



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

# INVESTIGATION REPORT

***OPERATION MYRRH—  
An investigation into “private” illicit drug use by  
certain Australian Customs and Border Protection  
Service officers***

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

REPORT 01/2014

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# TABLE OF CONTENTS

## PART ONE – ABOUT ACLEI REPORTS

INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER	iv
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## PART TWO – THE INVESTIGATION

INTEGRITY PRINCIPLE	2
---------------------	---

BACKGROUND	2
------------	---

JURISDICTION	2
--------------	---

INVESTIGATION PROCESS	3
-----------------------	---

WHAT THE INVESTIGATION FOUND	3
------------------------------	---

<i>OFFICER A</i>	4
------------------	---

<i>OFFICER B</i>	4
------------------	---

<i>OFFICER C</i>	4
------------------	---

PART 10 ACTIONS	5
-----------------	---

FINDINGS	6
----------	---

OBSERVATIONS	6
--------------	---

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

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

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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 (AFP);
- 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.

## ABOUT ACLEI REPORTS

- 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 that ACLEI will 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.

# ABOUT ACLEI REPORTS

## 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. When a public servant uses illicit drugs, he or she fails to meet the expectations of the government and the community, and will almost invariably act in a way that could give rise to criminal prosecution.
2. Even were a public servant to consider the use of illicit drugs to be a “personal” or “private” matter, the practice involves the person having to liaise with a supplier or with other users. Ultimately, such people are connected to organised crime groups, and are more likely than others to have an improper interest in knowing confidential government information and being able to influence decisions.
3. If the public servant were—in any capacity—also a staff member of an agency with law enforcement functions, the person’s drug use would be entirely inconsistent with his or her professional responsibilities, and those of his or her employer. Moreover, the person—and the law enforcement system more broadly—would be at a heightened risk of corrupt compromise.

## **BACKGROUND**

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4. The Australian Customs and Border Protection Service (ACBPS) plays an important role in protecting the Australian community through the interception of illegal drugs and other contraband at the border.
5. In February 2013, the New South Wales Police Force provided information to me about the possible use of illicit drugs by an ACBPS officer. Corroborative information was also notified to me by the ACBPS.
6. Further information was uncovered by the Australian Commission for Law Enforcement Integrity (ACLEI). Accordingly, Operation Myrrh examined the conduct of four ACBPS officers (Officers A, B, C and D) in relation to their suspected use of border controlled substances—namely, cocaine.

## **JURISDICTION**

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7. The conduct investigated falls within the definition of “engages in corrupt conduct” in section 6 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).
8. Section 26(2) of the LEIC Act provides that the Integrity Commissioner may deal with a corruption issue which relates to a law enforcement agency, including the ACBPS, by investigating jointly with another government agency. Since the primary drug offences to be investigated are the subject of New South Wales (NSW) law, I commenced my investigation jointly with the NSW Police Force.

## INVESTIGATION PROCESS

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9. With the knowledge and assistance of the ACBPS, the four officers were left in place while covert investigations proceeded. The ACBPS later assisted the investigation by requiring various officers to submit to drug tests.
10. During the investigation, ACLEI:
  - (a) examined ACBPS records, including emails, security documents, information technology audit reports, and—upon exercise of the Integrity Commissioner’s power to enter designated premises without warrant— toxicology reports relating to drug tests;
  - (b) examined records held by other government agencies;
  - (c) obtained and analysed financial records;
  - (d) conducted physical surveillance and, under warrant, technical surveillance;
  - (e) analysed call charge records; and
  - (f) intercepted telecommunication services, under warrant.
11. In order to ameliorate the risk that ACBPS systems and methods had been compromised, a tactical decision was made to use the compulsory hearing power which is available to the Integrity Commissioner under Part 9 of the LEIC Act. Accordingly, I conducted a number of hearings—held in private—at which sworn evidence was taken.
12. In addition, ACLEI and NSW Police Force officers interviewed, or held conversations with, a number of other witnesses.

## WHAT THE INVESTIGATION FOUND

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13. The investigation uncovered information about Officers A, B and C which indicated their involvement in a loose network of “social” cocaine users. The investigation also examined the situation of Officer D, against whom no adverse evidence was found.
14. The officers investigated were, at the time, part of the “front line” functions of the ACBPS in Sydney, with responsibilities that included detecting and preventing the importation of illicit drugs by air and by sea. Officer B also held supervisory and training responsibilities.
15. Due to their service histories, Officers A, B and C would have been well aware of the arrests in 2012 and 2013 of five ACBPS officers as part of ACLEI’s Operation Heritage (an investigation—conducted jointly with Australian Federal Police Operation Marca—into alleged corrupt conduct of ACBPS officers and their criminal associates at Sydney International Airport).

### OFFICER A

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16. Officer A's work related to the examination of cargo containers arriving in Sydney—a role directed to preventing and detecting the importation of illicit drugs and other contraband. She was a long-serving member of the ACBPS.
17. A drug test administered by the ACBPS during the course of this investigation confirmed Officer A's frequent use of cocaine. In a compulsory hearing, Officer A admitted to her drug use and to having contrived to be absent from work on occasions when she anticipated the ACBPS might conduct drug tests.
18. The rationale for her actions was surprising for a person of long experience in law enforcement—she said that she drew a distinction between her personal life (in which she used cocaine) and her professional life (in which she was tasked with preventing the importation of illicit drugs, including cocaine).

### OFFICER B

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19. Officer B's duties were in the ACBPS enforcement area, where from time-to-time she also worked as a supervisor and trainer.
20. A drug test established that Officer B also was a frequent user of cocaine. In a compulsory hearing, Officer B admitted to her drug use and that she was in close contact with other drug users and suppliers.
21. Officer B also admitted to avoiding cocaine use for a time while her work area was being used as a pilot for the ACBPS drug testing program. As with Officer A, she also considered that her drug use was a private matter that was not relevant to her professional duties.

### OFFICER C

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22. Officer C was a staff member of the ACBPS, who worked at Sydney International Airport.
23. In a compulsory hearing, Officer C admitted to past cocaine use, to the extent that his work attendance had suffered from it. A drug test during this investigation returned a negative result for the presence of cocaine.

## PART 10 ACTIONS

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24. Part 10 of the LEIC Act sets out what the Integrity Commissioner may do with evidence and information obtained during an investigation.

### *EVIDENCE OF A BREACH OF DUTY*

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25. Section 146 requires the Integrity Commissioner to bring to an agency head's notice evidence of a breach of duty or misconduct by a staff member.
26. This requirement arises when the Integrity Commissioner is satisfied that the evidence may justify terminating the staff member's employment or initiating disciplinary proceedings against the staff member and that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so.
27. During the investigation, I notified the Chief Executive Officer (CEO) of the ACBPS of evidence then obtained. Such information informed an ACBPS decision to require Officers A, B and C to submit to drug testing. ACBPS investigations have since established breaches of the Australian Public Service Code of Conduct relating to Officers A and B.

### *EVIDENCE OF A CRIMINAL OFFENCE*

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28. Section 142 of the LEIC Act obliges the Integrity Commissioner to give evidence of a criminal offence to an authority which is authorised by law to further investigate or prosecute the offence.
29. A person investigated by the NSW Police Force has since been prosecuted for drug offences that were identified during Operation Myrrh.

### *EVIDENCE OF PROVIDING FALSE INFORMATION*

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30. It is an offence to provide false or misleading information to a person exercising powers under a law of the Commonwealth (section 137.1 of the *Criminal Code*). This requirement extends, for instance, to hearings conducted under Part 9 of the LEIC Act. Upon conviction, such an offence may be punished by imprisonment for 12 months.
31. I have provided the Commonwealth Director of Public Prosecutions with evidence of a possible offence against section 137.1, arising from the appearance before me of one of the ACBPS officers.

### *DISCLOSURE OF INFORMATION TO OTHER BODIES*

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32. Section 208 of the LEIC Act enables the Integrity Commissioner to disclose relevant information to the head of another government agency in appropriate circumstances, having regard to the functions of the agency concerned.
33. Accordingly, I provided relevant information to two Commonwealth agencies outside of the Integrity Commissioner's jurisdiction. The information related to the risk that persons within their respective spans of control may be users of illicit drugs.

## FINDINGS

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34. The LEIC Act requires the Integrity Commissioner to report any findings relating to the corruption issues investigated. Before I reached my conclusions, I provided Officers A, B and C with an opportunity to be heard, as required by section 51(4) of the LEIC Act. No response or submission was received.
35. I note that all three officers, when confronted with the evidence, admitted to their use of cocaine. Since this self-incriminatory evidence was obtained in a compulsory information-gathering hearing, it may not be used in criminal proceedings against them (section 96 of the LEIC Act).
36. No evidence was uncovered that indicated the officers had an intentional, participatory role in the importation into Australia of border-controlled substances. However, it cannot be ruled out that any information they may have provided inadvertently or recklessly was put to use by criminal associates.
37. I note that the officers have resigned from the ACBPS and no longer have access to sensitive border information or systems. In all the circumstances of this case, I have decided that it is unnecessary for me to proceed to make findings of corrupt conduct.

## OBSERVATIONS

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38. In June 2013, in my Interim Report on Operation Heritage, I noted that it will take perhaps a decade to entrench high professional standards in the ACBPS. My comment reflected the pressure that is being exerted on all law enforcement agencies by corrupting influences—including “private use” of illicit drugs.
39. The conduct investigated in Operation Myrrh occurred after the arrests of several ACBPS officers in Operation Heritage, and continued during (and despite) the introduction of significant new measures to prevent corrupt conduct. These measures included drug and alcohol testing and mandatory reporting of integrity breaches.
40. Accordingly, the conduct seen in Operation Myrrh—including, “private” illicit drug use, association with criminal elements, failing to report the misconduct of others, seeking to “game” drug testing procedures, and being reckless or indifferent with information security—illustrates the challenges of integrity reform.
41. I regard it as likely that the officers investigated in Operation Myrrh were in the process of being groomed and activated by criminal elements, in order to obtain information about ACBPS processes and—perhaps—specific law enforcement activity. Despite their law enforcement experience, the officers were seemingly oblivious to the prospect.

42. Finally, I acknowledge the assistance provided to this investigation by the Commissioner and members of the NSW Police Force, whose skill and cooperative approach contributed to a successful joint operation.

A handwritten signature in black ink that reads "Philip Moss". The signature is written in a cursive, flowing style.

**Philip Moss**  
Integrity Commissioner

29 June 2014



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