



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

INVESTIGATION REPORT

**Operation Flax—an investigation into
allegations of misuse of Commonwealth
resources by an ACIC senior executive**

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

Report 02/2018

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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

Investigations and reports by the Integrity Commissioner

The Law Enforcement Integrity Commissioner Act

The *Law Enforcement Integrity Commissioner Act 2006* (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 Criminal Intelligence Commission (including the Australian Crime Commission 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)
- prescribed aspects of the Department of Agriculture and Water Resources, and
- the former National Crime Authority.

Other Australian Government agencies with law enforcement functions may be prescribed by regulation as coming within the jurisdiction of the Integrity Commissioner.

Corrupt conduct

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, 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.
- 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.

The Integrity Commissioner may decide to: have ACLEI 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 also 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 a State or Territory 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
- obtain a warrant to intercept telecommunications or conduct other electronic surveillance, and
- exercise powers conferred by the *Crimes Act 1914* in relation to controlled operations and integrity testing.

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.

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 is required to be ‘reasonably satisfied’, based on relevant facts, that conduct occurred which fell within the meaning of the LEIC Act. In considering whether or not the Integrity Commissioner is ‘reasonably satisfied’ of relevant facts, he or she applies the reasoning set out by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-362; *Rejtek v McElroy* (1965) 112 CLR 517 at 521 and *Re Day* [2017] HCA 2 (27 January 2017) at paragraphs 14 to 18 inclusive.

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.

Investigation Report

Introduction

1. This investigation arose from concerns raised about the conduct of a senior executive officer (Officer A) in the Australian Crime Commission—now known as the Australian Criminal Intelligence Commission (ACIC). In this instance, two important integrity principles were in question, namely:
 - (a) Did Officer A improperly gain access to law enforcement information in relation to a private matter?, and
 - (b) Did Officer A misuse official travel allowances, by undertaking travel for private reasons rather than for approved official public reasons?

Integrity Principles

2. Senior executives in government agencies play a critical role in their organisation's integrity frameworks—in particular, their actions set a tone for acceptable behaviour. However, without appropriate safeguards, personal dynamics between a senior staff member (on the one hand) and more-junior staff (on the other) can lead to statutory powers being used inappropriately, or privileges (such as allowances) being decided in a self-interested way. Left unchecked, such conduct can set the scene for more serious forms of misconduct or corruption to occur.
3. Ensuring the protection and proper use of the sensitive information held by law enforcement agencies is a critical factor in retaining public confidence and encouraging inter-agency cooperation. It follows that such resources and powers should only be used for the purposes of the law enforcement agency, and should not be used to pursue private matters.
4. Where such information is accessed in circumstances where a staff member or associate may be thought to have a personal interest, it is vital that this occur transparently—“on the record”, as it were—with an adequate explanation and having regard to avoiding the mixing of personal and public considerations in the way the information is handled. Such practices protect against law enforcement officers “trading” in information.

5. Similarly, the community expects that government officers would use public resources in lawful and accountable ways, and not for personal gain. Decisions to spend public monies—especially in relation to work related expenses, such as travel allowances—should be managed in accountable ways, to demonstrate concordance with policy and law.

Jurisdiction

6. If there were substance to the allegations, the conduct would be likely to fall within the class of being an abuse of office or, if not, 'conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind'. Accordingly, the information raised a corruption issue for the purposes of the LEIC Act.
7. In this instance, the nature of the conduct, coupled with the seniority of Officer A, warranted an independent investigation by the Integrity Commissioner.
8. Accordingly, the Integrity Commissioner decided that ACLEI should investigate the two issues under the LEIC Act. Some aspects of the investigation were conducted jointly with the Australian Federal Police (AFP).

What the investigation showed

Accessing law enforcement information

9. The initial information received by ACLEI suggested that Officer A had improperly obtained from police the names of persons alleged to have committed property offences at Officer A's home, and subsequently requested that ACIC staff check the names against ACIC databases.
10. ACLEI's investigation took into account information obtained following the issue of notices under the LEIC Act issued to staff of the ACIC and to the relevant state police force. The information sought related to the property offences and to specific communications by Officer A.
11. The investigation revealed that:
 - (a) during an apparently random burglary at Officer A's home, an ACIC building pass was taken
 - (b) although Officer A assessed it as a low probability, it was possible that the burglary had been targeted against the ACIC

- (c) Officer A informed staff who were performing relevant personnel security functions within ACIC, and requested checks that would assist in evaluating any risk to the agency
 - (d) those checks provided no basis for concern.
12. There is nothing revealed by the investigation which would suggest that Officer A acted from any personal motivation—for example, to take reprisals against the offenders or simply to satisfy a personal curiosity. The senior staff member acted—discreetly, but verifiably and in writing—to ensure that the risk of compromise to ACIC’s premises was managed.

Travel allowances

13. As a separate issue, Officer A raised direct with ACLEI some concerns that had been expressed within ACIC about travel allowances and related matters, arising from the Officer’s personal interstate travel.
14. Following extensive forensic investigation of relevant travel and financial records, it became clear that:
- (a) Officer A was meticulous in record-keeping, and in not mixing private travel and official travel.
 - (b) In circumstances that did relate to personal travel, Officer A had been reimbursed for the cost of flights in accordance with ACIC internal guidelines and corporate advice provided at the time.
 - (c) However, the information provided to Officer A was defective, in that it did not accord with the established travel and related expenses framework that applies to such matters within government.
 - (d) The situation was exacerbated due to a change in personal circumstances that led to the need for Officer A or Officer A’s partner to travel interstate every few months.
15. While ACLEI’s investigation uncovered a technical breach, it had none of the character of misconduct. In addition, as the investigation reached its conclusion it was apparent that ACIC was taking appropriate steps to rectify the error, including engaging with the Portfolio Department to ensure the issue is resolved transparently.

Findings

16. Since no evidence of corruption was adduced in the investigation of either matter—and, moreover, that there are plausible, benign explanations available which are corroborated by witnesses and records—I concluded my investigation.

Observations

17. It is a relatively easy thing for accusations of impropriety to be made about senior officers. However, in a modern public sector workplace, what counts most is that such matters can be brought forward for independent scrutiny and be dealt with in an appropriate manner.
18. I commend those who brought these issues to ACLEI's attention—including Officer A's self-report—and recognise the officers of ACIC and AFP for their assistance with my investigation.

Michael Griffin AM
Integrity Commissioner

16 May 2018



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