

ACLEI is no substitute for a federal ICAC

Some allegations around Crown Casino fall within ACLEI's jurisdiction, but others do not – and, in any case, ACLEI's powers are too limited. A National Integrity Commission is needed for the allegations to be fully aired and investigated.

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INTRODUCTION

In July 2019, reporting from Fairfax (*Sydney Morning Herald* and *The Age*) and Channel 9 (*60 Minutes*) presented claims about Crown Casino's behaviour, including:¹

- alleged pressure on the Department of Home Affairs by ministers and an MP to “smooth out” border security for Chinese big gamblers,
- alleged payments to a brothel owner and alleged money launderer,
- a 15-year long agreement with the Department of Home Affairs to fast-track visa applications for Crown patrons,
- Australian consular officials who allegedly helped facilitate Crown's access to the Chinese market including “rubber-stamping” some applications,
- Crown allegedly recommending that patrons with a visa-refusal record or who did not have “good reputation” shop around consulates,
- a then-suspended, now serving, police officer providing security services for a Crown patron, and
- a serving Border Force officer allegedly moonlighting for Crown or Crown patrons.

The Greens, Centre Alliance, Andrew Wilkie and Jacqui Lambie called for a parliamentary inquiry.²

Attorney-General Christian Porter instead referred the allegations to the Australian Commission for Law Enforcement Integrity (ACLEI). Insofar as the reference relates to a law enforcement agency such as the Australian Federal Police, or the law enforcement functions of the Department of Home Affairs, the Integrity Commissioner must now decide whether or not to take any further action. In making that decision, the Commissioner must have regard to the resources available for the conduct of the

¹ Crowe (2019) *Jacqui Lambie joins Andrew Wilkie in calling for parliamentary inquiry into Crown*, <https://amp.theage.com.au/politics/federal/andrew-wilkie-calls-for-parliamentary-inquiry-into-crown-resorts-20190729-p52brd.html>; Harris (2019) *“Tip of the iceberg”: Government orders investigation into Crown casino accusations*, <https://www.theage.com.au/politics/federal/tip-of-the-iceberg-government-orders-investigation-into-crown-casino-accusations-20190730-p52c48.html>; Harris & Crowe (2019) *Home Affairs had an agreement to fast-track visa applications for Crown*, <https://www.theage.com.au/politics/federal/home-affairs-had-an-agreement-to-fast-track-visa-applications-for-crown-20190729-p52bwi.html>; McKenzie, Toscano, & Tobin (2019) *Border Force official worked for Crown high-roller and wanted criminal*, <https://www.theage.com.au/business/companies/border-force-official-worked-for-crown-high-roller-and-wanted-criminal-20190726-p52b7w.html>

² Crowe (2019) *Jacqui Lambie joins Andrew Wilkie in calling for parliamentary inquiry into Crown*; Remeikis (2019) *Government refers Crown allegations to integrity commission – politics live*, <https://www.theguardian.com/australia-news/live/2019/jul/30/spotlight-on-newstart-after-survey-reveals-poverty-rise-politics-live>

reference.³ This in itself highlights the fragility of the Commonwealth’s anti-corruption powers.

Nevertheless, Porter maintains that ACLEI is “the body appropriately placed to investigate” the allegations. Indeed, Labor has joined the Coalition in declining to support a parliamentary inquiry, with Porter saying that a parallel parliamentary inquiry would “actually discourage and withdraw efficacy from the ACLEI investigation”.⁴

Wilkie has already referred Victoria Police and the Victorian Commission for Gambling and Liquor Regulation to Victoria’s integrity commission, IBAC.⁵

What is ACLEI, what are its powers to investigate allegations, and is it a satisfactory substitute for National Integrity Commission (i.e., a federal ICAC)?

ACLEI

ACLEI, and the Integrity Commissioner who heads it, are responsible for assuring the government of the integrity of five agencies, and any other agencies prescribed by law:⁶

- The Australian Criminal Intelligence Commission
- The Australian Federal Police (AFP)
- The Australian Transaction Reports and Analysis Centre (AUSTRAC)
- The Department of Home Affairs (including Border Force)
- The Department of Agriculture (prescribed aspects only)

ACLEI’s investigative and reporting functions are limited to “corruption issues” concerning a person who is, or has been, a staff member of a law enforcement agency.⁷

ACLEI is administered by the Attorney-General.⁸

³ *Law Enforcement Integrity Act 2006, s. 27*

⁴ Remeikis (2019) *Government refers Crown allegations to integrity commission – politics live*

⁵ Horan (2019) *New calls for Crown inquiry*, <https://www.thesaturdaypaper.com.au/thebriefing/2019/07/30>

⁶ *Law Enforcement Integrity Act 2006, s. 15*

⁷ *Law Enforcement Integrity Act 2006, ss. 7 and 15*

⁸ ACLEI (n.d.) *ACLEI’s role*, <https://www.aclei.gov.au/acleis-role>

General responsibilities

The Integrity Commissioner is responsible for investigating corruption issues, reporting annually on any patterns and recommending changes to laws or practices to identify or discourage corruption.⁹

Investigations and inquiries

The Integrity Commissioner can investigate corruption issues that are brought to the Commissioner's attention by members of the public (including anonymously or in-confidence), members of law enforcement or heads of agencies, as well as corruption issues that ACLEI identifies independently. The Integrity Commissioner can make its reports public, or otherwise comment publicly. ACLEI can also refer corruption issues to other agencies.¹⁰

ACLEI has the power to hold public inquiries but, as of late 2018, it never had.¹¹

The relevant minister can also request that the Integrity Commissioner conduct a public inquiry into corruption or integrity in law enforcement.¹²

The Integrity Commissioner's investigative powers include:¹³

- coercive information-gathering hearings and notices
- telecommunications interception and data access
- electronic surveillance
- controlled operations and assumed identities
- search warrants
- scrutiny of financial transaction records, and
- integrity testing.

The Integrity Commissioner can also prevent witnesses from disclosing the nature and existence of ACLEI hearings.

⁹ *Law Enforcement Integrity Act 2006, s. 15*

¹⁰ *Law Enforcement Integrity Act 2006, s. 15*

¹¹ National Integrity Committee, The Australia Institute (2018) *Implementation plan for a National Integrity Commission*, <http://www.tai.org.au/content/national-integrity-committee-calls-bipartisan-support-integrity-plan>

¹² *Law Enforcement Integrity Act 2006, ss. 15 and 71*

¹³ *Law Enforcement Integrity Act 2006, Part 9*

ACLEI IS NO SUBSTITUTE FOR A FEDERAL ICAC

ACLEI is responsible for integrity and corruption in law enforcement agencies, including the Department of Home Affairs.

Some Crown allegations are within ACLEI's jurisdiction: Allegations about moonlighting Border Force employees, Home Affairs agreements with Crown and the police treating Crown as a "city-state" (if those police are the AFP) are relevant corruption issues for ACLEI.

Other allegations are not within ACLEI's jurisdiction: ACLEI does not have the power to investigate ministers or former ministers, ministerial staff, MPs, government contractors or the judiciary.¹⁴

We would not expect its powers to cover consular officials either.

Insufficient resources and powers: ACLEI's jurisdiction is limited and its resources, profile and powers are "totally insufficient":¹⁵

- ACLEI does not have the full investigative powers of a Royal Commission.¹⁶
- ACLEI's definition of corrupt conduct is more limited than the definitions of the state-based anti-corruption commissions.¹⁷
- ACLEI cannot refer cases to the Director of Public Prosecutions, but only to the AFP Commissioner.¹⁸
- ACLEI cannot make findings of corrupt conduct, but only refer misconduct to agency managers.¹⁹
- Because ACLEI is under-resourced, it relies on the AFP to carry out its major investigations. Since ACLEI is responsible for overseeing the AFP (and other agencies that, like the AFP, come under the Home Affairs department), this represents a potential conflict of interest.²⁰

¹⁴ Aulby, The Australia Institute (2017) *The case for a federal corruption watchdog*, <http://www.tai.org.au/sites/default/files/P380%20Case%20for%20a%20federal%20ICAC%20%281%29.pdf>

¹⁵ Whealy (2017) *Re: Establishment of a National Integrity Commission*, <http://www.tai.org.au/sites/default/files/Whealy%20-%20Accountability%20and%20the%20Law.pdf>

¹⁶ National Integrity Committee, The Australia Institute (2018) *Implementation plan for a National Integrity Commission*

¹⁷ Aulby, The Australia Institute (2017) *The case for a federal corruption watchdog*

¹⁸ Aulby, The Australia Institute (2017) *The case for a federal corruption watchdog*

¹⁹ Aulby, The Australia Institute (2017) *The case for a federal corruption watchdog*

²⁰ McKenzie & Baker (2017) *Peter Dutton's home affairs ministry will investigate itself for corruption*, <https://www.smh.com.au/politics/federal/peter-duttons-home-affairs-ministry-will-investigate-itself-for-corruption-20170721-gxfwov.html>; McKenzie, Cormack, & Baker (2018) *Outgunned: Federal*

CONCLUSION

ACLEI does not have the jurisdiction, power or resources to fully investigate alleged corruption.

corruption agencies not up to the task, <https://www.smh.com.au/national/outgunned-federal-corruption-agencies-not-up-to-the-task-20181125-p50i6i.html>