



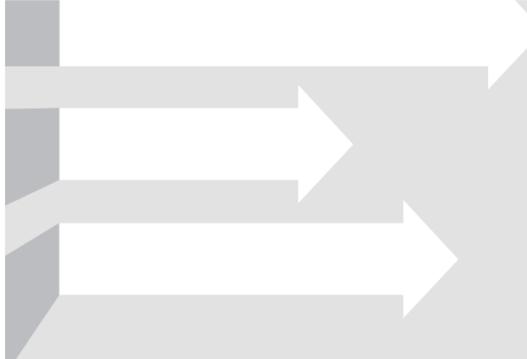
Australian Government
**Australian Commission for
Law Enforcement Integrity**

INVESTIGATION REPORT

**Operation Galaxy —
A joint investigation into the
conduct of an Australian Crime
Commission ICT staff member**

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

Report 01/2016



Enquiries about this report can be directed to the
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Investigation Reports published by the Integrity Commissioner
and summaries of reports which have not been made public
can be found on the ACLEI website: www.aclei.gov.au.

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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 Crime Commission (and the former National Crime Authority)
- Australian Federal Police (including ACT Policing)
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- CrimTrac Agency
- Department of Immigration and Border Protection (including the Australian Border Force), and
- prescribed aspects of the Department of Agriculture and Water Resources.

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. Sensitive information is a key asset, held on trust by government agencies to achieve beneficial ends for the public good they serve.
2. Information Communications Technology (ICT) sections within agencies that have law enforcement capabilities pose particular integrity and security challenges, because of staff members' high levels of technical expertise, wide access to sensitive information, and the privilege to modify records and systems.
3. ACLEI has previously noted¹ that these factors could make ICT staff potential targets for compromise by criminal groups.

Introduction

4. In September 2014, the Australian Crime Commission (ACC) notified the then Acting Integrity Commissioner, Mr Robert Cornall AO, of information suggesting that a person employed by the ACC had accessed and handled official information without proper authority. Specifically, the information suggested that the staff member may have used ICT privileges to copy a sensitive ACC document to computer storage outside of the ACC's secure environment—a breach of security protocols.
5. At the time, the logical possibility existed that ACC systems and controls were being tested to find—or manipulated to create—vulnerabilities which could later be exploited for more-serious purposes.

¹ See summary of *Investigation Report 01/2015—Operation Helix—a joint investigation into alleged drug use by Australian Customs and Border Protection Service ICT employees*, available at www.aclei.gov.au.

Jurisdiction

6. The information raised a corruption issue for the purposes of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act). The conduct in question falls within the definition of “engages in corrupt conduct” in section 6 of that 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”.
7. An investigation was conducted jointly with the ACC, as provided for by sub-section 26(2) of the LEIC Act. In particular, the investigation sought to determine what information had been accessed, if any had inappropriately been removed from the ACC secure environment and if any had been passed to third parties.

What the investigation showed

8. The joint investigation took into account information obtained from the ACC, from examination of the staff member’s work and personal data devices and from interviewing the staff member. In the circumstances, the Integrity Commissioner’s coercive powers were not used.
9. When approached, the staff member voluntarily provided investigators with access to personal ICT devices and accounts. Analysis showed evidence of sensitive ACC staffing information in a cloud account.
10. Following the gathering of physical evidence, ACLEI interviewed the staff member. The staff member acknowledged:
 - (a) downloading a cloud-based software application to an ACC computer (initially, it was claimed, for the purpose of allowing non-sensitive tasks to be progressed away from work)
 - (b) subsequently using the application to upload and store certain ACC information on a cloud-based account, protected only by a personal email address and password, and
 - (c) storing photographs of an ACC computer screen image containing some of the same information.

11. At interview, and subsequently in a written submission, the staff member denied any intentional wrong-doing, characterising the actions as a “misjudgement” arising out of concern about the potential effects of a corporate restructure.
12. In relation to downloading the software without permission, the staff member cited a lack of understanding of the ACC’s ICT security arrangements. The staff member also noted that the sensitivity of the uploaded document had not been apparent, since it had not been marked with a security classification.
13. The investigation found no evidence that ACC information had been disclosed to any third parties, and the staff member denied that it had been disclosed further.
14. Similarly, the investigation revealed no indication that ACC systems and security controls were being deliberately tested or manipulated by this means.

Part 10 actions

15. Part 10 of the LEIC Act provides for what the Integrity Commissioner may do with evidence and information obtained during an investigation.
16. Section 146 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.
17. Accordingly, during the investigation, Mr Cornall disseminated the transcript of interview to the ACC’s Chief Executive Officer. The ACC subsequently suspended the staff member from duty, to manage operational risk in the workplace.
18. As required under section 142 of the LEIC Act, I also referred a brief of evidence to the Commonwealth Director of Public Prosecutions, whose Office has advised that a criminal prosecution would not be instituted at this time.

Findings

19. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
20. Before finalising my report, I provided the staff member with an opportunity to be heard, as required by section 51 of the LEIC Act. The staff member provided a written submission—noted at paragraph 11—which I have taken into account.
21. Having reviewed all of the evidence, I am persuaded that there was no corrupt motive attaching to the staff member’s actions.
22. It is a matter now for the ACC to assess the staff member’s actions in the context of the Australian Government Protective Security Policy Framework and the Australian Public Service Code of Conduct.

Observations

23. In the present case, the ACC’s security assurance program discovered the anomalies that led to this investigation.
24. The investigation demonstrates how human factors—for instance, a breach of established protocols with an element of risk taking, rationalisation, “misjudgement” or haste—can undermine the efficacy of the strongest security and integrity systems.
25. In the present situation:
 - (a) Had the staff member consulted with more-experienced supervisors about the proposal to install a cloud-based software application to facilitate a work-from-home arrangement, it is unlikely that the situation would have unfolded the way it did. ACLEI has previously referred to the problem of “self-managing risk”.²
 - (b) Similarly, had the ACC document carried a protective security marking, it would have reduced the likelihood that sensitive data could be “spilled”, as occurred in this instance.

² See *Investigation Report 02/2011— An investigation into the conduct of an Australian Federal Police (Australian Capital Territory Policing) appointee concerning his association with the manager of a prostitution enterprise*, available at www.aclei.gov.au.

26. It is apparent that the cloud-based software was able to be installed on the ACC system under existing permissions, due to the nature of the staff member's duties. I am advised that the ACC has since added additional security measures to assure the integrity of its ICT systems, its records and its staff.

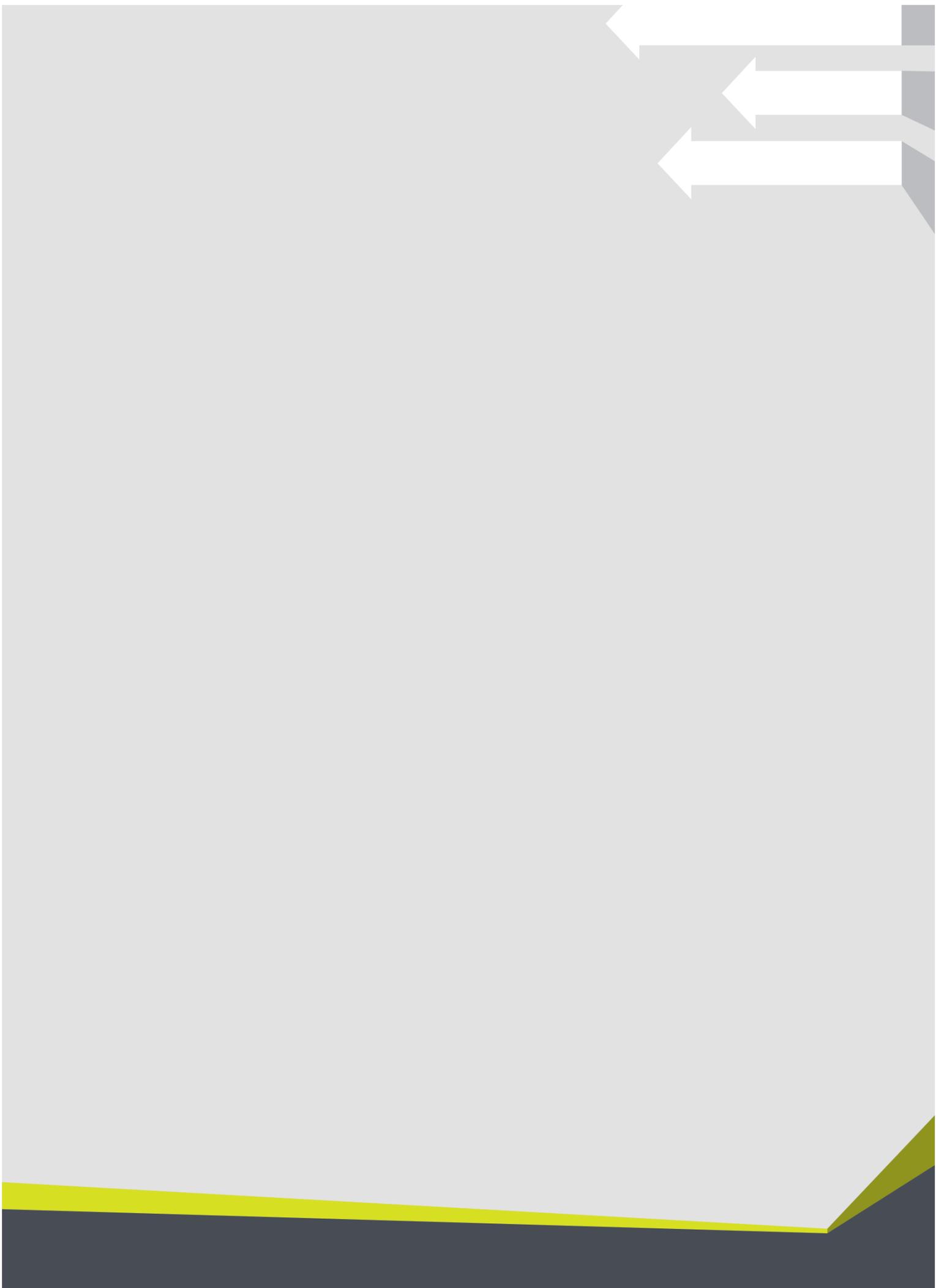
Concluding remarks

27. The results of this investigation will be provided to the Attorney-General's Department and the Australian Signals Directorate to inform the further development and implementation of the Australian Government Protective Security Policy Framework.
28. I acknowledge the assistance and cooperation of the ACC during this investigation.



Michael Griffin AM
Integrity Commissioner

15 January 2016





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