



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

Summary of Investigation

Operation Avon –

An investigation into the conduct and associations of staff members of the Australian Border Force

OFFICIAL

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

Enquiries about this report can be directed to the
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Investigation Reports published by the Integrity Commissioner
and summaries of reports which have not been made public
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About ACLEI Reports

The Law Enforcement Integrity Commissioner Act

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

The role of the Integrity Commissioner and ACLEI

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

Corrupt conduct

4. A staff member of a law enforcement agency 'engages in corrupt conduct' if the staff member:
 - abuses his or her office
 - perverts the course of justice, or
 - having regard to his or her duties and powers, engages in corrupt conduct of any other kind.
5. The Integrity Commissioner is to give priority to dealing with serious and systemic corruption.²

¹ *Law Enforcement Integrity Commissioner Act 2006* (Cth) s 5(1) (definition of 'law enforcement agency') (LEIC Act); *Law Enforcement Integrity Commissioner Regulations 2017* (Cth) s 7.

² *Ibid* s 6(1).

Dealing with corruption issues

6. A corruption investigation can commence in different ways:
 - the Minister may refer to the Integrity Commissioner an allegation or information that raises a corruption issue.
 - the head of a law enforcement agency within ACLEI's jurisdiction must notify the Integrity Commissioner of any allegation or information that raises a corruption issue which relates to that agency.
 - any person or government agency can refer to the Integrity Commissioner an allegation or information that raises a corruption issue. A referral may be anonymous, or on behalf of another person.
 - the Integrity Commissioner can commence an investigation on his or her own initiative.³
7. The Integrity Commissioner may decide to deal with the corruption issue in a number of ways:
 - have ACLEI investigate the corruption issue either alone or jointly with another government agency or an integrity agency for a State or Territory.
 - refer the corruption issue to the law enforcement agency to conduct its own investigation.
 - decide that an investigation is not warranted.
8. The Integrity Commissioner can decide to manage or oversee any investigation that has been referred to a law enforcement agency. If the law enforcement agency were not the Australian Federal Police (AFP), the Integrity Commissioner can also refer the issue to the AFP for investigation and may manage or oversee that investigation.⁴

Reports

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

³ Ibid ss 18–24 and 38.

⁴ Ibid ss 26–30.

⁵ Ibid ss 54(1)–(2).

⁶ Ibid s 55.

Standard of proof

11. The Integrity Commissioner makes findings about whether a person has engaged in corrupt conduct, based on the balance of probabilities. Those findings may not be the same as those that would be made by a court deciding on criminal guilt beyond a reasonable doubt.
12. Before making a finding, the Integrity Commissioner is required to be 'reasonably satisfied', based on relevant facts, that the corrupt conduct occurred and that the corrupt conduct was within the meaning of the LEIC Act.
13. In considering whether or not the Integrity Commissioner is 'reasonably satisfied' of relevant facts, the Integrity Commissioner applies the reasoning set out in *Briginshaw v Briginshaw*,⁷ *Rejtek v McElroy*,⁸ and *Re Day*.⁹

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

⁸ (1965) 112 CLR 517, 521.

⁹ (2017) 91 ALJR 262, 268 [14]–[18].

Summary of the Investigation

14. On 29 November 2018, a member of the Australian Federal Police (AFP) made a referral to ACLEI that raised a corruption issue pursuant to s 23 of the LEIC Act.
15. It was alleged that Australian Border Force (ABF) officers were working for a criminal drug syndicate and had used their positions to assist with the importation of drugs. The reference to ABF officers is a reference to staff members of Home Affairs.
16. The allegation was made to the AFP by a person who I have decided not to identify because of potential security risks outlined by the AFP.
17. Operation Avon commenced on 14 December 2018. The investigation sought to determine the identity of the Home Affairs employees and once identified, establish whether the individuals had any involvement with the criminal drug syndicate.
18. After extensive enquiries, the investigation did not establish any evidence that linked Home Affairs employees to the criminal drug syndicate, nor an indication of corrupt conduct.
19. Following the investigation, I prepared an investigation report on Operation Avon pursuant to s 54 of the LEIC Act and undertook a procedural fairness process as required by s 51 of the LEIC Act on 28 April 2022.
20. I made no findings of corruption in relation to Operation Avon as the investigation did not substantiate the allegations. I acknowledge the seriousness of the allegations made, but I am satisfied that the investigation undertaken by ACLEI did not identify any evidence of corrupt conduct by a Home Affairs employee.
21. Although I did not make a finding of corruption, I note the importance of investigating allegations such as those raised in this matter, to either identify and deal with corrupt conduct, or to provide assurance that the alleged corrupt conduct has not occurred.
22. While the investigation did not substantiate the allegations that Home Affairs employees were acting in a corrupt manner to assist a criminal syndicate to import drugs, it did identify the following potential vulnerabilities with respect to ongoing employment suitability checks. At the time of the alleged conduct, it was unclear whether all ABF officers had completed an Employee Suitability Clearance (ESC) or Australian Government Security Vetting Agency (AGSVA) Security Clearance,¹⁰ and it seemed to be the case that there were long-serving officers who had not undergone either. Home Affairs' policies and procedures for reviewing and updating ESC's were also unclear.
23. Since the time of the alleged conduct, Home Affairs has implemented a mandatory requirement for ESC and AGSVA Security Clearances for all Immigration and Border Protection workers.¹¹

¹⁰ [Applicants & Holders – Vetting assessment process | Sectors | Security | Department of Defence](#).

¹¹ Home Affairs, [Secretary Determination of Immigration and Border Protection Workers](#) (amended September 2016).

24. The following comments were provided by Home Affairs in relation to the corruption prevention observations in the investigation report:

The Department's Integrity Frameworks are designed to protect staff, property, systems and information from infiltration and corruption by criminal entities. The Frameworks ensure the Department of Home Affairs, including the Australian Border Force, achieves a high standard of professional behaviour and a strong integrity culture. This assists in maintaining the confidence of the Australian Government, the Australian community and partner law-enforcement agencies. The Framework also helps to prevent risks presented by corruption, fraud, inappropriate behaviours, and other unlawful and serious criminal activities.

All Immigration and Border Protection (IBP) Workers are required to obtain and maintain an ESC and AGSVA security clearance as defined in the Secretary Determination

The ESC Screening Process was published on 9 September 2020 and sets out the framework for the induction ESC process, as well as validity periods, revocation and rescreening.

The Department continues to review the ESC Screening Process and expects to publish a revised Procedural Instruction in the second quarter of the 2022-23 financial year.

The process notes that a clearance holder may be directed to undergo a re-screening at any time, however there do not appear to be provisions for systemic rescreening after a certain period of employment has elapsed. The Department is currently reviewing its process for managing ongoing security assessments.

As part of the review of the ESC Screening Process, the Department continues to improve the ongoing employment suitability framework through the use of data and intelligence to identify staff or business areas that pose risks to be subjected to re-screening.

25. On 9 June 2022, I gave the Attorney-General and the Secretary of Home Affairs my finalised report on Operation Avon in accordance with s 55 of the LEIC Act.
26. On 20 July 2022, the AFP informed me that the report should not be released publicly because of potential security risks. For this reason, I have decided it is not in the public interest to publish the Investigation Report on Operation Avon under s 209 of the LEIC Act and instead considered the publication of an investigation summary.
27. On 28 July 2022, I notified the Secretary of Home Affairs that I was considering publishing a summary of the investigation, giving the opportunity to provide submissions on the proposed publication in accordance with s 210 of the LEIC Act.
28. This is the summary of the investigation I have decided is in the public interest to disclose.



Jaala Hinchcliffe
Integrity Commissioner
23 August 2022