



TRANSPARENCY INTERNATIONAL AUSTRALIA

Affiliate of Transparency International, the Coalition against Corruption

PARLIAMENTARY JOINT COMMITTEE ON
THE AUSTRALIAN COMMISSION FOR
LAW ENFORCEMENT INTEGRITY

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Ms J Dewar
Committee Secretary
Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Dewar,

I refer to the Terms of Reference given to your Committee regarding the "Inquiry into State-based law enforcement integrity agencies". Thank you for the opportunity to make a submission on certain aspects of this Inquiry.

We are the local chapter in a world-wide non-profit network dedicated to combating bribery and corruption in all its forms and hence take a close interest in matters of integrity in government. Our organisation, of which there are about 100 Chapters now, has been established for more than 14 years.

Of special relevance is the work we have done with the Centre for Ethics Law Justice & Governance of Griffith University to produce a relevant study entitled: National Integrity Systems Assessment (NISA). That research report is entitled "Chaos or Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems" 2005. It made a number of recommendations for the establishment of a federal body to integrate and co-ordinate corruption prevention and integrity across all federal government departments and agencies. A copy is attached for ease of reference.

The 2005 NISA report especially examines the co-ordination between State based integrity agencies and other likeminded or similarly tasked departments and entities (eg Auditors-General, Ombudsmen, agency and department heads etc). The study concluded, by reference to the experience of State agencies and officers, that having multiple actors with overlapping but distinct responsibilities was capable of working effectively and efficiently to promote integrity. In this 'mix', a specialised integrity agency offers an important and influential contribution.

1. Why not an all-encompassing federal integrity agency?

As an important initial point, we are very concerned that the use of the term “law enforcement agencies’ in the Terms of Reference may be too narrow and preclude the Committee formally considering the vital basic issue which is the artificiality and danger of confining the jurisdiction of ACLEI to agencies exercising ‘law enforcement’ powers. As we have long maintained it is a serious limitation on the effective investigation of corruption to restrict it to “law enforcement agencies” as defined. It has been rightly pointed out, to take the simplest case, an investigation into a prescribed agency may well involve persons in another non-prescribed agency or not engaged in law enforcement activities.

Threats to integrity arising within a ‘law enforcement agency’ are but a subset of threats to integrity arising within all Government departments and agencies. The power of an administrative department or agency to award contracts or confer licences or other benefits may be just as great an attraction to corruption as a power to investigate and prosecute eg customs or criminal law offences.

We do trust that your Committee’s Terms of Reference will not preclude it from formally considering the valuable and wider experience of those State-based integrity oversight agencies that have been so far operating outside strictly ‘law enforcement’ spheres for some time and express the hope that as the Inquiry progresses it may lead into a more comprehensive examination and consider the promotion of integrity within relevant agencies performing non ‘law enforcement’ oversight

We endorse the supporting view of the member Labor Senators in the report on the Law Enforcement Integrity Commissioner Bill and other Bills of May 2006 (“the 2006 Report”) who concluded separately from the majority that “Rather than the specialist brief proposed (for ACLEI), Labor agrees with Dr AJ Brown who argued that ACLEI should be given a ‘broad mandate to uncover maladministration or corruption wherever found’.

We think the main conclusions of that Committee in the 2006 Report are highly relevant to the present Inquiry in a number of respects

2. The Challenge of Institutional Capacity-Building in Australian Integrity Systems

We have also considered the new paper of Dr AJ Brown of Griffith Law School entitled “Towards a Federal Integrity Commission: The Challenge of Institutional Capacity-Building in Australian Integrity Systems” (May 2008) of which a copy is attached for ease of reference. We endorse that paper and commend it to you.

The author raises the fundamental issues in this way:

“How can society be satisfied that any government has established the right institutions to safeguard public integrity? Even if those institutions exist on paper, when can citizens be confident these bodies have been given the capacity to do their job properly?”

In answering these questions, the paper deals with the key issues for federal institutional design in anti-corruption agencies under five headings. We support these entirely. They should, in our opinion, be considered by the Committee as a sound framework in proceeding with its work.

3. Expansion of ACLEI jurisdiction by legislative, not executive, action preferable.

In terms of the expansion of jurisdiction of ACLEI to other 'law enforcement' agencies we strongly agree with Dr Brown that this should be done by legislation rather than by regulation.

4. Cost Effectiveness of ACLEI

We suggest that it would be valuable to add a 'cost comparison' factor into your Committee's examination of the functioning of State-based agencies.

Decisions to mount independent inquiries into abuse of power or other matters of corruption will almost inevitably continue to be necessary from time to time. Such incidents can of course arise in either 'law enforcement' or in other agencies. . In order to warrant such attention, they must generally be out of the ordinary and generate a significant level of public attention. This means that they will almost certainly be rare and atypical cases. The danger is that forms of corruption or threats to integrity which are "below the radar" escape investigation.

In response to the argument we have heard that creation or expansion of standing independent anti-corruption agencies risk becoming a "lawyers' picnic", we would invite the Committee to consider the length and effectiveness of the Palmer/Comrie inquiries, the Cole Inquiry into AWB and the Clarke Inquiry-to say nothing of the HIH inquiry- and in particular to assess the cost of each.

In other words, we would contend that the use of wide and flexible statutory powers conferred already upon such an agency as ACLEI should normally be much more cost-effective. (This of course assumes that such agency is given more comprehensive jurisdiction than at present).

In our understanding, such State-based standing Commissions such as the ICAC (NSW), the CMC (QLD) and the CCC (WA) are becoming increasingly cost-effective. They are able to prepare more effectively for hearings to ensure that the investigations are properly focussed and efficient and much of the legal work is done relatively inexpensively by public lawyers. The retention of senior barristers, at least in Sydney, is taking place only in the most serious matters and at the culmination of the investigation process, not all the way through it.

Moreover the use of in-house legal staff with growing specialist experience has in our understanding contributed to the ability to convert the benefit of the investigation process into significant organisational reform of the agency investigated. One of the additional benefits of a standing organisation is the build up of specialisation and experience and the capacity to retain expertise, whereas with one-off royal commissions and enquiries this is inevitably dispersed at the conclusion of the enquiry.

5. Corruption prevention and education role of ACLEI

A further advantage of a standing agency such as ACLEI, with an expanded jurisdiction, is the capacity it would offer to draw on investigative experience to develop effective corruption prevention strategies and education. We recommend that consideration should be given to how the investigative functions of ACLEI can be combined most effectively with its other role in preventing corruption.

We endorse in this particular context the persuasive submissions to your Inquiry from ACLEI and from the Commonwealth Ombudsman. They reveal a number of ways in which the present system can be strengthened, and illustrate how the modest 'building blocks' approach has been a significant disadvantage to the capabilities of ACLEI. To date the budget and level of staffing of ACLEI may well prevent it undertaking a major corruption investigation and at the same time effectively carrying out its responsibilities in corruption prevention. [refer Brown, 2008 p20] We are greatly concerned that a combination of resistance to expansion of its jurisdiction from other agencies exercising their own internal 'law enforcement' function and Commonwealth budgetary constraints may continue to truncate its role adversely.

A true corruption exposure capacity in a standing Commission can yield substantial corruption prevention benefits. In particular that capacity can create a powerful accountability mechanism and assist greatly to focus the minds of senior individuals who might otherwise be inclined to disregard or give low priority to corruption in managing the risks of their agency.

To achieve outcomes that are more on-going in raising the integrity standards of relevant agencies, it has been put to us in this way:

"Corruption exposure provides an excellent opportunity for driving organisational development. Governments, organisations and the community respond to real-life situations (as exposed in corruption exposure processes). However, to get maximum developmental value from the exposure process, it is necessary to examine and expose the organisational deficiencies which accompany the emergence of the incidental corruption. How did the organisation allow this to happen and how can it respond to prevent it or similar transgressions in the future?"

This type of extended inquiry requires additional specialised resources. We urge the Committee to consider the manner in which state-based organisations are combining their corruption investigation and corruption prevention functions to achieve effective cultures of integrity. We recommend that the Committee look beyond the law enforcement integrity agencies to other integrity agencies and audit offices for this purpose.

6. Adequacy of resources

We acknowledge that the types of extended role for ACLEI that we advocate will require additional specialised resources. Indeed to extend ACLEI's jurisdiction to more agencies or its function without additional staff and finance would be self-defeating.

In addition, an independent integrity body should be authorised to-and have the capacity to- actively participate with the agency heads in addressing these key questions together.

As we read the submission to your committee from ACLEI it appears quite uncertain that presently its "resources are sufficient or targeted to where they will be more effective", further they say ..."it is not possible for ACLEI to conclude that an appropriate balance has been struck between agency autonomy and external oversight".(page 13) This is a situation of real concern.

We would be happy to make further submissions as the Committee may request and commend the government for the reference, the outcomes of which leave solid potential to enhance the efficiency and effectiveness of integrity oversight of law enforcement.

Kind regards



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