



## FACT SHEET

# THE LAW ENFORCEMENT FUNCTION OF PRESCRIBED AGENCIES

The purpose of this fact sheet is to provide general guidance and examples of the law enforcement function under the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act) and *Law Enforcement Integrity Commissioner Regulations 2006* (Cth) (LEIC Regulations). The examples are not exclusive, but are provided to assist in understanding.

### Prescribed Agencies

In 2021, the following agencies became prescribed Law Enforcement Agencies:

- The Australian Competition and Consumer Commission (ACCC);
- The Australian Prudential Regulation Authority (APRA);
- The Australian Securities and Investment Commission (ASIC); and
- The Australian Taxation Office (ATO).

Section 6(2) of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act) provides that a staff member of a prescribed agency engages in corrupt conduct only if the conduct relates to the performance of a law enforcement function of the Agency.

'Law Enforcement Functions' are defined at s 5 of the LEIC Act. They are considered below.

### The Law Enforcement Function

#### What is the Law Enforcement Function?

A law enforcement function 'relates to' the investigation into:

- Whether an offence has been committed against the law of the Commonwealth; or
- Whether there has been a contravention of a law of the Commonwealth to which a civil penalty proceeding may be brought.

Investigations about whether an offence has been committed against the law of the Commonwealth relates to the commission of criminal offences.

Investigations about whether a civil penalty proceeding can be brought involves legislative civil penalty provisions. Civil penalties are distinct from other action which may be undertaken by an agency where they are the Decision Maker. Civil penalties, like criminal offences, are decided by a court.

In some instances it may be a simple task to identify the relationship to the investigation of an offence or a civil penalty proceeding, but other instances will require a deeper consideration. The relationship to the investigation can be both direct and indirect.

It does not matter whether an investigation actually results in the investigation for the offence or civil penalty

ultimately being decided by a Court, the fact that an investigation is a possibility is sufficient.

### What does 'relates to' the Law Enforcement Function mean?

'Relates to' should be considered broadly, with the corrupt conduct being directly or indirectly related to the function.

It is important to remember that it is the conduct of the staff member that must relate to the law enforcement function, rather than the position which the staff members occupies. This must be assessed on the facts of each notification or referral.

The danger in just looking at the function occupied by the staff member is that this does not always reflect the conduct and does not account for the mixed nature of the functions within any role, or that the staff member has engaged in conduct that is outside of their function or position, but it has a relationship to a 'law enforcement function'. This would most obviously include conduct which compromises the integrity of law enforcement activity, but might also extend in some cases to situations where someone improperly benefits because of the agency's law enforcement function.

Given it is the conduct, which should be the focus of considering whether a referral to the Integrity Commissioner is required, agencies should consider the following questions:

- What are the facts of the conduct?
- What was the purpose of the conduct?
- What was the result, or possible result, of the conduct? This includes the impact the conduct had on any law enforcement function of the agency.

This connection to the law enforcement function, need only be at least a possibility, but there must be a foreseeable connection. For example, conduct may be 'related' to the law enforcement function of an agency where it:

- related to avoidance of a law enforcement function; and

- abusing access or powers held by virtue of a law enforcement function.

### Examples

#### Example 1

A criminal investigator submits a false claim for an employment entitlement. This entitlement is available to all staff members within their agency.

- The purpose of the conduct was to receive an entitlement they were not otherwise entitled to.
- While the majority of their role within the agency is carrying out a law enforcement function, their conduct is not related to this function because the entitlement is available to all staff member of the agency.
- The conduct does not impact the law enforcement role of the agency.

*This example would not fall within the jurisdiction of the Integrity Commissioner.*

#### Example 2

A criminal investigator submits a false claim for an employment entitlement. This entitlement is only available to them because they carry out a law enforcement function of the agency.

- The purpose of the conduct was to receive an entitlement they were not otherwise entitled to.
- The entitlement was only available to them because they worked within a law enforcement function of the agency. There is a connection between the conduct and the law enforcement function of the agency.
- The conduct impacts the integrity of the law enforcement function of the agency.

*This example would fall within the jurisdiction of the Integrity Commissioner.*

#### Example 3

A non-law enforcement staff member of an agency, uncovers evidence of criminal conduct while conducting their duties. They intentionally delete the evidence of the

criminal conduct because they know the person to whom it relates. They therefore do not pass this information onto the relevant law-enforcement function of the agency for investigation.

- The purpose of their conduct was to remove evidence of the criminal conduct of their friend and to not draw it to the attention of the relevant law enforcement function.
- The result of the conduct did not come to the attention of the law enforcement function of the agency and could not be properly investigated. This assists in the criminal conduct remaining undetected and possibility continuing.

*This example would fall within the jurisdiction of the Integrity Commissioner because the conduct engaged in by the staff member relates to the law enforcement function of the Agency.*

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