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

INVESTIGATION REPORT

**Operation Karoola –
An Investigation into potential
conflict of interests of
a biosecurity officer**

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

Report 02/2017

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Investigation Reports published by the Integrity Commissioner
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About ACLEI Reports

Investigations and reports by the Integrity Commissioner

The Law Enforcement Integrity Commissioner Act

The *Law Enforcement Integrity Commissioner Act 2006* establishes the office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity.

The role of the Integrity Commissioner and ACLEI

The role of the Integrity Commissioner and ACLEI is to detect and prevent corrupt conduct and investigate corruption issues, in designated agencies—presently the:

- Australian Criminal Intelligence Commission (including the Australian Crime Commission and the former CrimTrac Agency)
- Australian Federal Police (including ACT Policing)
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Department of Immigration and Border Protection (including the Australian Border Force)
- prescribed aspects of the Department of Agriculture and Water Resources, 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 when 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 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.
- The Integrity Commissioner can commence an investigation on his or her own initiative.

The Integrity Commissioner may decide to: have ACLEI 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 also 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 force/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.

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

The LEIC Act establishes the means by which the Integrity Commissioner may report to the Minister or to members of the public about issues related to the performance of his or her functions.

For instance, investigations conducted by the Integrity Commissioner may culminate in a report prepared under section 54 of the LEIC Act. The Integrity Commissioner's report must be given to the Minister and to the head of the relevant law enforcement agency.

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.

In addition, if the Integrity Commissioner were satisfied that it is in the public interest to do so, he or she may publish information.

When a report is to be tabled in Parliament, or otherwise published, 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.

Investigation Report

Integrity principle

1. The roles of many law enforcement officials require them to provide expert and impartial oversight of some areas of legitimate commercial activity. These roles exist in cases where important public interests—for example, health and safety or biosecurity—can be adversely affected by the errors or failures of business entities.
2. Credible performance of these oversight roles depends on the integrity among these officials—including the care needed to avoid conflicts of interest. An employee with such a role who capitalises on knowledge of official matters for private benefit can jeopardise the important public interests that depend on proper systems of official oversight.

Introduction

3. On 12 March 2014, under section 19 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act), the then Secretary of the Department of Agriculture—now known as the Department of Agriculture and Water Resources, and referred to in this report as the Agriculture Department— notified the then Integrity Commissioner, Mr Philip Moss, of a corruption issue relating to a staff member, Officer A.
4. Specifically, the Department had received information suggesting that Officer A had produced forged material to support a quarantine-related application for approval that a food importer had made to the Department.
5. On 17 April 2014, Mr Moss decided to investigate the issue jointly with the Agriculture Department. As the collection of evidence progressed towards the likelihood of a criminal prosecution, ACLEI's investigation was also conducted jointly with the Australian Federal Police (AFP).

Jurisdiction

6. Section 6(4) of the LEIC Act—as part of the definition of ‘engages in corrupt conduct’—expressly includes conduct engaged in before the commencement of the Act. By implication, this provision has effect following an extension to ACLEI’s jurisdiction, as occurred in the case with the Agriculture Department in July 2013.
7. The duties of Officer A are in the class of people who are ‘staff members’ of the Agriculture Department to whom the LEIC Act applies—namely, those persons undertaking assessments, clearance or control of vessels or cargo imported into Australia.
8. The description of the conduct alleged to have been engaged in by Officer A satisfies the definition in section 6(1)(c) of the LEIC Act—namely, “conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind”.

Investigation process

9. The joint investigation took into account:
 - (a) information obtained from the Agriculture Department
 - (b) statements by a number of people from businesses with which Officer A had dealings
 - (c) records relating to a company controlled by Officer A
 - (d) bank records, and
 - (e) physical documents and computer records obtained following the execution of search warrants obtained under the *Crimes Act 1914* at the residences of Officer A and an extended family member.
10. In addition, a private hearing was conducted with Officer A, pursuant to section 82 of the LEIC Act. This hearing was undertaken following the conclusion of court proceedings for criminal offences against Officer A, to further inform my investigation and to uncover and assess any potential vulnerabilities or compromise to Australia’s biosecurity arrangements.

What the investigation showed

Private quarantine consultancy

11. Officer A was a long-standing employee of the Agriculture Department whose most recent duties included conducting regulatory inspections at the premises of food importers. In this role, Officer A necessarily became familiar with the Department's processes and requirements.
12. From about 2007, Officer A was considering the establishment of a private consultancy to provide services to businesses that had dealings with the Agriculture Department in relation to quarantine and biosecurity regulation.
13. Officer A subsequently created and registered Company B, operating from Officer A's home. Officer A then recruited clients during interactions with food importers while performing official duties for the Agriculture Department.
14. Officer A did not seek permission from the Agriculture Department for secondary employment, or otherwise declare to it a financial interest in Company B, despite the general duty to avoid conflicts of interest which applies to all public officials.
15. Company B traded for almost five years, and in that time generated almost \$190,000 in gross revenue.
16. When trading, Company B assisted importing businesses to complete the application process to be registered as a 'Quarantine Approved Premises' (QAP) with the Agriculture Department. At the time this approval was a legislated requirement if a business was to deal with certain imported goods, with the criteria for approval dependant on the nature of the goods.
17. QAPs have since been replaced by 'Approved Arrangements' under the *Biosecurity Act 2015*. The following discussion relates to the requirements for QAPs that were in place at the time of Officer A's actions.

QAP Assessments

18. As part of the approval process, it was a requirement for applicants to designate 'QAP Accredited Persons' who were to be responsible for dealing with, or supervised others dealing with, material subject to quarantine. Under the biosecurity framework, an 'accredited person' had an important role in ensuring that imported goods are safe for the Australian community. Accordingly, the accreditation of a person who had not personally satisfied the accreditation requirements could present a serious risk to the effectiveness of Australia's biosecurity regime.

19. As part of the application process, candidates seeking to become an accredited person were required to enrol in, and complete, mandatory online training facilitated by the Agriculture Department via a contractor.
20. While operating Company B, Officer A created 72 accounts for clients to take part in the online assessment to become an accredited person. These accounts were all created using Company B's email address. Officer A also arranged payment through Company B's bank account to the Agriculture Department's contractor for the fees payable by those clients.
21. ACLEI's investigation considered the activities of two of those clients in detail, and found that:
 - (a) Mr C is the director of an import company which, following an approach from Officer A, purchased about \$3000 worth of services from Company B—including payment for the assessment to become an accredited person to operate a QAP. ACLEI's analysis of records indicated that Officer A completed the assessment on behalf of Mr C. Mr C told investigators that he never undertook online training or completed the online assessment. He said that Officer A had explained quarantine requirements to him in person, and had arranged for a family member of Officer A to install signage and paint boundaries.
 - (b) Mr D is branch manager of another food import company. Following an approach by Officer A, he paid an amount of money to Officer A for a number of staff to become accredited persons to work in the business operating a QAP. Officer A provided Mr D's company with the relevant certificates for its staff members, without the requisite training or assessment being completed.
22. Officer A subsequently admitted to personally undertaking the online assessments in place of clients in two instances.

Fumigation compliance

23. ACLEI’s investigation of Officer A uncovered other instances of possible corrupt conduct.
24. In early 2013, another business, Company E, applied to the Agriculture Department for approval to become a QAP that would handle agricultural products. There were special requirements for such an application, including:
 - (a) it must set out the process for dealing with biosecurity waste, including waste that is not subject to a separate quarantine requirement, and
 - (b) it must include the detail of a standing arrangement with a licensed person who could fumigate the premises against pests at short notice.
25. In September 2013, an Agriculture Department auditor sent an e-mail that informed Company E that these and other requirements had to be met before the QAP application could proceed.
26. In October 2013, a staff member of Company E forwarded this e-mail to Officer A, indicating that the company did not have the relevant biosecurity waste disposal procedure or an arrangement with a fumigator. Shortly afterwards, Officer A replied to Company E with “I will do asap”.
27. Following this exchange, Officer A sent Company E electronic copies of a completed fumigation agreement, together with an operating procedure to deal with biosecurity waste. However, Officer A asked that the e-mail address being used not be forwarded to the Department.
28. On its face, the fumigation agreement gave the appearance that Mr F—the manager of a well-known company that provided fumigation services to business premises—had agreed to provide fumigation services to Company E.
29. Company E then submitted the documents to the Agriculture Department as part of its application for QAP status.
30. Officer A also submitted an agriculture products QAP application to the Department on behalf of another company, Company G. That application also included a document appearing to be a fumigation service agreement signed by Mr F on behalf of the company of which he was a manager.
31. In May 2014, as part of ACLEI’s investigation, investigators from the Agriculture Department contacted Mr F, who indicated that the documents purporting to be agreements signed by him with Company E and Company G were not genuine, and that copies did not exist in his company’s files.

Part 10 actions

32. Part 10 of the LEIC Act provides for what the Integrity Commissioner may or must do with evidence and information obtained during an investigation—such as providing it to a prosecuting authority, and referring it to an agency head for disciplinary action.

Disciplinary actions

33. Section 146 of the LEIC Act requires the Integrity Commissioner to bring to an agency head's notice evidence of a breach of duty or misconduct by a staff member. This requirement arises when the Integrity Commissioner is satisfied that the evidence may justify terminating the staff member's employment or initiating disciplinary proceedings against the staff member and that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so.
34. During the investigation, ACLEI disseminated relevant evidence to the Secretary of the Agriculture Department, and this information informed the Department's decision to suspend Officer A's employment in May 2014. Officer A resigned in January 2015.

Court proceedings

35. Section 142 of the LEIC Act provides that the Integrity Commissioner must assemble admissible evidence relating to the contravention of a law and give it to a prosecuting authority or a designated police force. In this case, Officer A was charged in March 2015 with two counts of abuse of public office under section 142.2(1) of the *Criminal Code Act 1995* (Cth) and one count of using a forged document with the intention that it be accepted as genuine by a Commonwealth public official under section 145.1(1) of the Criminal Code.
36. Officer A pleaded guilty and was sentenced in April 2016 to a total effective sentence of 12 months' imprisonment to be released forthwith, conditional upon complying with a good behaviour order for two years. The court recorded convictions for all offences against Officer A.

Findings

37. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
38. Before I reached my conclusion, I provided Officer A with an opportunity to be heard, as required by section 51(4) of the LEIC Act, and I have taken into account written comments provided. In particular, Officer A asserts that:
 - (a) the almost \$190,000 in gross revenue included expenses incurred in the provision of genuine assistance to importers, and
 - (b) clients of Company B carried out the required online training and assessment with no input from Officer A on all but two instances.
39. Having considered these issues, I am satisfied that Officer A used inside knowledge of the Agriculture Department's processes to circumvent the Department's oversight of food importation businesses and, consequently, Australia's biosecurity arrangements were left vulnerable to compromise.
40. Accordingly, having regard to the convictions recorded against Officer A and the further information available to me as part of ACLEI's investigation, I find that Officer A engaged in corrupt conduct.
41. I make no inference that the businesses that obtained services from Officer A did so with any knowledge of the impropriety of those actions. Indeed, it is entirely possible that Officer A's official status may have left each of them with the impression that they had complied with the law.

Observations

42. This investigation demonstrates the commercial value of official information and insider knowledge, and illustrates the prospect that corrupt officers can exploit their status as public officials to obtain an unfair financial benefit. In some circumstances—although it is not established in this case—this situation could knowingly give rise to collusive behavior that unfairly advantages one business over another.
43. Perhaps more importantly in this case, circumventing QAP training processes and falsifying official documents left a number of businesses and individuals without the knowledge or skill to treat potentially serious biosecurity risks. In different circumstances, the impact could have been devastating for Australian agriculture.

Recommendations

44. ACLEI has provided the Department with an assessment of corruption risks and vulnerabilities in practices and procedures that were identified through Operation Karoola and related investigations. The Agriculture Secretary is considering that information as part of a broader review of integrity arrangements. Accordingly, I make no recommendations at this time.

Concluding remarks

45. I acknowledge the assistance and cooperation of the AFP and the Agriculture Department during this investigation.

Michael Griffin AM
Integrity Commissioner

29 June 2017

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