



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

INVESTIGATION REPORT

**Operation Tone —
An investigation into a corruption issue involving
the release of sensitive law enforcement
information by an AFP member**

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



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Investigation Reports published by the Integrity Commissioner
and summaries of reports which have not been made public
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About ACLEI Reports

The Law Enforcement Integrity Commissioner Act

1. The *Law Enforcement Integrity Commissioner Act 2006* (Cth) (the 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); and
 - Department of Home Affairs (including the Australian Border Force).
3. Other Australian Government agencies with law enforcement functions may be prescribed by regulation as being within the jurisdiction of the Integrity Commissioner.¹ At present those agencies include prescribed aspects of the:
 - Department of Agriculture, Water and the Environment (DAWE);
 - The Australian Competition and Consumer Commission (ACCC);
 - The Australian Prudential Regulation Authority (APRA);
 - The Australian Securities and Investment Commission (ASIC); and
 - The Australian Taxation Office (ATO).

Corrupt conduct

4. A staff member of a law enforcement agency 'engages in corrupt conduct' if the staff member:

¹ *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.

- abuses his or her office
 - perverts the course of justice, or
 - having regard to his or her duties and powers, engages in corrupt conduct of any other kind.²
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.³
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.

² Ibid s 6(1).

³ Ibid ss 18–24 and 38.

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.⁴

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.⁵
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.⁶

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.

⁴ Ibid ss 26–30.

⁵ Ibid ss 54(1)–(2).

⁶ Ibid s 55.

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*,⁷ *Rejtek v McElroy*,⁸ and *Re Day*.⁹

⁷ (1938) 60 CLR 336, 361–62 (Dixon J).

⁸ (1965) 112 CLR 517, 521.

⁹ (2017) 91 ALJR 262, 268 [14]–[18].

Preface to the public version of Investigation Report into Operation Tone

This is a report on Operation Tone, a corruption investigation into allegations that a member of the AFP disclosed sensitive law enforcement information to the target of an investigation.

Operation Tone began in 2019 with the substantive investigative activities concluding in 2020.

Following this, I prepared my report on Operation Tone pursuant to s 54 of the LEIC Act. I undertook a procedural fairness process as required by s 51 of that Act.

On 19 July 2021, I gave the Attorney-General, the Commissioner of the AFP and the Chief Executive Officer of the ACIC my finalised report on Operation Tone in accordance with s 55 of the LEIC Act.

I then considered whether it was in the public interest to publish the investigation report under s 209 of the LEIC Act. On 25 and 26 August 2021, I notified the Commissioner of the AFP and the Chief Executive Officer of the ACIC of the proposed publication, to provide the opportunity to comment on any sensitives. This process was completed on 23 September 2021.

This is the version of the report that I have decided is in the public interest to disclose.



Jaala Hinchcliffe
Integrity Commissioner
7 October 2021

Summary of the Investigation

Referral

14. On 1 October 2019, the Australian Criminal Intelligence Commission (ACIC) made a referral to the then Integrity Commissioner, Mr Michael Griffin AM, that raised a corruption issue pursuant to s 23 of the LEIC Act.
15. The referral alleged that an unidentified AFP member had disclosed law enforcement information relating to an investigation into the importation of a commercial quantity of cocaine (the importation).
16. The investigation in relation to the importation led to the prosecution of at least one individual. It was alleged that the AFP member disclosed information to an associate, who was the lawyer acting for one of the accused. The lawyer was not named in information accompanying the allegation, but the information accompanying the referral included a description of the lawyer.

Jurisdiction

17. On 1 November 2019, the then Integrity Commissioner, Mr Michael Griffin AM, considered the referral and was satisfied the referral raised a corruption issue because:
 - a) the allegation was within ACLEI's jurisdiction because the allegation involved an AFP member, and if proved, would amount to an abuse of office by a staff member of a law enforcement agency;¹⁰
 - b) the AFP member, while unidentified, has or may have engaged in corrupt conduct;¹¹ and
 - c) that conduct may constitute a breach of secrecy provisions under the *Australian Federal Police Act 1979* (Cth), Part 5.6 of the *Criminal Code* (Cth), and a perversion of the course of justice under s 43 of the *Crimes Act 1914* (Cth).
18. On 1 November 2019, the then Integrity Commissioner decided to refer the matter to the AFP for investigation, with ACLEI neither managing nor overseeing that investigation.¹²

¹⁰ LEIC Act, s 6(1)(a).

¹¹ LEIC Act, s 7(2).

¹² LEIC Act, s 26(1)(b)(iii).

Reconsideration of referrals and commencement of Operation Tone

19. In December 2019 and January 2020, ACIC made two further referrals to ACLEI. Both referrals alleged a number of disclosures of sensitive law enforcement information by an unidentified law enforcement officer during investigations into the importation of illicit drugs and were similar to the referral of 1 October 2019.
20. Given the seriousness of the allegations, on 14 February 2020, the Integrity Commissioner reconsidered the 1 November 2019 decision and decided to investigate the matter as an ACLEI only investigation. The ACLEI corruption investigation was named Operation Tone.

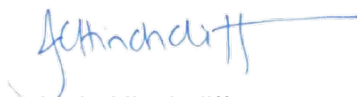
Investigation

21. In the initial stages of the investigation, the AFP confirmed there were three AFP members who had made integrity reports in relation to their contact with either the co-accused involved in the importation or their associates. All three officers were considered to have discharged their reporting duties and no further action was required.
22. AFP investigators confirmed the identities of the lawyers who appeared for the co-accused in the criminal proceedings. Of the lawyers identified, open source information was used to identify one lawyer who matched the description of the lawyer provided with the referral to ACLEI in November 2019.
23. AFP's internal investigation focused on identifying the AFP member who was allegedly an associate of that lawyer. A number of avenues of investigation were pursued, including:
 - a) reviewing Australian Electoral Commission records,
 - b) reviewing Home Affairs immigration and travel records,
 - c) reviewing Births, Deaths, Marriages and Divorces records,
 - d) an audit of AFP systems to determine whether there were any unusual or suspicious accesses of information relating to the relevant investigation or the lawyer identified above,
 - e) an email audit was conducted for all AFP outgoing and incoming emails during the period of the investigation.
24. AFP investigators were unable to verify whether an AFP member disclosed information to the lawyer. Indeed, the AFP advised that they had not received any information that would raise concerns that the operation had been compromised. This suggested that sensitive law enforcement information had not been disclosed inappropriately.

25. ACLEI investigators confirmed the checks undertaken by the AFP and conducted further checks of AFP systems relating to the accused to determine whether there was evidence to support an allegation that there had been unlawful disclosure of law enforcement information.
26. ACLEI investigators confirmed that the accused had been convicted for their role in the importation. They were sentenced to a substantial period of imprisonment. In sentencing the accused, the sentencing Judge considered, amongst other things, the accused's cooperation with law enforcement.
27. ACLEI investigators confirmed with ACIC that ACIC had no further information to provide concerning the allegation.

Findings

28. I am required under s 54 of the LEIC Act to provide my findings on a corruption issue.
29. Given there was no evidence of an unlawful disclosure having taken place in relation to the importation, I make no findings.
30. I note the seriousness of the allegations that were made, but I am satisfied that the investigation undertaken by both the AFP and ACLEI has not identified any evidence of corrupt conduct by an AFP member.
31. In this regard, I note that there was no evidence that the subject of the AFP's investigation of the importation benefited from inappropriate or unlawful disclosure of law enforcement information. Indeed, the evidence was to the contrary. They were prosecuted, convicted and sentenced for their role in the importation.
32. While I do not make any findings of corruption, I note the importance of investigating allegations such as those raised in this matter, to either identify and deal with corrupt conduct or to provide assurance that the alleged corrupt conduct has not occurred.



Jaala Hinchcliffe
Integrity Commissioner

19 July 2021