



Australian Government
Australian Commission for
Law Enforcement Integrity

Investigation Report – Operation Ajax

Operation Ajax

An investigation into the fraudulent use of medical certificates by officers of the former Department of Immigration and Border Protection and Home Affairs

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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: aclei.gov.au

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About ACLEI Reports

The Law Enforcement Integrity Commissioner Act

1. The *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act) establishes 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

2. The role of the Integrity Commissioner and ACLEI is to detect and prevent corrupt conduct and deal with corruption issues in designated agencies—presently the:
 - Australian Criminal Intelligence Commission (including the former Australian Crime Commission, the former National Crime Authority and the former CrimTrac Agency);
 - Australian Federal Police (including ACT Policing);
 - Australian Transaction Reports and Analysis Centre (AUSTRAC); and
 - Department of Home Affairs (including the Australian Border Force).
3. Other Australian Government agencies with law enforcement functions may be prescribed by regulation as being within the jurisdiction of the Integrity Commissioner.¹ At present those agencies include prescribed aspects of the:
 - Department of Agriculture, Water and the Environment (DAWE);
 - Australian Competition and Consumer Commission (ACCC);
 - Australian Prudential Regulation Authority (APRA);
 - Australian Securities and Investment Commission (ASIC);
 - Australian Taxation Office (ATO); and
 - Office of the Special Investigator (OSI).

Corrupt conduct

4. A staff member of a law enforcement agency 'engages in corrupt conduct' if the staff member:
 - abuses his or her office
 - perverts the course of justice, or
 - having regard to his or her duties and powers, engages in corrupt conduct of any other kind.
5. The Integrity Commissioner is to give priority to dealing with serious and systemic corruption.²

¹ *Law Enforcement Integrity Commissioner Act 2006* (Cth) s 5(1) (definition of 'law enforcement agency') (LEIC Act); *Law Enforcement Integrity Commissioner Regulations 2017* (Cth) s 7.

² *Ibid* s 6(1).

Dealing with corruption issues

6. A corruption investigation 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.³
7. The Integrity Commissioner may decide to deal with the corruption issue in a number of ways:
 - have ACLEI investigate the corruption issue either alone or jointly with another government agency or an integrity agency for a State or Territory.
 - refer the corruption issue to the law enforcement agency to conduct its own investigation.
 - decide that an investigation is not warranted.
8. The Integrity Commissioner can decide to manage or oversee any investigation that has been referred to a law enforcement agency. If the law enforcement agency were not the Australian Federal Police (AFP), the Integrity Commissioner can also refer the issue to the AFP for investigation and may manage or oversee that investigation.⁴

Reports

9. After completing a corruption investigation, the Integrity Commissioner must prepare a report setting out:
 - a) the Integrity Commissioner's findings on the corruption issue; and
 - b) the evidence and other material on which those findings are based; and
 - c) any action that the Integrity Commissioner has taken, or proposes to take, under Part 10 in relation to the investigation; and
 - d) any recommendations that the Integrity Commissioner thinks fit to make and, if recommendations are made, the reasons for those recommendations.⁵
10. The Integrity Commissioner must give the report on the investigation to the Minister who administers the LEIC Act and a copy to the head of the law enforcement agency to which the corruption issue relates.⁶

³ Ibid ss 18–24 and 38.

⁴ Ibid ss 26–30.

⁵ Ibid ss 54(1)–(2).

⁶ Ibid s 55.

Standard of proof

11. 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.
12. Before making a finding, the Integrity Commissioner is required to be 'reasonably satisfied', based on relevant facts, that the corrupt conduct occurred and that the corrupt conduct was within the meaning of the LEIC Act.
13. In considering whether or not the Integrity Commissioner is 'reasonably satisfied' of relevant facts, the Integrity Commissioner applies the reasoning set out in *Briginshaw v Briginshaw*,⁷ *Rejtek v McElroy*,⁸ and *Re Day*.⁹

⁷ (1938) 60 CLR 336, 361–62 (Dixon J).

⁸ (1965) 112 CLR 517, 521.

⁹ (2017) 91 ALJR 262, 268 [14]–[18].

Preface to the public version of Investigation Report

14. Operation Ajax is an investigation into allegations involving the fraudulent use of medical certificates by two staff members of the now Department of Home Affairs (Home Affairs).
15. Operation Ajax commenced in March 2017 after ACLEI received a notification from Home Affairs in relation to one staff member, Officer H. In August 2017, the investigation explored additional allegations notified by Home Affairs involving another staff member, Officer Q.
16. Following the conclusion of the investigation, I prepared my report on Operation Ajax pursuant to s 54 of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act). I consulted with the relevant parties in accordance with the procedural fairness requirements under s 51 of the LEIC Act, prior to the finalisation of my report.
17. On 29 November 2021, I provided my finalised report on Operation Ajax to the Attorney-General and the Secretary of Home Affairs in accordance with s 55 of the LEIC Act. The report made findings of corrupt conduct against both employees.
18. I then considered whether it was in the public interest to publish the Investigation Report under s 209 of the LEIC Act. In recognition of my corruption findings in Operation Ajax, I was satisfied that my report contained opinions or findings that could be considered critical of both Home Affairs staff members. As such, I provided them with a copy of the report an opportunity to be heard prior to making a decision on whether to publish this report in accordance with s 210 of the LEIC Act. This process concluded on 9 March 2022 with neither party providing submissions.
19. On 1 February 2022, I notified the Secretary of Home Affairs that I was considering publishing the Investigation Report on Operation Ajax and provided the department with the opportunity to make any submissions on the proposed publication. The process concluded on 17 February 2022.
20. Accordingly, this is the version of Investigation Report for Operation Ajax I have decided is in the public interest to disclose.



Jaala Hinchcliffe
Integrity Commissioner
22 June 2022

Summary of the Investigation

Notification

21. On 1 March 2017, the Secretary of the then Department of Immigration and Border Protection (DIBP)¹⁰ notified the former Integrity Commissioner of a potential corruption issue in accordance with ss 19(1) of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act).
22. The notification concerned allegations that DIBP Payroll Services Section employee Officer H, may have committed multiple counts of fraud against the Commonwealth by virtue of their submission of fraudulently altered medical certificates. It was reported that a staff member witnessed Officer H altering a medical certificate on their work computer.
23. On 31 July 2017, the Secretary of Home Affairs notified the former Integrity Commissioner of a further potential corruption issue pursuant to ss 19(1) of the LEIC Act. The notification alleged possible corrupt conduct on the part of Policy Development officer, Officer Q. At the time of notification, Officer Q had been absent from the workplace for an extended period of time on a combination of Unauthorised Leave, Sick Leave with Medical Certificate and Annual Leave.¹¹ Initial enquiries by Home Affairs identified 11 medical certificates suspected to be falsified that had been submitted by Officer Q, covering a period of approximately 75 days. Home Affairs assessed this alleged offending may have been occurring for a period of six or more years.

Jurisdiction

24. On 21 March 2017, the Acting Integrity Commissioner, Mr John Harris SC, decided to investigate the Officer H matter jointly with Home Affairs, pursuant to sub-ss 26(1)(a) and (2) of the LEIC Act.
25. On 30 August 2017, the former Integrity Commissioner, Mr Michael Griffin AM, decided to investigate the Officer Q matter jointly with Home Affairs, pursuant to sub-ss 26(1)(a) and (2) of the LEIC Act.
26. Noting the similarities between both issues, the former Integrity Commissioner further decided to investigate the matters together under the auspices of Operation Ajax.
27. The former Integrity Commissioner was satisfied:
 - a. The notifications were within ACLEI's jurisdiction because the officers were staff members of Home Affairs (and previously DIBP), both of which organisations fell within the jurisdiction of the LEIC Act;
 - b. Having regard to ss 6 and 7 of the LEIC Act¹², presenting forged medical certificates to the HR Department of Home Affairs would fall into the category of "corruption of any other kind" if that conduct took place in the context of their duties as staff members of the agency.

¹⁰ Now known and hereinafter referred to as the Department of Home Affairs (Home Affairs)

¹¹ Since early March 2017

¹² Meaning of 'engages in corrupt conduct' and 'corruption issue'

Investigation

28. The objective of the investigation was to investigate the alleged conduct and associated integrity concerns in relation to the provision by Officer H and Officer Q of fraudulent medical certificates.
29. The joint investigation highlighted a number of links and convergences across the matters giving rise to initial concerns that the identified conduct may have been significantly more widespread. Notably, those convergences included:
 - a. Officer H's prior close working relationship with Officer Q;
 - b. the existence of a personal relationship between Officer H and Officer Q;
 - c. recidivist absenteeism by both Officer Q and Officer H;
 - d. that both Officer Q and Officer H had worked in the Payroll Services Section;
 - e. both Officer Q and Officer H had presented falsified certificates from the same medical practice.
30. The investigation, therefore, focussed on identifying whether the identified activities were systemic across the Payroll Services Section.

Officer H

31. A Home Affairs audit of Officer H's Personal Leave identified 47 medical certificates submitted over the preceding 12 month period. An initial review of recently furnished certificates identified six suspected forgeries. These certificates were subsequently confirmed by the purported issuing authorities as non-genuine.
32. In addition to the specific reporting of corruption, the investigation considered whether Officer H may have sought to corruptly access, modify or disclose data from HR systems accessible to them for their own, or someone else's benefit¹³. No such evidence was found.
33. It was confirmed that Officer H (and Officer Q) did not have access to sensitive or operational intelligence that posed any risk of compromise to Home Affairs, Australian Border Force or associated law enforcement operations.
34. ACLEI also examined Officer H's internal and external associations and allegations in relation to Officer H's lifestyle choices. It was assessed that while Officer H's external (and undeclared) associations likely met a number of Risk Factor thresholds under the Employment Suitability Clearance Assessment Criteria, these had been mitigated by the termination of their employment.
35. The joint investigation found no reliable evidence or intelligence to support the notion that Officer H had been externally influenced for corrupt or criminal purposes. From a corruption risk perspective, no credible nexus or affiliation (suspected or otherwise) to organised crime and/or organised motor cycle gang activity was identified.
36. The investigation determined that six medical certificates supplied by Officer H were fraudulent with the result that Officer H obtained a benefit of approximately \$384.75. ACLEI investigators determined that there was insufficient admissible evidence to support referral for prosecution in this case.

Officer Q

37. On 21 July 2017, Officer Q had been put forward by their Branch as a candidate for Voluntary Redundancy (VR), but was rejected by the Delegate as the business case did not satisfy relevant criteria. The VR process highlighted, however, an extensive

¹³ In particular the easySAP (General employee portal), SAPGUI (Payroll) and / or TRIM systems

amount of Personal Leave taken by Officer Q on what appeared to be forged medical certificates.

38. The investigation in relation to Officer Q showed that they had used false medical certificates to support applications for personal leave on 28 occasions which had led to them receiving a benefit of \$9,270 to which they were not entitled, simultaneously causing a financial detriment to the Commonwealth of the same amount. In relation to each of the 28 medical certificates, there was no record at the medical practice that a consultation had taken place. The details of the 28 fraudulent medical certifications are set out in the following table:

Date range for leave taken	Number of medical certificates provided	Whether the leave was approved
29-31 August 2011	1	Yes
15-16 September 2014	1	Yes
13-14 July 2015	1	Yes
16-18 March 2016	1	Yes
29 September – 31 October 2016	8	Yes
11 November 2016	1	Yes
21 November 2016	1	Yes
23 November 2016	1	Yes
17-20 January 2016	1	Yes
7-9 November 2016	1	No
15-16 March 2017	1	No
20-24 March 2017	1	No
10-11 April 2017	1	No
19-21 April 2017	1	No
26 April – 26 June 2017	6	No
3-7 July 2017	1	No

39. In accordance with the Integrity Commissioner’s obligations under s 142 of the LEIC Act, a brief of evidence was provided to the Commonwealth Director of Public Prosecutions (CDPP).
40. On 18 December 2019, the CDPP notified ACLEI of their decision to proceed with a prosecution in respect of the following offences, having determined there was a reasonable prospect of conviction and that a prosecution of Officer Q was in the public interest:¹⁴
- Using a forged document (16 counts), ss 145.1(1) *Criminal Code* (Cth)

¹⁴ In accordance with the Prosecution Policy of the Commonwealth

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- Attempting to use a forged document (12 counts), ss 145.1(1) and 11.1 of the *Criminal Code* (Cth).
41. On 14 August 2020, Officer Q entered pleas of guilty to using a forged document and attempting to use a forged document.
 42. On 24 September 2020, Officer Q appeared before his Honour Magistrate Lawton at the ACT Magistrates Court, where they were formally convicted on both counts and sentenced to a 12 month good behaviour order and 200 hours of community service. They were also ordered to pay reparation in the sum of \$4,564.12 (having regard to \$4,705.57 previously recovered by Home Affairs upon their separation). Officer Q was given 2 years to pay.
 43. In sentencing Officer Q, his Honour noted the offending was aggravated by virtue of it taking place over a six year period and involved dishonesty and a significant breach of trust by an APS employee.

Assessment of likelihood of systemic corrupt activity

44. As noted above, Operation Ajax highlighted a number of links and convergences across the matters giving rise to initial concerns the identified conduct may have been more widespread. Notwithstanding the substantiated misconduct of Officer Q and Officer H, the joint investigation did not find evidence or credible intelligence of systemic corruption.

Findings

45. I am satisfied that evidence obtained in the course of Operation Ajax permits me to make findings that staff members of the former Department of Immigration and Border Protection and Home Affairs have engaged in corrupt conduct, namely “corruption of any other kind”¹⁵.
46. ‘Corruption of any other kind’ is not defined in the LEIC Act. Section 6(1)(c) of the LEIC Act states that a staff member engages in corrupt conduct, when having regard to the duties and powers of the law enforcement staff member, they engage in conduct for the purpose of, corruption of any other kind.
47. While ‘corruption’ is not defined in the LEIC Act, the Encyclopaedic Legal Dictionary defines it as:

‘...a deliberate act of dishonesty, breach of the law, or abuse of public trust or power that undermines or is incompatible with the impartial exercise of an official’s powers, authorities, duties or functions.’¹⁶
48. Similarly, Gageler J in *ICAC v Cunneen* found that corruption:

‘...connotes moral impropriety in, or in relation to, public administration. It has never acquired a more precise meaning in the language of law or ordinary speech.’¹⁷

¹⁵ LEIC Act (n1) s6(1)(c)

¹⁶ Encyclopaedic Legal Dictionary, online 2020

¹⁷ (2015) 256 CLR 1, 32

Finding in relation to Officer Q

49. The evidence obtained demonstrates that Officer Q engaged in conduct during the performance of their duties as a Home Affairs employee to dishonestly benefit them and cause detriment to the Commonwealth.
50. They did this by using false medical certificates to support applications for personal leave. As a result of those actions, Officer Q received approximately \$9,270 to which they were not entitled, simultaneously causing a financial detriment to the Commonwealth of the same amount.
51. I am therefore satisfied that former Home Affairs employee, Officer Q, engaged in corrupt conduct, being corruption of any other kind, as defined in s6 of the LEIC Act.

Finding in relation to Officer H

52. The evidence obtained demonstrates that Officer H performed their duties as a Home Affairs employee to dishonestly benefit them and cause detriment to the Commonwealth.
53. They did this by using false medical certificates to support applications for personal leave. As a result of those actions they received approximately \$384.75 to which they were not entitled, simultaneously causing a financial detriment to the Commonwealth of the same amount.
54. I am therefore satisfied that former Home Affairs employee Officer H engaged in corrupt conduct, being corruption of any other kind, as defined in s6 of the LEIC Act.

Action under Part 10 of the LEIC Act

55. A brief of evidence in relation to Officer Q's conduct was referred to the CDPP for assessment under section 142 of the LEIC Act. The consideration of that brief and results of the prosecution are set out in paragraphs 40-43 above.

Corruption Prevention Observation

56. Both cases investigated under Operation Ajax demonstrated an apparent unchecked ability for staff to obtain benefits (leave and accrued benefits), both in a one-off and systematic manner, to which they were not entitled.
57. Both the subjects of this investigation carried out corporate functions in Home Affairs' human resources area. This is an important reminder of the integrity risks presented by staff without a specific law enforcement function in these agencies, and the need to undertake consistent integrity education, training and due diligence across all agency staff.
58. Operation Ajax also demonstrated the need for management to be alert to potential behavioural changes, such as repeated absenteeism, that could be indicative of underlying integrity issues. This misconduct may have gone undetected had a staff member not witnessed Officer H falsifying their medical certificate. Whereas effective oversight of absences and verification of medical certificates may have picked up on this issue at an earlier stage.
59. Operation Ajax presents as a timely reminder of the need for appropriate supervisor vigilance and adherence to policy in areas of ostensibly 'routine' administration that

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may be open to corrupt exploitation. Managers can drive positive attendance by setting early, clear and realistic expectations in line with organisational culture and individual requirements.

60. In response to this report, Home Affairs provided information on a number of initiatives that have been implemented to address the issues raised in this report. This information is set out in attachment A.
61. A number of corruption vulnerabilities¹⁸ identified over the course of Operation Ajax were captured and reported in ACLEI's 'Vulnerabilities Brief 2018-19 Year in Review' which was disseminated to LEIC Act Agency heads.



Jaala Hinchcliffe
Integrity Commissioner
29 November 2021

¹⁸ Frontline Management Capability & Workplace Culture

Attachments

Attachment A – Submission by Home Affairs

A number of developments and changes have occurred since 2017 that address issues observed during ACLEI's investigation.

People & Culture Initiatives

- The implementation of the *Positive Participation Strategy 2020-2025 and associated Manager's toolkit*. The purpose of the strategy and toolkit are to optimise workforce participation by supporting managers and staff in delivering a pro-active approach to attendance. It address' the Department's attendance culture through enhanced supervisor accountability, improved reporting and a focus on improving knowledge or leave policies and training. This is intended to drive supervisor vigilance and better adherence to administrative obligations and reduce the risk that the identified issues can reoccur.
- The development and implementation of the *Payroll Controls & Assurance Framework*. Under this framework a continuous review of the management of staff leave is undertaken to assess timeliness of leave submission, approvals and the evidence to support leave applications where relevant. A corner stone of this Framework is the Payroll Quarterly Controls & Assurance Report which takes a sampled base approach to reviewing associated leave types which require evidential substantiation such as sick leave. This aims to address the integrity risk associated with leave and provides an independent due diligence assessment of how leave is managed. Metrics related to compliance with leave process and police are reported on a Managers dashboard that allows Managers to monitor and act on issues.
- All staff are required to undertake mandatory training on fraud and integrity obligations under the conditions or their employment with the Department.

Fraud and Corruption Control

- The Department has a range of procedures in place to ensure that staff have the guidance and procedures to carry out their fraud prevention responsibilities and senior executives have data to track and respond early to internal and external fraud issues, trends and risks. The ANAO audit "*Fraud Control Arrangements in the Department of Home Affairs*", which was published on 22 June 2020, generally concluded that the Department had developed and implemented a fraud control plan, conducted fraud risk assessments and had guidance and procedures to assist officials to understand what constitutes fraud and to carry out their fraud prevention responsibilities.
- The Home Affairs Fraud and Corruption Control Plan (FCCP) launched by the Secretary of the Department of Home Affairs on 20 July 2021 includes a summary of key Departmental-level fraud and corruption risks. This is intended to provide greater transparency to staff and managers on the fraud and corruption risks across the Department's activities.
- The Commonwealth Fraud Prevention Centre (CFPC) was established on 1 July 2019 as a 2-year pilot within the Attorney-General's Department to build a foundation of

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practical tools and leading practice guidance with regards to Fraud and Corruption Control. In May 2021, the CFPC was formally extended by 4 years. The partnership between the Department and the CFPC will continue to set the foundation for best practice advice to staff on managing fraud and corruption risks. Most recently, the Department adopted a *Strategic Fraud Risk Profiling Tool* developed by the CFPC. Strategic-level fraud risk profiling will assist in identifying areas of the Department and ABF that are at higher risk of fraud and/or corruption, which will enable the Department to conduct fraud control risk assessments on a prioritised basis.

- The Department has strengthened its fraud risk assessment methodology and refined guidance material and templates to enable business areas to conduct and maintain their own fraud and corruption risk assessments. The devolution of responsibility for conducting fraud risk assessment is designed to ensure that business increase the ownership and management of fraud and corruption risks and the design and implementation of the appropriate treatment actions.
- A quarterly Fraud in Home Affairs report to the Department's Audit & Risk Committee and Operations Committee was rolled out in 2020. The report details the implications of fraud faced by the Department and tracks internal and external fraud issues throughout the year. Data captured through this process will assist the Department to identify trends and emerging issues with regards to fraud and corruption. This will support identification of high risk areas within the Department and the ABF that may need more targeted support to treat fraud and corruption risks.
- The Department's *Integrity Strategy 2025* (the Strategy) was launched during Integrity Week 2020 (24-28 August 2020) and continues the Department's commitment to respond to integrity risk and enhance a positive integrity culture. The Strategy leverages initiatives which focus on prevention, education and early intervention. The Strategy includes an annual communications plan – providing staff with clear guidance on core values and expected behaviours – as well as training and awareness activities that enhance staff understanding of their obligations under the Integrity and Professional Standards Frameworks. The Department's Integrity Framework also includes a Mandatory Reporting policy, requiring staff to report serious misconduct, corrupt conduct or criminal activity that affects, or is likely to affect, the operations, responsibilities or reputation of the Department.