



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

# **INVESTIGATION REPORT**

**Operation Adder —  
An investigation into the conduct and  
associations of a staff member of the Department  
of Home Affairs.**

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

**Report 04/2020**



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Investigation Reports published by the Integrity Commissioner  
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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);
  - Department of Home Affairs (including the Australian Border Force); and
  - prescribed aspects of the Department of Agriculture, Water and the Environment.<sup>1</sup>
3. Other Australian Government agencies with law enforcement functions may be prescribed by regulation as being within the jurisdiction of the Integrity Commissioner.

### 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

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<sup>1</sup> *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.

- having regard to his or her duties and powers, engages in corrupt conduct of any other kind.<sup>2</sup>
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.<sup>3</sup>
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.<sup>4</sup>

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<sup>2</sup> Ibid s 6(1).

<sup>3</sup> Ibid ss 18–24 and 38.

<sup>4</sup> Ibid ss 26–30.

## 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.<sup>5</sup>
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.<sup>6</sup>

## 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*,<sup>7</sup> *Rejtek v McElroy*,<sup>8</sup> and *Re Day*.<sup>9</sup>

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<sup>5</sup> Ibid ss 54(1)–(2).

<sup>6</sup> Ibid s 55.

<sup>7</sup> (1938) 60 CLR 336, 361–62 (Dixon J).

<sup>8</sup> (1965) 112 CLR 517, 521.

<sup>9</sup> (2017) 91 ALJR 262, 268 [14]–[18].

## Summary of the Investigation

### Referral

14. On 10 July 2015, a corruption issue was referred to the former Integrity Commissioner under section 23(1) of the LEIC Act.
15. The referral alleged a customs officer was assisting an alleged criminal entity ('Person A'), to import cocaine into Australia by 'assisting packages through Customs' and supplying their work roster to Person A so importations were timed for when the customs officer was working. The customs officer would ensure the package got through or informed Person A if there was any law enforcement interest.

### Jurisdiction

16. In May 2016 the then Integrity Commissioner (Mr Michael Griffin, AM) considered this matter and decided to investigate it jointly with the Australian Federal Police (AFP).
17. The then Integrity Commissioner was satisfied:
  - (a) The 'customs officer' was a reference to a staff member of the Australian Customs and Border Protection Service<sup>10</sup> (now known as the Department of Home Affairs ('Home Affairs'))<sup>11</sup> and
  - (b) The allegations fell within the meaning of 'corruption issue'<sup>12</sup> as the information raised the possibility that a customs officer may have used their position to assist in the importation of cocaine, which would mean they engaged in corrupt conduct pursuant to s 6 of the LEIC Act.
18. The corruption investigation was named 'Operation Adder'.

### Investigation

19. The investigation aimed to:

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<sup>10</sup> At the time of the referral, a staff member of Customs was a staff member of a law enforcement agency pursuant to ss 51(1) and 10(2A) of the LEIC Act.

<sup>11</sup> While no particular staff member was specified in the referral, this did not prevent the information from raising a corruption issue pursuant to s 7(2) of the LEIC Act.

<sup>12</sup> LEIC Act, s 7, as at May 2016

- (a) determine the identity of the customs officer;
  - (b) confirm they were employed by Home Affairs;
  - (c) determine if they were associated with Person A or the importation of cocaine; and
  - (d) determine if they used their position at Home Affairs to assist in the importation of cocaine.
20. In December 2016, investigators received further information relating to the identity of the customs officer. This included a description of two vehicles allegedly driven by the customs officer. One of the vehicles was found to be registered to Person B.
21. The investigation obtained evidence from a number of different sources including:
  - (a) Home Affairs Official records;
  - (b) Home Affairs employment records;
  - (c) Financial Information of Person B;
  - (d) Information from the Home Affairs IT system and Person's B work account and computer; and
  - (e) Information from a hearing under Div 2 of Part 9 of the LEIC Act.
22. Investigators searched employment records of Home Affairs and confirmed Person B was an employee of the department. It was also confirmed Person B matched other information contained in the allegation.
23. These records showed Person B commenced employment with Home Affairs in 2010 and worked in a variety of roles since their commencement. At the relevant time, Person B was employed as a Border Force Officer working in voluntary removals. In this role they worked set hours rather than shift work and therefore did not have a roster as specified in the referral.
24. Enquiries revealed that Person B did not have access to the Home Affairs systems which would have enabled them to check directly on activity related to the allegations.
25. The investigation continued to ascertain whether Person B was receiving information from another employee of Home Affairs who had access to the relevant Home Affairs systems to assist Person A.
26. During January 2017, investigators looked at the financial information of Person B, but did not find any evidence they were receiving any financial gain.



27. In February and March 2017, investigators obtained Person B's work hard-drive, work emails and instant message communications. This information did not contain any evidence to support the allegations.
28. No information was collected to suggest Person B had any association or communication with Person A or that they were involved in the importation of cocaine into Australia.
29. Investigators did however collect evidence showing two instances where Person B improperly disclosed classified information from Home Affairs databases to other people. This information was not related to the drug importation allegations.
30. On 14 March 2017, Person B admitted:
  - (a) They accessed Home Affairs databases for non-work related purposes on three occasions. Once to look up an ex-partner and on two occasions to check on the status of visa applications for two associates they knew within their community; and
  - (b) They disclosed Home Affairs information from these searches on two occasions to two different people (Persons C and D).
31. They stated on one occasion their friend, Person C asked for information about another person's citizenship application.
32. Person B said they searched for the person's citizenship application and the application was flagged for cancellation due to an allegation of fraud. They relayed this information to Person C.
33. Person B said there was no agreement with Person C that they would receive any benefit for disclosing this information. They said they did it to impress Person C.
34. Person B said the second disclosure occurred following a conversation with Person D, who mentioned that their partner's visa was still outstanding and their children were missing their parent. Person B was unclear whether Person D had asked them to check on the status of the visa, or whether they offered. They stated they searched for information about the application and gave this information to Person D because they felt 'bad' for them.
35. Person B said there was no agreement with Person D that they would receive anything for the information.
36. Lastly, Person B said they looked up an ex-partner on the Home Affairs system on more than one occasion out of curiosity, but did not disclose the information to anyone.

## Findings

37. I am required under section 54 of the LEIC Act to provide my findings on the corruption issue.
38. On the basis of the evidence and material collected and analysed in the course of Operation Adder I find that:
- (a) The customs officer referred to in the allegation was Person B;
  - (b) Person B was employed by Home Affairs and was a staff member of a law enforcement agency;
  - (c) Person B was not associated with Person A or the importation of cocaine into Australia; and
  - (d) Person B did not use their position at Home Affairs to assist in the importation of cocaine into Australia.
39. I must now turn my mind to the searches Person B made of the Home Affairs databases and the subsequent disclosures made.
40. On Person B's own admission on two occasions they looked up the status of applications and disclosed this information.
41. On 5 September 2012, Person B signed an 'Official Secrecy Acknowledgement' as part of their baseline security clearance. This was an acknowledgement that the following provisions related to their employment:
- Sections 70, 77, 79 and 80 of the *Crimes Act 1914 (Commonwealth)*.
  - Section 73A of the *Defence Act 1903 (Commonwealth)*.
  - Sections 90.1 and 91.1 of the *Criminal Code Act 1995 (Commonwealth)*.
  - Section 13 of the *Public Service Act 1999 (Commonwealth)*.
42. As part of this acknowledgement, Person B also indicated they understood the following:
- 'I understand that all official information acquired by me in the course of my duties is to be regarded as the property of the Commonwealth and any such information which it is my duty not to disclose is not to be published or communicated to another person in any form either during or after my service or in association with the Commonwealth.'*

*I further understand that any breach of laws regarding the safeguarding of official information is an offence, and may render me liable to prosecution.'*

43. Relevantly, in regards to the acknowledgment, the *Public Service Act 1999* (Cth) sets out the APS Code of Conduct at section 13. This includes:
- At ss 13(1) – *'An APS employee must behave honestly and with integrity in connection with APS employment.'*
  - At ss 13(4) – *'An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws.'*
  - At ss 13(8) – *'An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.'*
44. The accessing and disclosure of information obtained through a public official's employment is also governed under the *Criminal Code* (Cth). Section 122.4 of the Criminal Code creates a criminal offence for the unauthorised disclosure of information by current and former Commonwealth Officers. Similarly, s 478.1 of the Criminal Code makes it a criminal offence to access restricted data without authorisation.
45. The LEIC Act, at ss 6(1) defines 'engages in corrupt conduct' to be:
- (1) *For the purpose of this Act, a staff member of a law enforcement agency **engages in corrupt conduct** if the staff member, while a staff member of the agency, engages in:*
- (a) *Conduct that involves, or that is engages in for the purposes of, the staff member abusing his or her office as a staff member of the agency; or*
  - (b) *Conduct that perverts, or that is engages in for the purpose of perverting, the course of justice; or*
  - (c) *Conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engages in for the purpose of, corruption of any other kind.*
46. For the purposes of these findings, I have focussed on s 6(1)(c), 'corruption of any other kind'. When considering the meaning of certain undefined words as contained within s 6 of the LEIC Act, I have considered the meaning of those words in the English language. In this regard, I have been assisted by the definition of corruption in the Encyclopaedic Legal Dictionary:

...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.<sup>13</sup>

47. 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 the law or in ordinary speech<sup>14</sup>.

48. Person B's behaviour was a deliberate act of dishonesty, a breach of law and was an abuse of the public trust instilled in them through their employment. They acted inconsistently with their office. They engaged in the behaviour for a corrupt purpose.

49. The disclosure of the information meant their associates had access to information they would not have been privy to had it not been for their association with them. They also received information quicker than they otherwise would have.

50. There is no evidence that Person B received any financial benefit through the disclosure of the information. Their motives for doing so were to impress an associate and because they felt 'bad' for another. They therefore received an intangible benefit for the disclosure of information.

51. Accordingly, I find that pursuant to subsection 6(1)(c), Person B engaged in corrupt conduct.

## Action under Part 10 of the LEIC Act

52. On 3 July 2017, the then Integrity Commissioner provided information arising from the investigation to the Home Affairs Secretary under s 146 of the LEIC Act. This section permits disclosure of information that amounts to evidence of a breach of duty or misconduct.

53. On 30 January 2018, Home Affairs advised the then Integrity Commissioner that a Code of Conduct investigation had commenced into the actions of Person B. The investigation determined breaches. However, Person B resigned prior to sanction.

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<sup>13</sup> Encyclopaedic Legal Dictionary, online, 2020

<sup>14</sup> (2015) 256 CLR 1, 32

## Corruption Prevention Observation

54. As with a number of other investigations conducted by ACLEI, Operation Adder found instances where a staff member with access to an official database misused that access.
55. In the context of corruption, ACLEI defines social capital as the intangible benefit and/or improved social standing that can be gained through corrupt conduct. Individuals' efforts to gain or maintain social capital may contribute to increased corruption vulnerability within agencies and may be a motivator for staff members to act corruptly.<sup>15</sup>
56. While Person B did not access the Home Affairs system to assist in the importation of drugs, their access to assist associates within their community was corrupt conduct.
57. Staff members of law enforcement agencies should never access official information for personal reasons or to assist their associates. Staff members may find themselves in a situation where someone in their social network is seeking favours or information for improper reasons. It is essential that staff members understand the value of the information they have access to, and if approached by someone in their social network for favours or information, act early and report it to their agency. There is never any justification for disclosing official information to family, friends or social contacts.

## Recommendations

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

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<sup>15</sup> See ACLEI's Social Capital Fact Sheet: [https://www.aclei.gov.au/sites/default/files/aclei\\_factsheet\\_-\\_corruption\\_prevention\\_concepts\\_-\\_social\\_capital.pdf](https://www.aclei.gov.au/sites/default/files/aclei_factsheet_-_corruption_prevention_concepts_-_social_capital.pdf)

59. On 7 July 2020 I provided my report to the Attorney-General pursuant to s 54 of the LEIC Act. Following the completion of my report, pursuant to s 209 of the LEIC Act I considered whether it was in the public interest to disclose information about this investigation. This is the version of the s 54 report of the investigation I have decided is in the public interest to disclose.



Jaala Hinchcliffe  
Integrity Commissioner

7 July 2020