



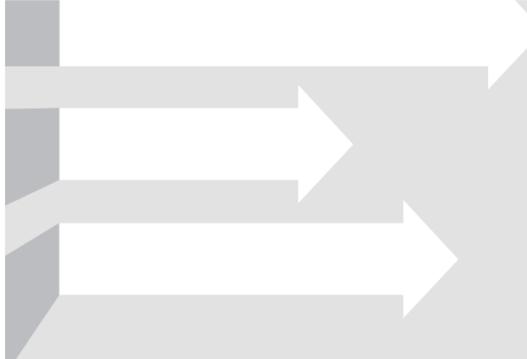
Australian Government
**Australian Commission for
Law Enforcement Integrity**

INVESTIGATION REPORT

**Operation Marlowe—
A joint investigation into the
conduct of an Australian Federal
Police Protective Service Officer
concerning information security**

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

Report 01/2017



Enquiries about this report can be directed to the
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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* establishes the office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity.

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 Immigration and Border Protection (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

'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.
- 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 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.

Investigation Report

Integrity principle

1. Sensitive information held by law enforcement agencies is a vital asset for those agencies, and one capable of being compromised by anyone who has access to it. That kind of information collected is held and to be used only for the lawful purposes of the agency, not for the private benefit or interest of any individual, including a staff member.
2. As ACLEI has commented in the past,¹ personal conduct can expose law enforcement agency staff members to serious risk of compromise. In particular, the 'private' use of illicit drugs can lead to undesirable associations with criminal entities.

Introduction

3. On 15 September 2015, AFP Professional Standards (PRS) notified ACLEI of a significant corruption issue, whereby the AFP had information suggesting that a member of the public had shown another person an image on a mobile telephone that was a screenshot of a confidential report from the AFP's database system, PROMIS. Access to PROMIS is limited to some staff members of the AFP and is subject to stringent security requirements.
4. PRS had conducted an audit of access to the relevant PROMIS record and found that it had been accessed by Officer A, a Protective Service Officer. Officer A had no known operational reason for accessing the record.
5. On 16 September 2015, the Integrity Commissioner decided that ACLEI should investigate the corruption issue jointly with the AFP.

¹ See summary of *Investigation Report 01/2015—Operation Helix—a joint investigation into alleged drug use by Australian Customs and Border Protection Service ICT employees*, available at www.aclei.gov.au.

Jurisdiction

6. The information raised a corruption issue for the purposes of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act). The conduct alleged 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'.
7. An investigation was conducted jointly with the AFP, as provided for by section 26(2) of the LEIC Act.
8. ACLEI's jurisdiction to investigate and make findings was not affected by the officer's subsequent arrest and suspension from duty on 17 September 2015 or by the AFP's termination of the officer's employment in late January 2016 due to the definition of "corruption issue" contained with section 7(1) of the LEIC Act.

What the investigation showed

9. The joint investigation took into account information obtained from the AFP, from the execution of search warrants at multiple premises, from examination of telephone records, and from physical surveillance of Officer A.
10. The investigation also included interviews under caution, pursuant to Part IC of the *Crimes Act 1914 (Cth)*, in which Officer A, who acknowledged:
 - (a) accessing information on PROMIS and using a mobile telephone to take photographs of the computer screen, despite knowing PROMIS was only to be used for official purposes, and
 - (b) sending these images to an individual who Officer A knew to be involved with criminal activity.
11. During search warrants executed at the home of Officer A, ACLEI and the AFP located a number of items of AFP equipment which Officer A later admitted to have stolen, as well as a quantity of illicit drugs.
12. Officer A admitted to being a regular user of illicit drugs, timing drug use to coincide with rostered days off in order to avoid detection through the AFP mandatory drug testing regime. He also admitted to associating regularly with people involved in criminal activity.

13. These issues in Officer A's private life had gradually intruded into his official functions, to the point where he was using access granted through his official role to benefit those with whom he had personal relationships.
14. Officer A subsequently pleaded guilty to a number of corruption related offences—namely, abuse of public office (*Criminal Code 1995 (Cth)*, s 142.2(1)), recording and disclosing prescribed information (*Australian Federal Police Act 1979*, s 60A(2)(a) and (b)), theft of Commonwealth property (*Criminal Code 1995 (Cth)*, s 131.1)—and a range of drug offences.
15. He was sentenced in May 2016 to a total effective penalty of 20 months' imprisonment, to be released after serving 12 months. Because the sentences to be served amount to more than 12 months, Officer A may also be subject to an application for a superannuation order under the *Australian Federal Police Act 1979 (Cth)* and steps towards such an order have commenced.

Part 10 actions

16. Part 10 of the LEIC Act provides for what the Integrity Commissioner may do with evidence and information obtained during an investigation.
17. Section 142 of the LEIC Act provides that the Integrity Commissioner must assemble admissible evidence relating to the contravention of a law and give it to a prosecuting authority or a designated police force. The AFP assembled the brief of evidence and provided it to the Commonwealth Director of Public Prosecutions for assessment and prosecution. The information gained through the investigation also provided the basis for the AFP's decision to terminate Officer A's employment.
18. Section 146 also requires the Integrity Commissioner to bring to an agency head's notice evidence of a breach of duty or misconduct by a staff member. This requirement arises when the Integrity Commissioner is satisfied that the evidence may justify terminating the staff member's employment or initiating disciplinary proceedings against the staff member and that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so.
19. In this instance, because ACLEI's investigation was conducted jointly with the AFP, and the AFP had access to all the information obtained, it was not necessary for the Integrity Commissioner to make a decision about disclosing information under Part 10 of the LEIC Act.

Findings

20. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
21. Before I reached my conclusion, I provided Officer A with an opportunity to be heard, as required by section 51(4) of the LEIC Act. In the officer's response, Officer A took responsibility for his actions, and did not seek to excuse his conduct.
22. Having regard to the evidence gathered, including his own admissions before the court, I find that Officer A engaged in corrupt conduct.

Observations

23. Officer A took part in a number of overseas deployments in which the AFP participated. Examination of his personnel records indicated he had been removed from one of the several overseas deployments he had undertaken due to alcohol abuse. As this matter was dealt with overseas, and because it did not reach a threshold for gravity, it was not known to AFP PRS before the current investigation was well underway.
24. While not every person with a substance abuse problem will go on to act unlawfully, such information can provide useful warning signs. Access to this information at an earlier stage may have enabled PRS to maintain a closer watch on Officer A's welfare and to ensure that he continued to satisfy the requirements for his position and the security clearance it required.
25. The AFP is considering processes that would enable PRS to access information about such issues so that it can inform both the AFP's management of personal factors affecting staff members, and the investigation of any later issues.
26. The AFP has a robust and mature mandatory drug testing regime, although potential vulnerabilities exist, particularly where staff members work on rostered shifts and have a number of concurrent days rostered off. Significant reform has occurred to enable drug testing to occur in a manner that is risk-based and intelligence-led. Cases like this one—whether from the AFP or other law enforcement agencies—will continue to inform drug testing policy in Commonwealth agencies.

Concluding remarks

27. I acknowledge the assistance and cooperation of the AFP during this investigation. The investigation provides an example of a mature and capable law enforcement agency working proactively with ACLEI to respond promptly and decisively to a corruption issue.
28. I also note the considerable and genuine efforts that the AFP Commissioner is making to give a focus to staff welfare in the AFP. Such attention is important in itself, and may help also to address at an early stage some of the many personal factors that can lead to corruption incidents occurring.

Michael Griffin AM
Integrity Commissioner

5 May 2017

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