

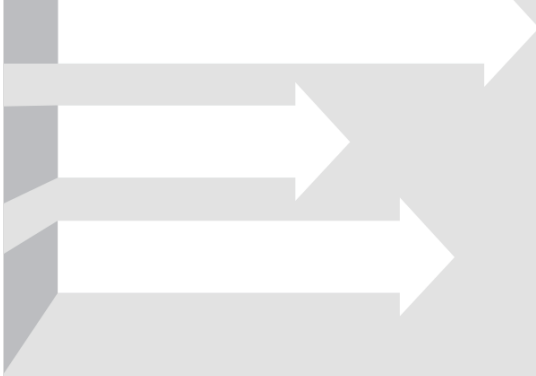


Australian Government
**Australian Commission for
Law Enforcement Integrity**

INVESTIGATION REPORT

**Operation Zelinsky —
An investigation into corruption issues relating to
external business interests of a Department of
Agriculture staff member.**

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



Enquiries about this report can be directed to the
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About ACLEI Reports

The Law Enforcement Integrity Commissioner Act

1. The *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act) establishes the office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity (ACLEI).

The role of the Integrity Commissioner and ACLEI

2. The role of the Integrity Commissioner and ACLEI is to detect and prevent corrupt conduct and deal with corruption issues in designated agencies—presently the:
 - Australian Criminal Intelligence Commission (including the former Australian Crime Commission, the former National Crime Authority and the former CrimTrac Agency);
 - Australian Federal Police (including ACT Policing);
 - Australian Transaction Reports and Analysis Centre (AUSTRAC); and
 - Department of Home Affairs (including the Australian Border Force).
3. Other Australian Government agencies with law enforcement functions may be prescribed by regulation as being within the jurisdiction of the Integrity Commissioner.¹ At present those agencies include:
 - prescribed aspects of the Department of Agriculture, Water and the Environment (DAWE)
 - Australian Competition and Consumer Commission (ACCC)
 - Australian Prudential Regulation Authority (APRA)
 - Australian Securities and Investment Commission (ASIC); and
 - Australian Taxation Office (ATO).

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 LEIC Act, s 6(1).

³ Ibid ss 18–24 and 38.

8. The Integrity Commissioner can decide to manage or oversee any investigation that has been referred to a law enforcement agency. If the law enforcement agency were not the Australian Federal Police (AFP), the Integrity Commissioner can also refer the issue to the AFP for investigation and may manage or oversee that investigation.⁴

Reports

9. After completing a corruption investigation, the Integrity Commissioner must prepare a report setting out:
 - (a) the Integrity Commissioner's findings on the corruption issue; and
 - (b) the evidence and other material on which those findings are based; and
 - (c) any action that the Integrity Commissioner has taken, or proposes to take, under Part 10 in relation to the investigation; and
 - (d) any recommendations that the Integrity Commissioner thinks fit to make and, if recommendations are made, the reasons for those recommendations.⁵
10. The Integrity Commissioner must give the report on the investigation to the Minister who administers the LEIC Act and a copy to the head of the law enforcement agency to which the corruption issue relates.⁶

Standard of proof

11. The Integrity Commissioner makes findings about whether a person has engaged in corrupt conduct, based on the balance of probabilities. Those findings may not be the same as those that would be made by a court deciding on criminal guilt beyond a reasonable doubt.
12. Before making a finding, the Integrity Commissioner is required to be 'reasonably satisfied', based on relevant facts, that the corrupt conduct occurred and that the corrupt conduct was within the meaning of the LEIC Act.

⁴ Ibid ss 26–30.

⁵ LEIC Act, sub paragraphs 54(1)–(2).

⁶ Ibid s 55.

13. In considering whether or not the Integrity Commissioner is ‘reasonably satisfied’ of relevant facts, the Integrity Commissioner applies the reasoning set out in *Briginshaw v Briginshaw*,⁷ *Rejcek v McElroy*,⁸ and *Re Day*.⁹


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

⁸ (1965) 112 CLR 517, 521.

⁹ (2017) 91 ALJR 262, 268 [14]–[18].

Preface to the public version of Investigation Report into Operation Zelinsky

14. This is a report on Operation Zelinsky, a corruption investigation into an allegation that a former officer of the then Department of Agriculture and Water Resources used his position to improperly benefit a Company.
15. Operation Zelinsky commenced in 2017 with the substantive investigative activities concluding in 2020.
16. Following this, I prepared my report on Operation Zelinsky pursuant to s 54 of the LEIC Act. I undertook a procedural fairness process as required by s 51.
17. On 21 June 2021, I gave the Attorney-General, the Secretary of DAWE and the Commissioner of the AFP my finalised report on Operation Zelinsky in accordance with s 55 of the LEIC Act.
18. I then considered whether it was in the public interest to publish the investigation report under s 209 of the LEIC Act.
19. On 16 July 2021, I notified the Secretary of DAWE and the individual referred to in this report, that I was considering publishing the report. I gave them the opportunity to provide submissions on the proposed publication in accordance with s 210 of the LEIC Act.
20. This is the version of the report that I have decided is in the public interest to disclose.



Jaala Hinchcliffe
Integrity Commissioner

26 August 2021

Summary of the Investigation

Referral

21. On 3 April 2017, the AFP referred information to ACLEI relating to travel to China undertaken by a member of an outlaw motorcycle gang (OMCG) with a Department of Agriculture and Water Resources officer, Mr Jarrod Entwistle. The AFP noted that, while the relationship between the OMCG member and Mr Entwistle was unclear, there was reporting that they were involved in a business venture importing building materials from China.

Jurisdiction

22. On 9 May 2017, the then Integrity Commissioner (Mr Michael Griffin, AM) considered this referral and decided to investigate the matter. On the same day correspondence was sent to both the Secretary of the Department of Agriculture and Water Resources (the Department of Agriculture) and the AFP Commissioner to inform them that he had considered the referral by the AFP and decided to investigate the matter pursuant to s 26(1)(a) of the LEIC Act. The investigation was named 'Operation Zelinsky'.
23. The then Integrity Commissioner was satisfied:
 - (a) The referral was within ACLEI's jurisdiction because the employee of the Department of Agriculture named in the referral was engaged as a quarantine officer. At the time of the notification, a staff member of the Department of Agriculture performing these duties was a staff member of a law enforcement agency.¹⁰
 - (b) The allegation fell within the meaning of 'corruption issue' as defined by s 7 of the LEIC Act. The information raised the possibility that a staff member of the Department of Agriculture may have abused their office by improperly using their position to assist in the importation of material from China.
24. On 31 October 2017, the then Integrity Commissioner reconsidered the matter under section 42 of the LEIC Act and the matter became a joint investigation with the AFP.

¹⁰ LEIC Act ss 5(1) and 10(2E).

25. On 19 April 2018, the then Integrity Commissioner again reconsidered the matter under section 42 of the LEIC Act and joined the Department of Agriculture to the investigation.

Investigation

26. The objective of the investigation was to determine if Mr Entwistle had abused his office as a staff member of the Department of Agriculture by using his position to assist with the importation of material from China.
27. An array of law enforcement methods were used in the investigation, including:
- (a) reviewing official records;
 - (b) reviewing financial information;
 - (c) conducting company searches;
 - (d) information obtained under the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act);
 - (e) physical surveillance;
 - (f) search warrants;
 - (g) interviews with witnesses; and
 - (h) information provided under caution.
28. Mr Entwistle commenced employment with the Department of Agriculture on 29 June 2009. During the relevant period, Mr Entwistle was a supervisor in a team that assess information about importations into Australia that are valued under \$1000 to determine whether the material can be cleared without a quarantine inspection or whether a formal inspection or more information is required. In order to carry out this role, Mr Entwistle had access to the Integrated Cargo System (ICS), which is an electronic cargo management system managed by the Department of Home Affairs. As with all government users of ICS, Mr Entwistle accessed ICS using a unique user identification and password.
29. The investigation identified that Mr Entwistle was connected to Company A and travelled to China with one of the company's directors, Mr X. Company A was involved in importing building products, primarily form plywood, from China.

30. While Mr Entwistle was not an office holder of Company A, the investigation identified that he had significant involvement with the company, including conducting financial transactions on behalf of the company and being in possession of business documents that related to profit calculations, supply of material from Company A to other companies and price and expense estimates and calculations. He also conducted numerous unauthorised accesses in ICS in order to track Company A's consignments and obtain information about competitors.
31. Mr Entwistle did not declare his business interest in Company A to the Department of Agriculture while he was an employee of the department.

Unauthorised accesses to restricted information

32. The investigation identified that between 24 April 2016 and 10 October 2017, Mr Entwistle made 220 unauthorised accesses to information in departmental systems, in particular ICS, that Mr Entwistle had no legitimate reason to access.
33. The unauthorised accesses fell into three categories.
34. The first category was unauthorised access to information about consignments imported into Australia by competitors of Company A. In accessing this information, Mr Entwistle gained access to confidential commercial information in relation to Company A's competitors, including information contained in final import declarations and invoices. On some occasions, Mr Entwistle photographed this information and shared it with a WhatsApp group that he was a member of with Mr X and Mr Y, the other director of Company A.
35. In relation to six accesses, Mr Entwistle used information he obtained from ICS about a competitor of Company A's to make his own calculations for the supply of material on behalf of Company A. Each of these accesses to information was for the benefit of Company A, not for the purposes of Mr Entwistle's role with the Department of Agriculture.
36. The second category of unauthorised accesses was to information relating to Company A's shipments or to consignments of Company A's suppliers. These accesses enabled Mr Entwistle to track these consignments to enable them to be cleared quickly¹¹. This benefited Company A as it meant less storage costs and the quicker delivery of products.
37. In relation to one of Company A's importations, some of the product was found to be damaged. Mr Entwistle used his position as an officer of the Department of Agriculture to have the consignment cleared quickly. He was also tasked by Mr Y to provide assistance in having the consignments that contained the damaged imports returned and to avoid shipping and customs costs.

¹¹ For example, see paragraphs 33-34.

38. The investigation identified that Mr Entwistle was in communication with Company A's directors at various times, both before and after making these unauthorised systems accesses.
39. The third category of unauthorised accesses was of information relating to a consignment containing hemp seed oil connected to an associate of Mr Y. Mr Entwistle made six accesses on 10 October 2017 to restricted data in relation to this consignment, which had a hold placed on it.
40. Mr Entwistle had a number of conversations with Mr Y about the consignment and provided information relating to how it could be released including the person who needed to be contacted, what documents needed to be submitted and how to change customs broker.

Use of position as supervisor to have Company A consignment released

41. On 19 May 2017, a Company A consignment arrived in Australia from China containing scaffolding accessories. A hold was placed on the consignment due to a potential biosecurity risk. Between 25 May and 6 June 2017, Mr Entwistle made 74 unauthorised accesses to ICS relating to the consignment. During this period he also had multiple conversations with Company A's directors. Mr Entwistle was also in contact with a transport company in relation to the hold on the consignment.
42. On 2 June 2017, Mr Entwistle asked one of his staff members to clear the consignment, saying words to the effect of "this is my mate's consignment and I don't want to touch it". The member did so and entered information into the comments section of the ICS profile for the consignment saying, "advised by supervisor Jarrod Entwistle, research on internet, low risk items, released..." A short time later, Mr Entwistle accessed the consignment and amended the comments to remove reference to his involvement in the clearance.
43. In using his position to have this consignment cleared quickly, Mr Entwistle benefited Company A in relation to storage costs and enabling Company A to promptly receive its goods to advance its own business purposes.

Evidence of a potential personal benefit to Mr Entwistle

44. The investigation also obtained evidence that Mr Entwistle was to obtain a direct personal benefit once Company A's consignments were delivered, although this did not eventuate.
45. On 8 and 30 August 2017, Mr Entwistle had a conversation with a personal contact about safe arrival of the containers and that he was going to get paid. During the conversations Mr Entwistle also said, 'I don't want to do this anymore. I just feel corrupted, you know?'
46. On 9 September 2017, in a conversation between Mr Entwistle and the directors

of Company A, Mr X said “don’t get anyone involved in our business, let’s just keep it me, you and Mr Y” and “you’re a partner”.

Execution of search warrants

47. On 13 December 2017, the AFP executed search warrants on Mr Entwistle, his residence and his vehicle with the assistance of ACLEI officers. Simultaneously, ACLEI officers executed a search warrant on Mr Entwistle’s work areas within the Department of Agriculture.
48. During the course of the search warrant executed at Mr Entwistle’s residence, Mr Entwistle made the following statements under caution:
 - He knew Mr X and Mr Y, and they are friends of his who own a business;
 - That he came into possession of import documentation (found at the search warrant premises) through Mr X and Mr Y;
 - Because of Mr Entwistle’s employment, he looked at the documents to confirm they were the required documents. He then provided advice to Company A on what their broker should do and the type of documents required;
 - That he did not receive a benefit providing this information;
 - That he was looking to leave the department and start a business, or go into business with Mr X and Mr Y, which is why he travelled to China;
 - He had no involvement in Company A, or interest in scaffolding or related business interests; and
 - That he did not know anything about Mr X’s background or if he had a criminal background.
49. Mr Entwistle was suspended from duty by the Department of Agriculture on 13 December 2017 and resigned from his position on 19 November 2018.

Prosecution

50. Mr Entwistle pleaded guilty to a charge of abuse of public office between 24 April 2016 and 10 October 2017 contrary to s 142.2(1) of the Criminal Code (Cth) (Maximum penalty: 5 years imprisonment).

51. On 26 March 2021, Mr Entwistle was convicted and sentenced to 1 year and 11 months imprisonment to be served by way of an Intensive Corrections Order with a condition requiring the completion of 500 hours community service work. Mr Entwistle was also ordered to pay a fine of \$10,000. The sentencing Judge remarked, if it were not for Mr Entwistle's good character evidenced by military service, the sentence would have been a full-time custodial sentence.

Findings

52. I am satisfied that the evidence obtained in the course of Operation Zelinsky permits me to make findings that Mr Entwistle engaged in corrupt conduct, namely, abuse of office.¹²
53. '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.¹³
54. 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'.
55. The evidence demonstrates that Mr Entwistle used his position to benefit Company A, both in terms of obtaining confidential commercial information about Company A's competitors and to enable the release and clearance of Company A's consignments quickly, so as to avoid costs and to enable prompt delivery of Company A's products.
56. The evidence also indicates that Mr Entwistle was to be paid once Company A's consignments were delivered, and was expecting to obtain a direct personal benefit as a result of the unauthorised accesses, although this personal benefit did not eventuate.
57. There are three particular matters that I wish to draw attention to in my considerations. The first is that Mr Entwistle was clearly heavily involved in the running of Company A and was in regular contact with the directors. He did not declare this interest in Company A to the Department, instead he used his position to benefit Company A. By his own admission, he knew that what he was doing was wrong and could land him in gaol.

¹² LEIC Act (n 1) s 6(1)(a)

¹³ See eg *Criminal Code* (Cth) s 142.2(1).

58. The second is that Mr Entwistle used his role as a supervisor to put pressure on a staff member to clear a consignment for Company A in an attempt to protect himself. This is a clear breach of duties as an officer of the Department of Agriculture and a breach of trust that was put in him in promoting him to the role of supervisor.
59. The third is that Mr Entwistle used his role to access confidential commercial information that had been provided by other companies to the Department of Agriculture in relation to their importations, in order to calculate costs for Company A, and provide Company A with a competitive edge it would not otherwise have had. This was a significant breach of the trust provided to Mr Entwistle in the access to departmental systems that he had been given. If this corruption issue had not been promptly detected and investigated, Mr Entwistle's actions could have led to a diminishing in trust in the security of this type of commercial information held by the Department of Agriculture.
60. I am therefore satisfied Mr Entwistle engaged in corrupt conduct as defined in s 6(1)(a) of the LEIC Act, while he was the staff member of a law enforcement agency, the Department of Agriculture.

Action under Part 10 of the LEIC Act

61. On 16 November 2018, ACLEI submitted a brief of evidence in relation to Mr Entwistle to the CDPP for consideration of prosecution action under section 142 of the LEIC Act.
62. The nature of the joint investigation with the Department of Agriculture meant that the Department had access to the material collected in this investigation. As a result, no action was undertaken under section 146 of the LEIC Act.

Corruption prevention observation

63. The conduct investigated in Operation Zelinsky was identified through travel the law enforcement officer undertook with a member of an OMCG, rather than through the identification of the unauthorised accesses to the departmental systems undertaken by Mr Entwistle. In this regard, by the time ACLEI was notified of the potential corruption issue, Mr Entwistle had already engaged in 120 unauthorised accesses to departmental systems for the benefit of Company A.

64. It is important that agencies that have access to sensitive and/or valuable information have in place policies and procedures that support the operational security of that information. Such practices can include, but are not limited to, regular auditing of accesses to those systems or databases to identify any instances of access that is not for a legitimate purpose. Where IT systems are used across multiple agencies, for example the ICS, auditing may need to be undertaken by multiple agencies, to ensure that unauthorised accesses are identified.
65. A concerning aspect of this investigation was the request that Mr Entwistle made of one of his staff members to clear a consignment for him. While the staff member recorded in the system that the consignment was cleared on Mr Entwistle's request, that record was later able to be, and was, deleted by Mr Entwistle. As previously discussed in ACLEI investigation reports, a characteristic of a healthy integrity culture is an understanding by staff members of integrity-related issues and the reporting of them. Recognising that in this case a power imbalance existed, with a supervisor requesting a more junior officer to clear a consignment, agencies should ensure that mechanisms to report integrity issues are clear, easy to access and available to all staff.
66. Finally, this investigation highlights the importance of early intervention in corruption prevention, for example through the use of policies and processes in relation to the declaration of associations – particularly associations with criminal entities. While being associated with a criminal entity is not in of itself corrupt, it increases the risk of grooming and/or exploitation. Declaration enables both adequate and independent assessment and oversight over the length of the staff member's employment.
67. More information on corruption risks and prevention opportunities related to this investigation such as the unlawful disclosure of information, grooming and early intervention, is available in the Corruption Prevention resources section of the ACLEI website: <https://www.aclei.gov.au/corruption-prevention>.
68. In response to a draft of this report, the Department of Agriculture advised that they have implemented changes to user access and controls for the import management system (AIMS) and the Integrated Cargo System (ICS) to address vulnerabilities identified in this matter including:
- (a) Implementation of an online access request form with supervisor confirmation of eligibility for access for AIMS and ICS user access
 - (b) Routine auditing of eligibility for systems access conducted by the department's Information Services Division; and
 - (c) Implementation of the capability to audit user activity.

Recommendations

69. I do not make any recommendations as a result of this corruption investigation.



Jaala Hinchcliffe
Integrity Commissioner
21 June 2021