



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

Investigation Report

Operation Fortescue –

An investigation into Australian Border Force Officers potentially defrauding the Commonwealth via the Tourist Refund Scheme.

A report to the Attorney-General, prepared under section 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); 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)
 - Australian Taxation Office (ATO); and
 - Office of Special Investigator (OSI).

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 Fortescue, a corruption investigation relating to Australian Border Force (ABF) officers potentially defrauding the Commonwealth via the Tourist Refund Scheme (TRS). The issues identified in Operation Fortescue resulted in Operation Drysdale, which is also the subject of an Investigation Report.
15. Both investigations concerned the administration of the TRS by officers of the ABF. Operation Fortescue commenced in 2018 and concluded in 2021 with the finalisation of criminal prosecutions against four former ABF officers.
16. Following the finalisation of two of the criminal prosecutions, I prepared my report on Operation Fortescue pursuant to s 54 of the LEIC Act. Before finalising my report, I undertook a procedural fairness process with affected persons as required by s 51.
17. On 4 August 2020, I gave the Attorney-General and Home Affairs Secretary my finalised report on Operation Fortescue in accordance with s 55 of the LEIC Act, alongside my report on Operation Drysdale.
18. As there were ongoing prosecutions arising out of Operation Fortescue, I exercised my discretion under s 54(5) of the LEIC Act to exclude information from the report relating to those prosecutions. When those prosecutions had completed, I prepared supplementary reports containing information relating to each person as required by s 54(7) of the LEIC Act. Before finalising these supplementary reports, I undertook a procedural fairness process with affected persons as required by s 51.
19. On 1 October 2020 and 3 March 2022, I gave the Attorney-General and Home Affairs Secretary my finalised supplementary reports in relation to Operation Fortescue in accordance with s 55 of the LEIC Act.
20. I also considered whether it was in the public interest to publish the Investigation Report in relation to Operation Fortescue under s 209 of the LEIC Act, inclusive of the material contained in the supplementary reports.
21. On 19 March 2021, I notified the Home Affairs Secretary and three former ABF officers that I was considering publishing my Investigation Report on Operation Fortescue, giving the opportunity to provide submissions on the proposed publication in accordance with s210 of the LEIC Act. I later notified a fourth former ABF officer of the same on 23 March 2022.
22. This is the version of Investigation Report I have decided is in the public interest to disclose.



Jaala Hinchcliffe
Integrity Commissioner

9 June 2022

Summary of the Investigation

Notifications

23. Operation Fortescue involves three separate notifications of corruption issues by the Secretary of the Department of Home Affairs (Home Affairs) to the Integrity Commissioner under s 19(1) of the LEIC Act on 15 June, 10 July, and 10 September 2018.
24. These notifications contained information identifying suspicious transactions under the Tourist Refund Scheme (TRS) associated with five separate Australian Border Force (ABF) officers. The information indicated that those officers may have defrauded the Commonwealth by knowingly processing fraudulent TRS claims in the course of their work.¹⁰

Jurisdiction

25. On 8 August 2018, the then Integrity Commissioner (Michael Griffin AM) decided to investigate the corruption issues that had been notified to that date.
26. On 19 September 2018, the then Integrity Commissioner decided to investigate the corruption issues notified subsequently.¹¹
27. In both these decisions, the then Integrity Commissioner decided to investigate the corruption issues jointly with Home Affairs. Because of the similarity of each corruption issue, the then Integrity Commissioner decided to deal with them together under a corruption investigation named 'Operation Fortescue'.¹² The then Integrity Commissioner was satisfied:
 - As Australian Public Service employees in Home Affairs, each ABF officer was a staff member of a law enforcement agency and within the Integrity Commissioner's jurisdiction;¹³ and
 - The information raised a 'corruption issue' as defined by s 7 of the LEIC Act. The information suggested that the ABF officers had been carrying out their duties with the intention of dishonestly obtaining a benefit for themselves or someone else and, in doing so, causing a detriment to the Commonwealth, thereby abusing their office.¹⁴

Investigation

Operation of the TRS

28. The TRS is an Australian Government initiative that allows international travellers departing Australia to claim a refund of the Goods and Services Tax (GST) and

¹⁰ The 15 June 2018 notification also contained two allegations related to, but distinct from, the TRS corruption issues. The then Integrity Commissioner was satisfied that one of these allegations did not raise a corruption issue and no further action was required. The then Integrity Commissioner later reconsidered how to deal with the other corruption issue notified and decided to take no further action, pursuant to s 42 of the LEIC Act.

¹¹ The then Integrity Commissioner later reconsidered how to deal with one of the corruption issues notified on 10 September 2018 and decided to take no further action, pursuant to s 42 of the LEIC Act.

¹² LEIC Act (n 1) s 28(1), as at 8 August and 19 September 2018.

¹³ Ibid s 10(2A)(c), as at 8 August and 19 September 2018.

¹⁴ See eg the offence of 'abuse of public office' in s 142.2(1) of the *Criminal Code* (Cth); LEIC Act (n 1) ss 6(1)(a) and 7(1)(a), as at 8 August and 19 September 2018.

Wine Equalisation Tax (WET) paid on goods they have purchased in, and are taking out of, Australia.

29. Home Affairs, through the ABF, administers the TRS at Australian international airports and ports on behalf of the Australian Taxation Office (ATO). A third-party company, Global Blue Australia Pty Ltd (GBA), makes payment of accepted claims.
30. A traveller departing Australia may claim in relation to goods they have purchased for \$300 or more from a retailer no more than 60 days before departure. A claimant may request that the refund be provided by cheque or transferred to a credit card or Australian bank account.
31. To claim a refund, the traveller must present the goods, original tax invoice, and their passport and boarding pass to a TRS desk. In busy or peak periods, claims may be made by completing a TRS form and depositing it in a TRS drop-box.
32. Claims are processed by ABF officers on a computer-based TRS system. The ABF Officer that processed a particular claim is identifiable by reference to the unique user ID recorded against that claim.
33. An approved claim is electronically forwarded to GBA to transfer funds to the claimant per their nominated method.

General investigative steps and conclusions

34. In the course of the investigation, ACLEI analysed information obtained through:
 - audits of Home Affairs systems;
 - notices to produce information or documents under s 75 of the LEIC Act; and
 - interviews conducted with witnesses.
 - Analysis of this information identified the following pattern:
 - numerous claims apparently made by unrelated claimants nominated the same Australian bank accounts or credit cards as the refund method;
 - these claims were typically of a kind which would not be subject to extra scrutiny under standard operating procedures, suggesting insider knowledge of Home Affairs' administration of the TRS;
 - the nominated bank accounts and credit cards were either in the name of the ABF officer who had processed the claim, or close associates of that officer.
35. The investigation confirmed that four separate ABF officers had processed claims following this pattern—two in Sydney, one in Adelaide, and one in Brisbane. Each of four officers were Irregular and Intermittent (IIE) employees of the ABF whose duties included processing TRS claims.¹⁵ Notwithstanding the similarities, no collusion was identified.
36. Investigators looked into each ABF officer to identify the particulars of their conduct.

Analysis of TRS system data and financial records

37. An analysis of TRS system data indicated a number of suspicious claims for each of the officers. Each officer had processed a number of claims involving different, ostensibly unrelated, claimants nominating the same accounts for refunds. Some of

¹⁵ An IIE is a casual, non-ongoing staff member.

the claims appeared to be structured to avoid scrutiny, suggesting insider knowledge about the operation of the TRS system.

38. An analysis of bank documents indicated that each of the accounts into which refunds for the suspicious claims were deposited were held either by the officer who had processed the claim or a person related to them. There was no suggestion that any of the nominal claimants had a relationship with the account holders to explain why these accounts were nominated.¹⁶
39. The analysis identified that the officers' approval of the claims had caused GBA to transfer funds to bank accounts held either by the approving officer or a person related to them as follows:

	Date range	Claims	Claimed	Transfers	Transferred
Officer A	12/2017–08/2018	26	\$25,554.92	25 ¹⁷	\$24,816.19
Officer B	08/2018	5	\$2,508.85	5	\$2,508.85
Officer C	04/2018–06/2018	55	\$40,774.24	55	\$40,028.79 ¹⁸
Officer D	12/2017–07/2018	18	\$72,126.73	18	\$72,126.73

Interviews

40. An interview was offered to each officer. Officers A, B and C accepted an interview while Officer D declined.

Interview with Officer A

41. Officer A made full admissions to processing fraudulent applications and directing funds to bank accounts held by him or his sons. Officer A provided the following further information:
 - He used details obtained in the course of legitimate work to make the fraudulent claims.
 - He used his knowledge of the TRS system to make claims which would be subject to less scrutiny. For those claims which would be subject to additional scrutiny, Officer A sought to obscure the fraud.
 - He initially made the fraudulent claims due to financial difficulties but then continued out of greed.
 - He had undertaken relevant training and was aware of responsibilities in relation to TRS duties.
 - He was aware that their conduct was improper and expressed remorse for those actions.

¹⁶ The TRS does not prevent a claimant from nominating that the refund be made to someone else, whether to be transferred on to the claimant or not. For example, it would be open to a claimant to nominate that the refund be directed to a family member or associate, for convenience or otherwise.

¹⁷ An approval for a refund of \$738.73 had incorrect bank account details and payment could not be made.

¹⁸ One payment of \$745.45 was successfully recalled by GBA.

Interview with Officer B

42. Officer B made full admissions to processing fraudulent applications and directing funds to the account. Officer B provided the following further information:
- He used details obtained in the course of legitimate work to make the fraudulent claims.
 - He used his knowledge of the TRS system to make claims which would be subject to less scrutiny.
 - He made the fraudulent claims to pay off debts and stopped once these had been paid off.
 - He was aware that the conduct was improper.

Interview with Officer C

43. Officer C provided the following information:
- He confirmed holding bank accounts with the relevant institutions but could not recall the account numbers—he declined to confirm the account numbers when asked;
 - He confirmed that they had access to the TRS system to process claims and had not shared their password or login details with anyone;
 - He indicated no knowledge of 50 persons who had ostensibly made TRS claims and directed refunds to bank accounts held by him;
 - He denied having made a TRS claim and denied knowledge of any refunds being directed to his bank accounts;
 - He declined to comment on a spreadsheet of TRS claims he had processed that directed refunds to the relevant bank accounts.

Cessation of employment and criminal prosecution

44. Following the interviews, Home Affairs exercised its discretion to cease offering shifts to each of the officers in accordance with the nature of their engagement as an IIE. Each of the officers' contract later expired and was not extended.
45. Each officer was subject to criminal prosecution for their conduct. Each pled guilty to obtaining a financial advantage by deception under s 134.2(1) of the *Criminal Code* (Cth).
46. Prior to sentencing, Officers A and C respectively repaid the \$24,816.19 and \$40,028.79 they had fraudulently obtained from the Commonwealth.
47. The sentencing outcomes are outlined in the following table:

	Date of sentence	Sentence
Officer A	22 November 2019	20 months imprisonment to be served by way of an Intensive Correction Order, required to complete 160 hours community service.
Officer B	12 December 2019	Five months imprisonment, to be released immediately upon entering a recognizance of \$200 to be of good behaviour for two years, ordered to repay the \$2,508.85 fraudulently obtained from the Commonwealth.

	Date of sentence	Sentence
Officer C	14 September 2020	18 months imprisonment, to be released immediately upon entering a recognizance of \$5,000 to be of good behaviour for 3 years on the condition that subject to the supervision of a probation officer for 12 months.
Officer D	14 December 2021	2 years imprisonment to be served by way of an Intensive Corrections Order.

Findings

48. I am satisfied that evidence obtained in the course of Operation Fortescue permits me to make findings that staff members of Home Affairs have engaged in corrupt conduct, namely abuse of office.¹⁹
49. '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.²⁰
50. 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'.
51. The evidence obtained demonstrates that Officers A, B, C and D each performed their duties as an ABF officer to dishonestly benefit themselves and cause detriment to the Commonwealth.
52. They did this by knowingly making and approving fraudulent claims in the course of their TRS processing duties, nominating bank accounts held by them or a person related to them. As a result of those fraudulent claims, they obtained a financial benefit for themselves or another and simultaneously caused a financial detriment to the Commonwealth.
53. I am therefore satisfied that each of the former ABF officers referenced in this report —Officers A, B, C and D—engaged in corrupt conduct as defined in s 6 of the LEIC Act.

Action under Part 10 of the LEIC Act

54. The former Integrity Commissioner referred four briefs of evidence to the Commonwealth Director of Public Prosecutions (CDPP) in relation to Operation Fortescue.
55. As referrals have been made in relation to all relevant ABF officers, I do not propose to take any further action under Part 10.

¹⁹ LEIC Act (n 1) s 6(1)(a).

²⁰ See eg *Criminal Code* (Cth) s 142.2(1).

Corruption Prevention Observation

56. On 11 February 2019, the then Integrity Commissioner decided to conduct a thorough investigation of the TRS as a result of the information obtained in Operation Fortescue. That investigation was called 'Operation Drysdale'.
57. Operation Drysdale is now complete and an investigation report has been prepared.²¹ In that report, I have made observations and recommendations that are directly applicable to Operation Fortescue.

A handwritten signature in black ink, appearing to read 'Jaala Hinchcliffe', with a long horizontal stroke extending to the right.

Jaala Hinchcliffe
Integrity Commissioner

²¹ Operation Drysdale—An investigation into corruption risks in the administration of the Tourist Refund Scheme by Australian Border Force officers.