies to continue to look for synergies and efficiencies to be gained through cooperation between them.

5.32 In order to facilitate such exchange, there would be considerable value in establishing a national forum - for example, a 'national council' or 'national roundtable'.¹² This would provide an environment conducive to shared initiatives and good practice.

5.33 The committee makes note of two issues that generated limited evidence during the inquiry but which the committee believes should be placed on a national agenda: determining performance measures within the anti-corruption field; and improving cross jurisdictional notification of potential corruption issues concerning officers who have recently engaged in joint investigations.

10 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 7.

11 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 7.

12 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 7.

Measuring performance within the anti-corruption field

5.34 During the inquiry the committee did receive some limited evidence that indicated that performance measurement in the anti-corruption area is difficult and, as yet, under-developed. An understanding of why something is or isn't working well is critical to achieving good practice. The capacity to measure whether performance is up to standard provides assurance to Government and the broader public. The committee believes, therefore, that there would be value in the various law enforcement bodies jointly progressing this matter.

Cross-jurisdictional notification

5.35 The agencies under ACLEI's jurisdiction are regularly involved with other state and Commonwealth agencies through joint operations and the secondment of staff.

5.36 In the committee's view, Sections 29 and 30 of the LEIC Act provide adequate provisions for dealing with corruption issues that relate to the conduct of seconded employees. The Act clearly outlines who has responsibility for managing corruption issues in these circumstances and notification requirements.

5.37 However, as the committee has noted elsewhere, there is less clarity with respect to informal secondments and employees engaged in joint operations.¹³ ACLEI noted that there is currently no formal arrangement through which state, territory or other Australian Government agencies must inform ACLEI of concerns they may have about the integrity of ACC or AFP officers.¹⁴ The committee considers that a national forum would be the appropriate avenue through which to address this matter. Clarifying and formalising notification protocols through memoranda of understanding would enable ACLEI and the state integrity agencies to better profile and manage corruption risks.

Recommendation 4

5.38 The committee recommends that the Australian Government initiates the establishment of a national forum through which matters of mutual interest to state and federal law enforcement integrity agencies can be addressed.

An inspectorate model

5.39 The committee sees merit in the establishment of an integrity inspector to assist in the oversight of ACLEI.

13 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Examination of the Annual Report of the Integrity Commissioner 2006-07*, p. 28.

14 ACLEI, answer to question on notice, 16 December 2008 (received 16 January 2009), p. 9.

5.40 The committee recognizes, however, that at this stage in ACLEI's development it does not have the resources available to assist an inspector. Adding to ACLEI's accountability framework could take much-needed resources away from investigations. The committee believes that the establishment of an integrity inspector should be given serious consideration in the longer term, when ACLEI's size and complexity warrants enhanced accountability. In the immediate term, the committee is satisfied that the existing accountability mechanisms offer reasonable assurance.

Recommendation 5

5.41 The committee recommends that the Australian Government consider in the longer term the establishment of an integrity inspector to assist in the oversight of the Australian Commission for Law Enforcement Integrity.

Secure hearing room

5.42 The coercive hearing powers of integrity agencies are integral to the investigation process. The corollary to this is ready access to a secure hearing room with the requisite technical and physical infrastructure and support. At this stage, ACLEI has no such facility and relies on arrangements with other like-bodies to use their facilities in other states.

5.43 The committee notes that a secure hearing room is one of the fundamental building blocks for ACLEI and it considers that there would be important practical and symbolic benefits to the effectiveness of the integrity system were ACLEI to have access to a purpose-built hearing room in Canberra. The committee anticipates that an asset of this type could be used by other agencies with similar needs, such as the ACC.

Recommendation 6

5.44 The committee recommends that as a priority the Australian Government fund the establishment and ongoing maintenance of a secure hearing room, associated technical infrastructure and personnel support.

Obligation to report misconduct

5.45 The committee was pleased to learn that the culture of policing is changing and that the 'code of silence' and adherence to the notion of unfailing loyalty to one's colleagues is being progressively replaced by an environment in which loyalty is first and foremost to the organisation and to the public interest. An increased focus on professional standards and greater encouragement and support for whistleblowers are some of the key factors driving this trend.

5.46 Within this context, the committee notes, as discussed in chapter 2, the statutory obligation on Queensland Police Service officers to report disciplinary breaches and misconduct to the Commissioner of Police and, in certain circumstances, to the CMC. Such a measure, the committee believes, establishes the clear message that an officer's duty is to uphold the professional standards of that agency. It supports

the reporting of misconduct and provides a disincentive for covering-up for fellow officers.

5.47 Presently, at the Commonwealth level, there is no statutory obligation on AFP or ACC employees to report disciplinary breaches or misconduct. However, the AFP Commissioner's Order 2, made pursuant to section 38 of the *AFP Act 1979*, places an obligation on AFP employees to report all contraventions of the professional standards of the AFP. This obligation is supported by other measures in the AFP's integrity system, including the AFP's Confidant Network,¹⁵ which together encourage a pro-disclosure culture.

5.48 Employees of the ACC are governed by the *Public Service Act 1999*. The Act does not place an obligation on Australian public service employees to report disciplinary breaches and misconduct. However, the Act does compel employees to comply with 'lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction'.¹⁶ The ACC's Fraud and Corruption Prevention Policy stipulates that ACC employees must report disciplinary breaches and misconduct.

5.49 The committee considers that there would be considerable value in strengthening arrangements to foster a culture of disclosure in Commonwealth law enforcement agencies.

Recommendation 7

5.50 The committee recommends that the Australian Government review existing obligations on employees of Commonwealth law enforcement agencies to report misconduct. The review should consider whether these arrangements need to be strengthened, including by legislative means, and whether there are sufficient measures in place to support and protect whistleblowers.

The power to suspend and dismiss employees

5.51 The high corruption-risk nature of law enforcement and the significant powers able to be exercised by law enforcement officers carries with it a significant onus on law enforcement agencies to ensure that officers act in a responsible and ethical manner. For this reason, the committee believes it is appropriate that Commonwealth law enforcement agency heads have recourse to adequate measures to temporarily stand down and dismiss employees.

5.52 The committee notes that provisions to temporarily stand down and summarily dismiss employees are available to the heads of other law enforcement agencies. Such provisions provide a crucial deterrent and enhance community

15 The internal Confidant Network provides a secure avenue through which AFP appointees can bring forward misconduct concerns.

16 *Public Service Act 1999*, s. 13(5).

confidence in the integrity of the law enforcement agency. Equally as important, the capacity to summarily stand down and/or dismiss an appointee can be critical to preserving the integrity of investigations. The committee emphasises, however, that there must be appropriate checks and balances in place to ensure that such powers are not misused. The committee notes, in particular, that employees must have an independent avenue through which to appeal dismissal decisions.

Recommendation 8

5.53 The committee recommends that the Australian Government review existing arrangements for the suspension and dismissal of Commonwealth law enforcement agency employees believed on reasonable grounds to have engaged in serious misconduct or corruption, and that the Government take action as appropriate, bearing in mind the need to respect the rights of employees.

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Chair