



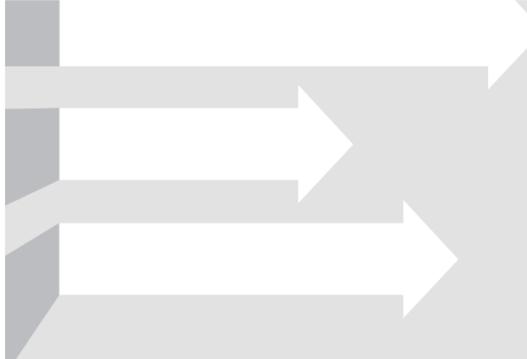
**Australian Government**  
**Australian Commission for  
Law Enforcement Integrity**

# INVESTIGATION REPORT

**Operation Balaton —  
An investigation into the misuse of an official  
credit card by an AFP appointee**

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

**Report 03/2020**



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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].

14. On 18 May 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.

## Summary of the Investigation

### Notification

15. On 30 November 2016, the Australian Federal Police (AFP) Commissioner notified the former Integrity Commissioner (Mr Michael Griffin AM) of a significant corruption issue under s 19(1) of the LEIC Act. It was alleged an AFP Federal Agent had used their corporate credit card to withdraw money, without approval, since July 2014. The withdrawals were estimated at \$56,273.

### Jurisdiction

16. On 30 November 2016, the then Integrity Commissioner decided to investigate the matter jointly with the AFP under s 26(2) of the LEIC Act. The corruption investigation was named Operation Balaton. The then Integrity Commissioner was satisfied:
  - (a) The referral related to an AFP Federal Agent (the Federal Agent). As an AFP appointee, the Federal Agent was a staff member of a law enforcement agency and within ACLEI's jurisdiction;<sup>10</sup>
  - (b) The allegations were within the meaning of 'corruption issue' as defined by s 7 of the LEIC Act. The then Integrity Commissioner was satisfied the conduct in which the Federal Agent was alleged to have engaged was either an abuse of office or conduct that, having regard to their duties, was engaged in for the purpose of corruption of any other kind.<sup>11</sup>

### Investigation

17. While this investigation was conducted jointly between the AFP and ACLEI, the AFP were the lead agency and undertook the majority of the investigation tasks. The objects of the investigation were:

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<sup>10</sup> LEIC Act ss 5(1) and 10(1)(b).

<sup>11</sup> Ibid ss 6(1)(a) and (c) and 7(1)(a).

- (a) to determine whether the Federal Agent misused their official credit card;
  - (b) if the Federal Agent misused their credit card, determine the extent of the misuse; and
  - (c) to determine whether the Federal Agent should be charged with criminal offences.
18. At the time of the alleged conduct, the Federal Agent was the Executive Officer to the then AFP Commissioner. In this role, the Federal Agent's duties included travelling with, and managing, the logistics for the Commissioner's travel. This included paying for the Commissioner's work related travel expenses. The Federal Agent was required to acquit these expenses, along with their own work related travel expenses, in line with the AFP's domestic and international travel policies.
19. Prior to the commencement of the investigation, the Federal Agent was suspended from duty. Given this, it was considered unnecessary for the investigation to use any covert powers. Instead, the investigation relied on:
- (a) AFP records relating to the Federal Agent's use of their official credit card;
  - (b) AFP records relating to official travel undertaken by the Commissioner and the Federal Agent in respect of which an entitlement to travel expenses may have arisen;
  - (c) Information provided by the Commissioner about the expectations of the Federal Agent and the instructions he gave the Federal Agent concerning the use of their corporate credit card to pay for travel expenses;
  - (d) A search of the Federal Agent's workspace and of their AFP-issued information technology and communications devices;
  - (e) Search warrants to obtain the Federal Agent's personal banking and financial records and records of their dealings with online gambling entities; and
  - (f) CCTV evidence of the Federal Agent using their AFP credit card and making deposits into their personal bank accounts.
20. The AFP commenced an interview with the Federal Agent under a criminal caution in January 2017, however, the Federal Agent declined to continue the interview after a break.

21. The investigation identified a correlation between cash withdrawals on the Federal Agent's AFP issued credit card and deposits into their personal bank accounts. On 34 occasions the transactions occurred within minutes of one another, and the deposits were found to be equal to, or slightly less, than the funds withdrawn. These withdrawals totalled \$31,750 and the deposits into their personal bank accounts totalled \$26,400.
22. The investigation identified that between 6 August 2015 to 2 October 2016, the Federal Agent conducted 43 transactions with an average cash withdrawal of \$493 per transaction. However, from 8 October to 23 November 2016, over 21 transactions the withdrawal average increased to \$1,240 per transaction.
23. In accordance with their duties, the Federal Agent was permitted to use their AFP credit card in order to pay for travel expenses where an invoice was provided. They were also permitted to withdraw cash advances to pay for minor travel expenses, such as meals. The expenses were required to be within the AFP's domestic and international travel entitlements, and to identify whether these transactions were in accordance with the AFP's travel entitlements, an examination of the travel by the Federal Agent and the Commissioner was undertaken, focusing on the following two time periods.

***Period 1 (6/8/15 – 2/10/16)***

24. The cash withdrawals during period 1 totalled \$21,220. The travel records showed that:
  - the Commissioner undertook 48 domestic and international trips. The Federal Agent travelled on 33 occasions, of which 29 involved domestic travel;
  - for nine of the 29 domestic travel events, the Federal Agent was not eligible for domestic travel allowance entitlement (per diem) as the travel did not involve overnight stays;
  - of the remaining 20 trips the Federal Agent submitted a claim and was paid the allowance on 13 occasions;
  - for the remaining seven domestic and four international trips, the Federal Agent was entitled to a maximum travel allowance of \$7,656.25; and
  - the Commissioner would have been entitled to a maximum of \$25,696.10.
25. While the maximum travel entitlements (\$33,352.35) available to the Commissioner and the Federal Agent were greater than the amount of cash withdrawals made, the Federal Agent failed to produce any evidence to demonstrate compliance with the AFP's requirements.

**Period 2 – (8/10/16 – 23/11/16)**

26. During Period 2, the Federal Agent withdrew cash on 21 occasions totalling \$26,050. The travel records show:

<b>Travel Location and Dates</b>	<b>The Federal Agent's Eligible Allowance</b>	<b>Commissioner's Entitlement</b>
Domestic 10/10/16	Day Trip no entitlement	Day trip no entitlement
Domestic 19 - 21/10/16	\$321.65 – per diem paid	Entitled to \$353.10
International 22 - 28/10/16	Maximum entitlement \$1,440.00 on production of receipts	Entitled to \$2,130.00
Domestic 31/10 to 2/11/16	Maximum entitlement \$377.85 – Not claimed	Entitled to \$529.65
International 5 – 10/11/16	Maximum entitlement \$825.00 on production of receipts	Entitled to \$1,150.00
Domestic 19 – 20/11/16	Did not travel no entitlement	Entitled to \$353.10

27. The combined total of maximum travel entitlements during Period 2 was \$7,158.70.
28. It was observed the Federal Agent withdrew an additional \$18,891.30 that was not accounted for. This indicated that these funds were not spent on authorised AFP related expenses.
29. On 22 September 2017, the AFP charged the Federal Agent with 64 offences of dishonestly causing a loss to the AFP contrary to s 135.1(5) of the *Criminal Code* (Cth).
30. The Federal Agent resigned from the AFP on 5 October 2017.
31. On 19 July 2018, the former Federal Agent pled guilty to one charge of dishonestly causing a loss to the AFP contrary to s 135.1(5) of the *Criminal Code* (Cth). This charge related to 58 occasions between 6 August 2015 and 23 November 2016 when the former Federal Agent withdrew cash amounts from their AFP issued credit card, causing a loss to the AFP of \$45,050.
32. On 24 January 2019, the former Federal Agent was convicted and sentenced to 8 months imprisonment, released forthwith on the condition they complied with an intensive corrections order. A reparation order in the amount of \$45,050 was also made.

## Findings

33. I have reviewed the material collected through this investigation and I am reasonably satisfied that in their capacity as a staff member of AFP, the former Federal Agent engaged in conduct that amounted to corruption of “any other kind” by applying amounts they withdrew using their official credit card for their own benefit. Accordingly, I find that the former Federal Agent engaged in corrupt conduct as defined in s 6 of the LEIC Act.

## Action under Part 10 of the LEIC Act

34. As this investigation was conducted jointly with the AFP, the AFP also hold the evidence in this matter. I do not propose to take any action under Part 10 of the LEIC Act with the evidence or information obtained under this investigation.

## Corruption Prevention Observation

35. The investigation revealed the former Federal Agent engaged in corrupt conduct to obtain money to use for gambling. Gambling is a substantial and increasing part of many economies, with a growth in online services that are constantly advertised and that provide incentives for new and existing customers. It is a lawful activity in which many people in the Australian community engage.
36. Indeed, statistics from the Productivity Commission suggest that 0.5-1.0% of the adult Australian population are problem gamblers, with a larger number at moderate risk of vulnerability.<sup>12</sup> Those so affected are associated with a number of adverse outcomes, including relationship problems including violence, health problems and diminished work performance.
37. While the selection processes and continuous oversight to which law enforcement personnel are subject may winnow out some of those at risk, it is likely that there are staff members who may be at risk of succumbing to the temptation to abuse their positions to feed problem gambling habits. Some of them may be in positions where their exposure to corruption risk would have more drastic consequences than credit card misuse or where any corrupt conduct engaged in would be less detectable than a failure to properly reconcile credit card accounts.

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<sup>12</sup> Productivity Commission, *Gambling* (Productivity Commission Inquiry Report No 50, 26 February 2010) vol 1, 5.19.

38. This overall context raises some important and difficult issues for ACLEI, the agencies under its jurisdiction and others with an interest in preventing and addressing corruption. The risks are significant and may come to be realised at any time, but especially after a problem gambler has exhausted his or her own resources and any borrowing capacity.
39. ACLEI raised the issue of problem gambling in a vulnerabilities brief disseminated to jurisdictional agency heads in July 2019. This brief provided guidance to enhance integrity systems to identify corrupt conduct that is a consequence of a gambling addiction.
40. In March 2020, a publically available fact sheet on problem gambling was prepared and published on ACLEI's website.

## Recommendations

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



Jaala Hinchcliffe  
Integrity Commissioner

4 June 2020