



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

Investigation Report

Operation Turner –

An investigation into whether an entity had access to a corrupt Commonwealth law enforcement staff member to assist with importations of illicit tobacco

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
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This publication should be attributed as:

Operation Turner—An investigation into whether an entity had access to a corrupt Commonwealth law enforcement staff member to assist with importations of illicit tobacco

Australian Commission for Law Enforcement Integrity, Canberra.

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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); 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)
 - Australian Competition and Consumer Commission (ACCC)
 - Australian Prudential Regulation Authority (APRA)
 - Australian Securities and Investment Commission (ASIC); and
 - Australian Taxation Office (ATO).

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
 - having regard to his or her duties and powers, engages in corrupt conduct of any other kind.
5. The Integrity Commissioner is to give priority to dealing with serious and systemic corruption.²

¹ *Law Enforcement Integrity Commissioner Act 2006* (Cth) s 5(1) (definition of 'law enforcement agency') (LEIC Act); *Law Enforcement Integrity Commissioner Regulations 2017* (Cth) s 7.

² *Ibid* s 6(1).

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.
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

³ Ibid ss 18–24 and 38.

⁴ Ibid ss 26–30.

⁵ Ibid ss 54(1)–(2).

⁶ Ibid s 55.

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*,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

14. This Investigation Report is a report on Operation Turner, a corruption investigation into whether an entity had access to a corrupt Commonwealth law enforcement staff member to assist with importations of tobacco.
15. Operation Turner commenced in 2019 with the substantive investigative activities concluding in 2020.
16. Following this, I prepared my report on Operation Turner pursuant to s 54 of the LEIC Act. I undertook a procedural fairness process as required by s 51.
17. On 21 September 2021, I gave the Attorney-General, the Secretary of the Department of Home Affairs and the Secretary of the Department of Agriculture, Water and the Environment my finalised report on Operation Turner in accordance with s 55 of the LEIC Act.
18. I then considered whether it was in the public interest to publish the Investigation Report on Operation Turner under s 209 of the LEIC Act.
19. On 5 October 2021, I notified the Secretary of the Department of Home Affairs and the Secretary of the Department of Agriculture, Water and the Environment that I was considering publishing the Investigation Report on Operation Turner, giving the opportunity to provide submissions on the proposed publication in accordance with s 210 of the LEIC Act.
20. This is the version of Investigation Report I have decided is in the public interest to disclose.



Jaala Hinchcliffe
Integrity Commissioner

10 November 2021

Summary of the Investigation

Commencement

21. On 19 November 2019, the former Integrity Commissioner, Mr Michael Griffin AM, decided to commence an investigation on his own initiative under section 38 of the LEIC Act into whether a company (Company A) or anyone associated with Company A had access to a corrupt Commonwealth law enforcement staff member to assist with importations of illicit tobacco into Melbourne.

Jurisdiction

22. On 20 November 2019, Mr Griffin wrote to the Chief Commissioner of Victoria Police, the Secretary of the Department of Home Affairs, and the Secretary of the then Department of Agriculture to inform them that during a previous investigation he had become aware of the possibility that members of Commonwealth law enforcement agencies may have corrupt associations with import companies and organised crime entities in Melbourne.
23. Mr Griffin informed those heads of agency that he decided to investigate the matter on his own initiative pursuant to sections 38(5) and 26(1) of the LEIC Act. Section 38(5) of the LEIC Act permits the investigation of a corruption issue of which the Integrity Commissioner becomes aware during the investigation of another particular corruption issue.
24. In making this decision Mr Griffin was satisfied:
 - a. The investigation was within ACLEI's jurisdiction as the potentially corrupt Commonwealth law enforcement officers may be employees of Home Affairs or the prescribed parts of the then Department of Agriculture.
 - b. The alleged conduct fell within the meaning of a 'corruption issue' as defined by section 7 of the LEIC Act. The information raised the possibility that a staff member of the Commonwealth law enforcement agency within ACLEI jurisdiction may have abused their office by improperly using their position to assist in the importation of illicit tobacco.
25. This investigation was conducted as a joint investigation with Victoria Police, Home Affairs and the Department of Agriculture, Water and the Environment (DAWE) pursuant to section 26(2) of the LEIC Act.

Investigation

26. Operation Turner was conducted jointly with a Victoria Police investigation, which targeted a known criminal entity (Mr S) suspected of being involved in illicit tobacco importation. Operation Turner investigated whether there was a corrupt Commonwealth law enforcement officer linked to Mr S or Company A.
27. Company A specialised in the domestic and international movement of unaccompanied personal effects. These imports are generally considered low risk to border security.
28. Company A held a Customs Depot licence under section 77G of the *Customs Act 1901*. Section 77G custom depot licences are issued and managed by the Australian Border Force (ABF). The licence permits the depot to accept and store 'under bond'

cargo, which is cargo still under Customs control, and provided Company A with access to the Home Affairs Integrated Cargo System (ICS).

29. Importers generally utilise s 77G Customs depots to have imported goods stored short term for unpacking and/or deconsolidation, or for short term storage. Once the goods have met legislative requirements, they are permitted to be released into the community.
30. The s 77G licence for Company A was held by a third party. The third party sold the company name for Company A to Company B. Company B was registered by Mr S and Mr S was a director of Company B, until the directorship was taken over by a family member and then an associate of Mr S.
31. DAWE completed a 'Fit and Proper Person' evaluation of personnel registered with Company B, however by that stage, Mr S was no longer a registered Director of the company, and was not included in that process.
32. While not an issue that goes to corruption of law enforcement staff members, it is important to note that Mr S had extensive criminal history for a range of different offences, which have resulted in him serving several terms of imprisonment. He also had connections to Outlaw Motorcycle gangs.
33. It is concerning that Mr S was able to use company structures and close relationships to obtain access to a s 77G custom depot licence and the ICS¹⁰.
34. The Victoria Police operation connected to Operation Turner resulted in Victoria Police charging multiple people with criminal offences.
35. Operation Turner also resulted in the seizure of illicit tobacco and the prosecution of a person for the importation and possession of illicit tobacco.
36. As part of this investigation, a number of Commonwealth law enforcement officers were investigated to determine whether they could have been providing information to the criminal syndicate. No evidence of corrupt conduct was found in relation to any Commonwealth law enforcement officer.

Action under Part 10 of the LEIC Act

37. Whilst this investigation did not identify corrupt conduct by any Commonwealth law enforcement officers, it identified integrity vulnerabilities. As a result, two information reports were produced and shared with partner agencies.
38. A DAWE inspection officer who most regularly attended the warehouse of Company A to clear imported goods from a biosecurity perspective was identified as having established overly familiar relationships with the warehouse manager. It was found that the officer was not carrying out inspections on the advice of the warehouse manager and inaccurately recording the time spent at the warehouse conducting official duties. It was also noted that the officer appeared to have a disproportionately high level of attendance at Company A with a disproportionately low level of biosecurity detections compared to other inspections staff.

¹⁰ The Department of Home Affairs has advised that Mr S was known to the ABF and the company had listed him as a previous director. His removal from the directorship was intentional by the company to ensure the licence application would not be rejected on fit or proper grounds. Licence conditions were placed on the depot licence barring Mr S from entering, interacting and being involved in the depot operations.

39. This information was disseminated to the Secretary of DAWE pursuant to section 146 of the LEIC Act.

Corruption Prevention Observation

40. This investigation revealed that there may be room for improvement in the monitoring and accountability of DAWE biosecurity inspection staff. Although there are policies and procedures governing the conduct of biosecurity inspections, there are indications that these were not always being followed at an operational level, and this has the potential to create corruption vulnerabilities.
41. For example, the DAWE 'Inspection Bookings & Client Calls Principle and Practises 2018' policy states that the DAWE Client Calls Group (CCG) will "Allocate inspection bookings to the available Inspection Services Group (ISG) workforce to ensure the inspection services are met as per the Client Service Charter." In essence, inspection staff should be allocated inspections based upon workload and a 'cab rank' approach. However, in practice, there are a variety of reasons why staff may be allocated to attend particular warehouses including due to commodity based competency and skillsets of the officers; availability of inspectors; and proximity to other premises in order to reduce travel or multiple officers attending one premises throughout a day, and thereby increasing staff efficiency. While allocation of inspections is managed independently of the work area, in this case, it resulted in the same officer regularly attending the warehouse of Company A, developing a higher degree of familiarity with the staff.
42. While familiarity comes with a benefit of understanding particular warehouse practices and procedures, it also comes with the inherent vulnerability of being taken advantage of, or pressured to overlook indiscretions. ACLEI will continue working closely with DAWE to strengthen the integrity of the biosecurity inspection processes and frameworks.
43. The investigation also revealed that a person with a significant criminal history had been able to use corporate structures and close relationships to gain access to a s 77G custom depot licence and the ICS. While it is noted that the industry access to ICS does not contain the same level of detail as the departmental access to ICS, it does enable a person to see whether the progress of a container has been delayed during the import process and whether there are further requirements which need to be satisfied in order to progress the importation of the container.
44. While recognising the complexities in managing access to ICS while maintaining a flexible and efficient import processing system, the consequences of ICS being able to be accessed by criminal entities is significant.
45. In June 2020, ABF cancelled Company A's s 77G Customs depot licence, due to multiple breaches to their licence conditions. Despite losing its s 77G licence with ABF, Company A continued to be registered with DAWE as having an "approved arrangement" pursuant to s 406(1)(a) of the *Biosecurity Act 2015* (Cth). An "approved arrangement" allows a company to manage biosecurity risks and/or perform the documentary assessment of goods in accordance with DAWE requirements, using their own sites, facilities, equipment and people. There may be opportunities for ABF and DAWE to share information concerning these arrangements to ensure that any integrity risks are appropriately and simultaneously managed across both licencing streams.

46. Although no corrupt conduct of Commonwealth law enforcement officers was identified through Operation Turner, the investigation contributed to the successful resolution of a significant Victoria Police investigation and the resolution of an ABF tobacco importation investigation.
47. In response to this report, Home Affairs and DAWE provided information on a number of initiatives that have been implemented or are being considered to address the issues raised in this report. This information is set out in attachments A and B.



Jaala Hinchcliffe
Integrity Commissioner
21 September 2021

Attachments

Attachment A – Submission by Home Affairs

A number of developments and changes have occurred since 2019-20 that address issues observed during ACLEI's investigation.

Paragraph [43] of the report identified that a person with a significant criminal history had been able to use corporate structures and close relationships to gain access to a s77G custom depot licence and the ICS.

There has been recognition of the weaknesses of the licensing regime and the Australian Border Force (ABF) is taking a number of steps which include:

- Previously, the ABF's fit and proper regime was limited to individuals in management or control positions employed by the licence holder. The ABF has imposed additional conditions now expanding the fit and proper regime to any persons that occupy the positions of management or control in a licensed place.
- The ABF is exploring the additional conditions to impose a fit and proper requirement for any person participating in the operations of a licenced place.
- The ABF is considering future enhancements to the regime, including legislative reform as part of broader border modernisation. As an immediate response, the ABF has established a national operation (JARDENA) and has dedicated resources to a joint agency taskforce (CENTINEL) which seek to identify and remove criminal threats to the supply chain.
- The ABF has the ability to impose additional conditions on licence holders to ensure compliance against the Customs Act and/or protection of the revenue.
- It must also be noted the licensing framework requires an element of procedural fairness as all decisions are appealable at the AAT

Paragraph [45] of the report identifies that there may be opportunities for ABF and DAWE to share information to ensure that any integrity risks are appropriately and simultaneously managed across both licencing streams.

The ABF has introduced new obligations on licence holders to now comply with their obligations under the Biosecurity Act 2015 and Aviation Transport Security Act 2005.

- As of 1 July 2021, the ABF has published a new Australian Customs Notice outlining a raft of updated and new obligations on licence holders
- The updated obligations put more focus on personnel integrity and enhanced physical security requirements. An example of this is additional requirements around CCTV, access controls and reporting on persons accessing the licensed place.
- The ABF is also taking a holistic approach to compliance matters where entities have multiple licences and accreditation with the Department, including joint compliance activity.

Attachment B – Submission by DAWE

The department agrees with the corruption prevention observations in the draft Investigation Report and, due to the time passed since the conclusion of this investigation, can confirm that they are broadly consistent with a program of integrity related work already underway within the department. In relation to your specific observations, we provide the following comment:

- Improved monitoring and accountability of department biosecurity inspection staff – the department recognises this vulnerability; Integrity Branch and Biosecurity Operations Division are actively implementing risk mitigation measures to reduce this vulnerability. The department has a robust framework in place for the receipt, assessment and investigation of all allegations of wrongdoing by departmental officers.
- Access to ICS by persons with criminal histories – [...] the department has robust processes in place, via Fit and Proper Person assessment processes, to assess a person’s suitability to gain access to licences and systems, including the Integrated Cargo System (ICS). The department is committed to continuing to review and evaluate the effectiveness of these assessment processes to ensure risks are appropriately mitigated.
- Information sharing between the department and the Australian Border Force (ABF)
 - In response to this observation, the department’s Compliance and Enforcement Division have advised the ability to share information with other agencies under the Biosecurity Act is limited. The department’s Audit and Assurance Group (AAG) conducts auditing of Registered Establishments (REs)/Approved Arrangements (AAs) approved under state legislation however there are no current arrangements in place to share information between the Commonwealth and the State Regulatory Authorities. The Biosecurity Act allows the department to obtain information from other agencies to perform the department’s duties under the legislation, however providing information to other agencies is quite restrictive and often limited to a biosecurity purpose. Legislative amendments to address these restrictions are currently being pursued by the department.
 - In relation to Op TURNER, more effective information sharing between ABF and the department could have enabled early identification of the criminal history of the individual and implementation of appropriate mitigation measures, including triggering a Fit and Proper Person assessment for the individual with the criminal history. Compliance and Enforcement Division have implemented processes to more effectively share information with ABF to reduce this vulnerability.
 - AAG recognise the integrity risks with sending the same auditors to the same RE/AAs. AAG have an allocation policy in place to ensure audits of RE/AAs are rotated between different auditors, where operationally possible. Further, integrity training was delivered to AAG auditors and staff by the department’s Fraud and Corruption Section in May 2021 to raise awareness and provide guidance on integrity risks specific to AAG.
- Further to the measures and initiatives outlined in specific response to ACLEI’s observations, the department has also implemented a range of broader integrity and risk management initiatives further strengthen integrity across the department, including:
 - Implementation of an Integrity Hotline and fraud and corruption mailbox to enhance internal reporting culture and enable key integrity stakeholders,

Chief Security Officer and relevant Senior Managers in Integrity, Human Resources and Security to identify and address the problematic behaviours and to conduct early interventions.

- Assessments and checks of staff member's declarations including Conflicts of Interest, Outside Employment and Gifts and Benefits.
- Delivery of face-to-face and online Integrity training and fraud and corruption risk education programs, to compliment ongoing integrity engagement with staff, to strengthen awareness of upholding appropriate work practices and policies and to provide support to staff members.
- Continued investment in the development of an integrity detections capability to proactively identify and respond to integrity related activity across the department.

The department welcomes ACLEI's offer of continuing support to strengthen our fraud and corruption framework and strategies, and we look forward to continuing to partner with ACLEI on corruption prevention.