



National Anti-Corruption Commission

Investigation Report

Operation Wilson

An ACLEI investigation into an
Australian Border Force officer's
connections with the
importation of illicit tobacco

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Further information

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National Anti-Corruption Commission

Investigation report - Operation Wilson

An ACLEI investigation into an Australian Border Force officer's connections with the importation of illicit tobacco

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Executive summary

This is a public report of an Australian Commission for Law Enforcement Integrity (ACLEI) corruption investigation, known as Operation Wilson, which was a joint investigation with the Department of Home Affairs (Home Affairs), the Australian Federal Police (AFP) and Victoria Police.

Operation Wilson investigated allegations of corrupt conduct by a former Australian Border Force (ABF) officer, Mr Jonah Hsu. It was alleged that Mr Hsu was associated with 'Mr Blue'¹, who was being investigated for multiple illicit tobacco importations, and that Mr Hsu had accessed information on Mr Blue's consignments in ABF databases.

The investigation established that Mr Hsu did work for a company that Mr Blue was the managing director of while employed at the ABF and looked up ABF information, at Mr Blue's request, on certain shipping containers, some of which contained illicit cigarettes. The accesses were unrelated to Mr Hsu's employment with the ABF and without authority.

It has been found that Mr Hsu, as a staff member of the ABF, engaged in corrupt conduct, namely 'abuse of office'.²

The investigation also resulted in Mr Hsu pleading guilty to 2 charges of unauthorised access to restricted data on or about 3 March 2021 and between 14 to 21 April 2021 contrary to section 478.1(1) of the Criminal Code (Cth). He was convicted and fined \$4000.

On 1 July 2023, ACLEI was subsumed into the National Anti-Corruption Commission. Under the transitional arrangements, the National Anti-Corruption Commissioner is required to complete the investigation report as though the *Law*

¹ Pseudonym.

² LEIC Act, s 6(1)(a).

Enforcement Integrity Commission Act 2006 (Cth) (LEIC Act) had not been repealed.

Following procedural fairness consultation, the investigation report was provided to the Attorney-General and the Secretary of Home Affairs as required under section 55 of the LEIC Act.

Law Enforcement Integrity Commissioner Act investigation reports

The LEIC Act established the office of Integrity Commissioner, supported by a statutory agency, ACLEI.

The role of the Integrity Commissioner and ACLEI was to detect, investigate and prevent corrupt conduct and deal with corruption issues in the following agencies:

- Australian Criminal Intelligence Commission (including the former Australian Crime Commission, the former National Crime Authority and the former CrimTrac Agency)
- AFP (including ACT Policing)
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Home Affairs (including the Australian Border Force).

Other Australian Government agencies with law enforcement functions were prescribed by regulation as being within the jurisdiction of the Integrity Commissioner. These were:³

- Department of Agriculture, Fisheries and Forestry (DAFF)
- Australian Competition and Consumer Commission (ACCC)
- Australian Prudential Regulation Authority (APRA)
- Australian Securities and Investment Commission (ASIC)
- Australian Taxation Office (ATO)
- Office of the Special Investigator (OSI).

³ *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.

The LEIC Act provided that 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.

After the Integrity Commissioner completed a corruption investigation, the LEIC Act provided that a report must be prepared setting out:

- a) findings on the corruption issue
- b) the evidence and other material on which those findings are based
- c) any action that has been taken, or proposed to be taken, under Part 10 in relation to the investigation, and
- d) any recommendations and, if recommendations are made, the reasons for those recommendations.⁴

The report on the investigation, prepared under the LEIC Act, was required to be given to the Attorney-General, and a copy to the head of the law enforcement agency to which the corruption issue relates.⁵

Findings made about whether a person has engaged in corrupt conduct are made 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 was 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 54(1)-(2).

⁵ Ibid s 55.

In considering whether or not the Integrity Commissioner was 'reasonably satisfied' of relevant facts, the Commissioner applied the reasoning set out in *Briginshaw v Briginshaw*,⁶ *Rejtek v McElroy*,⁷ and *Re Day*⁸.

On 1 July 2023, ACLEI was subsumed by the National Anti-Corruption Commission. Under Schedule 2, Item 38 of the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022* (Cth), for ACLEI investigations completed, but not yet reported on before the transition, the National Anti-Corruption Commissioner must prepare an investigation report as if the LEIC Act had not been repealed.

This investigation report for Operation Wilson has been prepared in accordance with Schedule 2, Item 38 of the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022*.

⁶ (1938) 60 CLR 336, 361–62 (Dixon J).

⁷ (1965) 112 CLR 517, 521.

⁸ (2017) 91 ALJR 262, 268 [14]–[18].

Summary of the investigation

Due to the sensitive nature of information contained within this investigation report, some people and corporations are referred to using pseudonyms, genders are neutralised and in some instances the relationship between people has been referred to in general terms.

Notification

On 20 May 2021, the Secretary of the Department of Home Affairs (Home Affairs) notified the Integrity Commissioner of a significant corruption issue pursuant to section 19(1) of the LEIC Act.

The notification alleged former ABF Officer, Mr Jonah Hsu (Mr Hsu), was associated with 'Mr Blue'⁹, who was being investigated for multiple illicit tobacco importations by the ABF Illicit Tobacco Taskforce Unit.

It was also alleged that Mr Hsu had:

- a) received a large cash transfer of over AUD 170,000 from Singapore investment firm, 'Skyfields'¹⁰, a firm connected to Mr Blue, and
- b) searched in ABF databases for consignments that Mr Blue had an interest in.

⁹ Pseudonym.

¹⁰ Pseudonym.

Jurisdiction

On 24 May 2021, the Integrity Commissioner decided to investigate the matter jointly with Home Affairs, AFP and Victoria Police pursuant to sections 26(1)(a) and 26(2) of the LEIC Act. The investigation was named 'Operation Wilson'.

In making this decision, the Integrity Commissioner was satisfied that:

- a) The allegations were within ACLEI's jurisdiction because it involved a member of the ABF, who was a staff member of a law enforcement agency as defined in section 10(2A) of the LEIC Act.
- b) The allegations fell within the meaning of 'corruption issue' as defined by section 7 of the LEIC Act. The information raised the possibility that a member of the ABF may have used their position to assist with the importation of illicit tobacco.

Investigation

ABF investigation

Prior to the commencement of Operation Wilson, the ABF identified that between 22 January and 27 March 2021, a company called 'StockGrains'¹¹ imported 23 shipping containers in 10 separate consignments into Sydney, New South Wales (NSW).

On arrival into Australia, the ABF examined 22 of the 23 imports. Of the 22 consignments that were examined, 6 were found to contain a total of 14,909,600 illicit cigarettes hidden behind a cover load of fertiliser. ABF investigations revealed that StockGrains did not have a permit to import tobacco.

¹¹ Pseudonym.

ABF enquiries also revealed that:

- a) Mr Blue was the Managing Director of Skyfields, a Singaporean registered company, and the Director of StockGrains, an Australian registered company.
- b) The importation clearance process for at least 4 of the consignments containing illicit cigarettes had been conducted by logistics company, 'Logistics Pty Ltd'.¹² An employee of Logistics Pty Ltd was introduced to Mr Blue through Mr Hsu.

Mr Hsu's employment

ABF

Mr Hsu commenced employment with the ABF on 7 October 2019 and undertook Border Force Officer Recruit Training.

At the time of the alleged conduct, Mr Hsu was employed as an APS 3 Intelligence Analyst in the ABF Mobile Deployment Team in Melbourne, Victoria. His role was to assist as an interpreter and work on projects as required. Mr Hsu was mainly tasked with translating material located on phones and other electronic devices seized during search warrants, from Mandarin to English.

As a condition of his employment, Mr Hsu was required to maintain a baseline security clearance with the Department of Defence through the Australian Government Security Vetting Agency (AGSVA). His clearance allowed him to access documents and information with classifications up to and including 'Protected'.

During his employment with the ABF, Mr Hsu completed training on various topics including mandatory reporting of serious misconduct, corrupt conduct and criminal activity and his obligations as a Border Force officer.

¹² Pseudonym.

Access to ABF databases

On commencement with the ABF, Mr Hsu was issued a unique information technology user identification to enable access to ABF computer systems to perform his duties, including the Integrated Cargo System (ICS) and the National Intelligence System (NIS).

ICS electronically reports the movement of goods across Australia's borders. Amongst other functions, it provides efficient management of all import and export reporting, processing and functions, effective cargo risk assessment and the ability to track cargo movement.

Information available in ICS includes the status of a consignment, such as whether it has passed customs and quarantine checks or whether it is being held, and details of a consignment, such as the consignor, consignee, goods description and date of arrival.

Users of ICS include both Home Affairs employees and third parties. Third parties, such as authorised customs brokers, can apply to be given limited access to the ICS environment, however third-party access does not grant third parties the same access as Home Affairs employees. For example, only departmental employees with designated access can view ABF interactions with cargo.

ICS is accessed via Home Affairs' computer system known as Corpnet. When accessing Corpnet an automatic message is presented addressing the conditions of use for Department Information Communications Technology resources, including that unauthorised access to the system may result in APS Code of Conduct breaches or criminal prosecution. The last condition of the message states:

By proceeding to the logon page you agree to abide by all relevant departmental policies, practice statements, instructions and guidelines. To continue past this screen, the user must click 'OK'.

NIS is the primary corporate intelligence reporting system for Home Affairs, including the ABF. NIS is a repository of information reports and entity details,

including details of persons, vehicles, addresses and phone numbers. The system is for official use only and is predominantly used by ABF officers to access historical and/or current information relevant to an investigation or enquiry.

Upon accessing the logon screen, users are reminded of the restrictions that apply to accessing NIS and the consequences of doing so without authorisation. For example, the following message appears when users attempt to access NIS:

NIS is provided for official use only. All data, regardless of classification, is to be assessed on a need-to-know basis. NIS data is subject to the provisions of Part 6 of the Australian Border Force Act 2015 and criminal penalties apply for unauthorised disclosures. Unauthorised access, modification, deletion, damage or denial of access to the data may be an offence under the Commonwealth Crimes Act 1914. Use of this system will be audited and any misuse will result in disciplinary and possible criminal action.

Skyfields

The investigation established that Mr Hsu had a personal relationship with Mr Blue since 2013 and was in contact with Mr Blue up until June 2021.

Documents retrieved from Mr Blue's laptop confirmed that from around 24 April 2018, Mr Hsu commenced work with Skyfields as a Compliance Officer and also acted as 'Market Manager China'.

Mr Hsu worked at Skyfields throughout his employment at the ABF.

Secondary employment declarations

On 30 May 2019, Mr Hsu completed a Home Affairs Employment Suitability Clearance (ESC) Questionnaire Submission Report (ESC Report), as part of his recruitment, together with a:

- statutory declaration, signed on 27 May 2019
- privacy notice and general consent form, signed on 27 May 2019, and
- ESC drug acknowledgement form, signed on 27 May 2019.

In completing the ESC report, Mr Hsu did not declare his associations with Mr Blue and Skyfields, including his employment status.

On 9 September 2019, Mr Hsu participated in an ESC telephone interview with an ESC Assessing Officer in relation to his outside employment status and did not declare his associations with Mr Blue and Skyfields.

Home Affairs records also revealed that on 16 September 2019, Mr Hsu completed and submitted several documents and electronic forms as part of his national security clearance assessment through AGSVA. Mr Hsu omitted to declare his associations with Mr Blue and Skyfields.

On 9 October 2019, Mr Hsu applied to an ABF manager to undertake external employment with Skyfields. In his application, Mr Hsu listed Mr Blue as the contact person and indicated that he had already commenced employment with the company.

The application was assessed as "high risk" by Home Affairs' Integrity and Professional Standards (I&PS) because the company was a foreign exchange service provider, making Mr Hsu vulnerable to corruption in his position with the ABF.

On 18 September 2020, Mr Hsu was directed to withdraw his application for outside employment and to cease involvement with Skyfields. Mr Hsu responded by sending an email to his ABF manager saying that he had never commenced employment with Skyfields.

On 1 April 2021, Mr Hsu completed another ESC Report which contained the following statement in his Statutory Declaration:

[...]

- a) I acknowledge that I understand that the Australian Government's Protective Security Policy Framework requires me to provide an assurance to the Department that I will comply with the Australian Government's policies, standards, protocols and guidelines that safeguard the Australian Government's people, information and assets from harm.
- b) I agree to comply with all relevant Departmental and Australian Government Protective Security policies and procedures, as amended from time to time.

Mr Hsu again did not declare his association with Mr Blue, Skyfields or StockGrains in the ESC report. On 8 April 2021, Mr Hsu participated in a voluntary interview with an ESC officer. During the interview, Mr Hsu said he was not engaged in outside employment and did not associate with anyone who was in the business of importing goods.

Mr Hsu's involvement with StockGrains

The investigation focused on Mr Hsu's connection with StockGrains and the consignments examined by the ABF in 2021.

Records obtained during Operation Wilson revealed the following key sequence of events:

- a) On 27 November 2020, Mr Blue submitted an application to the Department of Agriculture, Water and the Environment (DAWE) to import Palm Kernel Expeller from Malaysia into Australia to be used as stock feed.
- b) On 27 January 2021, DAWE emailed Mr Blue and advised that the department could issue an import permit and attached a draft permit for review and a production and audit questionnaire.
- c) Between 3 and 12 February 2021, Mr Blue forwarded documents from DAWE to Mr Hsu relating to the importation of stockfeed and requested that Mr Hsu have a look. Mr Hsu subsequently forwarded the documents to his ABF email address.
- d) On 12 February 2021, Mr Hsu participated in a meeting with DAWE and Mr Blue to discuss the permit application. Mr Hsu identified himself as a representative of StockGrains.

Between 22 January 2021 and 27 March 2021, StockGrains imported 23 shipping containers in 10 separate consignments. Of the 22 containers examined, the ABF found 6 containers containing illicit cigarettes.

Notices were served on StockGrains in relation to the seizure of containers containing illicit cigarettes in March and April 2021.

Unauthorised accesses

Integrated Cargo System

On 26 February 2021, 2 shipping containers, A and B, imported by StockGrains arrived at the ABF Container Examination Facility in Sydney, NSW.

Email records revealed that on 2 March 2021 at 4:13 pm, Mr Blue emailed Mr Hsu requesting that he 'assist [them] in updating [their] clients' and providing a Bill of Lading and 14 shipping container numbers. The 14 shipping containers referred to included containers A and B. Four hours later, Mr Hsu completed the first step in the process of obtaining legitimate third-party access to the ICS:

Boss, I have registered an account with Gatekeep a third party contracted by the Department of Home Affairs to conduct character investigations and company background check[s]. Once this stage is over, we can use the Digital Certificate to set up an ICS Account, which will enable [us] to follow up the status of our future consignments in real time ... Please message me on Signal if you need any clarification.

An account would have allowed officers from StockGrains to have limited access to the ICS and track their incoming and outgoing cargo. The application for access to ICS was unsuccessful as StockGrains failed the authentication process because Mr Blue was not based in Australia.

On 3 March 2021 at 1:11 am, Mr Blue sent a further email to Mr Hsu requesting that he look at shipping containers A and B which had been 'stuck' since 23 February 2021. Both shipping containers were ultimately found to contain illicit cigarettes.

Audits conducted on Mr Hsu's accesses to ABF systems revealed that on 3 March 2021, between approximately 7:44 am and 7:46 am, Mr Hsu accessed the ICS and viewed information relating to 2 of the 14 shipping containers. These containers were examined by the ABF and confirmed to contain fertiliser.

On 5 March 2021, between approximately 7:26 am and 7:32 am, Mr Hsu again accessed the ICS and viewed information relating to shipping containers A and B. These containers each contained 2,440,000 Manchester brand cigarettes.

Information that Mr Hsu accessed in ICS included a summary of the import status of the consignments.

The information Mr Hsu viewed in the ICS relating to the shipping containers was not related to Mr Hsu's work and he was not instructed to view or access this information by his supervisors at the ABF. Accordingly, Mr Hsu was not authorised to access this information and he knew that he was not authorised to access this information.

Mr Blue and StockGrains did not have limited access to the ICS when Mr Hsu looked up the consignments on 3 and 5 March 2021.

National Intelligence System

Mr Hsu's access logs to NIS identified the following:

- a) On 14 April 2021, Mr Hsu conducted searches in NIS and reviewed 14 ABF Taskforce information reports (information reports) relating to 6 suspected illicit cigarette importations linked to StockGrains. Information in NIS reports included actions taken in relation to the consignments, personal information and intelligence relating to StockGrains and Mr Blue and identification of other consignments of interest.
- b) On 21 April 2021, Mr Hsu conducted further searches in NIS and reviewed 3 further information reports on suspected illicit tobacco imports linked to StockGrains, as well as personal information and intelligence relating to Mr Blue and StockGrains.

The information reports Mr Hsu viewed on the NIS in relation to StockGrains and Mr Blue were not related to Mr Hsu's work and Mr Hsu was not instructed to view or access this material by his supervisors at ABF. Accordingly, Mr Hsu was not authorised to access this information.

The evidence showed that Mr Hsu communicated with Mr Blue on 2 and 24 March 2021 using the encrypted messaging app, Signal, however the content of the communications could not be recovered.

Interview with Mr Hsu

On 17 June 2021, Mr Hsu participated in an interview with ACLEI investigators and confirmed he had:

- known Mr Blue for several years
- invested money with Skyfields following the sale of his parents' home in China, and
- completed various training with the ABF, including on integrity, conflicts of interest and mandatory reporting of serious misconduct and corrupt conduct in criminal activity.

Mr Hsu declined to comment, when questioned about his external employment with Skyfields, the alleged unauthorised accesses to restricted data and his dealings with Mr Blue, Skyfields and StockGrains.

Financial investigations

Investigations were conducted into the financial position of Mr Hsu, particularly whether any payments were made to him in connection with the consignments.

It was established that on 1 April 2021 Skyfields remitted AUD \$173,742 to Mr Hsu. Mr Hsu declared this payment to Home Affairs stating it was from the sale of his parents' home in China, remitted to Mr Hsu via Skyfields in order for Mr Hsu to buy a property in Melbourne.

ACLEI investigators analysed financial records of Mr Hsu obtained pursuant to notices under s 75 of the LEIC Act and material collected on Mr Blue's laptop. From the material gathered, it was identified that 7 payments totalling \$236,917 were made to Mr Hsu from Skyfields or Mr Blue between 2 July 2019 and 6 April 2021.

While the payments could not be directly connected to Mr Hsu's access to ABF information, they do evidence that significant sums of money were received by Mr Hsu from Skyfields and the association that he had with Mr Blue.

Consideration

I am required under section 54 of the LEIC Act to provide my findings on a corruption issue.

Before the opinions and the findings set out in this report were made, a draft of the report containing those potential opinions and findings was provided to Mr Hsu. Mr Hsu provided submissions in response, through his lawyers. Those submissions have been considered, and they and the responses to them are summarised in Annexure A.

I am comfortably satisfied on the evidence obtained in the course of Operation Wilson that Mr Hsu, as a staff member of the ABF, engaged in corrupt conduct, namely 'abuse of office'.¹³

'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.¹⁴

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'.

The accessing and use of official information, to which a public official has access by reason of their office, for purposes other than the performance of their official duties, involves abusing their office.

¹³ LEIC Act, s 6(1)(a).

¹⁴ See for example the Criminal Code (Cth), s 142.2(1).

The evidence collected in Operation Wilson comfortably satisfies me that:

- a) While employed at the ABF, Mr Hsu was concurrently employed by Skyfields, of which his long-term associate, Mr Blue, was managing director, knowing that the ABF prohibited his employment with Skyfields.
- b) Mr Hsu attended an online Teams meeting with DAWE and Mr Blue on 12 February 2021 to discuss Mr Blue's permit application to import stockfeed.
- c) At Mr Blue's request, Mr Hsu on two occasions deliberately accessed restricted data on the ICS relating to StockGrains' containers, including containers holding illicit cigarettes, for purposes unrelated to his employment and without authority (StockGrains being an Australian registered company of which Mr Blue was a director).
- d) Mr Blue and StockGrains did not have access to ICS when shipping containers A and B were imported and when Mr Hsu looked up information on the containers on 3 and 5 March 2021.
- e) Mr Hsu conducted searches in ABF's NIS on 14 and 21 April 2021 and viewed information reports relating to 6 seized shipments linked to StockGrains, as well as intelligence about Mr Blue and StockGrains gathered on the NIS, for purposes unrelated to his employment and without authority.

Employment in the ABF comes with a high level of trust from the Australian community and Mr Hsu's conduct was a significant breach of this trust. Mr Hsu was dishonest with the ABF about his relationship with Mr Blue, Skyfields and StockGrains.

Although no specific instances of disclosure of confidential information by Mr Hsu to Mr Blue were identified, I am comfortably satisfied that Mr Hsu accessed and viewed confidential ABF information for the purpose of assisting Mr Blue, namely to provide him with confidential official information in relation to StockGrains and himself to which he would not otherwise have had access.

Accordingly, I am satisfied that Mr Hsu has engaged in corrupt conduct, namely 'abuse of office', by accessing official information to which he had access by reason of his office, for purposes other than the performance of his official duties.

Action under Part 10 of the LEIC Act

On 17 June 2021, Mr Hsu was arrested and charged by Victoria Police in relation to criminal offending, pursuant to section 142.2(1) (abuse of public office) and section 478.1 (unauthorised access of restricted data) of the Criminal Code (Cth).

On 21 June 2021, Victoria Police referred the prosecution of Mr Hsu to the Commonwealth Director of Public Prosecution.

On 1 September 2021, the ACLEI Integrity Commissioner wrote to the Secretary of the Department of Home Affairs disclosing evidence in relation to a breach of duty or misconduct by Mr Hsu pursuant to section 146 of the LEIC Act.

On 21 November 2022, Mr Hsu pleaded guilty to 2 charges of unauthorised access to restricted data on or about 3 March 2021 and between 14 to 21 April 2021 contrary to section 478.1(1) of the Criminal Code (Cth). He was convicted and fined \$4000 in the Melbourne Magistrates' Court.

On 19 June 2023, Mr Hsu's sentence was affirmed on appeal in the County Court of Victoria.



The Honourable PLG Brereton AM, RFD, SC
Commissioner

12/02/2025

Annexure A

Summary of submissions and responses		
Submissions from Mr Hsu's legal representatives		
Page reference of report	Relevant submission	Response
General	Overall position is that there is an insufficient basis to find that Mr Hsu engaged in corrupt conduct, namely 'abuse of office', even when applying the <i>Briginshaw v Briginshaw</i> ¹⁵ standard.	There is sufficient evidence to comfortably satisfy me that Mr Hsu engaged in corrupt conduct, namely abuse of office, as explained in the investigation report.
General	<p>Withdrawal of the abuse of office charge under subs 142.2(1) of the <i>Criminal Code</i> (Cth) against Mr Hsu represents a concession by the Commonwealth Director of Public Prosecution (CDPP) that the evidence was not sufficient to prove the offence to a criminal standard.</p> <p>The offences to which Mr Hsu pleaded guilty to, unauthorised access to restricted data contrary to subs 478.1(1) of the <i>Criminal Code</i> (Cth), do not encapsulate the central finding of the report.</p> <p>The CDPP conceded that actual disclosure of information to Mr Blue could not be proved.</p>	<p>This submission is not accepted. On the morning of the contested summary trial, Mr Hsu made an offer to plead guilty to 2 unauthorised access offences contrary to subs 478.1(1) of the <i>Criminal Code</i> (Cth). In exchange, the prosecution would withdraw one abuse of public office by a Commonwealth public official charge under subs 142.2(1), and the remaining 2 unauthorised access charges. The CDPP agreed to defence's offer. This was a compromise and, in any event, does not bind the Commission.</p> <p>Proof of actual disclosure is not essential to the conclusion that the admitted unauthorised access was an abuse of office: it is the purpose of the admitted</p>

¹⁵ (1938) 60 CLR 336, 361–62 (Dixon J).

		<p>unauthorised access that is decisive. As explained in the investigation report, I am comfortably satisfied, applying the standard set out in <i>Briginshaw v Briginshaw</i>, <i>Rejtek v McElroy</i>,¹⁶ and <i>Re Day</i>,¹⁷ that Mr Hsu engaged in corrupt conduct by accessing official information, to which he had access by reason of his office, for purposes other than the performance of his official duties.</p>
<p>Pages 13-14 and 18</p>	<p>The inference that Mr Hsu disclosed restricted ABF information to Mr Blue cannot be made:</p> <ul style="list-style-type: none"> a) The report does not assert what specific information was accessed or could have been accessed in the Integrated Cargo System (ICS) searches on 3 and 5 March 2021. b) How the accessed ABF information could have potentially benefited Mr Blue. c) The brief of evidence revealed that, by at least 16 March 2021, Mr Blue had already received seizure notices in relation to 2 of the consignments. d) The communication between Mr Hsu and Mr Blue on Signal was not until 24 March 2021. It makes little sense that Mr Hsu would conduct 	<p>The following sentence was removed from the final report:</p> <p>I am reasonably satisfied that an inference can be drawn that Mr Hsu disclosed the restricted ABF information about the consignments to Mr Blue.</p> <p>The investigation report concludes that Mr Hsu accessed and viewed confidential ABF information about the consignments for the purpose of assisting Mr Blue, namely providing him with confidential official information in relation to StockGrains and himself that he would not otherwise have been able to access. That is a finding as to purpose and does not depend on actual disclosure of the information.</p> <p>In relation to the specific points:</p> <ul style="list-style-type: none"> a) The report stated that Mr Hsu accessed ICS on 3 March 2021 between 7:44

¹⁶ (1965) 112 CLR 517, 521.

¹⁷ (2017) 91 ALJR 262, 268 [14]-[18].

	<p>searches on 3 and 5 March 2021 and then wait 3 weeks to disclose the information to Mr Blue.</p> <p>e) A reasonable inference can be drawn that the attempted registration of the Gatekeeper account was an effort by Mr Hsu to placate Mr Blue in a way that would obviate the need to disclose restricted information.</p>	<p>am and 7:46 am and viewed information relating to 2 shipping containers. The report also stated that Mr Hsu accessed the ICS and viewed information relating to shipping containers that contained the illicit cigarettes. The investigation report includes further information on what is contained in the ICS:</p> <p>[13] Information available in ICS includes the status of a consignment, such as whether it has passed customs and quarantine checks or whether it has been held, and details of a consignment, such as the consignor, consignee, goods description and date of arrival.</p> <p>[Page 13] Users of the ICS include both Home Affairs employees and third parties. Third parties, such as authorised customs brokers, can apply to be given limited access to the ICS environment, however third-party access does not grant third parties the same abilities and access as Home Affairs employees. For example, only departmental employees with designated access can view ABF's interactions with cargo.</p> <p>...</p> <p>[Page 18] Information that Mr Hsu accessed in ICS included a summary</p>
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		<p>of the import status of the consignments.</p> <p>...</p> <p>[Page 18] Mr Blue and StockGrains did not have limited access to the ICS when Mr Hsu looked up the consignments on 3 and 5 March 2021.</p> <p>...</p> <p>[Page 21] Mr Blue and StockGrains did not have access to ICS when shipping containers A and B were imported and when Mr Hsu looked up information on the containers on 3 and 5 March 2021.</p> <p>b) As stated above, in the investigation report it is no longer asserted that confidential information was actually disclosed to Mr Blue. However, the report maintains that Mr Hsu's purpose for accessing the information was to assist Mr Blue. The information was of potential benefit to Mr Blue because it was information about a consignment in which he was interested and which he could not otherwise access.</p> <p>c) The report has been amended to include when the seizure notices were served. Receipt of seizure notices on 16 March does not mean that additional information from the NIS would not have been of utility. In any event, the point is that there was an unauthorised access, which</p>
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		<p>implicitly involves a collateral purpose.</p> <p>d) As explained above, the conclusion does not depend on there having been an actual disclosure on 24 March or at all.</p> <p>e) Even if the attempted registration of the Gatekeeper account was an effort by Mr Hsu to placate Mr Blue in a way which would obviate the need to disclose restricted information, it failed and was followed by the unauthorised accesses.</p>
<p>Pages 12, 13-14 and 18.</p>	<p>In relation to Mr Hsu's searches in ABF's National Intelligence System (NIS) it is submitted that:</p> <p>a) The searches occurred 'weeks' after the email requests of Mr Blue on 2 and 3 March 2021 for information about the consignments and the seizure notices.</p> <p>b) There is no suggestion proffered as to when or how any disclosures of the NIS information to Mr Blue occurred.</p> <p>c) No articulation of the potential benefit to Mr Blue of the disclosure of the NIS information.</p> <p>d) It is 'very likely' that by 14 April 2021, Mr Hsu had some knowledge of the seizure of the consignments given communication with Mr Blue on 24 March 2021. It is submitted that Mr Hsu</p>	<p>a) and b) As outlined above, the finding that Mr Hsu disclosed the restricted information has been removed from the final report. The conclusion relies on the purpose of the unauthorised accesses.</p> <p>c) The NIS is a more confidential system than the ICS. It contains intelligence gathered for the purpose of protecting national security interests. There is no third party access. The potential benefit to Mr Blue is the obtaining of information about his consignments to which he would not otherwise have access. The final report has been amended to include the following:</p> <p>Information in the NIS reports included actions taken in relation to the consignments, personal information and intelligence relating to StockGrains and Mr Blue</p>

	<p>would have been naturally curious to know what occurred in relation to the shipments.</p> <p>e) It is not probable that Mr Hsu would be willing to implicate himself by disclosing restricted information.</p>	<p>and identification of other consignments of interest.</p> <p>d) It is not accepted that Mr Hsu’s access to the records was simply out of curiosity, noting his close association with Mr Blue, their communications via an encrypted app, his defiance of the refusal of his application for secondary employment with Mr Blue, his false statements to ABF in relation to his association with Skyfields, and his previous unauthorised access to the ICS system at Mr Blue’s request.</p> <p>e) It is not accepted that it is not probable that Mr Hsu would be willing to implicate himself by disclosing restricted information, as he had already willingly accessed information in ICS without authority at the request of Mr Blue, and for the further reasons given at paragraph (d) above.</p>
<p>Page 14</p>	<p>Disputed that Mr Hsu was employed by Skyfields continuously or throughout his employment with the ABF. It is submitted that the financial records are not evidence that Mr Hsu had an ongoing employment relationship with Skyfields.</p>	<p>This submission is not accepted. The evidence establishes that Mr Hsu was employed by Skyfields on 24 April 2018 as a Compliance Officer and, from at least 6 December 2019, also acted as ‘China Market Manager’. Further, on various dates between 4 March 2019 and 11 March 2021, Mr Hsu completed training with Skyfields and was included in correspondence from Mr Blue to Skyfields employees concerning payroll and development of a Code of Conduct. There is no evidence that his employment</p>

		was terminated at any time during the relevant period.
Pages 14-16	Inadequate weight has been given to the fact that Mr Hsu made an application to undertake external employment with Skyfields on 9 October 2019 and listed Mr Blue as the contact person.	This submission is not accepted. The investigation report states at pages 15 to 16 that Mr Hsu made an application to the ABF to undertake external employment with Skyfields; the application was assessed as high risk; and Mr Hsu was directed to withdraw his application for outside employment. Despite this, he continued to work for Skyfields.

Submissions from Mr Hsu		
General	Australian cattle raisers benefit from StockGrains' business activities.	This is not relevant to the investigation.
General	There is no evidence that the cigarettes were intentionally imported by StockGrains. Mr Hsu submits that a high proportion of illicit tobacco intercepted by the ABF involves 'piggybacking'.	It is not necessary to make any finding in relation to StockGrains' intent, and none has been made. However, it is not correct that there is no evidence to support a finding of intent: the illicit tobacco was found in StockGrains' containers. The investigation did not find any evidence that the tobacco was 'piggybacked'.
General	Mr Hsu was 'trying to do the right thing' by assisting the company to obtain a digital certificate for the ICS. Mr Hsu submits he made an 'error of fact' in accessing ICS information that 'in theory' would be available to the company when granted the digital certificate.	Mr Hsu accessed restricted data on the ICS without authorisation on two occasions at the request of Mr Blue. As noted in the report, StockGrains would not have been provided the same level of access to ICS as Mr Hsu.
General	At the time of accessing the ICS information for the company, Mr Hsu was under a 'tremendous' amount of personal stress due to purchasing his apartment. Further, he was tasked with examining vast amounts of information and assisting multiple ABF investigation teams.	Mr Hsu did not raise any personal circumstances when interviewed by ACLEI investigators. In any event, these are not relevant mitigating factors, as they do not explain why he would have made the unauthorised accesses. And even if they were mitigatory, they would not detract from the finding of abuse of office.
General	Mr Hsu submits he 'hastily' searched information of interest in the NIS immediately logging off after learning there was an ongoing investigation into the company.	Mr Hsu's searches in the NIS were targeted. He conducted searches on 2 separate occasions (14 and 21 April 2021) on the illicit cigarette importations, following

	Further, Mr Hsu submits he only saw the 'warning sign' on the login page of the NIS once.	unauthorised access to the ICS system. Upon accessing the logon screen, the user is reminded of the restrictions in accessing the NIS and the consequences of doing so. Mr Hsu would have seen this every time he logged on.
Page 12	It is submitted that Mr Hsu's promotion to Home Affairs' Intelligence Division in April 2021 was not included in the summary of facts. Further, Mr Hsu's ABF role was not appropriately described, which went beyond translation services.	The report only discusses Mr Hsu's role at the time of the alleged conduct insofar as it is relevant. Further elaboration would not be relevant.
Page 16	Mr Hsu submits that the ESC interviewer was purposefully deceptive about the purpose of the interview and 'gaslighted' him. Mr Hsu states that he declared his involvement with the company a year prior to the ESC interview. He also submits that Operation Wilson triggered the ESC interview.	The only reference to the 8 April 2021 interview is in page 16 of the final report, which notes assertions made by Mr Hsu about his outside employment and associations during the interview, which Mr Hsu does not appear to dispute were made. In that context, it is not apparent how what he understood to be the purpose of the interview would be relevant.
Page 19	Mr Hsu raises concerns with the reference in the draft report to his parents' investment with Skyfields: a) his parents invested with the company for 'wealth management', and b) he declared the two financial transactions to Home Affairs.	The report states that Skyfields remitted \$173,742 to Mr Hsu which he declared to Home Affairs was from the sale of his parents' home. The report accurately reflects the evidence, including that the transaction was declared.
General	Mr Hsu raises concerns with the conduct of ACLEI in executing the search warrant at his	These allegations, even if they were established, are not relevant to the findings in the report.

	residence, suggesting the investigators were biased and bigots.	
General	Mr Hsu submits that Home Affairs has been influencing the legal matters by suspending him without pay, ignoring his concerns over racist conduct, attempting to gather information on behalf of the DPP, and concealing relevant emails.	These allegations, even if they were established, are not relevant to the findings in the report.
General	Concerns are raised regarding the length of the court proceedings and the timing of the withdrawal of the abuse of office charge by the CDPP.	These allegations, even if they were established, are not relevant to the findings in the report.
General	It is submitted that the misuse of information offence was incorrectly used to remove Mr Hsu from his office and the laying of charges was politically motivated.	These allegations, even if they were established, are not relevant to the findings in the report.