

**Submission  
No 5**

**REVIEW OF THE INSPECTOR'S REPORT TO THE  
PREMIER: THE INSPECTOR'S REVIEW OF THE  
ICAC**

**Organisation:** Australian Commission for Law Enforcement Integrity  
**Name:** Mr Michael Griffin AM  
**Position:** Integrity Commissioner  
**Date Received:** 30 June 2016



Our ref: 16/341  
Your ref: LAC16/167

29 June 2016

Mr Damien Tudehope MP  
Chair, Joint Committee on the ICAC  
Parliament House  
6 Macquarie Street  
SYDNEY NSW 2000

Dear Mr Tudehope

**Inquiry into the ICAC Inspector's Report to the Premier**

Thank you for your invitation to make a submission to the inquiry into the ICAC Inspector's *Report to the Premier: The Inspector's Review of the ICAC*.

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). The LEIC Act confers a range of functions and powers on the Integrity Commissioner in relation to corruption issues in prescribed law enforcement agencies—including notices to produce information and coercive information-gathering hearings.

Prescribed law enforcement agencies presently comprise the Australian Federal Police, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Department of Immigration and Border Protection (including the Australian Border Force), the Australian Crime Commission (ACC), the CrimTrac Agency, and designated parts of the Department of Agriculture and Water Resources. With effect from 1 July 2016, the ACC and CrimTrac will merge and be known as the Australian Criminal Intelligence Commission, and remain part of the LEIC Act jurisdiction.

The Integrity Commissioner may hold a hearing—either wholly or partly in private—in relation to “investigating a corruption issue” (under s 26(1)(a)) or in conducting a “public inquiry” (under s 71). You may note that the Integrity Commissioner may only conduct a public inquiry at the request of the Minister, and to date such a request has not been made.

Section 82 of the LEIC Act sets out the general provisions for the manner in which hearings may be conducted, and I attach an extract of for your reference.

It may be relevant for the purposes of your Inquiry for me to note in particular section 82(4) of the LEIC Act, which sets out the factors to which the Integrity Commissioner must have regard in determining whether a matter should be heard in private or in public, namely:

- (a) whether evidence that may be given, or a matter that may arise, during the hearing (or that part of the hearing) is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence;
- (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing (or that part of the hearing) took place in public;
- (c) whether it is in the public interest that the hearing (or that part of the hearing) take place in public;
- (d) any other relevant matter.

To date, my predecessors and I have conducted hearings as an aid to investigation, directed to those serious or systemic law enforcement corruption issues that are to be given priority under section 16 of the LEIC Act. Aligned with the primary risks in ACLEI's jurisdiction, these matters have tended to also involve corruption-enabled crimes, such as providing assistance to the importation or trafficking of controlled substances.

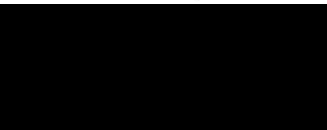
ACLEI's holding of hearings in private has in many cases allowed other aspects of an investigation to proceed in a covert manner, during which time other evidence-gathering methods are progressed. It has also avoided the prospect that unfair damage to reputations could accompany the public airing of speculative information during the exploratory phase of an investigation. Private hearings also enable ACLEI to gather and disseminate criminal intelligence—such as corruption methods, prevalence and practice—that may be relevant to crime prevention generally, but where the content or source of information remains sensitive.

ACLEI's operations should and do have a public dimension, which promotes transparency and awareness-raising about corruption risk. When an investigation is concluded, a report is provided to the Minister (section 55, subject to s 51 *opportunity to be heard*) and a summary must be recorded in ACLEI's annual report (section 201(a)(iv)). When criminal charges result (section 142), admissible evidence is heard in court. The Integrity Commissioner may also publish part or all of a report, or indeed any other relevant information (section 209, subject to s 210 *opportunity to be heard*) and may make a special report to the Parliament (section 204).

It is possible that public interest factors in future may warrant the holding of part or all of a hearing in public, although those circumstances have not yet arisen in the matters that ACLEI has dealt with.

Finally, I note that the coercive powers in the LEIC Act were substantially amended by Schedule 2 of the *Law Enforcement Legislation Amendment (Powers) Act 2015 (Cth)*, to take account of jurisprudence relating to the interplay of coercive information gathering powers and prosecutions. The amendments, which took effect on 28 July 2015, may be relevant to your inquiry.

Yours sincerely



Michael Griffin AM  
Integrity Commissioner

Encl.

**Part 9** Integrity Commissioner's powers in conducting investigations and public inquiries

**Division 2** Conducting hearings

Section 82

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# **Law Enforcement Integrity Commissioner Act 2006**

**No. 85, 2006**

## **Compilation No. 21**

**Compilation date:** 1 May 2016

**Includes amendments up to:** Act No. 26, 2016

**Registered:** 7 June 2016

**Part 9** Integrity Commissioner's powers in conducting investigations and public inquiries

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**Part 9—Integrity Commissioner's powers in  
conducting investigations and public  
inquiries**



## Division 2—Conducting hearings

### Subdivision A—General provisions

#### 82 Integrity Commissioner may hold hearings

*Commissioner may hold hearings for investigations or public inquiries*

- (1) The Integrity Commissioner may hold a hearing for the purpose of:
  - (a) investigating a corruption issue; or
  - (b) conducting a public inquiry.
- (1A) A hearing may be:
  - (a) a pre-charge hearing or a post-charge hearing; or
  - (b) a pre-confiscation application hearing or a post-confiscation application hearing.
- (1B) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
  - (a) paragraph (1A)(a) were, by express provision, confined to pre-charge hearings; or
  - (b) paragraph (1B)(b) were, by express provision, confined to pre-confiscation application hearings.
- (2) Subject to subsections (3), (4) and (5), a hearing may be conducted in such manner as the Integrity Commissioner thinks fit.

*Hearing in relation to an investigation of a corruption issue*

- (3) The Integrity Commissioner may decide to hold the whole (or a part) of a hearing in relation to an investigation of a corruption issue either in public or in private.
- (4) In deciding under subsection (3) whether a hearing (or a part of a hearing) is to be held in public or in private, the Integrity Commissioner must have regard to the following:
  - (a) whether evidence that may be given, or a matter that may arise, during the hearing (or that part of the hearing) is of a

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confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence;

- (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing (or that part of the hearing) took place in public;
- (c) whether it is in the public interest that the hearing (or that part of the hearing) take place in public;
- (d) any other relevant matter.

Note: If the hearing is to be held in public, a witness may request that his or her evidence be taken in private: see section 89.

*Hearing in relation to a public inquiry*

- (5) A hearing in relation to a public inquiry must be held in public. However, a part of a hearing in relation to a public inquiry may be held in private if the Integrity Commissioner so directs.

Note: Certain evidence must be given in private, and a witness may request that his or her evidence be taken in private: see section 89.

*Record of hearing*

- (6) The Integrity Commissioner must make a record of a hearing.
- (7) If the Integrity Commissioner is conducting a public inquiry, the record of the hearing must include:
  - (a) any document produced to the Integrity Commissioner at the hearing; or
  - (b) a description of any thing (other than a document) produced to the Integrity Commissioner at the hearing;unless the Integrity Commissioner directs otherwise.

*Direction is not a legislative instrument*

- (8) A direction given under this section is not a legislative instrument.