



**Australian Government**

**Australian Commission for  
Law Enforcement Integrity**

# **INVESTIGATION REPORT**

**Operation Volker—An investigation into alleged false  
document production by a staff member of the Department  
of Agriculture and Water Resources**

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

**Report 04/2018**

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Investigation Report 04/2018—Operation Volker—An investigation into alleged false document production by staff member of the Department of Agriculture and Water Resources, Australian Commission for Law Enforcement Integrity, Canberra.

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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* (the 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. Law enforcement agencies perform roles that are fundamental to Australian society and, for that purpose, are given extensive powers and resources. The public is entitled to trust that staff members of those agencies will always act with integrity when performing its functions.
2. A staff member of a law enforcement agency who misuses his or her position for personal benefit damages the reputation of the whole agency and endangers the trust and confidence of the public in it.
3. To have this effect, a misuse of position need not be one which relates to some specific power of the agency as a law enforcement agency, but may relate to its general administration.
4. It is also incumbent upon these agencies to foresee well-known corruption risk factors and—to the extent reasonable—have mechanisms in place that can mitigate events to reduce the likelihood of serious risks manifesting.

## Introduction

5. On 29 June 2015, under section 19 of the LEIC Act, the Secretary of the Department of Agriculture—now known as the Department of Agriculture and Water Resources, and referred to in this report as the Agriculture Department—notified the Integrity Commissioner, Mr Michael Griffin AM, of a corruption issue relating to a staff member, Officer A.
6. According to the notification, the Agriculture Department had received information suggesting that Officer A had produced a false document on Departmental letterhead. This document purportedly came from an Agriculture Department Employee (Officer B), and asserted that Officer A had made a Comcare claim for a work-related injury and was expected to receive backpay for income lost.
7. On 23 July 2015, the Integrity Commissioner decided to investigate the issue jointly with the Agriculture Department, with assistance from the Australian Federal Police (AFP), pursuant to sections 26(1)(a) and 26(2) of the LEIC Act. In December 2015, following a review of the evidence, the investigation proceeded without the need for further assistance from the AFP.

## Jurisdiction

8. Officer A fell into the class of Agriculture Department employees specified by regulations<sup>1</sup> made for the purpose of section 10(2E) of the LEIC Act. The officer was therefore a ‘staff member’ of the Agriculture Department to whom the LEIC Act applies—namely persons undertaking assessments, clearance and control of vessels or cargo imported into Australia or having access to the Integrated Cargo System (a government database recording details of the movement of containers across Australia’s borders).
9. The alleged actions of Officer A 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. The allegations may also have given rise to an offence of a level that would warrant being described as ‘serious corruption’ for the purposes of the LEIC Act.

## Investigation process

10. The joint investigation took into account:
  - (a) information obtained from the Agriculture Department, including IT records
  - (b) statements and information obtained from a number of people with whom Officer A had, or purported to have had, dealings, and
  - (c) an interview with Officer A.

## What the investigation showed

### Relevant events

11. Officer A had been renting a residential property from Person C. Rental payments had fallen into arrears, and Person C had issued a notice to Officer A to leave the premises.
12. Officer A provided Person C with a letter purporting to be from a ‘Rehabilitation Officer’ with the Agriculture Department (Officer B).
13. The letter asserted that Officer A had made a workers’ compensation claim for a work-related injury that was under assessment. The letter suggested that Officer A would receive a payment of salary arrears which could be used to pay

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<sup>1</sup> Regulation 7, *Law Enforcement Integrity Commissioner Regulations 2017*.

the outstanding rent. The letter sought patience from Person C, was forwarded to Person C and to the State government agency responsible for residential tenancy disputes.

### On investigation

14. In fact, Officer A did not have a compensation claim. Officer B no longer worked at the Agriculture Department when the letter was purportedly sent, had never been a 'Rehabilitation Officer', and expressly denied signing or sending the letter.
15. Information technology records obtained by the Agriculture Department indicated that the letter was produced by Officer A at work and signed in Officer B's name.
16. In a recorded interview with ACLEI in December 2015, Officer A admitted to:
  - (a) producing the letter on Department of Agriculture equipment
  - (b) signing the letter using Officer B's name, and
  - (c) sending it to Person C and the State government agency in order to gain leniency with rental arrears. She explained that she had been under severe financial stress at the time but had been making efforts to clear the rental arrears.
17. Officer A explained to investigators the severe financial stress the officer was under at the time, as well as other efforts being made to clear the rental arrears.

### Investigation result

18. Officer A's actions constituted an abuse of office and may also have formed the basis for consideration of criminal charges. Under financial pressure, Officer A was prepared to engage in wrongful conduct that adversely affected Person C and that fell well short of the conduct reasonably expected by the Agriculture Department.
19. Despite the officer's access to systems and the presence of a financial motive and other stressors, there was no indication uncovered by the investigation that Officer A had taken any other actions that may have compromised the integrity of the Agriculture Department or its important role in safeguarding the border.

## Part 10 actions

20. 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, and referring it to an agency head for disciplinary action.

### Consideration of prosecution

21. 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.
22. ACLEI provided a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP) in February 2017. For public interest factors specific to this matter—including Officer A’s admissions and obvious remorse—the CDPP decided not to proceed with a prosecution.

### Disciplinary action

23. Section 146 of the LEIC Act 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 obligation 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.
24. During the investigation, ACLEI disseminated relevant evidence to the Secretary of the Agriculture Department. The Department suspended Officer A and subsequently terminated the officer’s employment in June 2017.

## Findings

25. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
26. The Integrity Commissioner finds that Officer A engaged in corrupt conduct.

## Observations

27. Financial stress is a well-known factor affecting an individuals' susceptibility to corruption risk as well as the propensity for them to engage in other counter-productive workplace behaviours. Such situations can also impair an individual's ability to accurately assess the likelihood of being caught and suffering a penalty—leading to a higher level of risk-taking behaviour.
28. Government (and other) entities that operate in high corruption-risk environments—like the Agriculture Department—need to take all reasonable steps to encourage their staff to come forward when they are experiencing stress and to self-report risk factors. Such mechanisms are well established in agencies such as police and the Defence forces, both as a means to meet the welfare needs of individuals and as part of an early-intervention strategy for organisations to mitigate corruption (and other) risk.
29. It is clear that Officer A was under considerable financial pressure due, largely, to circumstances outside of the officer's immediate control. Had the officer sought assistance, the Agriculture Department would have been in a position to exercise welfare options and/or remove the officer from potential risk. While I cannot know the experience in every workplace, I have every expectation and hope that such an approach would have been dealt with sympathetically, rather than as a basis for action against the individual.
30. The Agriculture Department and ACLEI are presently collaborating to design on-line integrity training for the department's staff. An open discussion of these sorts of dilemmas—for individuals, managers and entities—is crucial to setting an appropriate tone for integrity to flourish.

## Recommendations

31. The Agriculture Department, and other law enforcement agencies, should consider ensuring that staff are encouraged to report that they are under financial or other pressure. To this end, I note that in addition to established mechanisms, the Agriculture Department has advised that it recently established an Integrity Unit and a 'hotline' to facilitate early identification of issues and intervention as well as rolling-out national training designed to educate staff on corruption risks, vulnerabilities and support mechanisms.
32. Obviously, agencies should treat self-reports of financial stress or other pressure on their merits as what they are – an honest attempt to identify a problem before it occurs – rather than as a basis for action against individuals.

## Concluding remarks

33. The Integrity Commissioner recognises the AFP and the Agriculture Department for their valuable cooperation and assistance during this investigation.

**Michael Griffin AM**  
Integrity Commissioner

24 July 2018





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