



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

INVESTIGATION REPORT

**Operation Walpole —
An investigation into a potential corruption issue
in the course of the execution of a search warrant
by an Australian Border Force staff member.**

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

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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

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

Corrupt conduct

4. A staff member of a law enforcement agency ‘engages in corrupt conduct’ if the staff member:

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

- 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.²
5. The Integrity Commissioner is to give priority to dealing with serious and systemic corruption.

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.

² LEIC Act, s 6(1).

³ Ibid ss 18–24 and 38.

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

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 *Rejfek v McElroy*,⁸ and *Re Day*.⁹

⁴ Ibid ss 26–30.

⁵ LEIC Act, sub paragraphs 54(1)–(2).

⁶ Ibid s 55.

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 the Investigation Report for Operation Walpole

14. Operation Walpole is an investigation into allegations that an officer of the Australian Border Force, Officer FX, disposed of white powder contained in a 'deal bag' located during the execution of a search warrant, contrary to established procedures and practices.
15. The allegations were referred to my predecessor by the Department of Home Affairs (Home Affairs) on 3 February 2020 and I made a decision on 24 March 2020 to investigate the allegations.
16. Operation Walpole's investigation concluded in February 2021. Following this, I commenced preparing my report on the investigation pursuant to s 54 of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act). I consulted with 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 25 June 2021, I provided the final version of my report on Operation Walpole to the Attorney-General and to the Secretary of Home Affairs pursuant to s 55 of the LEIC Act.
18. I then considered whether it was in the public interest to publish the investigation report under s 209 of the LEIC Act. Although I did not make a corruption finding against Officer FX, I was satisfied that my report contained opinions or findings that could be considered to be critical of them. As such, I consulted with Officer FX to provide them with the 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 13 August 2021.
19. Accordingly, this is the version of the investigation report for Operation Walpole that I have decided is in the public interest to disclose.



Jaala Hinchcliffe
Integrity Commissioner
3 September 2021

Summary of the Investigation

Referral

20. On 3 February 2020, the Secretary of the Department of Home Affairs notified the former Integrity Commissioner, Mr Michael Griffin AM, of a corruption issue pursuant to s 19 of the LEIC Act, alleging that on 17 December 2019, during the execution of a search warrant, a Border Force officer disposed of white powder contained in a 'deal bag' located on the warrant premises and that this disposal was not in accordance with established procedures and practices.

Jurisdiction

21. On 24 March 2020, the Integrity Commissioner wrote to the Secretary of the Department of Home Affairs to inform the Secretary that she had considered the notification and had decided to investigate the matter jointly with the department pursuant to s 26(1)(a) and (2) of the LEIC Act.
22. The Integrity Commissioner was satisfied:
- (a) The referral was within ACLEI's jurisdiction because the Border Force officer, Officer FX, was an employee of the Department of Home Affairs (as an Australian Border Force (ABF) staff member) and therefore a staff member of a law enforcement agency.¹⁰
 - (b) The allegation fell within the meaning of 'corruption issue' as defined by s 7 of the LEIC Act as the information raised the possibility that the officer may have abused their office by disposing of material suspected to be drugs at the execution of a search warrant.

The Investigation

23. The objective of the investigation was to determine whether Officer FX had abused their office as a staff member of the ABF to assist another person by disposing of material suspected to be drugs at the execution of a search warrant. Given the highly unusual behavior engaged in by Officer FX at the execution of the search warrant, i.e. flushing white powder suspected of being drugs down a toilet, the investigation sought to uncover whether this conduct was undertaken for a corrupt purpose (i.e. to benefit Officer FX or another person) or was undertaken for some other reason.

¹⁰ LEIC Act ss 5(1) and 10(2A).

24. The investigation obtained statements from the officers who attended the search warrant and the senior officers involved in an initial investigation of the allegations. Officer FX was interviewed under caution. Further, official records from the search and material from ABF mobile phones was obtained during the investigation.
25. In December 2019, officers from ABF, including Officer FX, attended a property to execute a search warrant under s 198 and s 203 of the *Customs Act 1901* (Cth) as part of an ABF Operation. Officer FX was tasked with recording and maintaining an exhibit log of items that were seized by the searching officers.
26. During the course of the search, two clear zip lock bags were located. One contained what appeared to be a residual amount of white powder (bag 1). The other contained what appeared to be white powder (bag 2). The ABF officer who located the bags placed them on a desk in bedroom 4.
27. Officer FX was informed of the discovery of bags 1 and 2 and Officer TW accompanied Officer FX to bedroom 4 and pointed out bags 1 and 2 located on the desk. Officer FX said words to the effect of, 'This would be easier if I could just dispose of it' and proceeded to photograph the bags using their mobile phone.
28. Senior Investigator JQ, was present in bedroom 4 at this time. Senior Investigator JQ saw Officer FX remove bags 1 and 2 and leave the room.
29. A short time later, Officer TW saw Officer FX walk through bedroom 5 and into the adjoining bathroom, carrying bags 1 and 2. Officer TW saw Officer FX shaking something into the toilet and formed the view that Officer FX was shaking out the contents of both bags into the toilet. Officer FX then rinsed out both bags using the bathroom tap and subsequently returned both bags to bedroom 4.
30. Senior Investigator JQ was present in the vicinity of bedroom 4 and saw Officer FX place both bags on the desk. Upon closer observation, Senior Investigator JQ noticed that the contents in bags 1 and 2 were empty. Officer TW reported Officer FX's actions to Senior Investigator JQ.
31. After the search warrant was executed, Officer FX was questioned over the telephone by Acting ABF Superintendent VL about their actions. Acting ABF Superintendent VL recalls that the conversation contained words to the following effect:

I said: Hello Officer FX, I have been advised that during today's warrant there has been an allegation made that a white powdered substance in a zip lock bag was located and that the contents of the bag was disposed of by flushing.

Officer FX said: yes, that's correct. I flushed it.

I said: right, would you like to tell me any more about the events? Can you also tell me how much powder was in the bag?

Officer FX said: a MDF¹¹ officer showed me the bag, I took it off them and flushed the contents, I said something like 'I'll get rid of it' and took the bag. It was about a fingernails worth. Acting ABF Superintendent VL I take full responsibility.

32. Officer FX then prepared a handwritten statement, in which they stated:

I made this decision following my initial call to the local police station (name of officer) when I reported our warrant activity – [they] informed me [they] had just arrived at work and hadn't logged on because they were "flat out".

My decision to flush the items was because I was of the view that local police were "flat out" busy, and this was a minor quantity. In my view the easiest way to neutralise the situation was to dispose of the powder (white) in zip lock bag.

Yes, I do understand that this is against the expectations of the ABF. I take full responsibility – an error in my judgement.

33. On 14 August 2020, Officer FX participated in a record of interview under caution. During the interview, Officer FX made the following admissions:

- They flushed the contents of the zip lock bags down the toilet
- They rinsed out both of the bags in the sink and then put them back
- The normal process when drugs were found on a warrant would be for Officer FX to talk to the warrant holder or corroborator and for either of them to contact the local police station. In response to why they did not follow this procedure, Officer FX stated:

It would be necessary to not do what I did; it was just a lapse in judgement I don't it was from fatigue or a moment of stupidity. I don't have an answer for why I did what I did, if that is what you are asking me.

- They were not under any duress or direction to destroy the substances, nor did they destroy the substances in order to benefit themselves or someone else. In this respect they stated:

No. Nobody directed me, asked me, forced me, or had any involvement in my decision. I simply made a stupid decision. I don't even know why. My actions in a sense sort of highlight that I didn't try to do this for nefarious reasons, malicious intent or for any personal gain, I simply did what I did. I verbalised what I did. I went there and I put it back and didn't think about it until such time as the allegation was presented to me back

¹¹ A 'MDF' officer is a reference to a Mobile Deployment Force officer.

at Customs House. Throughout both the first and second warrant I still had in my possession, I wasn't aware of the reasoning why I was sitting in a room. It was only when the allegation was presented I realised oh my God what did I just do.

(...)

I don't think there was decision process that I made. I have just, I wrote that statement directly after I had that short conversation with the Superintendent so in my head, I am frantically trying to justify why I would have done what I've done. Which is why I wrote what I wrote. But when it actually occurred, clearly no decision making process was going on. I did what I did quite matter of factly. I did this and then I moved there and what I did I then returned those items and then that was the end of it. In hind sight I would've appreciated some of the colleagues just to have perhaps voicing their concern or something to trigger me backing up on the path of doing the right thing. So there was no decision making. I can't give you a reason why I did what I did. What a dumb thing I did and more importantly, whatever I did there is no benefit to me or to the person or to the case or to anything so there is no reason why I shouldn't have just said under our legislation if there were any concerns that I might have so. I can't give you an answer.

- Their behavior did not reflect ABF practice. They stated:

No, this is not something that is learnt or regional practice or a common practice or an ABF practice. This is not something I have seen before, this is not something that I have ever been told or instructed or heard of before. This is me solely making an idiotic, silly decision that has resulted in me essentially, you know, damaging my investigative career and removing myself from that.

34. The investigation did not uncover any evidence that Officer FX had any personal connection with the occupants of the house where the warrant was executed.
35. Consideration was given as to whether a potential intangible benefit was obtained by Officer FX's actions, in that the substance did not need to be dealt with in accordance with policy and procedure by the staff executing the warrant or by the NSW police. In considering this, regard was particularly had to Officer FX's written statement, where it was said:

My decision to flush the items was because I was of the view that local police were "flat out" busy, and this was a minor quantity. In my view the easiest way to neutralise the situation was to dispose of the powder (white) in zip lock bag.

36. The investigation considered whether Officer FX's conduct aligned with the department's procedures. The Department of Home Affairs Procedural Instruction on Evidence Handling (20 December 2018) applies to "all ABF officers undertaking or supporting operations or investigations activity during which evidence may be located and lawfully seized". This Procedural Instruction applied to the search warrant executed on 17 December 2019.
37. The Procedural Instruction provides the following instruction in relation to items discovered during a search warrant which relate to State or Territory offences:

7.14. Items Relating to State or Territory Offences

7.14.1. ABF officers can provide information to State / Territory police they have located evidentiary material or illegal items relating to state offences; however, Part 6 of the *Australian Border Force Act 2015* (ABF Act) **must** be complied with to provide this information lawfully.

7.14.2. No further action is available as there is no legal authority to seize items only relating to State offences. ABF officers may only seize evidentiary material, forfeited goods and special forfeited goods that come within the terms of warrants executed under the *Customs Act 1901* (Cth) (Customs Act). They do not have a common law power to seize evidentiary material or illegal items relating to State offences.

7.14.3. ABF officers may be required to provide statements to support State / Territory police prosecutions.

NOTE: Officers *should* be aware of their powers under s 203C of the Customs Act, *Seizure without warrant of narcotic goods or of evidential material relating to narcotic goods at other places*

38. The passage extracted above reflects the procedure that Officer FX said should have been adopted upon the discovery of suspected illegal items at a search warrant.
39. The Procedural Instruction also requires officers to be aware of their powers under s 203C of the *Customs Act 1901* (Cth), which provides (in part):

203C Seizure without warrant of narcotic goods or of evidential material relating to narcotic goods at other places

- (1) This section applies if:
- (a) an authorised person suspects on reasonable grounds that there are special forfeited goods that are narcotic goods:
 - (i) at, or in a container at, a place other than a Customs place; (...); and
 - (b) it is necessary to exercise a power under this section in order to prevent such goods from being concealed, lost or destroyed.

Note: Container has a special definition for the purposes only of this Division.

- (2) The authorised person may, without warrant:

(a) search the place or any container at the place for narcotic goods; or

(b) stop and detain the conveyance about to leave the place, and search it and any container on it for narcotic goods; or

(c) search the container in the immediate physical possession of the person for narcotic goods;

as the case requires, and seize any goods that the authorised person reasonably suspects are narcotic goods if the authorised person finds them there.

40. This section would appear to allow an ABF officer to search a place if they have reasonable grounds that there are special forfeited goods that are narcotic goods and seize any goods that they believe are narcotic goods if they find them.
41. The Procedural Instruction provides information on the limited circumstances under which evidence seized can be destroyed. The instruction is clear that a disposal direction for forfeited or abandoned goods must be approved by an Inspector or Case Manager. This can occur at the conclusion of a case. The Procedural Instruction does not include an ability to dispose or destroy items at a search warrant. This accords with Officer FX's evidence in their record of interview that their actions did not reflect ABF practice.

Findings

42. I am satisfied that the investigation of Operation Walpole has produced evidence that Officer FX flushed the substance found in the zip lock bags down the toilet and then rinsed out the bags. In doing so, Officer FX acted outside of ABF procedure and their actions did not accord with normal standards for law enforcement officers in executing search warrants. Officer FX's evidence was that the correct process in this situation was to alert the local police station to the discovery of the substance. This was not done in this case.
43. However, the investigation has not identified that Officer FX engaged in this conduct for a corrupt purpose. By their own admissions, Officer FX cannot explain their behaviour. It was not done for personal benefit or for benefit of anyone else. They were not pressured or directed to destroy the substance. While this behaviour raises significant questions about Officer FX's judgment, noting that Officer FX refers to it as a lapse in judgment, it does not amount to corruption.

Action under Part 10 of the LEIC Act

44. On 20 October 2020, ACLEI sought assistance from the CDPP under s 142 of the LEIC Act. The CDPP advised that based on the available evidence, there were no reasonable prospects of securing a conviction against Officer FX for any offence.
45. On 20 October 2020, information was disseminated to the Department of Home Affairs under section 146 of the LEIC Act.

Recommendations

46. I do not make any recommendations as a result of this corruption investigation.



Jaala Hinchcliffe
Integrity Commissioner
25 June 2021