



Australian Government

**Australian Commission for
Law Enforcement Integrity**

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The Hon Nicolas Goiran MLC
Chair, Joint Standing Committee on
the Corruption and Crime Commission
Legislative Assembly Committee Office
Parliament of Western Australia
Level 1, 11 Harvest Terrace
WEST PERTH WA 6005

Dear Mr Goiran

Thank you for your invitation to make a submission to the Joint Standing Committee's *Inquiry into the Corruption and Crime Commission (CCC) being able to prosecute its own charges*.

About ACLEI

The office of Integrity Commissioner and the Australian Commission for Law Enforcement Integrity (ACLEI) are established under the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act). The LEIC Act confers a range of functions on the Integrity Commissioner (see section 15) and establishes powers in relation to the investigation of corruption issues in prescribed law enforcement agencies—including notices to produce information and coercive information-gathering hearings.

ACLEI's jurisdiction comprises the Australian Federal Police (AFP), the Australian Criminal Intelligence Commission, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Department of Immigration and Border Protection, and prescribed parts of the Department of Agriculture and Water Resources.

Due to the functions and roles of the LEIC Act agencies—which puts them at increased risk of criminal infiltration or corrupt compromise by organised crime groups—ACLEI's high-end investigation activities tend to culminate in criminal charges being laid (whether for corruption or non-corruption related offences). Some (lesser) predicate offences, such as unauthorised disclosure of official information, are also investigated by ACLEI and its investigation partners.

Does legislation allow ACLEI to charge and prosecute, even for the enforcement of actions in its own legislation, and does ACLEI think it should have that power?

The LEIC Act does not confer any powers on the Integrity Commissioner or ACLEI to charge or prosecute offences, including offences arising from the LEIC Act.

Part 10 of the LEIC Act articulates processes for dealing with admissible evidence obtained in investigation or public inquiry. Section 142(1) provides that if, in investigating a corruption issue or conducting a public inquiry, the Integrity Commissioner obtains:

- (a) evidence of an offence against a law of the Commonwealth that would be admissible in a prosecution for the offence; or
- (b) evidence of the contravention of a law of the Commonwealth:
 - i. in relation to which civil penalty proceedings may be brought; and
 - ii. that would be admissible in civil penalty proceedings for the contravention;

the Integrity Commissioner must:

- (c) assemble the evidence; and
- (d) give the evidence to:
 - i. the Commissioner of the AFP; or
 - ii. another person or authority who is authorised by or under a law of the Commonwealth to prosecute the offence or bring the civil penalty proceedings.

Sections 142(2) and 143 provide a similar regime in relation to admissible evidence of an offence against a law of a State or Territory, and confiscation proceedings (respectively).

It should be noted that sections 80 and 96 establish certain protections against the direct use in criminal proceedings of self-incriminatory material that has been obtained through an exercise of LEIC Act coercive powers. Significant amendments to the LEIC Act in 2015—particularly the insertion of Subdivision EAA of Division 2 of Part 10—further establish and clarify the permitted uses or disclosures of hearing material and derivative material. These amendments have regard to the cases of *X7 v Australian Crime Commission* [2013] HCA 29 and *Lee v The Queen* [2014] HCA 20, among other similar cases.

It is also relevant to note that the Integrity Commissioner has the simultaneous power to make an administrative finding of corrupt conduct in a report to the Minister for Justice (section 54, subject to section 51 procedural fairness requirements) and to publish his or her conclusions.

Which agency undertakes charging and prosecutions and how effectively does this process work?

The *Director of Public Prosecutions Act 1983* (Cth) establishes a framework that separates the investigative and prosecutorial functions of the Commonwealth criminal justice system. Accordingly, prosecutorial decisions are made by the Commonwealth Director of Public Prosecutions (CDPP), independent of those who were responsible for the investigation—except in limited circumstances where some Commonwealth agencies conduct summary prosecutions for straight-forward regulatory offences, by arrangement with the CDPP.

In accordance with section 142(1) of the LEIC Act, ACLEI (or an investigative partner) refers briefs of evidence to the CDPP. Applying the *Prosecution Policy of the Commonwealth*, the CDPP then decides whether or not to prosecute, principally giving consideration to:

- whether there is sufficient evidence to prosecute the case, and

- whether it is evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the public interest.¹

Since January 2011, the AFP-led multi-agency *Criminal Assets Confiscation Taskforce* (CACT) has been responsible for taking criminal asset confiscation action in the Commonwealth. Accordingly, investigations by ACLEI involving Commonwealth offences relevant to the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002* would be referred to the CACT.

As with any activity involving multiple agencies, the process of referring briefs of evidence for assessment and progression introduces the responsibility for ACLEI to manage cases and communicate perspectives clearly at key milestones. ACLEI and the CDPP have a positive relationship, which enables broader policy considerations (such as deterrence of public sector corruption) to be taken into account when relatively minor offences (in terms of maximum penalty) are referred for assessment, or when it is proposed that “lesser” charges be scheduled in favour of “more serious” during the course of a prosecution.

As a relatively small agency, ACLEI is frequently assisted by joint investigation partner agencies—particularly the AFP—during lengthy prosecution processes. This distribution of work—including deciding which agency will refer charges to the CDPP—assists the Commonwealth to achieve its anti-corruption and criminal justice objectives in an efficient way.

The CCC has an important role in Western Australia’s accountability and integrity system, and as part of the national mosaic of anti-corruption commissions. While it is my experience that the Commonwealth prosecution system has worked well in ACLEI’s context, nothing in this submission should be taken as a comment on past practices in Western Australia, or as support for or against the various proposals being considered by the Committee’s inquiry.

I wish the Committee well in its deliberations.

Yours sincerely



Michael Griffin AM
Integrity Commissioner

¹ Commonwealth Department of Public Prosecutions, *Prosecution Policy of the Commonwealth*, <www.cdpp.gov.au/prosecution-process/prosecution-policy>.