

Report of the Senate Committee into the Bills to Establish the Australian Commission for Law Enforcement Integrity (ACLEI)

Issued 11 May 2006

The report makes a number of recommendations (pages 3-4 below). This summary is directed to the main matter addressed in the report which is the limited jurisdiction of the proposed body, the ACLEI.

The original proposal for ACLEI was announced jointly by Ministers Ruddock and Ellison way back in June 2004. In fact the 2005-06 Budget provided nearly \$9 million for ACLEI, so this delay may betoken some debate or difficulty about it within the government.

The aim of the legislation is to set up a body with jurisdiction over corruption allegations in the AFP and ACC in order to:

- prevent and detect corrupt conduct and improve the integrity of officers of those Commonwealth agencies engaged in law enforcement-at least the AFP and ACC;
- fill a gap identified in the various federal public sector investigation and review bodies; and
- act as a deterrent for those working in those 2 agencies who may be tempted to engage in corrupt activity;

and thereby increase public confidence in the AFP as a key organisation.

In that regard the report notes that many other federal agencies clearly exercise sensitive law enforcement functions and investigative powers, notably the Customs Service, the ATO and the Department of Immigration (DIMA) – not to mention ASIC, ACCC and Austrac. If allegations are made as to corruption in those agencies the AFP presently could be called in by the head of the relevant agency.

The bill proposes that the scope of functions of the ACLEI could be later extended by regulation to cover these, or some of these, agencies directly if the Government feels that is warranted at the time.

Submissions to the Senate Committee, particularly by Dr AJ Brown and Commissioner Mick Keelty, put a number of good arguments as to why the initial scope of the ACLEI in the bill is too limited:

- The officers in those other agencies are 'no more immune' or resistant to corruption than those in the AFP.
- Exercise of the law enforcement powers of the other main agencies can be just as sensitive to community and government risk.
- By limiting the supervision and investigation to only two federal agencies a natural 'displacement effect' could be produced in practice. As described by Commissioner Keelty:
'If you have an oversight or governance regime in a particular place then you need to expect that if you tighten it up in one area, displacement may create a problem for you in another area.'
- By so limiting the scope of jurisdiction, the anti-corruption framework of the Commonwealth will be left in much the same shape as exists in Victoria now (which has been criticised in Canberra even to the extent of not allowing the Victorian ombudsman access to intercept powers for a time).

- Being the first big change at the federal level for 20 years in terms of anti-corruption systems, ACLEI is a big opportunity not only for collaborative work between the AFP, the ACC and the Ombudsman but for a comprehensive anti-corruption regime (Para 3.46).
- Since the matter of jurisdiction of ACLEI is so fundamental to its nature, it is too important to be left to regulations but should be dealt with in legislation to allow for full exposure and debate.

While the force of these arguments was acknowledged by the Committee, they were not accepted as sufficiently decisive to justify a revolt.

In the upshot, as below, the Senate Committee report does not recommend outright that the other relevant agencies exercising law enforcement functions be covered at the outset by the ACLEI, but it does indicate the Committee's view that a 'strong rationale' exists to cover at least the ATO, DIMA and the Customs Service and that 'it would be useful for the government to give a public indication of the proposed timetable for this process' of enlargement (Para 3.48).

Moreover, the Committee expressed views on the important wider issue. They agreed that an 'accountability gap' would be closed by giving ACLEI a general jurisdiction going beyond law enforcement functions. In their words, 'Consideration should also be given to developing such a (Commonwealth integrity) Commission in the longer term' (Para 3.51).

A minority statement by the Labor Party members on the Committee is quite forthright. 'We strongly question how the Federal Government will enhance the Commonwealth's anti-corruption capacities in ACLEI's role is restricted to the AFP and the ACC'. They also state, 'Rather than the "specialist brief" proposed, Labor agrees with Dr. AJ Brown who argued that the ACLEI should be given a 'broad mandate to uncover maladministration or corruption wherever found.'

The Democrat Senator Natasha Stott Despoja agrees. She quotes again from the submission from Mick Keelty of AFP:

'If we are serious about this, and if it is not just a quick fix, then the AFP could benefit in its investigations if the ACLEI had a wider remit than that proposed in the bill.'

Dr. Brown is the author of published articles on this subject, as cited in his submission, and was the Lead Author of the major study sponsored by Griffith University and Transparency International Australia, *Chaos or Coherence? Strengths, Opportunities and Challenges for Australia's Integrity System, 2005*.

TIA lodged a submission to the Senate Committee endorsing the views expressed by Dr. AJ Brown and recommending that the scope of the proposed anti-corruption body be broadened in accordance with the terms of the primary conclusion reached in that major study.

The report also deals with questions concerning greater protection for whistleblowers (accepting changes recommended by Dr. AJ Brown), the Ombudsman and professional standards.

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Recommendations of the Legal and Constitutional Legislation Committee (May 2006)

Recommendation 1

3.50 The committee recommends that the Law Enforcement Integrity Commissioner Bill 2006 be amended such that changes to the agencies subject to the Commission's jurisdiction are made by legislation, rather than regulation, as is currently provided for in paragraph (d) of the definition of law enforcement agency.

Recommendation 2

3.71 The committee recommends that the Law Enforcement Integrity Commissioner Bill 2006 be amended to provide the Integrity Commissioner with discretion not to investigate or refer a complaint where he or she considers the complaint to be frivolous:

- the complaint is frivolous or vexatious or was not made in good faith; or
- the complainant does not have a sufficient interest in the subject matter of the complaint; or
- an investigation, or further investigation, of the action is not warranted having regard to all the circumstances.

Recommendation 3

3.79 The committee recommends that the Law Enforcement Integrity Commissioner Bill 2006 be amended to remove the phrase 'in good faith' from proposed paragraph 22(2)(c).

Recommendation 4

3.80 The committee further recommends that the Law Enforcement Integrity Commissioner Bill 2006 be amended to insert a provision to improve protection for informants, such that where it appears to the Integrity Commissioner that a person's safety may be prejudiced or that person may be subject to intimidation or harassment, he or she may make such arrangements as are necessary to protect the safety of any such person, or to protect any such person from intimidation or harassment.

Recommendation 5

3.83 The committee recommends that the Law Enforcement Integrity Commissioner Bill 2006 be amended to provide an offence of giving false or misleading information to ACLEI, with an appropriate maximum penalty.

Recommendation 6

3.86 The committee recommends that a practice and procedure manual be developed by ACLEI as soon as possible after it commences operation.

Recommendation 7

3.106 The committee recommends that amendments are made to the Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006 to ensure that a corruption issue that becomes apparent through an own motion investigation undertaken by the Commonwealth Ombudsman can be referred to ACLEI.

Recommendation 8

3.107 The committee recommends that the Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006 be amended to provide

greater clarity in relation to ACLEI's obligations to notify the Commonwealth Ombudsman of information relating to a matter referred by the Ombudsman.

Recommendation 9

3.127 The committee recommends that the Law Enforcement Integrity Commissioner Bill 2006 be amended to require the Minister to provide a report to Parliament on the proposed section 149 certificates he or she has provided in the previous financial year.

Recommendation 10

3.142 The committee recommends that Part 14 of the Law Enforcement Integrity Commissioner Bill 2006 be amended to provide the existing Parliamentary Joint Committee on the Australian Crime Commission with jurisdiction to scrutinise the Australian Commission for Law Enforcement Integrity and those Commonwealth law enforcement agencies subject to its oversight.

Recommendation 11

3.145 The committee recommends that the Law Enforcement Integrity Commissioner Bill 2006 be amended to provide for a review three years from the date of commencement of the Act.

Recommendation 12

4. The committee recommends that the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 be amended to provide that a determination on categories of conduct shall be made by the Commonwealth Ombudsman and the Commissioner of the Australian Federal Police within three months of the commencement of the Act.

Recommendation 13

4.65 The committee recommends that the lower level disciplinary matters (categories 1 and 2) should be subject to internal review while more serious matters (category 3) should be the subject of external review for example, through the Administrative Appeals Tribunal.

Recommendation 14

4.66 The committee also recommends that the possible conflict of the Bill with the *Workplace Relations Act 1996* be resolved, before the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 is enacted.

Recommendation 15

4.74 The committee recommends that the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 clarify that the professional standards regime applies to the Commissioner of the Australian Federal Police.