



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mrs Giulia Jones MLA (Chair), Ms Bec Cody MLA (Deputy Chair), Mr Deepak-Raj Gupta MLA

Evaluation of Current ACT Policing

Submission 10

Australian Commission for Law Enforcement Integrity

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Australian Government
Australian Commission for
Law Enforcement Integrity

25 March 2020

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

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Dear Mrs Jones

**ACLEI SUBMISSION TO THE INQUIRY IN THE FORM OF AN EVALUATION OF
CURRENT ACT POLICING ARRANGEMENTS**

I am writing to make a submission to the ACT Legislative Assembly Standing Committee on Justice and Community Safety *Inquiry in the form of an evaluation of current ACT Policing arrangements*.

I welcome the opportunity to contribute to this Inquiry and thank the Committee for providing an extension to the deadline to enable my office to make a submission.

My submission is attached and I am available to appear before the Committee to answer questions, should you wish.

I can be contact directly on 62141 2301. Alternatively, if you have any questions, please contact the ACLEI Executive Director Operations, Sarah Marshall on 02 6141 2300.

Yours sincerely

Jaala Hinchcliffe
Integrity Commissioner



Australian Government

**Australian Commission for
Law Enforcement Integrity**

ACT LEGISLATIVE ASSEMBLY

**STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
EVALUATION OF CURRENT ACT POLICING ARRANGEMENTS**

**Submission by the
Australian Commission for Law Enforcement Integrity**



Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the Standing Committee on Justice and Community Safety inquiry in the form of an evaluation of current ACT Policing arrangements (the Inquiry).

To assist the Committee:

- Part 1 of this submission will summarise the role, functions and powers of ACLEI in relation to ACT Policing,
- Part 2 will outline the way ACLEI partners with the Australian Federal Police (AFP) and ACT Policing to deliver oversight in accordance with the *Law Enforcement Integrity Commissioner 2006* (the LEIC Act), and
- Part 3 summarises the legislative and procedural arrangements governing information sharing between ACLEI and the ACT Government.

ACLEI's role, functions, powers and jurisdiction

The office of the Integrity Commissioner, and ACLEI, are established by the LEIC Act to investigate and prevent corrupt conduct in law enforcement agencies.

ACLEI's strategic purpose is to make it more difficult for corruption in law enforcement agencies to occur or remain undetected. The LEIC Act requires the Integrity Commissioner to prioritise the investigation of serious and systemic corruption. For this purpose, the Integrity Commissioner has coercive information-gathering powers and the full suite of covert policing capabilities, including telecommunications interception; electronic and physical surveillance; and controlled operations.

The AFP, including ACT Policing, fall under ACLEI's jurisdiction.

Pursuant to section 19 of the LEIC Act, the AFP Commissioner must notify the Integrity Commissioner of any information or allegation that raises a corruption issue in his or her agency. ACLEI may also receive information or an allegation that raises a corruption issue from the Commonwealth Attorney-General; a member of the public; or another government agency.

The Integrity Commissioner can choose from a range of options to deal with corruption issues which are notified or referred pursuant to the LEIC Act, including to:

- investigate the corruption issue

- refer the corruption issue to the law enforcement agency for internal investigation (with or without management or oversight by ACLEI) and to report findings to the Integrity Commissioner
- refer the corruption issue to the AFP (if the corruption issue does not relate to the AFP)
- investigate the corruption issue jointly with another government agency or an integrity agency for a state or territory, or
- take no further action.

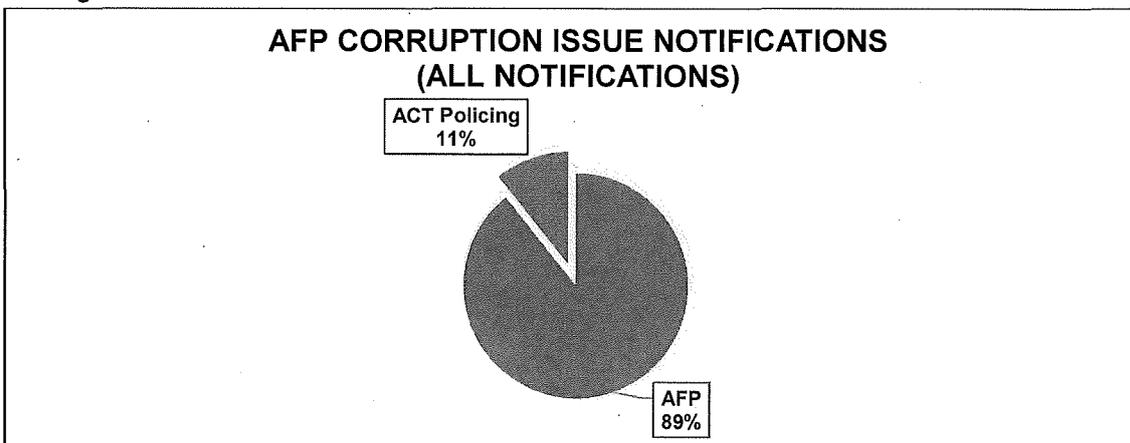
ACLEI works closely with LEIC Act agencies to share information and intelligence for the purpose of strengthening anti-corruption measures. ACLEI publishes a range of corruption prevention products including material for use by corruption prevention practitioners; law enforcement agencies and officers; the public; and academics.

ACLEI Oversight of ACT Policing

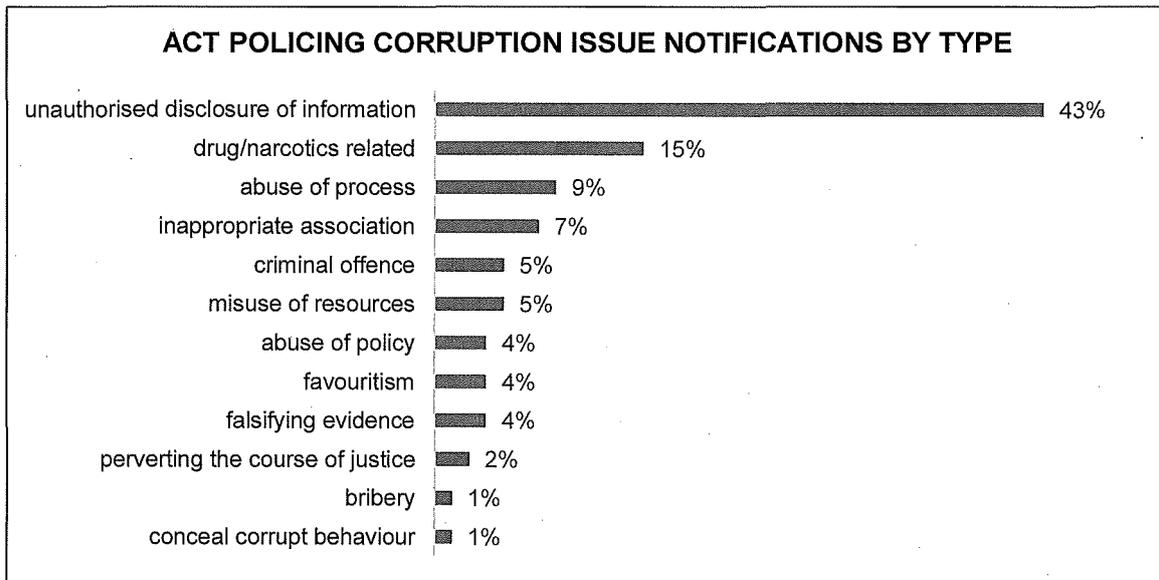
Note on the use of ACLEI data:

ACLEI has manually extracted the data relating to ACT Policing from notifications and referrals from the AFP. While every effort has been made to ensure the accuracy of the data presented below, the manual identification and extraction of ACT Policing corruption issues may have resulted in a very small number of issues being omitted. However, ACLEI is confident the following information is indicative of the scale and nature of ACT Policing corruption issues notified to ACLEI.

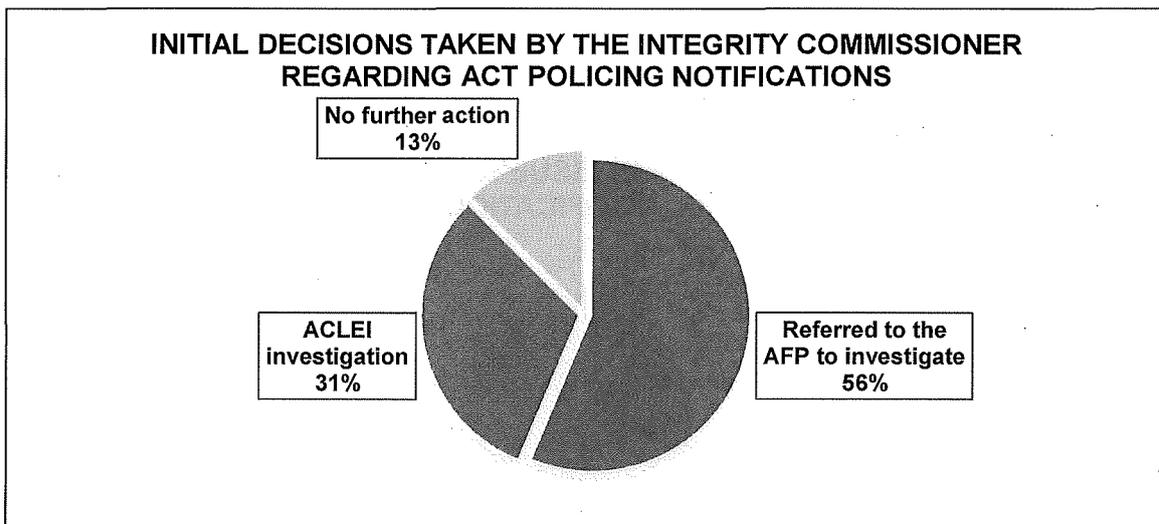
Corruption issue notifications relating to ACT Policing represent a small percentage of the total number of notifications or referrals received by ACLEI from the AFP. Approximately 11% of all AFP corruption issue notifications to ACLEI relate to officers performing ACT Policing functions.

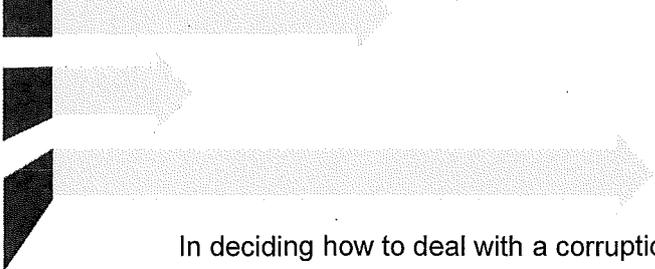


For those corruption issues that involve ACT Policing, the majority (approximately 43%) relate to allegations of inappropriate or unauthorised disclosure of information. The type of information disclosed, and the receiving entity vary and include family and friends, leaks to the media, and, most seriously, to criminal entities.



Most ACT Policing corruption issues (approximately 56%) notified to ACLEI resulted in the Integrity Commissioner initially deciding to refer the matter back to the AFP to investigate. Matters that are referred to the AFP are investigated by AFP Professional Standards (PRS).





In deciding how to deal with a corruption issue, the Integrity Commissioner has regard to the factors set out in section 27(2) of the LEIC Act:

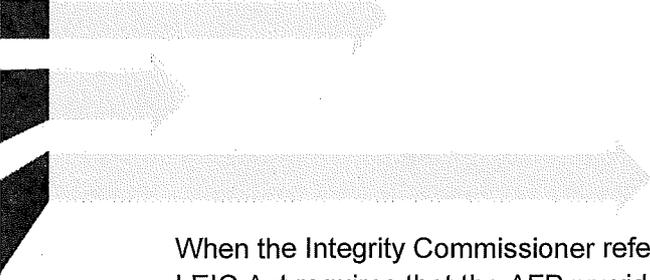
- (a) the need to ensure that the corruption issue is fully investigated;
- (b) the rights and obligations of the law enforcement agency to investigate the corruption issue;
- (c) if a joint investigation of the corruption issue by the Integrity Commissioner and the law enforcement agency is being considered—the extent to which the law enforcement agency is able to cooperate in the investigation;
- (d) the resources that are available to each of the following to investigate the corruption issue:
 - (i) the Integrity Commissioner;
 - (ii) the AFP;
 - (iii) the law enforcement agency;
- (e) the need to ensure a balance between:
 - (i) the Integrity Commissioner's role in dealing with corruption issues in law enforcement agencies (particularly in dealing with significant corruption issues); and
 - (ii) ensuring that the heads of law enforcement agencies take responsibility for managing their agencies;
- (f) the likely significance of the corruption issue for the law enforcement agency.

The Integrity Commissioner may decide to take no further action in relation to a notification or referral. In doing so, the Integrity Commissioner must be satisfied that:

- the corruption issue is already being, or will be, investigated by a law enforcement agency or other government or integrity agency, or
- the referral of the allegation or information is frivolous or vexatious, or
- the corrupt conduct has been, or will be, the subject of proceeding before a court, or
- an investigation of the corruption issue is not warranted having regard to all the circumstances.

A decision by the Integrity Commissioner to take no further action does not prevent the AFP from taking whatever action they consider necessary or advisable under legislation other than the LEIC Act that may apply.

Additionally, pursuant to section 42 of the LEIC Act, the Integrity Commissioner may, at any time, reconsider how a particular corruption issue should be dealt with.



When the Integrity Commissioner refers a matter to the AFP to investigate, section 66 of the LEIC Act requires that the AFP provide the Integrity Commissioner with an investigation report at the end of the investigation. Section 66 requires that the AFP set out its findings on the corruption issue, the evidence and other material on which those findings are based, and any action taken or proposed. Under section 67 of the LEIC Act, the Integrity Commissioner may make comments or recommendations in relation to this report.

A desktop review by ACLEI of section 66 investigation reports received from AFP PRS in relation to ACT Policing matters shows that approximately:

- 41% of investigations found that the allegation was not established, and
- 22% of investigations resulted in disciplinary proceedings by the AFP.

Reports provided by the AFP pursuant to section 66 of the LEIC Act demonstrate the maturity of PRS's capability to investigate and report on corruption issues within ACT Policing.

Information sharing between ACLEI and the ACT Government

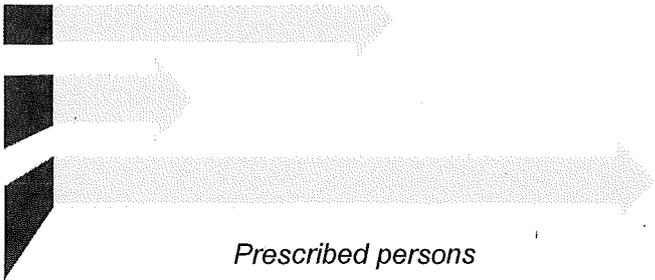
The *Law Enforcement Integrity Commissioner Regulations 2017* (the LEIC Regulations) specifically contemplate the interest of the ACT Government in assuring the integrity of its contracted provider of policing services, when that provider is the AFP.

Regulation 18 of the LEIC Regulations establishes a mechanism for the relevant ACT Government Minister to be informed about ACLEI's activities.

18 Requirement to give information or reports

Giving information or reports in specified circumstances

- (1) For the purposes of subsection 224(2) of the Act, information or reports that are required to be given under a provision of the Act prescribed in subsection (2) are also to be given to the persons prescribed in subsection (3) if:
- (a) the corruption issue to which the prescribed provision relates is a relevant corruption issue in relation to the Australian Capital Territory or an External Territory; and
 - (b) the Integrity Commissioner:
 - i) is investigating the corruption issue to which the prescribed provision relates; or
 - ii) is managing or overseeing the investigation by a law enforcement agency of the corruption issue to which the prescribed provision relates.



Prescribed persons

- (2) The following persons are prescribed:
- (a) for information or reports relating to a relevant corruption issue in relation to the Australian Capital Territory-the Minister, within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*, who is responsible for exercising the power of the Australian Capital Territory Executive in relation to police matters;
 - (b) for information or reports relating to a relevant corruption issue in relation to an External Territory-the Administrator of the External Territory.

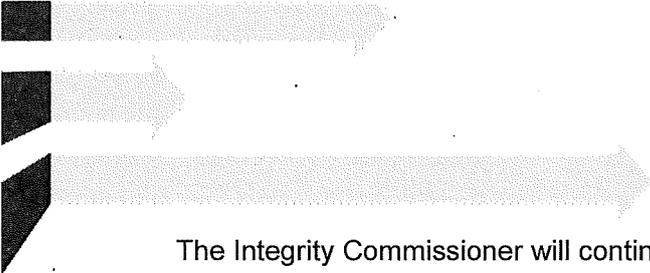
Definitions

- (3) A corruption issue is a **relevant corruption issue** in relation to the Australian Capital Territory or an External Territory if:
- (a) the corruption issue relates to corrupt conduct of a person while the person was a staff member of the AFP whose duties included providing police services in relation to the Australian Capital Territory or an External Territory under section 8 of the *Australian Federal Police Act 1979 (AFP Territory police services)*; or
 - (b) the corruption issue relates to corrupt conduct of a person while the person is a staff member of the AFP whose duties include AFP Territory police services; or
 - (c) the corruption issue relates to corrupt conduct that:
 - i) is the conduct of a person who, at the time the corruption issue is being investigated, is a staff member of the AFP whose duties include AFP Territory police services; and
 - ii) in the opinion of the Integrity Commissioner, affects, or is likely to affect, the person's performance of the police service functions of the agency.

The Integrity Commissioner has, on three occasions, provided the ACT Minister for Police and Emergency Services with investigation reports about corruption issues relating to ACT Policing.

For example, at the conclusion of ACLEI Operation ASHLAR¹, the Integrity Commissioner provided the ACT Minister for Police and Emergency Management with a copy of the investigation report and a summary of the consultation undertaken with the ACT Chief Police Officer on identified corruption risks and proposed treatment measures.

¹ Operation ASHLAR was an ACLEI investigation relating to information which suggested that ACT Policing officers had inappropriately provided information ("tip-offs") to a known criminal. Ultimately, the investigation did not reveal any evidence of law enforcement corruption, however several vulnerabilities were identified, including in relation to apparent inconsistencies in the record keeping practices of police officer contact with persons of interest to law enforcement.



The Integrity Commissioner will continue to provide the Minister with information and investigation reports about corruption issues relating to ACT Policing as required by the LEIC Regulations.

ACLEI cooperates and shares information with other agencies and has practical arrangements with most state and territory integrity bodies to give practical effect to the relevant information sharing provisions of the LEIC Act. It is anticipated these arrangements would assist the newly-established ACT Integrity Commission.