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Author

Prenzler, T, Faulkner, N

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Towards a Model Public Sector Integrity Commission

Tim Prenzler & Nicholas Faulker

This article examines the current debate in Australia about public sector integrity and the idea of a standing anticorruption commission. From this debate the article outlines a specific type of ‘public sector integrity commission’ that in principle should have the necessary powers and techniques at its disposal to minimise corruption while ensuring efficiency and fairness. The debate has been most active in jurisdictions that have not had an anticorruption commission – mainly in Victoria, South Australia and Tasmania – but debate about integrity commissions has occurred in all jurisdictions. The authors argue that anticorruption commissions are essential to ensure the integrity of the public sector and that a model commission should: cover all elements of the public sector, independently investigate all serious and mid-level complaints, have own motion powers to investigate any matter, have summary authority to apply administrative sanctions, make use of a range of investigative tools, not be tasked with combating major and organised crime, and be held accountable to citizens through a parliamentary committee and a parliamentary inspector.

Background

The state of public sector integrity systems in developed nations has changed significantly in the last twenty to thirty years. Traditional pillars– such as the separation of powers, the Media, Ombudsmen and Auditor-Generals – have been supplemented by new ‘watchdog agencies’ – including anticorruption commissions (Brown and Head 2005, Pope 2000). Policing has been one of the lead domains, with police conduct scandals driving the introduction of powerful police commissions (Parliament of the Commonwealth of Australia 2009:84-8). The broader public sector has also been subject to enlarged forms of external oversight. Anticorruption commissions, tasked with addressing misconduct across the public sector, have been established in New South Wales, Queensland and Western Australia, with new commissions due to begin operation soon in Tasmania and Victoria. While more active debate has occurred in jurisdictions without anticorruption commissions there has also been debate about the powers and operations of existing agencies (Fraser 2009). Overall, there appears to be a need to develop greater consensus and a more consistent approach to ensuring probity in the public sector.

Method

The purpose of this study was, firstly, to examine and describe the contemporary debate in Australia about public sector integrity systems and, secondly, to contribute to the debate by outlining the characteristics of a model commission in response to the key issues. In order to analyse the debate, initial searches were made of the newspaper database *Factiva* for the preceding five years back to 2004. The keywords used were ‘corruption’, ‘anticorruption’, ‘integrity’, ‘oversight’, ‘watchdog’, ‘ethics’, ‘ethical standards’, ‘oversight’, ‘accountability’, ‘complaints’ and ‘public sector’; as well as the names of existing government oversight bodies, which were obtained from government websites. Information from *Factiva* was supplemented by searches of parliamentary debates, parliamentary reports, and reports from oversight agencies and their inspectors. The results of this research are reported in a narrative format in Part A –

‘The Debate’ – and the issues are evaluated in Part B – ‘The Issues’. This material is then re-ordered into a summary set of key characteristics of a proposed model public sector integrity system. The results are set out in Part C – ‘A Model Commission’.

One of the problems with the issue of a model integrity commission is that there are no accurate measures of public sector misconduct and integrity which can be used to assess the impact of different systems, and there is a dearth of research on the topic. Subsequent sections in this paper draw on available measures or forms of evidence, including public opinion surveys and stakeholder opinion as well findings from investigations. However, the focus is more on arguments about principles – including principles of coverage, adequacy for the task and fairness – and necessarily relies on speculation about likely effectiveness. The proposed model is designed to help focus debate and advance best practice. The model is applicable in advanced democracies, such as Australia, and it is expected that key aspects will have relevance to emerging democracies with less funds available for expenditure on public institutions.

Part A: The Debate

Victoria

The Victorian debate on public sector integrity systems has arguably been the most vigorous in Australia in the past five years. Responsibility for combating corruption in the public sector lies with the Office of Police Integrity (OPI) and the Ombudsman. The Victorian Labor Government consistently resisted calls to establish a public-sector-wide commission, claiming the OPI and Ombudsman have sufficient powers and jurisdiction, and that anticorruption commissions are an excessive and unnecessary expense which seldom produce criminal convictions (Parliament of Victoria, Legislative Council 2007:2250-2260). The Liberal/National Opposition is amongst a number of key actors in favour of a commission, arguing that the OPI and the Ombudsman are inadequate for the task. The Leader of the Opposition in the Legislative Council in 2007 argued that:

It is clear that we have limited independent means of public scrutiny in regard to the executive – or indeed in regard to the bureaucracy – at the present time... as the head of the Office of Police Integrity, [the Director’s] powers are confined to investigating police misconduct...The Ombudsman does not have power to investigate judicial bodies or politicians – that is us – and I think we should be aware that we need to be as equally subject to investigation as any other part of government (Parliament of Victoria, Legislative Council 2007:2555).

The Victoria Police Association has been particularly strident in support of a comprehensive commission, because ‘corruption does not, has not and will never start and stop with the police force’ (Police Association Victoria 2008:15, Davies 2008). The Greens have also been supportive, emphasising the need for a commission with a capacity for investigation as well as prevention, and education (Parliament of Victoria, Legislative Council 2007:2546). Succumbing to pressure, in November 2009 Premier Brumby announced a review of all aspects of Victoria’s integrity system. In June 2010 the government accepted the recommendation of the ‘Proust

Review' in support of a new 'Victorian Integrity and Anti-corruption Commission' (Brumby 2010, Public Sector Standards Commissioner 2010).

South Australia

The situation in South Australia has been similar to Victoria. Responsibility for investigating and preventing public sector misconduct largely rests with the Police Complaints Authority (PCA), the Ombudsman, an anti-corruption branch within the police force, and the Auditor-General. The South Australian Labor Government has argued that existing arrangements are adequate (Parliament of South Australia 2007:834), that a commission would be too costly and 'nothing more than a lawyers' picnic' (in Wiseman 2008:1). The government also claimed that commissions can ruin a politician's career by publicly investigating allegations – describing this power as 'a gift to malicious slanderers' (Parliament of South Australia 2008:3891). The Liberal Opposition, prominent legal figures, police union and high profile federal independent Nick Xenophon have all expressed support for a commission (Kemp 2009, Parliament of South Australia 2007:811, Wiseman 2008).

Tasmania

The Tasmanian debate has also been vigorous. The Liberal Opposition, Greens and Tasmanian Police Association campaigned for an anticorruption body for many years against dogged resistance from the Labor government. Pressure intensified following the resignation of former Deputy Premier, Steve Kohns, who 'admitted misleading parliament over the appointment of a magistrate' (ABC News 2008). After Premier Paul Lennon's resignation in May 2008 the Government changed its position. A Joint Select Committee on Ethical Conduct was set up to inquire into the issue. The Attorney-General told parliament,

The Government is very much committed to having some form of ethics commission in this State... I do get distressed, as I have said in the House before, about the lack of trust that the public has in politicians as a whole – in all of us... I think we are all very keen to see the ethics committee report so that we can move forward and establish a commission in this State with the appropriate powers. (Parliament of Tasmania, House of Assembly 2009:126)

In July 2009 the final report of the Select Committee recommended an 'Integrity Commission' be established, legislation was passed by the parliament and the commission is due to begin operations in mid-2010 (Joint Select Committee on Ethical Conduct 2009, *Integrity Commission Act 2009*).

New South Wales

The Independent Commission Against Corruption (ICAC) was established in 1988 following decades of controversy over corruption that reached to the highest levels of government. The research for this paper was unable to identify any political parties or other important actors opposed to the existence of the ICAC. There has, however, been some debate about specific aspects of its functioning. Most recently there has been debate about whether or not the Commission should be permitted to prosecute matters itself (NSW Parliament 2008:10304). New

South Wales also has a separate Police Integrity Commission (PIC), which bifurcates the integrity commission system. The PIC was established in 1996 when the Wood Royal Commission found corruption in the Police Force that the ICAC had failed to detect (Wood 1996).

Queensland

In 2002 the Crime and Misconduct Commission (CMC) replaced the Criminal Justice Commission (CJC). The CJC was established in 1989 following findings of police and political corruption by the Fitzgerald Inquiry (1989). The debate in Queensland is characterised by a seemingly universal acceptance of the value of the CMC, with no important actors arguing against its existence. There have, however, been debates about particular aspects of the Commission's functioning, primarily concerning the policy of 'devolution' – whereby primary responsibility for investigating complaints is often put back on the relevant public sector agency, subject to review by the Commission. Devolution has drawn the ire of journalists, academics and lawyers as a return to the pre-Fitzgerald days of 'Caesar judging Caesar' (PCMC. 2009:29).

Western Australia

Western Australia is the only other jurisdiction with an established anticorruption commission monitoring the whole public sector. In 2004 the Corruption and Crime Commission (CCC) replaced the Anti-Corruption Commission (ACC), introduced in 1996. The ACC was set up after the 'WA Inc.' scandal, involving financially disastrous collusion between politicians and business leaders, but the ACC was deemed by the Kennedy Royal Commission into the Western Australia Police to have lacked adequate transparency and adequate powers – such as the capacity to hold public hearings or conduct sting operations (Kennedy 2004). The CCC also has bipartisan political support and community support. It has faced questions over its credibility in relation to the devolution of disciplinary decisions which have allegedly been undermined at the departmental level, and it has been accused of conducting 'witch hunts' against high profile ex-politicians (Murray 2006:2).

Northern Territory

The Northern Territory appears to have had the least amount of public debate on the topic. Issues of public-sector corruption are dealt with by 'agency policy, investigations by the Ombudsman, or reporting by the Auditor-General' (Northern Territory Legislative Assembly 2009). According to the Minister for Public Employment, the Territory has not 'experienced the corruption and maladministration other jurisdictions have endured in their public sectors' (Northern Territory Legislative Assembly 2009). The *Ombudsman Act 2009* included an 'own initiative' power in relation to investigating police conduct.

Australian Capital Territory

Debate in the ACT has been very limited since 2002 when the Standing Committee on Justice and Community Safety found an anticorruption commission was beyond the means of the Territory (Australian Capital Territory, Legislative Assembly 2001:14, 3742). However, the

Inquiry found there was a need for the kinds of functions performed by anticorruption commissions and recommended that:

The Government, in consultation with the Auditor-General, develop a model for a new function which provides for both (1) the investigation of complaints about behaviour lacking integrity and (2) an educative and preventative role in relation to behaviour lacking integrity (Legislative Assembly for the ACT 2001:15).

The Report received bipartisan support, but since then there has been just one reference to the issue in Hansard between 2002 and September 2009 (Australian Capital Territory, Legislative Assembly 2002:3730-3747).

The Commonwealth

The debate has also been very low key at the federal level. The main task of the Australian Commission for Law Enforcement Integrity (ACLEI) is to ‘detect, investigate and prevent corruption in the Australian Crime Commission and the Australian Federal Police’ (ACLEI 2009). There is no body with the same mission in relation to the entire public sector including politicians. The Commonwealth Ombudsman is able to investigate commonwealth government departments but without the same powers as ACLEI (such as applying for search warrants), and with no jurisdiction over ministers or other politicians (Parliament of the Commonwealth of Australia 2009:84-8, OPI 1997:5). The Commonwealth Ombudsman (2004:5) has stated that ‘the Ombudsman should not be the chief agency responsible for investigating corruption allegations’. The Greens and the Australian Federal Police Association have called for ACLEI’s mandate to be extended to cover politicians and the public sector, but these calls have been quietly rejected by both the Labor government and the Coalition (Gilchrist and Colman 2004). A recent review of models of police oversight by the Parliamentary Joint Committee on the ACLEI raised the issue of the need for commissions to have education and prevention functions and for the parliamentary committee on ACLEI to have access to an inspector (Parliament of the Commonwealth of Australia 2009).

Part B: The Issues

The following subsections outline the eight main areas of contention drawn from the debate, with a brief assessment of the various arguments by the authors.

1. Are existing measures sufficient?

The governments of Victoria and South Australia have insisted that their existing integrity systems – consisting primarily of Ombudsmen, Auditor Generals and police oversight bodies (the OPI and PCA) – are the ‘most appropriate models for dealing with corruption’ in their states (Parliament of Victoria, Legislative Council 2007:2551). The main rejoinder to this is that the traditional Ombudsman and Auditor-General is restricted to responding to complaints about administrative decisions deemed to be unfair or in error, or assessing financial reports, rather than conducting forensic investigations into allegations of corruption or misconduct – including investigating suspicions on an own motion basis without complaints (see Wood, 1996:77).

The implication of this is that corruption can remain hidden when there is no agency with adequate powers and comprehensive coverage of the whole public sector. This was the main finding of the Proust Review in Victoria (Public Sector Standards Commissioner 2010). Critics have argued that corruption is much more likely to be exposed and stopped in jurisdictions with anticorruption commissions. For example, former South Australian Auditor General Ken MacPherson claimed that the defence of existing institutions in Victoria and South Australia fails to recognise that ‘in those other jurisdictions [Queensland, NSW and WA]... there also exist the same institutions as we have in this state, but these have been shown to be not up to the task and a corruption body was also required’ (Parliament of South Australia 2007:811). Cases in point include systemic corruption in New South Wales, Queensland and Western Australia before the establishment of commissions. Some post-reform cases include exposés of corruption in corrective services in New South Wales and Queensland, the ‘travel rorts’ inquiry into politicians misuse of expense accounts in Queensland, the exposure of corruption in the Wollongong City Council and Railcorp, and the exposure in Western Australia of undue influence by ex-politicians turned lobbyists. In response to the allegation that commissions fail to produce results, in 2009 CCC Commissioner Len Roberts-Smith reported that in a five year period the Commission obtained 42 convictions from 51 charges (Taylor 2009).

Public opinion is also strongly supportive of the principle of an independent commission – as high as 98 percent in a recent survey in Western Australia (CCC 2009b:41; also CMC 2009:54). Public confidence in existing commissions is also generally high – up to 93 percent in the most recent survey in New South Wales (ICAC 2006:26, also CCC 2009b:36). There is also strong support for the view that commissions improve accountability and reduce corruption (CCC 2009b:36-38, CJC 2000, ICAC 2006:12, 27).

Another area where it is alleged commissions are more successful than Ombudsmen is in research, education and prevention. The *Inquiry into Law Enforcement Integrity Models* by the federal Parliamentary Joint Committee on ACLEI recommended that ACLEI undertake ‘education of law enforcement personnel, public education and awareness-raising, corruption-risk reviews, [and] research’ (Parliament of the Commonwealth of Australia 2009:vii). The Tasmanian Joint Select Committee report on ethical conduct emphasised the need for a ‘dedicated research function to support the continual development of standards and codes of conduct’ (Joint Select Committee on Ethical Conduct 2009:9, see also Public Sector Standards Commissioner 2010:37). Government departments have also expressed support for the advice provided to them by oversight bodies (Clarke 2008, Stewart 2008).

2. Are anticorruption commissions too expensive?

A common charge against anticorruption commissions is that they are too expensive (ABC News 2008, Parliament of Victoria, Legislative Council 2007:2550). Operating expenses of commissions in 2006-7, cited by the Tasmanian Government, ‘ranged from \$16.2m (and a staffing establishment of approx 120) for the NSW ICAC, \$25.5m for the WA CCC (148 full time employees), and \$35m for the Queensland CMC, which has about 270 staff in total’ (2008:78). These are big ticket items for public money. Nonetheless, it has been argued that it is

money well spent in terms of improving public confidence in government and improving integrity across the public sector, so long as performance measures are in place (Brereton, 1999).

It has also been argued that cost-shifting should reduce the overall cost to taxpayers. The Tasmanian Department of Public Prosecutions suggested that, in relation to police integrity, funding an anticorruption commission:

does not necessarily mean a large impost to Government: since what is required is something ... Police ought to have done, one would expect savings to be found... from the Police budget itself to establish a truly independent and effective investigative body (Ellis 2008:37).

Complaints and other indicators of misconduct have to be investigated, and misconduct prevention activities are essential. The work can be spread across departments or concentrated in an independent commission with greater expertise and technical capacity (Kalimnios 2008; Tesch 2008; Parliament of the Commonwealth of Australia 2009:22). The size of a jurisdiction, in terms of population, should be irrelevant to these considerations as misconduct can occur in both large and small jurisdictions. Given that 'coverage' of the public sector is often seen as a key criterion, then smaller jurisdictions would be expected to have less costly commissions and resourcing should be governed primarily by complaints and assessments about levels of misconduct and risks.

3. Should anticorruption commissions conduct independent investigations or devolve responsibility onto government departments?

Devolution is something of a sleeper issue that has been inadequately recognised in the debate in most locations. The term refers to the practice of integrity commissions referring complaints back to the relevant department for investigation and resolution. There is often an assumption by proponents of anticorruption commissions that existing commissions carry out a lot more investigations than is the case. While they may have the capacity in legislation, the more common practice is to select out a small proportion of complaints for independent examination. The ICAC 'acts upon' about 15% of matters that come to its attention (2009:33), while the OPI directly investigates only 3% of complaints that come to its notice. (OPI, 2007:42). A Victoria Police survey found that two thirds of complainants were dissatisfied with most aspects of the way their complaint was managed and that this was related to the fact that 78% expressed a preference for the independent processing of their complaint (Prenzler, et al., 2009).

The debate over devolution has been most intense in Queensland. The CMC and Parliamentary Crime and Misconduct Committee argued devolution 'has a crucial role to play in building the capacity within agencies to identify and avert risks of misconduct that could be peculiar to that agency' (PCMC 2009:30). The Committee has argued that devolution can work by '(a) ensuring there is adequate distance between the officers being investigated and those doing the investigating, and (b) ensuring the CMC provides oversight, review or full investigation where appropriate' (PCMC 2009:30), but failed to specify what this means in practice. Devolution is widely viewed with mistrust as 'akin to a jury system, wherein the entirety of the jury is made up of family and friends of the accused' (Walsh 2008:2). The CMC investigates 'less than two

percent' of the approximately three-and-a-half thousand complaints it receives each year (CMC 2008:26), despite the fact that research it commissioned in relation to complaints against police found that 91 percent of public respondents supported the view that 'complaints against the police should be investigated by an independent body not the police themselves' (CMC 2009:54). The situation has prompted disillusionment amongst scholars, journalists and lawyers; and generated profound dissatisfaction amongst complainants (Chamberlin 2002, CMC 2009c:47, Koch and McKenna 2009). The issue took on renewed prominence in 2009 when a major investigation found that police had developed improper relationships with informants in prison. Although the investigation was conducted by the CMC it had earlier passed disclosures back to the police for internal investigation (CMC 2009b).

4. Should there be a one-stop-shop or a split between police and public sector agencies?

The integrated model in Queensland and Western Australia is favoured by supporters of commissions in jurisdictions where the debate has been most intense. Police unions are particularly vocal in arguing that an integrated agency provides fairness for all public sector personnel and proper coverage of corruption risks. The Police Association of Victoria has questioned why the OPI focuses on police but not the public sector: 'Why shouldn't [the OPI] be the Office of Public Integrity? ... The Brumby Government just doesn't get the message that corruption does not, has not and will never start and stop with the police force' (Police Association Victoria 2008:15). The Greens have put forward the same argument at the federal level: 'ACLEI does not cover the bureaucracy at large. It does not cover the parliament and it does not cover the matters that the public would want to see it cover' (Commonwealth of Australia, Senate 2009:4828).

New South Wales is unique in having an ICAC and a separate Police Integrity Commission. During the Wood Inquiry the ICAC argued it lacked the resources and full range of powers to properly uncover police misconduct. However, Commissioner Wood (1996:chapter 5) held the view that policing in New South Wales carried a high risk profile for misconduct to the extent that a dedicated police anticorruption commission was required. The bifurcated system has strong support in New South Wales and there is no imperative for amalgamation. There might be some efficiency gains from amalgamation but the important point is that the current system provides coverage of the public sector by agencies with royal commission powers.

5. Should oversight agencies have 'own motion' powers to investigate any matter or should they only investigate formal complaints?

Own motion investigative powers can be activated in response to Media reports of possible misconduct or intelligence where there is no formal complaint. This is a standard power for integrity commissions and widely seen as an important means of exposing hidden or 'victimless' corruption and preventing the escalation of corruption (Parliament of the Commonwealth of Australia 2009:32, Parliament of Tasmania 2009:Appendix 4). Proponents of integrity commissions appear to hold to a consensus position in favour of own motion powers, whereas opponents tend to be silent on the issue. A 2001 survey of integrity agencies found that the agencies that lacked own motion powers – mainly Ombudsmen – claimed they needed the power

to adequately address suspected misconduct and support public confidence (Prenzler and Lewis 2005).

6. Should oversight agencies have the power to adjudicate matters and prosecute matters in the courts?

A standard feature of anticorruption commissions in Australia is that they do not have the power to take disciplinary action against holders of public office when they believe disciplinary action is warranted. Nor do they have the power to prosecute criminal matters, although in some instances they might be able to prosecute intermediate matters before a misconduct tribunal. The issue has generated surprisingly little debate, but it lies behind widespread disillusionment when individuals found by a commission to have engaged in misconduct are ‘let off’ with little or no consequence (Prior and Taylor 2009, Smith 2008:2). The problem might in part be solved by granting commissions summary jurisdiction over disciplinary matters – including the power to fine, demote and sack public servants; and to make findings of unethical conduct against politicians; subject to an appeals process. Commissions have also been frustrated with delays by public prosecutors (Committee on the ICAC 2008:2) and one option is to allow them to independently prosecute matters in the courts following excessive delays. The CMC in particular has repeatedly expressed frustration with the frequency of findings against it when prosecuting intermediate matters in misconduct tribunals (e.g., CJC 1996:3.15). Suggested resolutions to this problem have included better training of tribunal members in inquisitorial administrative approaches to misconduct and greater use by commissions of mediation of complaints (Prenzler, 2009:92-93).

7. Should oversight agencies investigate major crime?

Currently both the Western Australian Corruption and Crime Commission (CCC 2009a) and the Queensland Crime and Misconduct Commission (CMC 2009a) are tasked with the responsibility of addressing major and organised crime. The idea of adding a crime fighting function to the CCC came from the CMC, although the role is more prominent in the CMC – as indicated by the order of words in their names. The CMC is tasked with dealing with major and organised crime because the Fitzgerald Inquiry found that police had failed in this area and because of the connections it identified between organised crime and police corruption. However, the Fitzgerald Report only saw a very limited role for the Commission in the area of criminal intelligence coordination (1989:372), but this role has been significantly enlarged.

It has been alleged that the crime fighting role divides the focus of integrity commissions. It distracts it from dealing with ordinary complaints; and the task puts it at high risk of corruption, given that organised crime is a major corrupter of law enforcement (Stewart 2008:2). The role also requires integrity commissions work closely with police, potentially compromising the commission’s independence. It is partly for this reason that the New South Wales system gives the ICAC responsibility for dealing with corruption and the NSW Crime Commission responsibility for investigating major crime (NSW Crime Commission 2009). In Queensland in the mid-1990s the Borbidge Coalition government put the serious and organised crime function into a new Queensland Crime Commission (QCC), but the Beattie Labor government shut down the QCC in 2001 and put its functions into the CMC. In October 2009 WA CCC Commissioner

Len Roberts-Smith warned of the risks of neglecting public sector misconduct in response to a move by the Barnett government to require the Commission focus more on organised crime (Taylor 2009).

8. How should oversight agencies be held accountable to citizens?

The current debate on integrity commissions in Australia has included the question ‘who is overseeing the overseers?’ In order to perform such a task, a difficult balancing act is required between independence from political interference and accountability to citizens through parliaments. A model for democratic accountability that has emerged from the development of integrity commissions in Australia, and appears to have strong consensus support, is that of a cross-party parliamentary oversight committee (Brown 2006). A parliamentary committee periodically reviews and reports on the oversight agency’s performance, and responds to allegations of misconduct against the agency. Increasingly in Australia it has also been shown that it is also essential that such a committee has an executive capacity. This usually takes the form of an office of inspector – ‘parliamentary inspector’ or ‘parliamentary commissioner’ – who has many of the agency’s own powers to enter property, obtain documents and require answers to questions. Although this issue is part of ‘the debate’ under review here, like own motion powers it appears to evince a consensus view, including support from the anticorruption commissions (NSW Parliament 2006:54, PCMC 2006:112, Public Sector Standards Commissioner 2010:36).

The Western Australian CCC has also supported the role of the Parliamentary Inspector despite tensions with its former Inspector Malcolm McCusker (JSCCCC 2009:xi-xii). These tensions arose after McCusker bypassed the Committee and tabled five reports in Parliament that were critical of the CCC’s investigations and findings. The CCC Commissioner did not believe that McCusker had legal authority to table the reports and commenced action in the Supreme Court to determine legality. The dispute was settled before the Court made a ruling.

C: A Model Commission

The debate about integrity systems generally shows little evidence of cooling down, especially in jurisdictions that lack an anticorruption commission. In these cases the debate has been fueled by widespread distrust of existing arrangements – with an eye to successful exposés of misconduct in jurisdictions with commissions. As noted in the method section, reliable measures of public sector misconduct and integrity are in short supply, but public confidence and stakeholder opinion are important democratic criteria. These factors combined make for a strong case for a powerful integrity agency with comprehensive coverage of the whole public sector, including elected officials. It appears increasingly difficult to argue that the traditional Ombudsman model (supplemented by an Auditor General) is adequate to address the range of misconduct risks in government, even with additional powers. The creation of a public sector integrity commission allows the other two agencies to focus on their specialist tasks of reviewing administrative complaints and scrutinising government accounts (Joint Select Committee on Ethical Conduct 2009:9) – referring suspected corruption cases to an integrity commission. A properly constituted commission would need to have powers and adopt methods well beyond those of the traditional Ombudsman. It appears that the full battery of royal commission powers and a variety of

additional functions are essential to allow these agencies to meet the challenge of hidden corruption. These include the capacity to:

1. Conduct own motion investigations
2. Require attendance and answers to questions
3. Hold public hearings
4. Apply for warrants to search properties and seize evidence
5. Engage in covert tactics – including listening devices, optical surveillance, undercover agents and targeted integrity tests
6. Directly investigate the most serious and intermediate matters
7. Make disciplinary decisions and manage a mediation program
8. Conduct research and risk reviews aimed at improving procedures and preventing misconduct
9. Engage in public sector ethics training
10. Prosecute complainants who are patently vexatious
11. Account for its work using a variety of performance measures, including stakeholder satisfaction, prosecution outcomes and case study reports.

These features are core elements of evolving institutional arrangements internationally and in Australia. They can be seen in their most mature form in police integrity agencies – such as the Northern Ireland Police Ombudsman, established 2000, or the Independent Police Complaints Commission for England and Wales, established in 2004 (Prenzler, 2009:153-172). But they are also evident in agencies with a wider brief across the public sector, such as the landmark Hong Kong Independent Commission to Combat Corruption, established in 1974 (Scott, Carstairs and Roots, 1988).

Powerful integrity commissions must also be held accountable to citizens. Parliamentary oversight provides a vital cross-party mechanism for scrutiny. An inspector attached to the committee can provide a further degree of independence while giving the committee the capacity to investigate complaints and any matters deemed appropriate. In addition, while the bifurcated police/public sector model seems to work well in New South Wales, integration does offer the prospect of a fairer, more efficient, system – so long as the commission includes a dedicated police unit. An additional benefit is that the larger size of an integrated commission should allow it to develop a regional ‘shop front’ presence to provide easier access for citizens outside capital cities. Figure 1 outlines the model system of accountability described above that includes police oversight within a comprehensive public sector integrity commission.

Figure 1 about here

Conclusion

The debate in Australia about public sector integrity systems is ongoing, although the trend is in the direction of comprehensive coverage through a powerful integrity commission. The debate has been most vigorous in states without a commission. The South Australia government has been holding out against any review of the issue. In Victoria, the government was staunchly opposed to a commission but acceded to public pressure, allowed a review and then accepted the

recommendation for a new commission. Tasmania has also moved decisively in this direction with a new Integrity Commission pending. The debate is more muted in the other jurisdictions but the issues are alive here as well. Given the numerous cases of public sector misconduct and corruption exposed by integrity commissions it is becoming increasingly difficult to argue against their role as essential institutions.

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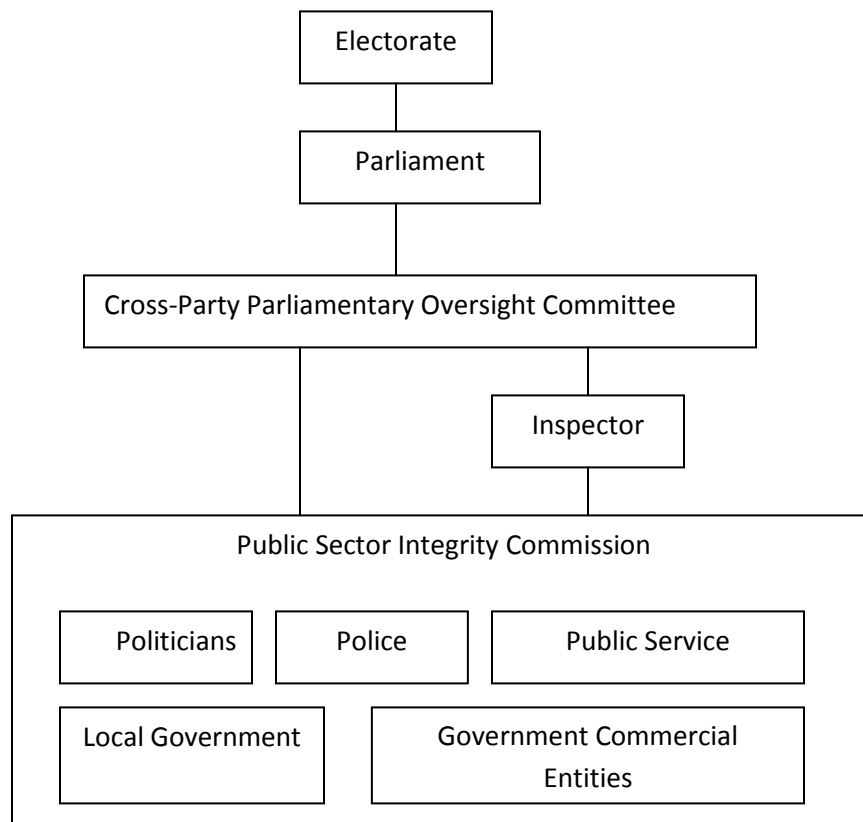
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Legislation

Integrity Commission Act 2009 (Tasmania)

Ombudsman Act 2009 (Northern Territory)

Figure 1: Basic Structure of a Model Public Sector Integrity Commission



(from Prenzler, 2009:171)