



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

INVESTIGATION REPORT

**Operation Swordfish —
An investigation into the conduct of staff
members of the Department of Home Affairs
working as Locally Engaged Employees at the
Australian High Commission in New Delhi.**

*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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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);
 - Department of Home Affairs (including the Australian Border Force); and
 - prescribed aspects of the Department of Agriculture, Water and the Environment.
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:
 - Australian Competition and Consumer Commission (ACCC);
 - Australian Prudential Regulation Authority (APRA);
 - Australian Securities and Investment Commission (ASIC); and
 - Australian Taxation Office (ATO).

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.

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.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 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;
 - (b) the evidence and other material on which those findings are based;
 - (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. 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

⁴ Ibid ss 26–30.

⁵ Ibid ss 54(1)–(2).

⁶ Ibid s 55.

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 Swordfish

This is a report on Operation Swordfish, a corruption investigation into allegations that former Home Affairs staff members used their position to influence the processing of visas for a personal financial benefit.

Operation Swordfish commenced in 2018 with the substantive investigative activities concluding in 2018 and 2019.

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

On 13 April 2021, I gave the Attorney-General and the Secretary of the Department of Home Affairs my finalised report on Operation Swordfish 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 16 June 2021, I notified the Secretary of the Department of Home Affairs and the individuals referred to as 'PC', 'PG' and 'JK' in this report, that I was considering publishing this report. I gave them the opportunity to provide submissions on the proposed publication in accordance with s 210 of the LEIC Act.

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



Jaala Hinchcliffe
Integrity Commissioner
20 August 2021

Summary of the Investigation

Notification

13. On 22 November 2017, the Department of Home Affairs (Home Affairs) notified the then Integrity Commissioner (Mr Michael Griffin AM) of a corruption issue pursuant to s 19(1) of the LEIC Act. The notification alleged that a Visa Processing Officer (VPO) based at the Australian High Commission (AHC) in New Delhi, was accepting bribes in exchange for expediting visa applications (the November notification).
14. On 12 December 2017, Home Affairs notified the then Integrity Commissioner of a further corruption issue pursuant to s 19(1) of the LEIC Act. The notification alleged that an Indian based visa agent posted in online immigration forums that he is a former Department of Immigration and Border Protection (DIBP) worker who retains influence in the Department over the outcome of visa applications (the December notification).

Jurisdiction

15. On 5 January 2018, the then Acting Integrity Commissioner (Mr John Harris SC) decided to investigate the notifications pursuant to s 26(1)(a) of the LEIC Act. The November notification was registered as corruption issue number (CIN) 1168. The December notification was registered as CIN 1173.
16. On 5 January 2018, when deciding to investigate, the then Acting Integrity Commissioner was satisfied:
 - (a) The allegations were within ACLEI's jurisdiction because LEEs of Australian overseas posts attached to the then DIBP (now Home Affairs) were considered staff members of DIBP, a law enforcement agency;
 - (b) The person identified in the initial referral, PC, was a Locally Engaged Employee (LEE). The person identified in the second referral, PG, had posted in online immigration forums indicating he was a former DIBP employee; and

- (c) The allegations fell within the meaning of ‘corruption issue’ as defined by s 7 of the LEIC Act. The information raised the possibility that one or more staff members of the then DIBP may have used their position to influence the processing of visas for a financial benefit. The then Acting Integrity Commissioner was satisfied that, if such conduct was engaged in by a staff member of DIBP, that staff member may have ‘engaged in corrupt conduct’ pursuant to s 6 of the LEIC Act.¹⁰
17. On 30 January 2018, Home Affairs provided further information to ACLEI pursuant to s 21 of the LEIC Act. The information related to the conduct of PC, and JK, who also worked at the AHC in New Delhi. The information related to the handling of a Prospective Marriage visa which was allegedly created by PC outside of processing guidelines.
18. On 31 May 2018, the then Integrity Commissioner notified the Secretary of Home Affairs of his decision to reconsider CINs 1168 and 1173 and investigate both matters jointly with Home Affairs pursuant to ss 26(1)(a) and (2) of the LEIC Act.
19. CINs 1168 and 1173 were investigated in a Visa Integrity Task Force investigation named ‘Operation Swordfish’. In 2017, ACLEI established the Visa Integrity Task Force to target corrupt conduct by staff members involved in the issue of visas in various Australian and overseas posts.

¹⁰ LEIC Act s 6, as at January 2018.

Investigation

20. On 10 January 2018, PC's employment was terminated by AHC under the terms of their engagement. PC was terminated following a complaint from a client that PC had emailed from their personal email address to offer suggestions about applying for a visa. The AHC found other instances where the same email account was used to lodge visa applications, one of which PC granted outside of the processing guidelines.
21. In light of PC and JK's employment status at the onset of the investigation, the investigation objectives were to:
 - (a) Identify whether PC had corruptly processed visas at the AHC New Delhi and if any corruption was ongoing;
 - (b) Identify whether JK had assisted PC in any corrupt visa processing activities; and
 - (c) Determine if JK breached the LES Code of Conduct.
22. During the investigation the following information was obtained:
 - (a) AHC personnel files for PC and JK;
 - (b) Audit data from the Home Affairs Integrated Client Services Environment (ICSE) computer system related to system access by PC and JK;
 - (c) AHC telephone records of PC and JK;
 - (d) Audit data related to the Department of Foreign Affairs and Trade (DFAT) email accounts of PC and JK;
 - (e) Local visa-processing policies and procedures relevant to the AHC New Delhi;
 - (f) Financial records relevant to the financial activity of PC and JK; and
 - (g) Open source information, including analysis of social media accounts.
23. In December 2018, ACLEI investigators and a Home Affairs officer conducted six interviews with AHC staff in New Delhi, including with JK.
24. Also in late 2018, ACLEI sought to identify whether PC had any ongoing influence over visa processing in the AHC New Delhi, using the alias PG.

Locally Engaged Staff / Employees

25. Under the *Prime Minister's Directive: Guidelines for the Management of the Australian Government Presence Overseas*, DFAT is the managing agency overseas and the AHC in New Dehli is the legal employer of the Home Affairs Locally Engaged Staff/Employees (LES/E).¹¹
26. LES/E's managed by DFAT are obliged, as part of their conditions of service, to comply with the LES Code of Conduct in place at their post.
27. Relevant excerpts of the LES Code of Conduct applicable in 2018 to employees at the AHC New Delhi are outlined at Annexure A.
28. In addition to the LES Code of Conduct, other policies and guidelines were in place at AHC New Delhi during the period of PC and JK's employment and were circulated by email to all LES staff. These policies included:
 - (a) Instructions in relation to receiving and declaring gifts/benefits. These instructions provided that gifts and benefits should generally not be accepted, and where they are they must be disclosed.
 - (b) Professional Standards Secretary Direction dated 29 June 2015 which amongst other things stated that:

An IBP worker, who is a contractor, consultant or secondee who is not employed under the Public Service Act 1999, in connection with any work conducted for, or services provided to, the Department of Immigration and Border Protection:

- *must use Commonwealth resources in a proper manner and for a proper purpose*
- *must not improperly use inside information or their duties, status, power or authority to:*
 - *gain, or seek to gain, a personal benefit or an advantage for themselves or for any other person, or*
 - *cause, or seek to cause, detriment to the Department of Immigration and Border Protection, the Commonwealth or any other person.*

¹¹ <https://www.dfat.gov.au/about-us/publications/corporate/conduct-ethics-manual/Pages/chapter-1-about-this-manual>.

- (c) Guidance on mandatory responsibility to report corruption and serious misconduct, including specific advice emailed to staff stating that “examples of serious or corrupt activity include accepting money or other reward for assisting a visa application, disclosing secure Departmental information, or assisting individuals to bypass visa or border entry requirements for any reason”.

Visa processing at the AHC New Delhi

- 29. Home Affairs is responsible for considering and processing different types of Australian visa applications. Such types of visas include, Partner and Visitor (Tourist) visas.¹²
- 30. LEEs at AHCs, including at New Delhi, are employed by the AHC and managed by DFAT as VPOs, but are also considered staff members of Home Affairs for the purposes of the LEIC Act.
- 31. A “staff member” of Home Affairs is defined under s 10(2A) and includes “a person covered by paragraph (f) or (g) of the definition of “officer” in sub-s 5(1) of the *Migration Act 1958*. Section 5(1)(g) of that Act defines “officer” to include “...a class of persons authorised by the Minister to be officers for the purposes of this Act...” and sub-s 5(1A) requires such an authorisation to be published in the Gazette. In Gazette Instrument No. GN 1, dated 10 January 2007, the then Minister published an authorisation defining “officer” to include all persons “in the class of persons who are employed as locally engaged employees of Australian overseas posts and attached to the Department of Immigration and Multicultural Affairs (DIMA)” (now known as the Department of Home Affairs).
- 32. Visa application processing at the AHC New Delhi uses either allocation by line management or an automated system known as Work Management System (WMAN) to allocate visa applications to VPOs.
- 33. WMAN is a visa allocation tool that is integrated with the ICSE. It distributes applications from the ICSE system to teams and case officers. Ordinarily when a VPO is allocated an application in WMAN, the VPO is redirected to the application in ICSE through a hyperlink.
- 34. The AHC provided the following advice regarding the process and procedure applicable to VPOs:
 - (a) Officers are encouraged to process cases as efficiently as possible. In a practical sense, this means reviewing a case once and, if possible, finalising it at the same time. If the case is not finalised at the time of initial assessment, clear case notes should outline any outstanding items or pending action.

¹² <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing>

- (b) Clients upload documents with their application (such as evidence of funds, marriage certificate, itinerary and invitation letter), which are available online to case officers as 'attachments' to the application. There is an audit function in accessing these attachments. This shows the officer and date the attachments were accessed.
- (c) Officers are expected to assess applications within two days of being allocated a case. In the event of a backlog, cases may be assessed outside this two day window.
- (d) Officers send correspondence to clients through an automated system called Enterprise Correspondence Service, which does not provide the officer's email address. The system only displays the officer's name and position number. Therefore it would be unusual for a client to contact a case officer directly, as the case officer's information is not available to them. Applicants may communicate with the system through a group mailbox.

Corruption issue involving 'PC'

- 35. On 1 October 2014, PC was offered non-ongoing employment as an LES Immigration Assistant with the AHC New Delhi. PCHis contract was extended in 2015 and 2016.
- 36. On 1 October 2014, PC signed a letter of offer acknowledging the application of the LES Conditions of Service to employment along with an agreement to abide by the LES Code of Conduct. The letter of offer further stated he was subject to the authority of the Head of Mission and must comply with the post's Code of Conduct.
- 37. On 6 October 2014, PC signed:
 - (a) An Acknowledgment of Receipt of LES Code of Conduct Form stating that he received, read and understood the Code of Conduct Form for LES of the AHC;
 - (b) An Acknowledgment of Post Security Instructions Awareness Form stating that he had read, understood and agreed to abide by the Post Security Instructions for New Delhi Post;
 - (c) A Declaration of Secrecy Form stating that he would observe strict secrecy regarding all matters connected with their employment; and

- (d) The Code of Conduct Information for New Staff Gifts, Second Jobs Conflict of Interest and Dealing with Certain Visa Applications form. This form attached a “Do’s and Don’ts” document, which stated that he must not access records unless he had a need to access the record for immediate work, assign or re-assign cases to himself, or re-prioritise cases, unless directed to.
38. In late 2017, the AHC New Delhi were alerted to PC’s mishandling of a number of visa cases through existing fraud control measures. PC was interviewed and it was ascertained that he was aware of the procedures and directions he was required to follow, including in relation to the processing of visas, contact with clients and the use of DFAT email versus the work group mailbox. PC was unable to explain the significant departures from those directions in the cases put to him. PC was advised he was not required to attend work while a decision regarding employment under the LEE Terms and Conditions.
39. Further interrogation of PC’s DFAT email account found multiple instances where he emailed visa applicant details (including their names, application reference numbers, dates of birth and visa histories) to their personal email address.
40. Based on advice from the AHC New Delhi, ACLEI investigators focused their inquiries on four visa applications which appeared to have been inappropriately processed by PC. Details of each of the four applicants are outlined below.

‘IS’

41. Home Affairs records showed that on 28 May 2017, IS lodged a partner visa application with the AHC New Delhi. Later, on 9 August 2017, they applied for a visitor visa.
42. A full audit of ICSE found that on 6 September 2017, PC accessed IS’ Home Affairs records and continued to access the records regularly until 27 November 2017.
43. Emails provided to investigators by IS’ partner show that:
- (a) On 6 September 2017, IS received an email from a Gmail account offering to obtain IS a quick decision on their Australian partner visa application for approximately AUD \$2,000.
- (b) On 8 September 2017, a further email sent from a Gmail account to IS advised them that their visitor visa would be granted the next day and to contact the sender to assist with the Australian partner visa for a nominal fee.

- (c) On 11 September 2017, IS replied to the Gmail account seeking a contact number. The recipient replied they were, *“assuring of quick processing because I am working in the department. I have seen your visitor application and spouse (sic) application and thought of contacting you, because lot of people are not getting proper guidance and their processing time reach about 2 years. I can get the decision within 4-7 months”*.
- (d) On 11 September 2017, the Gmail account further replied to IS stating, *“I am in need of urgent money and that's why I am trying to help people who need it and in return do expect that people can help me too....I will make sure, that all the documentation is complete and as and when a case officer picks up your file, it is straight away granted.... I would ask you if you can pay me AUD 2500. No additional Charges (sic) until the decision is made....All of our communication will be based on trust and confidentiality. I will provide you enough evidences (sic) from your file and visa history to gain your trust. I am just requesting you to keep this confidential”*.
- (e) On 13 September 2017, the Gmail account emailed IS and asked for the fees to be transferred into their Axis bank account in Australia and provided the relevant bank details. The bank details were the same as a bank account used by PC.
- (f) Communication from the Gmail account to IS continued from 13 September 2017 to 17 October 2017, concerning the author's ability to access IS' file, payment for the services and the author's need for urgent money for *“property dues”*.
44. Access to PC's DFAT email account showed that on 30 October 2017, he emailed IS advising that they needed to undergo a biometrics check in relation to their visitor visa.
45. An email provided to ACLEI investigators from Home Affairs showed that on 1 November 2017, IS' visa sponsor, BS, received an email from the Gmail account stating, *“I am 20 years experienced person in Partner applications for Australia (Subclass 309), as you already have an active application 309 for your spouse, I can help you with a quick decision and guidance.... My fee is only 2500 AUD”*.
46. In an interview with ACLEI investigators, BS advised that they, had not engaged a migration agent or given details about the visa application to anyone. BS further advised they did not know how the user of the Gmail account obtained details of the visa application that they did not provide any money in response to the email received.
47. IS received a letter from DIBP dated 17 November 2017 stating that their visitor visa had been granted.

48. IS received a letter from DIBP dated 11 December 2017 requesting more information in order to process their partner visa application.
49. PC's employment ceased in January 2018.
50. IS received a letter from DIBP dated 12 February 2018 advising that their partner visa application was granted.

'TB'

51. On 17 February 2017, TB lodged an application for a partner visa. Later that year, on 20 June 2016, TB lodged an application for a visitor visa.
52. On 13 July 2016, TB's visitor visa application was refused, in part due to her having lodged an earlier partner visa application.
53. On 27 July 2016, TB's partner visa application was assessed and issues were flagged in relation to the birth certificate that had been filed. The application was referred for further action, including a site visit to verify school records that had been filed in support of the application and TB's birth certificate.
54. On 18 February 2017, TB's visa sponsor, FV, lodged a complaint with the AHC New Delhi about the length of time it had taken to process TB's partner visa application.
55. Email records show that on 2 August 2017, FV received an email from the Gmail account referred to at paragraph 43(a) above, which stated, "*Just get the form [signed] and send it to me.. I will fill rest of the details*". FV replied on 3 August 2017, "*Please find the signed form attached*". Later in the evening of 3 August 2017 the Gmail account, emailed the forms to PC's email account.
56. An audit of PC's DFAT email account found that on 4 August 2017, PC sent an AHC staff member's email address in the subject line of an email to a Yahoo email address. Further, on 9 August 2017 PC sent an email to a Yahoo account with the names of TB and FV.
57. Emails provided to investigators by the AHC in Colombo showed that on 27 August 2017, a person who identified themselves as PG, using the same Gmail account referred to at 43(a) above, emailed the AHC staff member's address, which PC sent to a Yahoo email account on 9 August 2017. The email stated the writer was a social worker writing on behalf of the visa sponsor and requested that TB's visa be processed urgently due to mental health concerns. On 7 September 2017, the Gmail account emailed a departmental email address asking for the visa application to be considered urgently.
58. Based on the ICSE audit, investigators determined that PC accessed TB's refused visitor visa on 2 August 2017 and continued to access it until 1 December 2017.

59. On 9 October 2017, FV submitted a medical letter in support of TB's visa application.
60. On 16 October 2017, FV transferred AUD \$1,500 into PC's Indian bank account.¹³
61. On 18 October 2017, a second visitor visa application was lodged on behalf of TB using PC's Gmail email. The application listed the Gmail account email associated with IS' application as the contact email address.
62. Financial records show that on 27 October 2017, FV transferred a further AUD \$500 to PC. On the same day, PC granted the visitor visa, even though the case had not been allocated to him in WMAN.
63. On 8 November 2017, the site visit report on TB was finalised and found evidence that TB was 16 years of age rather than 20 years of age, as declared on TB's partner visa application. This matter was brought to the attention of the AHC New Delhi by Colombo Post after it was discovered someone at the AHC New Delhi had granted the visitor visa application prior to the outcome of the site visit.
64. On 9 and 10 November 2017, PC was interviewed by the Senior Migration Officer in charge of Integrity at the AHC New Delhi. PC said:
 - They could not explain how he came to process the case given it wasn't allocated to him in WMAN.
 - PC said he spoke with the applicant's sponsor, FV, to confirm details concerning TB's medical report. FV advised TB was suffering from depression so PC decided to grant the case.
 - PC confirmed he did consider the previous refusal to grant a visitor visa but stated TB had submitted more documents this time to support the application.
 - PC confirmed he had reviewed the partner visa application in ICSE and had seen that a site visit had been requested. PC confirmed that a site visit meant there were serious concerns with the case and therefore it should have been referred to the Senior Migration Officer.
 - PC denied knowing TB or FV.
65. On 20 November 2017, FV transferred a further AUD \$2,000 to PC while TB's partner visa was being processed.

¹³ The bank account details PC listed in his AHC recruitment forms were the same account details in which Mr Uddin and Mr Mander transferred money to PC.

66. The AHC confirmed that the visa application lodged by TB on 18 October 2017 was assessed outside of processing guidelines with no explanation given by PC (the application was finalised on 27 October 2017, much quicker than usual given the current processing times). Further, there was a site visit request on foot due to concerns raised by the earlier visa assessment, therefore the subsequent visa application should have been refused.
67. The AHC in New Delhi subsequently advised the Australian Border Force (ABF) that a visitor visa had been granted to TB, now a suspected minor, who had travelled to Australia. On 22 November 2017, the ABF referred the matter to the AFP.

'SL'

68. ICSE records show that on 12 October 2017, SL lodged an application for an Australian visitor visa, which PC subsequently accessed.
69. PC's DFAT email records show that on 30 October 2017, he emailed SL's visa sponsor, TT, to offer assistance in processing the application and to enquire why TT had not applied for a partner visa.
70. According to ICSE records, on the same day, PC also accessed SL's visa application. PC emailed TT's contact details from their work email account to their personal Yahoo email address.
71. On 31 October 2017, PC used the Home Affairs visa system to access SL's partner's, TT's, records.
72. On 1 November 2017, TT received the following email from PC's Gmail address.:

I am [PC], case officer from Australian High Commission. I am messaging you for giving you an advise which I can not give officially, hence writing from my personal email. Requesting you don't disclose it to anyone.

What I wanted to tell you, lodging a 309 application will add weight to your application, the current visitor application is very difficult to grant because of lack of relationship proofs.

If you don't have documents ready you can still lodge the application and submit the documents as and when it is available with you.

If you are hesitant, I can lodge your partner application on your behalf in Delhi office as soon as you say it and will submit your documents as and when you collect them.

Just an FYI. I don't need any additional money for this. I just want to help couples because, I have seen many bad family situations personally due to these issues.

Email me if you have any questions.

And once again, I am just advising you, I am hoping my kindness will be repaid and you don't disclose this to anyone.

73. On 2 November 2017, PC wrote to TT using a DFAT email account to advise that they would be deciding the visitor visa application.
74. Home Affairs records confirm that on 2 November 2017, PC granted SL's visitor visa application.
75. The AHC advised that in PC's assessment of the application on 30 October 2017, he stated that he was satisfied with the evidence provided and the requirements for granting the visa were met. Consequently, the application should have been granted at the time of assessment. Further, there were no systems issues that would have caused the delay in processing.
76. PC was moved from the Visitor Section at the AHC New Delhi on 9 November 2017 and was advised not to access allocated cases.
77. On 14 December 2017, SL's sponsor, TT, lodged a partner visa application. The 'assessing officer' and 'granting officer' were listed as 'NA' in ICSE.
78. The AHC contacted TT, who advised that they had received an email from PC's official email address asking why they had not lodged a partner visa application, along with a follow up email.
79. The AHC advised that the handling of this application is a clear departure from the processing guidelines. Officers are instructed to contact applicants from the group mailbox rather than their personal work email. Further there were no case notes recorded with the application and there was no business need to ask an applicant about lodging an additional visa application.

Corruption issue involving PG

80. ACLEI investigators found from at least July 2017, the Gmail account referred to at 43(a) above posted numerous anonymous messages online offering assistance with visas processed at the AHC, New Delhi. The messages identified the poster as a former "*DIBP employee*" who offered the "*guaranteed grant*" of visas.
81. In August and September 2017, the user of that Gmail account corresponded with Home Affairs regarding the partner visa application for TB. In the correspondence, the user of the email identified themselves as, PG. They said that they were TB's social worker and requested that the application be granted quickly.

82. In September and October 2017, the Gmail account sent several emails to visa applicant IS stating they could assist with visitor and partner visa applications for approximately AUD \$2,500.
83. The first email sent from the Gmail account to IS was sent on the same day PC first accessed IS' information in the Home Affairs systems. Further, the bank details provided by the user of the Gmail account to IS were the same as an account used by PC into which FV transferred PC AUD \$4,000.
84. In January 2018 (after PC's employment was terminated), the user of the Gmail account created a website which offered assistance with Australian visas. In March 2018, three visa applications were lodged from PC that Gmail account, with that account as the application contact.

'CL'

85. Based on ICSE records, investigators determined that CL electronically lodged a visitor visa application on 12 October 2017.
86. ICSE records show that on 3 November 2017, PC granted CL's visitor visa application and on the same day he lodged a partner visa application and made a record that payment had been received.
87. The partner visa file only contained photocopies of an application, sponsorship form and passport bio-pages. There was no evidence of any payment being received (besides the note made by PC that payment had been made) and no supporting documentation. However, CL's Australian based partner and sponsor, TN, advised the AHC they, "*paid the migration charge to PC who also organised the visitor visa*".
88. PC's role did not include responsibility for creating or receiving payment for partner visa applications.
89. Financial records show that on 4 November 2017, TN transferred AUD \$2,000 into PC's bank account and a further \$3,798 AUD on 6 November 2017.
90. On 9 November 2017, CL arrived in Australia using the visitor visa granted by PC.
91. Records of PC's work emails show that on 27 November 2017, he sent CL's visa application, passport copies and photos from their work email account to a personal Yahoo account.
92. On 28 November 2017, just prior to being placed on leave for misconduct, PC left CL's paper-based visa application on JK's desk. JK worked in the team responsible for processing partner visas.

Corruption issue involving JK

93. On 10 March 2016, JK was offered temporary employment as an Immigration Assistant with the then DIBP section of the AHC New Delhi.

94. JK's letter of appointment stated:

You are subject to the authority of the Head of Mission and must comply with the post's Code of Conduct. Any breach of the post's Code of Conduct may render you liable to dismissal without notice and forfeiture of any separating entitlements. You will find attached a copy of the Code of Conduct and an Acknowledgment Receipt of the same for completion and return to the HR Section. By signing this letter you are acknowledging the application of the "India Locally Engaged Staff Terms and Conditions of Employment" to your employment along with an agreement to abide by the Code of Conduct for LES.

JK signed the letter on 11 March 2016.

95. JK also signed on 11 March 2016:

- (a) They acknowledged they read, understood and agreed to abide by the Post Security Instructions for New Delhi Post.
- (b) The Declaration of Secrecy Form, which provided that they would undertake to observe strict secrecy regarding all matters connected with their employment at the AHC.
- (c) The Acknowledgment of receipt of the LES Code of Conduct Form, which stated that they had received, read and understood the Code of Conduct Form for the LES of the AHC.

96. During the AHC's interrogation of files which were possibly inappropriately handled by PC, it was discovered that one of the files in question had been given to an Immigration Assistant in the Family Visa Team, JK.

97. The AHC alleged that on 28 November 2017, PC left a partner visa application on JK's desk. JK did not know why the file was left. They queried it with PC on 1 December 2017 and PC said he thought JK had left it with him and he was just returning it.

98. During the investigation, JK's work email account was audited. The audit identified several departmental emails that JK sent from their work email account to their personal email account.

99. Six of the emails were identified as being of a confidential nature and described various systems and processes used by Home Affairs to process Australian visa applications:

- (a) An email sent on 2 March 2017, describing the Department's Operational Integrity Systems (email one);
 - (b) An email sent on 2 March 2017, describing the process for triaging of visa applications (email two);
 - (c) An email sent on 3 March 2017, marked 'For-Official-Use-Only', describing how the AHC New Delhi could verify Punjabi marriage certificates (email three);
 - (d) An email sent on 3 March 2017, describing how the AHC New Delhi could verify tax details (email four);
 - (e) An email sent on 6 March 2017, marked 'For-Official-Use-Only', about how the AHC New Delhi could verify Indian passports (email five); and
 - (f) An email sent on 19 July 2017, marked 'For-Official-Use-Only', giving approval to waive Penal Clearance requirements for former Indian citizens under migration regulation 1.20KC (email six).
100. On 14 November 2018, the AHC to India appointed a Home Affairs officer and two ACLEI investigators to undertake an administrative investigation into JK's conduct.
101. On 10 and 14 December 2018, JK was interviewed by investigators where he said the following regarding the processing of CL's visa file:
- (a) They were working in the same building as PC and they had lunch together. PC said, "*this is a migration file, I don't know who put it on my desk but please keep it where it needs to be kept*".
 - (b) They left the file on their desk and left to go home and came back the next day and it was still on their desk because they hadn't put it in the compactus yet.
 - (c) At that time they had a number of other paper files on their desk.
 - (d) They checked the file in ICSE to see if there was any electronic notes indicating where the file belonged.
 - (e) There was no case notes in the file so they told the team leader that they got the file from PC and there were no notes. They asked what they should do with the file and their team leader said to give it to them. .
 - (f) They were later questioned about the file by their team leader where they said they didn't know anything about the file it was just given to them by PC. They admitted it was their negligence that they had left it on their desk and did not give it to their team leader earlier.

- (g) They didn't know the visa applicant and they denied doing PC a favour. They never spoke about the file with PC.
102. During the interviews they also gave the following evidence regarding the work emails sent to their email account:
- (a) They did send emails one to six from their work email account to their personal account.
 - (b) They sent 'email one' home in order to prepare for a work quiz.
 - (c) They sent 'email two' for their learning at home so they could perform well in the office and had not passed the information on to anyone.
 - (d) They could not remember why they sent 'email three' but it might have related to wanting to learn new things. They noted the link in the email was publically accessible. They said they now understood that 'For-Official-Use-Only' material was for the office only but at the time of sending the email they were new and did not know about the classification.
 - (e) They sent 'email four' so they could learn the information at home.
 - (f) They probably sent 'email five' because they had been given training on how to verify passports and it was exciting information.
 - (g) They could not remember why they sent 'email six' home.
103. JK also said that at the time of sending the emails, they were very new and very eager to perform well in the team. They said they wanted to get a permanent position and that forwarding the emails was their mistake but they never passed the information on to anyone.
104. Following JK's invitation, investigators inspected JK's personal email account on their mobile phone. There appeared to be no sent items in JKs mailbox for the month of March 2017 (the month they had forwarded five of the six emails from their work account to their personal account) indicating they hadn't provided the emails to anyone.
105. During the interview, investigators felt JK understood that departmental information, which was not publically available, should not be sent from an individual's work email to their personal email account.
106. On 15 January 2019, ACLEI investigators provided their Code of Conduct Investigation Report to the AHC to India.

107. The investigators concluded that the evidence was inconclusive in relation to whether JK had breached the LES Code of Conduct regarding handling of CL's visa file.
108. However, the investigation identified sufficient evidence to conclude on the balance of probabilities JK had breached the following element of the LES Code of Conduct:
- An employee must maintain appropriate confidentiality including about information obtained during the course of his or her employment.*
109. Specifically, investigators concluded JK breached this element of the LES Code of Conduct by sending six official Departmental emails of a confidential nature, describing various systems and processes used by the department to process Australian visa applications, from their work email account to their personal email account.
110. On 1 February 2019, JK was found by the AHC to have breached the Code of Conduct and was dismissed from employment.

Findings

111. I am required under s 54 of the LEIC Act to provide my findings on the corruption issues.
112. On the basis of the evidence and material collected and analysed in the course of Operation Swordfish I make the following findings.

Findings in relation to PC

113. Having considered the evidence, I am satisfied that PC, while a staff member of the then DIBP, now Home Affairs:
- (a) obtained visa applicant details from systems accessed in their employment;
 - (b) forwarded applicant details to their personal email addresses;
 - (c) approached applicants, and their sponsors, using a personal email addresses, a DFAT email address and an alias email address;
 - (d) offered assistance to applicants, and their sponsors, in processing their visas for a monetary amount; and

- (e) received money on at least two occasions from applicants' sponsors in connection with the processing of their visa applications.
114. I am satisfied that PC actively sought to conceal their conduct from their employers. For instance, PC assessed applications outside of normal processing procedures, contacted applicants and their sponsors using an alias email address, and in communication with applicants and their sponsors, made statements such as, "*Requesting you don't disclose it to anyone*", and, "*I am requesting you keep this confidential*".
115. PC's conduct was in clear breach of many aspects of the LES Code of Conduct and other relevant policies and procedures to which he was bound. Importantly, the LES Code of Conduct states:
- An employee must not disclose official information to any person unless authorised to do so in connection with his or her duties.*
- An employee must not misuse information obtained in connection with his or her duties, including taking advantage of another person on the basis of information held about the person in official records.*
- An employee must not make improper use of inside information, or the employee's duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for the employee, or for any other person.*
116. I am satisfied based on the evidence before me that PC was aware of the LES Code of Conduct and other relevant policies and procedures, which their actions were contrary to.
117. Having carefully considered the evidence obtained in the course of Operation Swordfish, that evidence permits me to make findings that PC engaged in corrupt conduct, namely abuse of office.
118. 'Abuse of office' is not defined in the LEIC Act. It is a concept primarily used in the context of criminal law. It generally involves using one's office to dishonestly benefit oneself or another, or to dishonestly cause detriment to another.¹⁴
119. While my findings concern corruption, not criminality, I consider these general elements expounded in the criminal law useful in considering whether a staff member of a law enforcement agency has engaged in conduct involving an 'abuse of their office'.

¹⁴ See, *Criminal Code* (Cth) s 142.2(1).

120. The evidence obtained demonstrates that PC performed their duties as a staff member of the then DIBP to dishonestly benefit himself. They did this by using their position to obtain visa applicant details, contacting visa applicants and their sponsors outside of work, and granting, or offering to grant, a number of visas in exchange for an unlawful financial benefit. On at least two occasions PC received substantial sums of money directly from visa applicants' sponsors and subsequently approved their visas, outside of policies and procedures.
121. His conduct was dishonest and deceitful. The seriousness of PC's conduct is compounded by the severe consequences resulting from the granting of TB's application and Ms CL's application:
- (a) PC approved TB's application in circumstances where TB's age was being investigated. It was subsequently determined they were a minor. As a result of the visa being granted by PC, TB travelled to Australia, prompting an AFP investigation.
 - (b) In relation to CL's visa application, the sponsor was of the understanding he paid the visa fee correctly, when in fact PC retained the money required for the processing of the visa. On this occasion, PC defrauded the Australian Government by having the visa processing fee paid to him instead of the AHC.
122. Accordingly I find that former Home Affairs staff member, PC, engaged in corrupt conduct as defined in s 6(1)(a) of the LEIC Act.

Findings in relation to PG

123. Having considered the evidence I am of the view that the name PG was either an alias used by PC, or an associate of PC.
124. On occasion, the user of an email address purported to be PG, however there is evidence before me to indicate that PCPC also used that email address.
125. In PC's 'Personal Particulars' form, signed at the beginning of his employment at the AHC, he listed a PG as a referee.
126. In any case there is no evidence to indicate that the individual using the email address had ongoing connections within the AHC resulting in the continuation of corruption following PC's dismissal.

Findings in relation to JK

127. The investigation did not find any evidence that JK colluded with PC in the granting, and offering to grant, visas in exchange for an unlawful financial benefit. Consequently, I do not make any findings that JK engaged in corrupt conduct, namely abuse of office, in relation to that matter.
128. However, JK admitted to sending six official emails from their work email account to their private email account. Therefore, for the purposes of these findings I have considered whether JK's conduct amounted to 'corruption of any other kind' pursuant to s 6(1)(c).
129. When considering the meaning of certain undefined words as contained within s 6 of the LEIC Act, I have considered the meaning of those words in the English language. In this regard, I have been assisted by the definition of corruption in the Encyclopaedic Legal Dictionary:
- ...a deliberate act of dishonesty, breach of the law, or abuse of public trust or power that undermines or is incompatible with the impartial exercise of an official's powers, authorities, duties or functions.¹⁵
130. Similarly, Gageler J in *ICAC v Cunneen* found that corruption:
- ...connotes moral impropriety in, or in relation to, public administration. It has never acquired a more precise meaning in the language of the law or in ordinary speech.¹⁶
131. The investigation did not determine any gain, financial or other, received by JK as a result of forwarding the official emails to their private account. Furthermore, while the Code of Conduct investigation determined JK was aware that forwarding work emails to their personal email account was against the internal policies and procedures, and was dismissed from their employment on that basis, it did not determine any dishonesty or moral impropriety associated with their actions. As such, I do not make any findings of corrupt conduct in relation to JK.

Action under Part 10 of the LEIC Act

132. No action in relation to the referral of briefs of evidence was taken under Part 10 of the LEIC Act due to the conduct taking place internationally and the difficulty that posed in obtaining admissible evidence.
133. PC was dismissed by AHC on 10 January 2018, a few days after ACLEI's investigation began, due to a complaint AHC received from a client.

¹⁵ Encyclopaedic Legal Dictionary, online, 2020.

¹⁶ (2015) 256 CLR 1, 32.

134. On 14 November 2018, two ACLEI investigators and a Home Affairs officer were appointed by the New Delhi Head of Mission as Investigating Officers with respect to allegations of a breach of the LES Code of Conduct against JK. Following their investigation a report was provided to DFAT on 15 January 2019, which provided the basis for JK's dismissal on 1 February 2019.
135. Consequently, material was not disseminated to Home Affairs pursuant to s 146 of the LEIC Act as PC and JK were dismissed from their positions following Code of Conduct inquiries.

Corruption Prevention Observation

136. This investigation formed part of ACLEI's Visa Integrity Taskforce (VITF).
137. An important outcome of the VITF was the dissemination of corruption prevention products, which enable the corruption issues and vulnerabilities discovered through these investigations to be learnt from and mitigated in the future.
138. These vulnerabilities included issues related to record keeping practices offshore, the amount of information recorded in electronic systems from offshore paper based visa applications, audit capability of some of Home Affairs' electronic systems, the ability to process applications outside of an assigned caseload and the documentation of escalated decisions.
139. Officers involved in the VITF from both ACLEI and Home Affairs provided briefings and anti-corruption training to both Australian-based staff and LEEs in a number of overseas posts. This training raised awareness of the integrity and corruption risks associated with visa processing and created a deterrence measure by highlighting the investigation capabilities of Home Affairs and ACLEI in relation to these matters.
140. Briefings were also provided to senior officials at various posts to enable work to be carried out to tighten processes and procedures to ensure risks are managed appropriately at a local level.
141. Since February 2019, Home Affairs has implemented a number of corruption mitigation strategies, including:
 - Revision of the Fraud and Corruption Risk Assessment to include offshore-specific controls;
 - Updates to mandatory training to include specific fraud and corruption content;
 - Development and implementation of an Offshore Network Security and Integrity Checklist; and

- Deployment of Caseload Risk and Integrity Teams in visa processing hubs to review and analyse caseload risk indicators.
142. Based on vulnerabilities identified by the VITF, Home Affairs has undertaken a comprehensive review of the Work Management tool access and operation, which has resulted in increased functionality to manage access levels. Home Affairs has also implemented enhanced management reporting to monitor staff usage of WMAN and reviewed visa processing systems to ensure that key decisions and events in these systems are logged, accessible and auditable.

Recommendations

143. I make no recommendations in relation to this investigation.



Jaala Hinchcliffe
Integrity Commissioner

13 April 2021

Annexure A

Code of Conduct Extract

An employee's personal behaviour, including his or her behaviour outside office hours, must not compromise the good reputation of Australia or the post.

An employee must behave honestly and with integrity In connection with his or her employment with the Embassy, High Commission, Consulate or Business Office.

An employee must not use his or her official position to Influence improperly or try to influence colleagues or members of the public by giving or receiving gifts or by entering into financial or other arrangements with them.

An employee, when acting in connection with his or her employment with the Embassy, High Commission, Consulate or Business Office, must treat members of the public and colleagues with respect and courtesy, and without coercion or harassment of any kind.

An employee must maintain appropriate confidentiality including about Information obtained during the course of his or her employment.

An employee must not disclose official information to any person unless authorised to do so in connection with his or her duties.

An employee must not misuse Information obtained in connection with his or her duties, including taking advantage of another person on the basis of information held about the person in official records.

An employee must use the resources of the Embassy, High Commission, Consulate or Business Office in a proper manner.

An employee must not make improper use of inside information, or the employee's duties, status, power or authority In order to gain, or seek to gain, a benefit or advantage for the employee, or for any other person, including the acceptance of gifts, benefits, sponsored travel, hospitality, accommodation, hire car costs and entertainment.

Money must never be accepted as a gift.

An employee in connection with his or her employment at the Embassy, High

An employee must not engage in deceitful actions aimed at gaining a benefit or avoiding a liability.

An employee must not engage in fraudulent conduct. This includes deceitful or other dishonest conduct, involving acts of omission or the making of false statements, orally or in writing, with the object of obtaining money or other benefit, or of evading liability, from the Embassy, High Commission, Consulate or Business Office.