



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

INVESTIGATION REPORT

Operation Heritage—a joint investigation of alleged corrupt conduct among officers of the Australian Customs and Border Protection Service at Sydney International Airport (Interim Report)

This interim report is made to the Hon. Jason Clare MP,
Minister for Justice and Minister for Home Affairs, pursuant to section 208 of the
Law Enforcement Integrity Commissioner Act 2006.

REPORT 02/2013

Enquiries about this report can be directed to the
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LETTER OF TRANSMITTAL



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

7 June 2013

The Hon. Jason Clare MP
Minister for Home Affairs and Minister for Justice
Parliament House
CANBERRA ACT 2600

Dear Minister

I provide an interim report into my investigation, known as Operation Heritage, concerning alleged corrupt conduct among officers of the Australian Customs and Border Protection Service at Sydney International Airport. The investigation is being conducted jointly with Customs and Border Protection, and with the Australian Federal Police (which designates it as Operation Marca).

The purpose of this interim report is to inform you, in broad terms, of the key factors that led to the arrest of four Customs and Border Protection officials between August 2012 and February 2013. I intend also that my interim report will assist the Customs Reform Board, which you established in December 2012 to oversee the implementation of integrity reforms in Customs and Border Protection.

In compiling this interim report, I have decided to exclude certain sensitive information that could have prejudicial consequences if it were to be published at this time.

I will provide a final report at the conclusion of my investigation.

Yours sincerely

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

Philip Moss
Integrity Commissioner

ABOUT ACLEI REPORTS

INVESTIGATIONS AND REPORTS BY THE INTEGRITY COMMISSIONER

THE LAW ENFORCEMENT INTEGRITY COMMISSIONER ACT 2006

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

The role of the Integrity Commissioner and ACLEI is to detect, investigate and prevent corruption in the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Federal Police (AFP) and the former National Crime Authority. Other Australian Government agencies with law enforcement functions may be prescribed by regulation as coming within the jurisdiction of the Integrity Commissioner.

CORRUPT CONDUCT

'Corrupt conduct' is where 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

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.

ABOUT ACLEI REPORTS

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 service or integrity agency for investigation. A joint investigation can also be undertaken by ACLEI and that agency.

INVESTIGATION POWERS

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

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

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.

ABOUT ACLEI REPORTS

GRADES OF CORRUPTION

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

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—on his or her own initiative, or on request by the Minister—the Integrity Commissioner may make reports and recommendations to the Minister in relation to any matter that concerns the integrity of staff members of law enforcement agencies.

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

The Integrity Commissioner may also exclude information from a report if he or she 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



Australian Government
**Australian Commission for
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INVESTIGATION REPORT

**A joint investigation of alleged corrupt conduct among
officers of the Australian Customs and Border Protection
Service at Sydney International Airport (Interim Report)**

REPORT 02/2013

THE INVESTIGATION

BACKGROUND

1. The Australian Customs and Border Protection Service was added to the Integrity Commissioner's jurisdiction on 1 January 2011. On 4 January 2011, the then Chief Executive Officer (CEO) of Customs and Border Protection, Mr Michael Carmody AO, notified me of ten corruption issues—concerning information or allegations about possible corrupt conduct—that were known to, or being examined by, the agency at that time.
2. One corruption issue was an allegation that one or more officers at Sydney International Airport were in regular contact with a person who, the Australian Federal Police (AFP) suspected, was involved in the illegal importation of border controlled substances—namely, pseudoephedrine or other chemicals used in the manufacture of the illicit drug MDMA (also known as methamphetamine or ecstasy).
3. In March 2011, I established *Taskforce Natio*—a joint operations team comprised of investigators and analysts from the Australian Commission for Law Enforcement Integrity (ACLEI), Customs and Border Protection and the AFP—to investigate this allegation and related information concerning the possible facilitation by other Australian Government officials of illicit movements of border controlled substances. The Australian Crime Commission (ACC) provided assistance to the taskforce, including by providing additional surveillance services. The New South Wales Police also assisted.
4. At various times, the Chief Executive Officer was the only senior manager in Customs and Border Protection who was briefed about key operational details and developments. This arrangement maintained operational security and ensured that I was made aware of any factors that might harm unduly the operations of Customs and Border Protection.
5. I acknowledge and commend the propriety and cooperation of Mr Carmody—and his successor in that role, Mr Michael Pezzullo—who both allowed the investigation to continue for more than 18 months, despite their knowledge that corrupt conduct was taking place in an agency under their control. Without their cooperation, the opportunity to discover the breadth of the corrupt network and its modes of operating would have been lost.

OPERATION HERITAGE

6. The aspect of *Taskforce Natio* that is the subject of this interim report is *Operation Heritage*—an investigation into a possible corrupt collaboration between Customs and Border Protection officers and others to import illicit drugs through Sydney International Airport. Pursuant to its role of investigating Commonwealth crimes, the AFP investigated these issues jointly with ACLEI, under the name *Operation Marca*, and contributed additional resources to the Taskforce.

THE INVESTIGATION

7. During the investigation, ACLEI has obtained 12 warrants under the *Surveillance Devices Act 2004*. A number of extensions were also granted, some multiple times. Sixteen warrants have been obtained under the *Telecommunications (Interception and Access) Act 1979*, several of which were renewed multiple times. The AFP has also obtained various warrants for Operation Marca, to collect evidence covertly about related persons of interest, or to search their premises. Under the joint investigation arrangement, ACLEI and the AFP each have had lawful access to information collected by the other agency.
8. As Integrity Commissioner, I can summons a witness to attend an information-gathering hearing. It is an offence under the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) to fail to comply with a summons, or fail to answer questions, even if an answer were to involve self-incrimination. Evidence so obtained cannot be used in a criminal prosecution—other than for a matter of contempt or perjury relating to the hearing. The evidence may also be used for disciplinary purposes, or in a civil action for the recovery of proceeds of crime. To date, I have held 16 hearings in relation to Operation Heritage. I have held all these hearings in private, to make best advantage of covert collection of evidence.
9. The investigation has also made extensive use of physical surveillance.

ARRESTS AND OTHER PROCEEDINGS

10. Between August 2012 and February 2013, four Customs and Border Protection officers were arrested. They face (or, in one instance, have already faced) a range of charges or sentencing for corruption-related offences—including abuse of office, offering a bribe to a Commonwealth public official, and receiving a bribe—as well as conspiracy to import a commercial quantity of border-controlled precursors. One of the accused pleaded guilty to the charges he faced and, in April 2013, was sentenced by the New South Wales District Court to seven years' jail with a four-year non-parole period.
11. An officer of the Department of Agriculture, Fisheries and Forestry (DAFF) has also been arrested and faces charges of abuse of public office, prohibited disclosure of official information, receiving a corrupting benefit and influencing a Commonwealth public official. Prior to the arrest, the officer was a member of the DAFF Border Compliance Division and worked at Sydney International Airport.
12. Fifteen other people have been arrested, and face charges or sentencing for offences including conspiracy to import a commercial quantity of border controlled precursors, bribery of a Commonwealth official and dealing in the proceeds of crime. At the relevant time, one of these people was a baggage handler at Sydney International Airport. Further arrests remain a possibility.
13. To date, 54 kilograms of pseudoephedrine has been seized, and cash and assets to the value of approximately \$237,000 have been confiscated.

THE INVESTIGATION

14. Operation Heritage—Marca has not concluded, and ACLEI and the AFP continue to gather evidence. Accordingly, the generalised comments in this report should not be taken to refer in every case to the people arrested so far. Neither are my comments necessarily limited only to those people.

FURTHER ACTIONS

15. At the completion of my investigation, I will provide a detailed report to the Minister, in accordance with section 54 of the LEIC Act. At that time, I will make formal findings about the conduct of individuals who fall within the Integrity Commissioner's jurisdiction, and recommend any actions that may be necessary to hold individuals to account, or that may further strengthen the integrity framework.
16. In the interim, I have disseminated information on a number of occasions to the Chief Executive Officer of Customs and Border Protection, Mr Pezzullo. The information I have provided has enabled Customs and Border Protection to commence disciplinary action against a number of officers.
17. ACLEI is also compiling information for the purpose of other criminal proceedings. I expect, in due course, to bring forward evidence concerning witnesses whom I consider provided false statements in hearings conducted under the LEIC Act.

CORRUPTION PREVENTION

18. During 2012, ACLEI officers provided substantial strategic and technical assistance to a corruption prevention project initiated by Customs and Border Protection. The project—which drew on evidence gained from Operation Heritage—Marca—resulted in considerable changes to Custom and Border Protection's integrity policy, practice and organisational arrangements.
19. A significant outcome of Operation Heritage—Marca was the passage through the Parliament, in November last year, of the *Law Enforcement Integrity Legislation Amendment Act 2012* (the LEILA Act).¹ That enactment introduced specific anti-corruption measures for Customs and Border Protection—namely, drug and alcohol testing, the power for the CEO to declare that a dismissal was for reason of serious misconduct (which modifies appeal rights), and an authority to issue binding orders relating to conduct and integrity (such as mandatory reporting of misconduct). The new powers bring Customs and Border Protection into closer alignment with integrity arrangements already in place in the AFP and the ACC.

¹ These measures were variously recommended in separate inquiries conducted by the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, the reports of which were tabled in July and November 2011.

THE INVESTIGATION

20. The LEILA Act introduced a number of other measures to strengthen resistance to corruption, namely:
 - (a) a framework for integrity testing, which will apply to Customs and Border Protection, the AFP and the ACC; and
 - (b) extending ACLEI's jurisdiction from July 2013 to include the Australian Transaction Reports and Analysis Centre (AUSTRAC), the CrimTrac Agency and prescribed aspects of DAFF.
21. ACLEI and the AFP, with assistance from the ACC, have prepared a corruption vulnerabilities assessment of Sydney International Airport. The assessment—which identifies possible remedial changes to procedures and other arrangements—has already been provided in-confidence to the Minister for Home Affairs and Justice. It has also been provided to the CEO of Customs and Border Protection and to the Customs Reform Board,² to inform the broad revision of program delivery and agency culture that presently is taking place.
22. ACLEI and its partner agencies are applying the intelligence gained in this investigation to detect potential corruption in other contexts.

HOW DID THE CORRUPTION HAPPEN?

23. The corrupt conduct observed in Operation Heritage—Marca involves long-term collusion between a small number of Customs and Border Protection officers at Sydney International Airport. So far as can be ascertained, these officers commenced unauthorised importations of steroids in 2007, an enterprise which expanded in the intervening years to include more officers and the importation of the precursor drug pseudoephedrine.
24. Looking back, the evidence gathered over more than two years of investigation reveals a concerning picture. Some officers used their inside knowledge to defeat surveillance and interdiction systems. This knowledge included information about law enforcement techniques and systemic vulnerabilities. They had privileged access to the secure border environment, and access to law enforcement databases. By working together, they exploited weaknesses in the supervision system at Sydney International Airport to manipulate rosters and job placements, thereby increasing their capacity to facilitate larger importations of drugs. They used their official positions and made use of friendships and other connections that they had developed at Sydney International Airport to gather information, and to cover their tracks.

² On 20 December 2012, the Minister for Home Affairs and Minister for Justice, the Hon. Jason Clare MP, announced the establishment of the Customs Reform Board. The Board will provide the Minister with advice and recommendations about further action needed, in addition to those reforms already being put into place, and will oversee the implementation of reform in Customs and Border Protection.

THE INVESTIGATION

25. Between 2007 and 2012, on a number of occasions, the corrupt network is suspected to have organised and facilitated the importation of border controlled precursors from Thailand and Vietnam.
26. The criminal conspiracy grew out of a confluence of circumstances, including a weak integrity culture and changes in the risk environment. These preconditions combined to permit a number of individuals to move from enabling each other's friends to exceed duty-free limits when arriving on overseas flights (in 2007), to an orchestrated importation of steroids and pseudoephedrine (until arrests commenced in August 2012).
27. These circumstances are set out in greater detail in the following paragraphs.

INADEQUATE PREPARATION FOR A CHANGE IN RISK

28. A factor in the Government's decision, in 2010, to include Customs and Border Protection in ACLEI's jurisdiction, was an awareness that law enforcement agencies were likely to be under an increased threat of corrupt compromise and infiltration by organised crime groups. This view was informed, in part, by the Australian Crime Commission's biannual intelligence review of organised crime in Australia.
29. To take account of these changing patterns in transnational organised crime—and, importantly, an anticipated increase in volumes of legitimate movements across the border—the agency had oriented towards an intelligence-led model of detecting and interdicting illicit goods at the border. With the benefit of hindsight, it can now be said that Customs and Border Protection responded less well to the concomitant corruption risk that accompanies a change in threat picture and operating strategy, and was under-prepared for that risk.
30. In 2008, Customs and Border Protection commenced strengthening its internal investigation capability, with a gradual scaling-up of resources and functions. Other key elements—such as an integrity framework development team, a formal professional reporting (whistle-blowing) program, and a risk identification function—were then not present or were underutilised. (Recent reforms have started to address these issues.)
31. In a complex operating environment, it takes perhaps a decade of investment to embed an effective anti-corruption system—particularly, to establish a highly-functioning, nationally-based internal investigation function, and to put in place the means to influence agency culture.
32. Accordingly, there was a gap between the perception and the reality of the effectiveness of the anti-corruption measures that had been put in place. This situation led to the agency underestimating its risk in environments that should have been recognised as high-risk, and having an over-confidence in the anti-corruption measures it had at that time only recently established.

THE INVESTIGATION

33. In the absence of evidence of corruption, it was widely assumed that there was no corruption. Accordingly, too little attention was paid to systemic vulnerabilities that were then extant or emerging. This widespread lack of awareness—somewhat akin to a denial that systemic and collusive corruption could occur to defeat the system—was a key factor in how corrupt conduct occurred.

VULNERABILITIES ASSOCIATED WITH A CHANGED MODEL

34. In broad terms, Customs and Border Protection has the dual role of facilitating legitimate international passenger movements and trade (on the one hand), and a law enforcement function (on the other). In the last decade, significant increases in the volume of passenger and trade movements have put pressure on this balance.³
35. Customs and Border Protection—not inappropriately, in my view—responded to this challenge by increasing its reliance on using multi-channel intelligence to direct interdictions to high-risk passengers ('intelligence-led interdiction'). This passenger profiling and alert strategy, among other law enforcement strategies, is said to have contributed to higher rates⁴ of successful interdictions in recent years.
36. When intelligence-led interdiction systems are established in law enforcement or regulatory environments, it is common to retain a system of randomised control, or to provide for officers to interdict based upon their real-time observations. These back-stops are intended to assure the integrity of the system and are a second line of defence.
37. At Sydney International Airport, staff who would normally have been involved in 'real-time targeting' were frequently diverted at peak times to perform passenger facilitation roles, namely assisting travellers to pass through the immigration, customs and quarantine process in a timely fashion.
38. Over the same period, Customs and Border Protection adopted what is referred to as a 'whole of airport' strategy at Sydney International Airport. Rather than having highly specialised interdiction teams, as was the case previously, staff are required to perform a wide range of roles. This approach allows staff to be allocated to the highest priority duties as required, and is intended to introduce variety to work tasks.

³ Each week in 2011–12, an average of nearly 560,000 air passengers arrived on more than 3,375 international flights. Nearly 42% of Australia's international air travellers passed through Sydney International Airport, compared to 23% for Melbourne Airport and nearly 16% for Brisbane Airport (source: Bureau of Infrastructure, Transport and Regional Economics, *Statistical Report: Aviation—International Airline Activity 2011–12*, Table 4). The volume of passengers is predicted to increase by six million (or nearly 20%) from 2012–13 to 2015–16, equating to over 700,000 air passengers per week by 2015–16 (source: *Attorney-General's Portfolio Budget Statements 2012–13*, page 103).

⁴ Drug detections from air passengers and crew have increased over the past three financial years, from 458 in 2009–10 to 1298 in 2011–12 (source: Australian Customs and Border Protection Service *Annual Report 2011–12*, page 91).

THE INVESTIGATION

39. However, the two new approaches ('intelligence-led' and 'whole of airport') introduced a number of systemic vulnerabilities that were not sufficiently recognised or controlled. They were:
- (a) Broader access—With more staff having access to sensitive databases, and a broader sharing of information and intelligence, there was a marked increase in opportunity for corrupt conduct.
 - (b) Assets of value—The increased reliance on intelligence-led interdiction and the concentration of information in databases meant that a corrupt officer with access to sensitive law enforcement information had an asset of value to criminals. For instance, such information may include what flights or which passengers are scheduled for law enforcement activity, thereby allowing a drug courier to plan flights and arrival times to avoid detection, or to abandon baggage carrying drugs if an interdiction were planned after the courier boarded a flight. Insider knowledge about limitations in detection methods meant that drug couriers could be chosen carefully and coached in methods to ensure that contraband was more difficult for law enforcement officials to locate by accident.
 - (c) Inadequate deterrence—Under changed arrangements, Sydney International Airport came to rely less and less on randomised controls and real-time interventions. The absence of random checking reduced the perceived risk of a chance detection.

ORCHESTRATION

40. Another means to circumvent interdiction at Sydney International Airport was insider assistance to ensure a drug courier would not be intercepted in the International Arrivals Hall. In similar fashion, it would be of value to a criminal if assistance were provided to allow quantities of cash to cross the border (in or out) without declaration. An officer who could assist in these ways might command a share of the profits of an illicit importation or a money laundering operation.
41. By these means, it appears that border officials were able to engage in larger and riskier importations from their modest start in 2007.
42. In this interim report, I will not detail how such an orchestration might have been arranged. However, there are a number of factors I will highlight below, since each played a role in ensuring corrupt orchestrations were not noticed.

MISPLACED LOYALTY AND COMPROMISE

43. The network—which is apparently broader than just Customs and Border Protection officers—shared some common demographics, including school links, age and community ties. These same links and sources of obligation extended to friends who were active members in organised crime groups, including outlaw motorcycle gangs.

THE INVESTIGATION

44. Disregard for the law, perhaps driven by an uncritical sense of loyalty to one another, appears to have underpinned the orchestration. A number of the individuals used illicit drugs, and the compromise of individuals—which could be the basis for blackmail, or just the means of assuring loyalty—may also have been a factor in how the network formed and strengthened.
45. This shared background and affinity meant that the circle of corruption could be widened with confidence.

POOR STANDARDS

46. The investigation has obtained information which suggests it had been common for some Customs and Border Protection officials to flout regulations, whether by inviting friends or family to go to the front of a Customs queue, or helping them to exceed duty-free allowances for alcohol or cigarettes by engaging colleagues to allow them to exit the baggage hall without inspection.
47. This currency of favours meant that a collaborator would not know whether a colleague's friend was carrying excess tobacco (which was considered acceptable within the culture) or illicit drugs.

BREAKDOWN IN SUPERVISION

48. The staff supervisory arrangements at Sydney International Airport were not well matched to the risk of the activities carried out by Customs and Border Protection. The culture, to which I have already referred, meant that many managers were not alert to or were indifferent to systemic vulnerabilities and the indicators of corruption. Evidence also suggests there was a risk that any supervisor who took action about misconduct would be open to reprisal from certain staff.
49. During the course of the investigation, it became clear that a number of Customs and Border Protection officers had raised concerns about some of the officers who were involved in the matters under investigation. It also became clear that many of these concerns were not dealt with—or not dealt with effectively—by the agency, thereby allowing poor conduct to flourish and embolden the perpetrators.
50. Under the organisational arrangements then in place, no one area in Customs and Border Protection had an overview of the concerns being raised about individuals. This situation meant that there was no opportunity to see the pattern of unprofessional behaviour that may have indicated that a staff member's actions required closer scrutiny.
51. Overall, this situation led to a lack of confidence amongst staff that wrongdoing would be noted or punished, so poor standards of conduct became acceptable, and even became the norm in some of the cases investigated.

THE INVESTIGATION

CONCLUSION

52. The work of diligent Customs and Border Protection officers—who are the majority—has been undermined and tarnished by the misconduct discussed in this report.
53. Operation Heritage–Marca illustrates what may happen when individuals take advantage of systemic vulnerabilities in a high-risk operating environment that lacks adequate safeguards.
54. An enduring lesson is that corruption risk will follow opportunity for illicit profit. Policy designers, and those responsible for governance of high-risk operating environments, must expect this situation to be the case, and plan accordingly.

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

Philip Moss
Integrity Commissioner

7 June 2013

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