



Australian Government
Australian Commission for
Law Enforcement Integrity

Investigation Report

Operation Heritage –

An investigation of alleged corrupt conduct among officers of the Australian Customs and Border Protection Service at Sydney International Airport

OFFICIAL

A report to the Attorney-General, prepared under section 54 of the *Law Enforcement Integrity Commissioner Act 2006* (Cth)

Enquiries about this report can be directed to the
Australian Commission for Law Enforcement Integrity
GPO Box 605, Canberra, ACT, 2601
or by email to contact@aclei.gov.au

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

© Commonwealth of Australia 2022

Except for the Commonwealth Coat of Arms, the Australian Commission for Law Enforcement Integrity logo and any material protected by a trade mark, this document is licenced by the Commonwealth of Australia under the terms of a Creative Commons Attribution 3.0 Australia licence (www.creativecommons.org/licenses/by/3.0/legalcode).



You are free to copy, communicate and adapt the work, as long as you attribute the document to the Australian Commission for Law Enforcement Integrity and abide by the other terms of the licence.

This publication should be attributed as:

Operation Heritage —An investigation of alleged corrupt conduct among officers of the Australian Customs and Border Protection Service at Sydney International Airport

Australian Commission for Law Enforcement Integrity, Canberra.

The terms under which the coat of arms may be used can be found at:
www.dpmc.gov.au/government/commonwealth-coat-arms

Contents

Forward	4
Operation Heritage Investigation Report	6
Attachment A – Submissions from Home Affairs	19

Forward

On 30 June 2014, the former Integrity Commissioner, Mr Philip Moss AM, provided his final report to the then Minister for Justice, the Hon Michael Keenan MP, in relation to Operation Heritage, which was an investigation into alleged corrupt conduct among officers of the Australian Customs and Border Protection Service (ACBPS) at Sydney International Airport.

Operation Heritage was investigated by the Australian Commission for Law Enforcement Integrity with the Australian Federal Police and the ACBPS. Operation Heritage focused on allegations in relation to a group of ACBPS officers at Sydney International Airport engaging in corrupt conduct by assisting in the importation of border-controlled substances, including pseudoephedrine. The AFP's investigation codenamed Operation Marca focused on investigating the criminal associates.

In his final report, Mr Moss noted that several officers investigated as part of Operation Heritage were awaiting trial for charges laid as a result of the investigation. Consideration of the publication of the final report in Operation Heritage awaited the finalisation of those prosecutions.

Eight former Commonwealth officials were prosecuted as a result of the investigation in Operation Heritage. The charges laid against those officials included:

1. providing false or misleading information contrary to section 137.1 of the *Criminal Code* (Cth)
2. aiding and abetting the importation of a border controlled precursor contrary to sections 11.2 and 307.11 of the *Criminal Code* (Cth)
3. conspiracy to import a border controlled precursor contrary to section 11.5 and 307.11 of the *Criminal Code* (Cth)
4. receiving a bribe by a Commonwealth public official contrary to section 141.1 of the *Criminal Code* (Cth)
5. receiving a corrupting benefit by a Commonwealth public official contrary to section 142.1 of the *Criminal Code* (Cth)
6. abuse of office contrary to 142.2 of the *Criminal Code* (Cth)
7. dishonestly intending to influence a Commonwealth public official contrary to section 135.1(7) of the *Criminal Code* (Cth)

The prosecutions of all eight former officials are now complete. Seven of those prosecutions resulted in convictions with sentences ranging from the defendant being released without passing sentence to imprisonment for a period of 14 years. One prosecution resulted in the charge being proven, with the defendant discharged without conviction.

As the prosecutions are complete, I have considered whether it is in the public interest to publish the final report in Operation Heritage in accordance with section 210 of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act).

On 20 October 2021 I notified the Secretary of the Department of Home Affairs and the Commissioner of the Australian Federal Police that I was considering publishing the report. I gave them the opportunity to provide submissions on the proposed publication in accordance with section 210 of the LEIC Act. In response, the Department of Home Affairs provided submissions on initiatives that have been implemented since the events that this investigation relates to. Those submissions are set out in Attachment A.

OFFICIAL

This is the version of the report that I have decided is in the public interest to disclose.



Jaala Hinchcliffe
Integrity Commissioner
25 March 2022

OFFICIAL

Operation Heritage Investigation Report



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

INVESTIGATION REPORT

***OPERATION HERITAGE (Final Report)—
An investigation of alleged corrupt conduct
among officers of the Australian Customs and Border
Protection Service at Sydney International Airport***

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

REPORT 02/2014

Enquiries about this report can be directed to the
Australian Commission for Law Enforcement Integrity
GPO Box 605, Canberra, ACT, 2601
or by email to contact@aclei.gov.au

© Commonwealth of Australia 2014

All material presented in this publication is provided under a Creative Commons Attribution 3.0 Australia (<http://creativecommons.org/licenses/by/3.0/au/deed.en>) licence. This licence only applies to material as set out in this document.



The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 licence (<http://creativecommons.org/licenses/by/3.0/legalcode>).

This publication should be attributed as:

Investigation Report 02-2014—Operation Heritage (Final Report)—An investigation of alleged corrupt conduct among officers of the Australian Customs and Border Protection Service at Sydney International Airport. Australian Commission for Law Enforcement Integrity, Canberra.

The terms under which the coat of arms may be used can be found on the *It's an Honour* website, at www.itsanhonour.gov.au/coat-arms/index.cfm.

TABLE OF CONTENTS

PART ONE – ABOUT ACLEI REPORTS

INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER

iv

PART TWO – THE INVESTIGATION

BACKGROUND

2

JURISDICTION

2

WHAT THE INVESTIGATION FOUND

2

FINDINGS

4

OBSERVATIONS

4

ABOUT ACLEI REPORTS

INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER

THE LAW ENFORCEMENT INTEGRITY COMMISSIONER ACT 2006

The *Law Enforcement Integrity Commissioner Act 2006* (the 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

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 Customs and Border Protection Service;
- Australian Federal Police (AFP);
- Australian Transaction Reports and Analysis Centre (AUSTRAC);
- CrimTrac Agency; and
- prescribed aspects of the Department of Agriculture.

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.

ABOUT ACLEI REPORTS

- 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.

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 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.

ABOUT ACLEI REPORTS

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.

THE INVESTIGATION



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

INVESTIGATION REPORT

**OPERATION HERITAGE (Final Report)—
An investigation of alleged corrupt conduct among officers of
the Australian Customs and Border Protection Service at
Sydney International Airport**

REPORT 02/2014

BACKGROUND

1. In June 2013, I published an Interim Report into Operation Heritage—a joint investigation of alleged corrupt conduct among officers of the Australian Customs and Border Protection Service (ACBPS) who worked at Sydney International Airport. The Interim Report identified, in broad terms, a number of key factors that led to the arrests of four ACBPS officers between August 2012 and February 2013.
2. My investigation was conducted jointly with the Australian Federal Police (AFP)—which used the designation Operation Marca—and the ACBPS. Other agencies also assisted, including the Australian Crime Commission and the New South Wales Police Force.
3. The investigation phase of Operation Heritage–Marca is now concluded. Accordingly, I am able to bring the record up to date to the extent possible.
4. My report is necessarily brief due to ongoing criminal court proceedings—including appeals—that relate to a number of individuals who have been charged or convicted as a result of Operation Heritage–Marca.

JURISDICTION

5. The conduct of the ACBPS officers investigated falls within the definition of “engages in corrupt conduct” in section 6 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).

WHAT THE INVESTIGATION FOUND

6. Operation Heritage investigated a small group of ACBPS staff at Sydney International Airport who were suspected of abusing their positions by circumventing border controls, and a surrounding group of ACBPS officers who may have assisted, concealed or recklessly disregarded the criminal conduct of others. AFP Operation Marca involved the investigation of criminal associates and their actions.
7. The evidence collected indicated that several ACBPS officers were actively involved in the importation into Australia of border-controlled substances, including the precursor drug pseudoephedrine. On the basis of this evidence, it is alleged that they abused their positions to arrange and effect the importations, and to attempt to frustrate detection of their activities. It is also alleged that they variously gave and received bribes to achieve their objectives.

8. Arising from these allegations, three ACBPS officers have been convicted of offences relating to abuse of public office, bribery and drug importation. Another two ACBPS officers are awaiting trial for similar offences (and retain their right to a presumption of innocence).
9. Operation Heritage–Marca also gathered evidence that some of the ACBPS officers conspired or worked with other people—including a baggage handler and various drug couriers—to import drugs or to launder the proceeds of crime. Seventeen of these other people have since faced charges, of whom eleven have been convicted to date.
10. Other evidence obtained indicated that five more ACBPS officers had acted in ways that were likely to have breached their professional obligations. No admissible evidence was gathered relating these five officers, and so none has been charged with a criminal offence. However, relevant information was provided to the ACBPS to inform its disciplinary processes.
11. All ACBPS officers mentioned in paragraphs 8–10 have resigned their positions, except for two. One of these officers is suspended without pay, pending the outcome of administrative and court processes. The other was found to have breached the Australian Public Service Code of Conduct, was sanctioned and has been redeployed within the ACBPS.
12. An officer of the then Department of Agriculture, Fisheries and Forestry (now the Department of Agriculture) was investigated by the AFP and was convicted of corruption offences relating to her involvement in the issues investigated in Operation Heritage–Marca. The officer has since been dismissed.
13. As provided for by Part 9 of the LEIC Act, a number of information-gathering hearings were held in private during the investigation, at which witnesses are obliged to answer questions truthfully. Three other ACBPS officers who were summonsed to give evidence to the Integrity Commissioner in this way were charged with offences relating to providing false or misleading information during their appearance as witnesses. Two of the officers have been sentenced, and the third officer’s case remains before the court.
14. In all, 26 people have faced criminal charges arising from Operation Heritage–Marca, eight of whom were ACBPS officers at the time of the conduct that gave rise to their prosecution. A further five ACBPS officers faced disciplinary action. I regard these actions—including the prosecution of perjury offences arising from the Integrity Commissioner’s hearings—to be an important part of achieving cultural change in the ACBPS.

FINDINGS

15. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
16. Having regard to the various court proceedings underway that involve ACBPS officers and other people—including appeals of their sentences—I have decided to reserve indefinitely my findings in relation to all eight ACBPS officers who have been charged with criminal offences.
17. As noted in paragraph 10, there were five other ACBPS officers whose conduct was investigated, and who were not charged with criminal offences. In all the circumstances—which include the disciplinary actions taken by the ACBPS—I do not intend to make adverse findings against these five officers, and I regard those issues as finalised.

OBSERVATIONS

18. It would be incorrect to conclude that Operation Heritage was a case of “bad apples”. Rather, the broader relevance of Operation Heritage–Marca is that the conduct investigated constitutes a warning about the vulnerability of people and systems to corruption. The border and drug law enforcement occupations—irrespective of the agency concerned—are especially prone to corrupt temptation and are working environments that are notoriously difficult to supervise. No agency with such responsibilities is immune from these risks and vulnerabilities.
19. For the avoidance of doubt, I reiterate the comment I made in an Interim Report on Operation Heritage in June 2013—namely, that it will take a long time, perhaps a decade, to entrench the required professional standards in the ACBPS.
20. Drawing on the lessons of Operation Heritage–Marca, it is apparent that anti-corruption treatments and agency structures must be rethought in fundamental ways to strengthen resistance to corruption. That there is a strong link between integrity and organisational capability is also now clear.
21. Accordingly, I add my support to the Australian Border Force concept, which was announced in May 2014 by the Minister for Immigration and Border Protection, the Hon Scott Morrison MP, and which has received broad approval within the Parliament. It is an important integrity initiative, as much as it is a measure to strengthen and enhance Australia’s border protection services.



Philip Moss
Integrity Commissioner

30 June 2014

THIS PAGE IS INTENTIONALLY BLANK



www.aclei.gov.au

Attachment A – Submissions from Home Affairs

Initiatives in relation to issues identified since the events were alleged to have taken place

Integrity and Professional Standards Branch, Department of Home Affairs

Since the events in the Report, the now Department of Home Affairs has implemented a strong integrity culture through its robust Integrity and Professional Standards Frameworks.

All staff must abide by the Frameworks, and the Department has no tolerance for serious misconduct, corrupt conduct or criminal conduct. The Department takes action in relation to corrupt conduct in close cooperation with law enforcement partners including the Australian Commission for Law Enforcement Integrity (ACLEI).

Further, Integrity Strategy 2020 (the Strategy) sets out the Department's commitment to strengthen the Frameworks and foster a positive integrity culture. It seeks to create a workplace where all staff live and work with integrity and where 'choosing the right path' becomes second nature. This is being achieved through a series of initiatives that focus on prevention, education and early intervention

The Strategy is underpinned by the fact that the majority of staff already act, and work with integrity. The Department, ABF and its staff occupy a position of trust, and our service to the Australian community is guided by the values of integrity, professionalism, respect and accountability.

Australian Border Force (ABF)

Since the investigation in 2017, the ABF has implemented a number of initiatives to enhance the control framework for mitigating integrity and corruption risks and in response to ACLEI and internal audit reports. This includes:

- completing six (6) strategic and operational risk assessments/registers on the airport environment
- finalising eleven (11) Procedural Instructions on the mitigation of risks of fraud and corruption at the airport
- conducting an Airport Integrity and Corruption Control Survey across all international airports to examine the awareness and adherence of airport officers to procedural instructions, which resulted in a further review of procedural instructions, and subsequently, strengthened the integrity regime around use of personal mobile devices by officers at the airport, as outlined in the *Procedural Instruction Use of personal mobile electronic devices (PMED) in airports, seaports and cargo and container examination facilities (CEF)*
- finalised the Airport Integrity and Corruption Control Survey methodology into the Compliance Assurance Program (CAP) as part of ongoing management quality assurance.

It is important to note for the record, that a significant period of time has elapsed between the investigation of these matters and the publication of this report.

In that time, the ACBPS has undergone a significant change in structure and is now known as Australian Border Force (ABF). The ABF is working closely with the Department of Home Affairs and ACLEI to implement proactive corruption prevention mechanisms. The

OFFICIAL

ABF is also undertaking a significant body of work aimed at targeting criminal infiltration of the supply chain at our borders. If this work was to uncover evidence of corruption, there are processes in place to ensure those allegations are referred to the department and ACLEI as required by the *Law Enforcement Integrity Commissioner Act 2006*.