



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

# INVESTIGATION REPORT

## ***Operation Barden: An investigation into the supervision by the Australian Federal Police of a traveller with internally-secreted drugs***

A report to the Minister for Justice,  
under section 55 of the *Law Enforcement Integrity Commissioner Act 2006*

REPORT 04/2014

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# ABOUT ACLEI REPORTS

## INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER

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### *THE LAW ENFORCEMENT INTEGRITY COMMISSIONER ACT 2006*

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The *Law Enforcement Integrity Commissioner Act 2006* establishes the office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity.

### *THE ROLE OF THE INTEGRITY COMMISSIONER AND ACLEI*

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The role of the Integrity Commissioner and ACLEI is to detect and prevent corrupt conduct and investigate corruption issues, in designated agencies—presently the:

- Australian Crime Commission (and the former National Crime Authority)
- Australian Customs and Border Protection Service
- Australian Federal Police
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- CrimTrac Agency, and
- prescribed aspects of the Department of Agriculture.

Other Australian Government agencies with law enforcement functions may be prescribed by regulation as coming within the jurisdiction of the Integrity Commissioner.

### *CORRUPT CONDUCT*

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‘Corrupt conduct’ is when a staff member of a law enforcement agency:

- abuses his or her office
- perverts the course of justice, or
- having regard to his or her duties and powers, otherwise engages in corruption.

The Integrity Commissioner is to give priority to dealing with serious corruption and systemic corruption.

### *DEALING WITH CORRUPTION ISSUES*

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A corruption investigation, conducted by ACLEI, can commence in different ways.

- The Minister may refer to the Integrity Commissioner an allegation or information that raises a corruption issue.

- The head of a law enforcement agency within ACLEI's jurisdiction must notify the Integrity Commissioner of any allegation or information that raises a corruption issue which relates to that agency.
- Any person or government agency (eg the Commonwealth Ombudsman) 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. A person in custody can make a referral by a secure communication channel.
- The Integrity Commissioner can commence an investigation on his or her own initiative.

The Integrity Commissioner may decide to: have ACLEI investigate a corruption issue; allow a law enforcement agency to conduct its own investigation; conduct a joint investigation with a law enforcement agency; or decide that an investigation is not warranted. The Integrity Commissioner can manage or oversee an investigation that has been referred to a law enforcement agency. If the law enforcement agency were not the AFP, the Integrity Commissioner can refer the issue to the AFP for investigation and may manage or oversee that investigation.

An allegation concerning an employee of a State or Territory agency (the home agency), seconded to an Australian Government law enforcement agency, can be referred to the home agency or to the relevant State or Territory police force/service or integrity agency for investigation. A joint investigation can also be undertaken by ACLEI and that agency.

### *INVESTIGATION POWERS*

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When conducting an investigation, the Integrity Commissioner can:

- issue a summons or notice, requiring law enforcement personnel and other people to provide information and documents
- obtain and execute a search warrant, and
- obtain a warrant to intercept telecommunications or conduct other electronic surveillance.

### *HEARINGS*

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The Integrity Commissioner may conduct a hearing for the purposes of a corruption investigation. A hearing, or part of a hearing, may be conducted in public or in private.

The word 'hearing' as used in the LEIC Act, has no significance other than to describe a process whereby the Integrity Commissioner may gather information and evidence, and exercise certain coercive powers, for the purposes of an investigation. The purpose of a hearing is not to decide an issue, but to progress an investigation by assisting the Integrity Commissioner to discover facts that may lead to further action being taken.

## STANDARD OF PROOF

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The Integrity Commissioner makes findings about whether a person has engaged in corrupt conduct, based on the balance of probabilities. Those findings may not be the same as those that would be made by a court deciding on criminal guilt beyond a reasonable doubt.

Before making a finding, the Integrity Commissioner requires comfortable satisfaction, based on real evidence, that conduct occurred which fell within the meaning of the LEIC Act. This approach applies the reasoning of the High Court of Australia in *Briginshaw v Briginshaw* [1938] HCA 34 (per Dixon and Rich JJ) and *Neat Holdings P/L v Karajan Holdings P/L* [1992] HCA 66.

## GRADES OF CORRUPTION

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The relevant provisions of the LEIC Act are based on the Integrity Commissioner's finding on a single question—did a person engage in corrupt conduct? While all corrupt conduct is wrong and should be eliminated, some instances are less grave than others in terms of, for example, motives, pre-meditation and planning, concealment and deceptive conduct, corrupt collaboration, the effects on public confidence in the law enforcement agency, the effect on other agency staff and the steps required to rectify the problem.

The Integrity Commissioner may reflect on this question of relative gravity in a report.

## REPORTING

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The LEIC Act establishes the means by which the Integrity Commissioner may report to the Minister or to members of the public about issues related to the performance of his or her functions.

For instance, investigations conducted by the Integrity Commissioner may culminate in a report prepared under section 54 of the LEIC Act. The Integrity Commissioner's report must be given to the Minister and to the head of the relevant law enforcement agency.

If a public hearing were held, the LEIC Act requires the Minister to present the Integrity Commissioner's report to both Houses of Parliament within 15 sitting days of receiving it. It follows that a report of a public inquiry requested by the Minister must also be presented to Parliament by the Minister.

In addition, if the Integrity Commissioner were satisfied that it is in the public interest to do so, he or she may publish information.

When a report is to be tabled in Parliament, or otherwise published, the Integrity Commissioner must exclude information covered by a certificate issued by the Attorney-General under section 149 of the LEIC Act.

The Integrity Commissioner may exclude other information from a report if the Integrity Commissioner were satisfied that it is desirable to do so. In coming to a decision, the Integrity Commissioner must seek to achieve an appropriate balance between the public interest that would be served by including the information in the report and the prejudicial consequences that might result from that disclosure.

# THE INVESTIGATION



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## INTEGRITY PRINCIPLE

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1. In the course of their duties, law enforcement officials can have ready access to items—such as seized illicit drugs—that are portable and valuable and which the owner may be keen to discard or disown. This situation creates an opportunity for corrupt conduct to occur—whether by theft, intimidation or agreement—and not be reported.
2. One protection an agency can employ against concerns arising from this prospect is to have well developed procedures that reduce the opportunity for corrupt conduct to occur undetected. The best protection for staff members is to follow those procedures meticulously.
3. The present case serves as an example in which an agency and its staff acted correctly in bringing to attention what appeared to be suspicious events; and in which subsequent investigation was able to allay those suspicions.

## BACKGROUND

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4. On 23 April 2014, the Acting Commissioner of the Australian Federal Police notified the Integrity Commissioner of a corruption issue that the AFP was well-advanced in investigating.
5. In October 2012, a body scan performed by Australian Customs and Border Protection Service officers discovered anomalies in a traveller's abdomen. The ACBPS handed the traveller over to the AFP to be taken to hospital and x-rayed.
6. The x-ray revealed that the traveller's digestive system contained 41 or 42 pellets of the kind that are sometimes used to smuggle drugs.
7. The traveller was detained in the hospital under the supervision of a series of shifts, each of two AFP appointees. On the relevant shift, those appointees were:
  - (a) Officer A, who had some experience at dealing with internally-secreted drugs, but no experience supervising such actions or in dealing with a non-compliant suspect; and
  - (b) Officer B, who had no previous exposure to supervising a patient suspected of carrying internally-secreted drugs.
8. Officer A retrieved 29 pellets from two bowel movements by the traveller who had been made to use a bedpan. Officer A washed the pellets in a bedpan cleaning sink outside the hospital room and away from the sight of the traveller and Officer B, who was supervising the traveller. This situation could have provided an opportunity for Officer A to take some of the pellets.



9. After two days, the traveller was x-rayed again and no further pellets were apparent. The traveller later pleaded guilty to charges of importing a border-controlled substance and was imprisoned.
10. The ACBPS brought the discrepancy in the number of pellets to the attention of the AFP. Although noting that it was possible that some pellets had been destroyed by the traveller, the AFP commenced an internal investigation. The AFP interviewed Officers A and B and the other AFP appointees who had supervised the traveller. When tested for drug use, both Officers A and B returned negative results.

## **JURISDICTION**

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11. As a precautionary measure, the Acting AFP Commissioner notified the Integrity Commissioner of this information under section 19 of the *Law Enforcement Integrity Commissioner Act 2006*. In light of the officers' duties to interdict illicit drugs at the border, as Acting Integrity Commissioner, I decided to investigate this corruption issue under sub-section 26(1)(a) of the LEIC Act.

## **INVESTIGATION PROCESS**

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12. ACLEI's investigation took into account:
  - (a) the information which had already been collected by the AFP investigation
  - (b) the results of drug tests conducted by the AFP under the *Australian Federal Police Act 1979*
  - (c) AFP guidance on the retrieval of internally-secreted evidence
  - (d) expert advice about the reliability of x-ray scanning for drugs, and
  - (e) telephone number data.
13. On the basis of the information obtained, no use of the Integrity Commissioner's coercive powers was necessary.

## **WHAT THE INVESTIGATION SHOWED**

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14. The initial investigation showed that the traveller had attempted to flush the contents of the bedpan down a toilet, but had been restrained. Officer A recovered some of the pellets from the toilet. Officer A washed them in a sink used for cleaning bedpans and did so out of sight of Officer B, the traveller or anyone else.

15. A radiologist consulted by ACLEI confirmed that x-ray scanning is reliable. Accordingly, the original count (41 or 42 pellets) was likely to have been accurate.
16. It is improbable that Officer A or Officer B could have arranged the place and time of their roster in order to be present when the traveller excreted the pellets. That is, if there were improper conduct, it was unlikely to have been planned.
17. In circumstances where:
  - (a) the hospital room had only a small hand sink and hospital staff had identified a bedpan cleaning area with a larger sink, and
  - (b) it was necessary for Officer B to remain in the hospital room to supervise the traveller,it would have been difficult for Officer A to remain in sight of Officer B or the traveller while washing the pellets. However, it was this divergence from protocol that cast doubt on Officer A's integrity.
18. None of the other checks that were undertaken, including checks of telephone logs, revealed any suspicious connections between Officers A or B and persons of interest to law enforcement operations.

## FINDINGS

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19. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated.
20. In all the circumstances, I consider it most likely that the traveller successfully destroyed some of the pellets.
21. There is no evidence that either Officer A or Officer B engaged in corrupt conduct in relation to this matter.



Robert Cornall AO  
Acting Integrity Commissioner

23 December 2014

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