

CHAOS OR COHERENCE? STRENGTHS, OPPORTUNITIES AND CHALLENGES FOR AUSTRALIA'S INTEGRITY SYSTEMS

THE NATIONAL INTEGRITY SYSTEMS ASSESSMENT (NISA) FINAL REPORT¹
*LAUNCH OF THE REPORT BY PROF. JOHN MCMILLAN, COMMONWEALTH OMBUDSMAN
PARLIAMENT HOUSE, SYDNEY, 9 DECEMBER 2005*

In recent years Australia has been at the forefront of a movement to define the requirements for integrity in government and to spell out the ethical principles that we expect those in government and business to observe. The excellent report that I have the pleasure of launching today is a further important step in that process. The report culminates an innovative and ambitious project to map the integrity system in Australia, to gauge its effectiveness, to highlight its strengths and weaknesses and to propose refinement and improvement of that system.

Before I say more about the report, may I firstly acknowledge the work of those who have authored it. The report is the product of the Australian National Integrity Systems Assessment research project, conducted over five years. This project was a partnership between two bodies – the Key Centre for Ethics Law Justice and Governance at Griffith University and Transparency International Australia. The Queensland Office of Public Service Merit and Equity was also a partner for a Queensland segment of the project. The research was funded by those industry partners and by the Australian Research Council.

The project leader was Professor Charles Sampford, and the principal author of the report was Dr AJ Brown. A large number of other contributing authors and researchers are acknowledged in the front of the report. They include people from six universities and elsewhere, across four Australian jurisdictions.

I commend those individuals and institutions for their foresight and prodigious work in producing this report. The report will in my view be an important document, for many years to come, in prodding government agencies and

¹ The report was prepared in collaboration by the Key Centre for Ethics Law Justice & Governance at Griffith University, and Transparency International. The report is available at www.griffith.edu.au/centre/kceljag/nisa.

researchers in Australia and elsewhere to conceive of integrity and integrity systems as a vital new way of evaluating government and business.

The involvement of Transparency International (TI) in this project draws attention immediately to the focus of TI's work upon highlighting corruption in government and business. The work of TI has shown over many years that corruption can degrade every element of a system: corruption can undermine respect for democratic principles, distort government policy priorities, bleed the efficiency of business, breed crime, result in unsafe buildings and products, and lessen the standard of living generally of the community. Once rooted in a system, corruption is immensely difficult to remove.

One of the tools that Transparency International has used to draw attention to these points are various indexes for measuring corruption in countries around the world. Australia has long enjoyed a reputation as a 'clean' country in respect of corruption. For example, according to TI's most recent (2005) Corruption Perception Index, Australia ranks as the 9th least corrupt country out of 158 examined.

Nevertheless, we know that complacency is not warranted, nor is it safe. To be complacent is to provide the opportunity for corruption to develop and for integrity to decline. Australia has had its share of corruption scandals that have reached the highest levels of government and business. Instances that have been well-documented are the corruption exposed by the Fitzgerald Report in Queensland, by the WA Inc inquiry in Western Australia, and police links to gangland killings in Victoria. In the last year, prosecutions brought by the Australian Securities and Investments Commission resulted in 27 corporate criminals being jailed for more than 96 years, including three HIH directors. Reports of the NSW Independent Commission Against Corruption in the last couple of years have made corruption findings against a university, an Aboriginal land council, the mayor of a local council, corrections officers, assessors in a government regulator, and a member of parliament.

If we broaden the focus beyond corruption, we see many other recent events that shake public confidence in the integrity of national institutions. These include the revelations about patient care in the Bundaberg Hospital in Queensland, about wrongful detention and removal of people by the Department of Immigration, the abuse of trust towards young people by teachers and religious leaders, the reluctance of James Hardie to accept responsibility for the asbestos-related illness of its former workers, suspect payments and practices by an Australian wheat export authority, and incorrect public statements on matters such as the Children Overboard Affair.

We can never be complacent. To prevent wrongdoing in government and business, and to elevate the standard of integrity in national life, we need a framework of institutions, rules and procedures that will safeguard the values that underpin integrity and public virtue. Added to those solid guarantees of integrity, we need a high degree of commitment and effort by all those who work in and around government and business. Preserving integrity is an ongoing challenge.

We are fortunate in that endeavour that we now have this report – the National Integrity Systems Assessment Final Report. The report draws attention to the issues in a thorough fashion, backed up by empirical research, underpinned by a comprehensive new methodology for integrity assessment, and strengthened by a complete set of recommendations that set the direction for reform in Australia. I will say a few words to describe the scope and contents of the report.

The NISA report takes Transparency International's approach to integrity a step further, by an in-depth examination of the different integrity components of Australian government and business.² Those integrity components variously include institutions such as parliamentary committees, ombudsmen, auditors-general, anti-corruption commissions, corporate regulators, and public sector standards commissions, and statutory guarantees such as administrative law, freedom of information, and whistleblower protection.

The methodology of the report is to examine the government and business integrity systems in three ways: by looking at consequences, capacity and the coherence of each system. **Consequences** refers to how well an integrity system and its components are operating. **Capacity** deals with the effectiveness of each component – whether, for example, each integrity institution has sufficient and appropriate resources at its disposal, including financial and human resources, legislative underpinning, and political will in support. **Coherence** refers to the overall coherence of a Commonwealth, State or business sector integrity system: how well the integrity institutions and statutory guarantees work in unison, cooperatively or otherwise, and whether the result is an integrated and mutually supportive armoury of anti-corruption safeguards.

The analysis of those themes – consequences, capacity and coherence – is illustrated in the report by a wealth of empirical research on the views of members of the public and those within government. Issues on which their views become important are whether they have confidence in the integrity system, how they rank the comparative effectiveness of different integrity agencies, and whether that performance ranking varies over time.

The report uses the analogy of a "birds nest" to describe a coherent integrity model: in a well-constructed birds nest, single twigs that are individually frail can be inter-twined and support far more weight and withstand more turbulence than a different arrangement of the twigs. The twigs can be collectively more effective than the sum of their individual force. This is a key message in the NISA report: integrity components that are integrated effectively and harmoniously can result in an integrity system that underpins good government and provides a barrier against forces, such as corruption, that would weaken it.

² The focus of the report is upon three public sector integrity systems - Queensland, New South Wales and the Commonwealth – and on a business sector integrity system, largely in Victoria.

The report also contains many recommendations for improving Australia's integrity framework. These include the creation of a national independent statutory authority to investigate and prevent corruption and misconduct, and also to promote integrity and accountability in government; the creation in each Australian jurisdiction of a governance review council, including representatives of agencies such as the Ombudsman, Auditor-General, public service commissioner, parliamentary standards commissioner, and community representatives; the creation of a parliamentary committee to oversight the core integrity institutions; the imposition of a statutory duty on public sector agencies to prepare an organisational code of conduct; the creation of better consultative and other links between the core integrity institutions; and the development of accredited training on integrity, accountability and ethics requirements in public and private sector agencies.

The report contains an Appendix that provides an Overview of the NISA methodology – a 'how to do a NISA', if you like. I am told that this methodology document will evolve to reflect experience learnt from the application of the methodology by other researchers.

There is much else besides in the report that will appeal differently to each reader or researcher. I will give two examples that held a special interest for me. The first was a survey of senior public servants in NSW who were asked to rate the importance to their agency of the different integrity agencies and organisations in that State. The three agencies rated the most important were the Ombudsman, the Independent Commission Against Corruption, and the Auditor-General. Integrity bodies that sometimes figure more prominently in academic and media analysis – such as courts, tribunals, royal commissions and the Director of Public Prosecutions – were rated lower.³

A survey of Commonwealth agencies yielded a similar picture, but gave more emphasis to financial accountability mechanisms, such as the Audit Office, parliamentary estimates committees, and the *Financial Management and Accountability Act 1997* (Cth).⁴ As that illustrates, the integrity system must be adapted to the responsibilities of government, which at the Commonwealth level involves a principal focus on financial transactions, in areas such as taxation, welfare support, child support, health and education funding, and defence equipment acquisition.

A second feature of the report that held a special interest to me was the very concept of an integrity system. As I have noted elsewhere,⁵ the model that is conventionally taught in Australia is that there is a separation of powers, between the legislature, executive and judiciary. The role of overseeing and reviewing executive (and to a limited extent, legislative) activity falls to the judiciary. Yet that model – in a pure form – is increasingly misleading in describing how accountability occurs and integrity is maintained. According to the three-branch separation of powers, institutions such as the Ombudsman, Auditor-General, anti-corruption commission and tribunals are classified as

³ See p 25 of the report.

⁴ See pp 32-34 of the report.

⁵ J McMillan, 'The Ombudsman and the Rule of Law' (2005) 44 *AIAL Forum* 1, 11-13.

being part of the executive branch of government. But the NISA report confirms that those institutions have evolved as a separate branch of government, with a function of reviewing and overseeing the executive (and legislative) branches and maintaining integrity in government and business generally. In short, the NISA report provides us with the material to take a different look at both the constitutional framework and the practical dynamics of government.

I note finally that the report has already had some practical impact while in preparation. In June 2005, key Western Australian integrity agencies formed an 'Integrity Coordinating Group' (ICG), comprising the Ombudsman, Corruption and Crime Commission, Auditor-General and Public Sector Standards Commissioner: this was a strategy recommended in the draft NISA report. In addition, a project is now underway in Georgia in the Caucasus where a team, using the NISA methodology, is working on a Georgian NISA project. The project is being directed jointly by the International Institute of Ethics, Governance and Law at Griffith University and "TIRI", a London-based non-government organisation that is looking internationally at integrity building.

I will close by commending the report to those who have gathered to launch it, and by congratulating those who have prepared and written it. My fervent hope is that the report will receive wide readership and attention in Australia, that its recommendations will be debated widely, and that the foundations laid in this report will be built upon by others.

With great pleasure I formally launch the NISA Australia Final Report.

Summary of Recommendations from the NISA Final Report, Chaos or Coherence?

The report contained 21 recommendations for government, business, civil society groups and members of the general community concerned to ensure continual improvement in Australia's integrity systems.

Integrity from the top: core institutions

1. Commonwealth integrity & anti-corruption commission

The Commonwealth Government's proposed new independent anti-corruption agency to be a comprehensive lead agency operating across the Commonwealth, not just a few agencies.

2. Governance review councils

Each Australian government to establish a governance review council to promote policy and operational coherence between core integrity institutions, and related functions.

3. Standing parliamentary & public oversight mechanisms

All core public integrity institutions to have a standing multi-party parliamentary committee, and direct public involvement in their operations or reviews.

4. Jurisdiction over corporatised, contracted & grant-funded services

Jurisdictions of public sector integrity institutions to extend to any decisions or services flowing from an allocation of public funds.

5. Access to administrative justice

National review of the availability of substantive administrative law remedies to citizens aggrieved by official decisions.

6. Enforcement of parliamentary and ministerial standards

All Australian parliaments to establish comprehensive regimes for the articulation and enforcement of parliamentary and ministerial standards.

7. Independent parliamentary select committees

New procedure for the initiation of inquiries by select parliamentary committee.

Walking the talk: distributed integrity institutions

8. Statutory frameworks for organisational codes of conduct

Comprehensive legislative basis for all integrity systems for any sector in any jurisdiction.

9. Relationships between organisations and core integrity agencies

All statutory frameworks to better reflect and ensure the mutually supporting functions of core and distributed integrity institutions.

10. Effective disclosure of interests & influences

New standards for systems for regulation and disclosure of material interests, including electoral contributions, based on continuous disclosure and the right of the public or affected persons to know of interests prior to relevant decisions.

11. Whistleblower protection and management

Revision of minimum legislative requirements to facilitate 'whistleblowing' by current and former employees, including better protection from reprisals.

12. Minimum integrity education and training standards

Training in integrity, accountability and ethics institutionalisation as a prerequisite for appointment to senior management.

13. Professional development for integrity practitioners

National program of advanced professional training for integrity practitioners in government and business sectors.

14. Freedom of information

Revision of FoI laws to better respect the principle of public 'right to know'.

15. Regional integrity resource-sharing and capacity-building

Comprehensive review of framework for building integrity system capacity at local and regional levels of government.

Investing in integrity: education, evaluation and research

16. Civic education and community awareness

Development of civic education to include a stronger direct focus on the theory and practice of the nation's integrity systems including nature of ethical decision-making.

17. Public review of integrity resourcing and performance measurement

National review of optimum resourcing levels and performance measurement arrangements for core and distributed integrity institutions.

18. Parliamentary oversight review methodologies

Joint comparative study of the methods used by standing parliamentary and public advisory committees in the oversighting of core integrity institutions.

19. Evidence-based measures of organisational culture and public trust

Joint long-term research by integrity agencies into optimum use of social science and evidence-based research for evaluation of integrity system performance.

20. Core integrity institutions in the business sector

Supplementary integrity system assessment of the consequences, capacity and coherence of core integrity institutions responsible for Australia's business sector.

21. Civil society integrity systems

Supplementary integrity system assessment of Australia's civil society sector.