



Australian Government
**Australian Commission for
Law Enforcement Integrity**

INVESTIGATION REPORT

***An investigation into doubts raised about
the integrity of senior managers in the Australian
Customs and Border Protection Service***

A report to the Minister for Home Affairs and Justice,
issued under section 55 of the *Law Enforcement Integrity Commissioner Act 2006*

REPORT 02/2012

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Enquiries about this report can be directed to
the Australian Commission for Law Enforcement Integrity
GPO Box 305, Canberra, ACT, 2601
or via email to **contact@aclei.gov.au**

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INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER

THE LAW ENFORCEMENT INTEGRITY COMMISSIONER ACT 2006

The *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) established the office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity (ACLEI).

THE ROLE OF THE INTEGRITY COMMISSIONER AND ACLEI

The role of the Integrity Commissioner and ACLEI is to detect, investigate and prevent corruption in the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Federal Police (AFP) and the former National Crime Authority. Other Australian Government agencies with law enforcement functions may be prescribed by regulation as coming within the jurisdiction of the Integrity Commissioner.

CORRUPT CONDUCT

'Corrupt conduct' is where a staff member of a law enforcement agency:

- abuses his or her office;
- perverts the course of justice; or
- having regard to his or her duties and powers, otherwise engages in corruption.

The Integrity Commissioner is to give priority to dealing with serious corruption and systemic corruption.

DEALING WITH CORRUPTION ISSUES

A corruption investigation, conducted by ACLEI, can commence in different ways.

- The Minister may refer to the Integrity Commissioner an allegation or information that raises a corruption issue.
- The head of a law enforcement agency within ACLEI's jurisdiction must notify the Integrity Commissioner of any allegation or information that raises a corruption issue which relates to that agency.
- Any person or government agency (eg the Commonwealth Ombudsman) can refer to the Integrity Commissioner an allegation or information that raises a corruption issue. A referral may be anonymous, or on behalf of another person. A person in custody can make a referral by a secure communication channel.
- The Integrity Commissioner can commence an investigation on his or her own initiative.

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The Integrity Commissioner may decide that ACLEI will investigate a corruption issue, allow a law enforcement agency to conduct its own investigation, conduct a joint investigation with a law enforcement agency, or decide that an investigation is not warranted. The Integrity Commissioner can manage or oversee an investigation that has been referred to a law enforcement agency. If the law enforcement agency were not the AFP, the Integrity Commissioner can refer the issue to the AFP for investigation and may manage or oversee that investigation.

An allegation concerning an employee of a State or Territory agency (the home agency), seconded to an Australian Government law enforcement agency, can be referred to the home agency or to the relevant State or Territory police service or integrity agency for investigation. A joint investigation can also be undertaken by ACLEI and that agency.

INVESTIGATION POWERS

When conducting an investigation, the Integrity Commissioner can:

- issue a summons or notice, requiring law enforcement personnel and other people to provide information and documents;
- obtain and execute a search warrant; and
- obtain a warrant to intercept telecommunications or conduct other electronic surveillance.

HEARINGS

The Integrity Commissioner may conduct a hearing for the purposes of a corruption investigation. A hearing, or part of a hearing, may be conducted in public or in private.

The word 'hearing' as used in the LEIC Act, has no significance other than to describe a process whereby the Integrity Commissioner may gather information and evidence, and exercise certain coercive powers, for the purposes of an investigation. The purpose of a hearing is not to decide an issue, but to progress an investigation by assisting the Integrity Commissioner to discover facts that may lead to further action being taken.

STANDARD OF PROOF

The Integrity Commissioner makes findings about whether a person has engaged in corrupt conduct, based on the balance of probabilities. Those findings may not be the same as those that would be made by a court deciding on criminal guilt beyond a reasonable doubt.

Before making a finding, the Integrity Commissioner requires comfortable satisfaction, based on real evidence, that conduct occurred which fell within the meaning of the LEIC Act. This approach applies the reasoning of the High Court of Australia in *Briginshaw v Briginshaw* [1938] HCA 34 (per Dixon and Rich JJ) and *Neat Holdings P/L v Karajan Holdings P/L* [1992] HCA 66.

ABOUT ACLEI REPORTS

GRADES OF CORRUPTION

The relevant provisions of the LEIC Act are based on the Integrity Commissioner's finding on a single question—did a person engage in corrupt conduct? While all corrupt conduct is wrong and should be eliminated, some instances are less grave than others in terms of, for example, motives, pre-meditation and planning, concealment and deceptive conduct, corrupt collaboration, the effects on public confidence in the law enforcement agency, the effect on other agency staff, and the steps required to rectify the problem.

The Integrity Commissioner may reflect on this question of relative gravity in a report.

REPORTING

Investigations conducted by the Integrity Commissioner culminate in a report made under section 54 of the LEIC Act. The Integrity Commissioner's report must be provided to the Minister and to the head of the relevant law enforcement agency.

When an investigation relates to a person seconded from another Government agency, a copy of the report must be provided to the head of the home agency and to a State or Territory integrity agency, as the circumstances warrant. If the corruption issue relates to the provision of police services to the Australian Capital Territory, the *Law Enforcement Integrity Commissioner Regulations 2006* prescribe (regulation 24(2)-(4)) that a copy of the report must also be provided to the ACT Government Minister responsible for police matters.

If a public hearing were held, the LEIC Act requires the Minister to present the Integrity Commissioner's report to both Houses of Parliament within 15 sitting days of receiving it. It follows that a report of a public inquiry requested by the Minister must also be presented to Parliament by the Minister.

Where a report is to be tabled in Parliament, the Integrity Commissioner must exclude information covered by a certificate issued by the Attorney-General under section 149 of the LEIC Act.

The Integrity Commissioner may exclude other information from a report if the Integrity Commissioner were satisfied that it is desirable to do so. In coming to a decision, the Integrity Commissioner must seek to achieve an appropriate balance between the public interest that would be served by including the information in the report, and the prejudicial consequences that might result from that disclosure.

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THE INVESTIGATION

EXECUTIVE SUMMARY

A key role of the Integrity Commissioner is to assure the integrity of senior leadership of law enforcement agencies, and to investigate when there may be cause for doubt.

This investigation concerns anonymous allegations which suggested that there was corruption at senior levels in the Australian Customs and Border Protection Service. The focus of this investigation was the suggestion that the Chief Executive Officer (CEO) had sought to 'cover up' possible corrupt conduct in Customs and Border Protection, relating to a number of 'missed detections' of importations of illicit drugs. In the course of investigating this corruption issue, a number of other allegations were also tested.

The investigation revealed that the CEO did not become aware of the missed detections until after they had already been treated as a training issue. The documentary evidence demonstrates that the CEO did in fact notify the Integrity Commissioner of the corruption issue.

The Integrity Commissioner found that the evidence repudiates the allegation that the CEO or any other senior manager in Customs and Border Protection engaged in corrupt conduct in relation to the missed detections.

The Integrity Commissioner has recommended that Customs and Border Protection formalise and keep up-to-date a guideline—informed by the current program of risk assessments—that would apply to all high corruption-risk operating environments, whereby corruption indicators (such as missed drug detections) are reported to the Customs and Border Protection Integrity and Professional Standards Branch for assessment and advice. This measure is designed to make better use of anti-corruption arrangements that are already in place, or in contemplation.

THE INVESTIGATION

THE CORRUPTION ISSUES

1. This investigation concerns allegations about corruption at senior levels in the Australian Customs and Border Protection Service. The allegations were made anonymously during March and April 2012, and were addressed to the Minister for Home Affairs and Justice, whose office provided them to the Integrity Commissioner. I treated this information as a referral under section 23 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).
2. The context surrounding the communications suggested that the informant may have been a senior Customs and Border Protection staff member, or a person who had been provided detailed information by a senior staff member.
3. For the most part, the allegations were general in nature and provided little basis for testing the assertions made. An allegation that could be pursued to finality—and the focus of my investigation—suggested that the Chief Executive Officer (CEO) had “block[ed] a reference to the Integrity Commissioner”. When put together with other assertions, one inference available was that the CEO had sought to cover up possible corrupt conduct in Customs and Border Protection.
4. In the course of investigating this corruption issue, a number of other allegations were also tested. These issues included whether some senior managers had—through their course of conduct in appointing, dismissing and dealing with various staff—nurtured a culture of corruption.

JURISDICTION

5. I decided to investigate the allegations since, if substantiated, they would fall within the definition of ‘engages in corrupt conduct’ in section 6 of the LEIC Act.
6. Section 26(1)(a) of the LEIC Act provides that the Integrity Commissioner may deal with a corruption issue which relates to a law enforcement agency, including Customs and Border Protection, by investigating that issue. In deciding to investigate, I considered that the independence of the Integrity Commissioner and the Australian Commission for Law Enforcement Integrity (ACLEI) should be applied to investigate the corruption issues and that it would be beneficial to hold private hearings under the LEIC Act in order to do so.

INVESTIGATION PROCESS

7. During the investigation:
 - (a) I interviewed a person who provided important background information about some of the people and events that had been noted in the allegations;

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- (b) under ‘notices to produce’, I obtained information from various staff members of Customs and Border Protection and from an internet service provider; and
- (c) I conducted several separate hearings at which staff members of Customs and Border Protection, including the CEO, gave sworn evidence in private.

CONSIDERATION OF THE ISSUES

- 8. The LEIC Act reflects the intention of the Parliament to take out of the hands of law enforcement agencies decisions about how information and allegations about corrupt conduct are to be dealt with. The following provisions of the LEIC Act are relevant.
 - (a) Sections 6 and 7 establish a broad definition of ‘corruption issue’. The definition extends beyond *actual* corrupt conduct to include *possible* corrupt conduct.
 - (b) Section 19 requires the head of a law enforcement agency to notify the Integrity Commissioner of an allegation or information that raises a ‘corruption issue’, as soon as practicable after becoming aware of the issue.
 - (c) Sections 26, 31 and 32 give to the Integrity Commissioner the responsibility for deciding how a corruption issue will be dealt with.
- 9. The purpose of this arrangement is to bring independence to the investigation of possible corrupt conduct, and to guard against self-interest in related decision-making. If information about a corruption issue were withheld from the Integrity Commissioner—whether as a result of ill-intent, misunderstanding, or poor practice—the effectiveness of the law enforcement integrity system would be impaired.

ALLEGATION OF FAILING TO NOTIFY ACLEI OF A CORRUPTION ISSUE

- 10. The incident referred to in the informant’s anonymous communications has a factual basis, as follows.
 - (a) Between March and August 2011, Customs and Border Protection officers using x-ray equipment failed to detect drugs hidden in eleven shipping containers.
 - (b) Information provided by police to Customs and Border Protection regional supervisors caused them to review copies of the x-rays. The review concluded that anomalies revealed by the x-rays, although very faint, should have been detected in the eleven instances.

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- (c) Following further assessment, which was conducted under the ‘missed detections’ procedure at an operational level, the issue was treated as a training deficiency and the officers concerned were alerted. More-senior officers considered and evaluated the possibility of corrupt conduct by the x-ray operators, and made broader enquiries.
 - (d) The specialised intelligence and investigation unit established by Customs and Border Protection to handle such matters—the Integrity and Professional Standards Branch—was not consulted and, therefore, was not able to add to the consideration of how the matter might be dealt with.
11. Apparently relying on at least some of this information, the informant inferred that senior Customs and Border Protection staff members were complicit in a ‘cover-up’ and, specifically, that the CEO had withheld the relevant information from notification to the Integrity Commissioner.

Did the CEO fail to inform the Integrity Commissioner?

12. It is apparent from documents and witness accounts that the CEO—who had been on leave—first became aware of the matter after the missed detections had already been treated as a training issue.
13. The evidence also shows that the CEO did notify the Integrity Commissioner of the missed detections, after seeking further information from the Integrity and Professional Standards Branch.

Did Customs and Border Protection staff ‘cover up’ corruption?

14. There is no evidence known to this investigation to indicate that corrupt conduct played any part in the missed detections. What is at issue is whether a ‘cover-up’ ensued, as was inferred by the informant.
15. The information gathered shows no indication of a ‘cover-up’. Rather, documents and witness evidence show that an integrity assessment was undertaken, which actively considered the possibility of corrupt conduct by x-ray operators. If there were a shortcoming in the process, it was that the Integrity and Professional Standards Branch was not informed at an earlier point.
16. I note that the CEO, shortly after becoming aware of these issues, and on advice from the Integrity and Professional Standards Branch, directed that arrangements be put in place to ensure that any future ‘missed detections’ be referred to Integrity and Professional Standards in the first instance. (ACLEI has arrangements with the agencies in the LEIC Act jurisdiction, whereby possible corrupt conduct and indicators are discussed as soon as possible after they come to light, in order to clarify whether a notification to the Integrity Commissioner should be made.)

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17. Since these events, and partly because of them, Customs and Border Protection has worked with ACLEI in a corruption prevention taskforce, known as the 'Integrity Project', to identify and evaluate options for strengthening anti-corruption arrangements. The project has given prominence and priority in Customs and Border Protection to developing an integrity and anti-corruption system that is matched to the agency's present and emerging role in law enforcement operations, and to the attendant risks of corrupt compromise and criminal infiltration.
18. In this regard, I note that in the Customs and Border Protection *Annual Plan 2012–13*, the CEO has made it a strategic priority to:

*...demonstrate to our partners, government and the community how serious we are about achieving the highest possible standards of integrity.*¹

The CEO has also committed Customs and Border Protection to a new strategy to control the threat of criminal infiltration and other corruption risk. One of these measures is:

*...shaping the environment to achieve high levels of security awareness and maintaining the integrity of our staff, information and operations with a strong focus on anti-corruption and security education and training.*²

ALLEGATION OF NURTURING CORRUPTION

19. The allegations also included inferences that certain current and former senior Customs and Border Protection staff members had been disadvantaged in their employment, or had been dismissed or had resigned, as a result of bringing to light their concerns about corruption risks. My investigation found no evidence of reprisal in the matters cited in the allegations, although a number of affected witnesses expressed frustration with a culture that, in their respective views, had insufficient appreciation of corruption risk.
20. In support of this same view, one person raised with me a concern that at least one senior-level recruitment process had been interfered with, in an attempt to influence the result. Although I do not consider it likely that the interference—if it occurred in the way described—involved corrupt conduct, it is worth recalling that a key purpose of a merit-based selection system is to guard against nepotism and cronyism, which are pre-cursors to entrenched or systemic corruption. Perceptions matter, and Customs and Border Protection should do all it can to continue to preserve and promote merit in employment decisions.

¹ *Annual Plan 2012–13*, page 2.

² *Annual Plan 2012–13*, page 20.

THE INVESTIGATION

FINDING

21. In relation to the issues investigated, the evidence repudiates the allegations that the CEO or any other senior manager in Customs and Border Protection engaged in corrupt conduct.

RECOMMENDATION

22. I recommend that Customs and Border Protection formalise and keep up-to-date a guideline—informed by the current program of risk assessments—that would apply to all high corruption-risk operating environments, whereby corruption indicators (such as missed drug detections) are reported to Integrity and Professional Standards Branch for assessment and advice.

CLOSING REMARKS

23. It is always better to report a reasonable suspicion or concern that turns out to be unfounded, than to let corrupt conduct continue unhindered. In the course of my investigation—and somewhat incidental to it—I identified and obtained evidence from the source of the communications. As it happened, the informant was not in a position to know fully or at first-hand of the matters brought forward.
24. I have decided not to include text from the anonymous communications in my report. To do otherwise may lead to the identification of the informant and have an inhibiting effect on any person who, in future, may wish to consider bringing forward a concern or suspicion about corrupt conduct. I am satisfied that my summary of the information provided by the informant is sufficient context for my report.



Philip Moss
Integrity Commissioner

3 September 2012



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