



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

INVESTIGATION REPORT

**Operation Shinobi—an integrity assurance investigation relating to
officers of the Australian Criminal Intelligence Commission**

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

Report 03/2018



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* (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 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 and Water Resources.

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 that 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

Integrity principles

1. Sensitive law enforcement information about the inside activities of organised crime groups is key to disrupting the otherwise concealed illicit activities of these groups. Accordingly, such information is an important commodity—both for law enforcement to keep confidential, and for crime groups to discover.
2. ACLEI, law enforcement agencies and integrity commissions have for some time been observing a range of compromise attempts from individuals connected to criminal groups. It is part of the constant threat which must be managed by agencies that operate in high corruption risk operating environments.
3. Accordingly, when a compromise (or apparent compromise) of information is detected, law enforcement agencies seek to understand how it might have occurred, and whether further measures can be taken to protect sensitive information. Such investigations typically involve scrutinising the conduct of people who may have had access to the information, whether through direct or indirect means. The activities of possible corruptors, or ‘conduits’, are sometimes also examined.

Introduction

4. The present investigation arose from a concern that certain sensitive information from the Australian Crime Commission (ACC)—now known as the Australian Criminal Intelligence Commission (ACIC)—may have been ‘leaked’ to a significant criminal target (Mr A) in the form of a ‘tip-off’ about a specific law enforcement activity concerning him. Although other possibilities existed, the level of detail and timing was a strong indication that Mr A may have had an ‘inside’ source.
5. The issue was first raised in December 2014 through a notification to the Acting Integrity Commissioner, Mr Robert Cornall AO, by the then Chief Executive Officer of the ACIC, Mr Chris Dawson APM. While the notification identified Mr A, the identity of the ACIC officer or officers was not known. It was also possible that the officer or officers may have been from another law enforcement agency.

6. At the time, ACLEI was already dealing with a similar corruption issue from another agency, which involved Mr A. Accordingly, ACLEI commenced an investigation, which later also involved the resources of the ACIC and the Australian Federal Police.

Jurisdiction

7. The ACIC notification raised a corruption issue for the purposes of section 7 of the LEIC Act since, if proven, the conduct would have amounted to an abuse of office of the kind referred to in section 6 of that Act by a staff member of a law enforcement agency in ACLEI's jurisdiction (section 10).
8. Subsection 7(2) clarifies that ACLEI's jurisdiction is enlivened even if the identity of the person is unknown, is uncertain or is not disclosed in the allegation or information.

Investigation process

9. The joint investigation took into account:
 - (a) information obtained from external agencies about cognate investigations into the senior crime figure
 - (b) ACLEI's investigation of similar suggestions of corruption relating to Mr A and staff in two other law enforcement agencies
 - (c) scrutiny of ACIC corporate and operations records
 - (d) analysis of telecommunications metadata
 - (e) forensic accounting
 - (f) use of 'notices to produce' under section 75 of the LEIC Act, and
 - (g) private hearings conducted under section 82 of the LEIC Act.

What the investigation showed

10. A reasonably wide group of people had access to general information about law enforcement activities concerning Mr A. However, the timing and details of the information apparently leaked to Mr A helped to narrow the field of enquiry.

11. Network analysis helped to further identify a possible conduit through which the critical information could have been passed from a staff member of the ACIC to an intermediary (Person C), and thereafter to Mr A.
12. Information gathering and analysis could find no strong evidence of direct, contemporaneous contact between a staff member of the ACIC and Person C. However, given the significance of the information compromise and the linkage to other ACLEI investigations, the Integrity Commissioner conducted private hearings in order to determine if any of the ACIC staff members with access to the relevant information was responsible for the alleged disclosure.
13. The hearings also provided a means to obtain evidence on oath not attainable through other means, and to do so with the confidentiality protections of the LEIC Act (which can be encouraging to potential whistle-blowers), and the assurance that self-incriminatory information could not be used in a subsequent prosecution (section 96).
14. Collectively, the evidence of witnesses provided a comprehensive overview of the ACIC's handling of critical information about the investigation into Mr A and any possible contact between ACIC staff members and Person C, of which there appears to have been none.
15. Having regard to the evidence gathered in Operation Shinobi and cognate investigations, it is highly unlikely that the ACIC was the source of the information purportedly obtained by Mr A.

Mr A

16. There can be no doubt that criminal groups actively seek to compromise law enforcement officials. However, despite the accuracy of the information held by Mr A, there is doubt about whether he needed inside information to predict with reasonable accuracy what law enforcement actions might be underway or in contemplation. For instance, it is possible that information then circulating in the criminal milieu could have been a sufficient catalyst for Mr A to make certain deductions, and then publicise them.
17. While Mr A routinely claims to have corrupt officers working for him, it appears likely that at least some of these claims are self-promotion, designed to gain 'market advantage' as a potential conspirator with other criminal actors. On this occasion, when investigated thoroughly, those claims were found to lack substance.

Part 10 actions

18. Part 10 of the LEIC Act provides for what the Integrity Commissioner must do with evidence and information obtained during an investigation—such as providing it to a prosecuting authority, or referring it to an agency head for disciplinary action.
19. As no adverse material was identified during Operation Shinobi, no action need be taken under Part 10 of the LEIC Act.
20. Information obtained about Mr A has been disseminated to law enforcement agencies.

Findings

21. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
22. I am satisfied that no staff member of the ACIC engaged in corrupt conduct.

Concluding remarks

23. ACLEI's primary role is most often characterised as gathering information about criminal corrupt conduct, to lead to a prosecution. However, when the evidence leads to the exoneration of a person (or an agency) when integrity may have been in doubt, an important public value is also delivered.
24. I acknowledge the assistance and cooperation of ACIC staff during this investigation.

Michael Griffin AM
Integrity Commissioner

22 May 2018



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