Inquiry into law enforcement integrity models

This submission is made in response to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity Committee calling for submissions to assist the Committee in its deliberations.

The authors thank the Committee for providing the opportunity to contribute in this way.

Methodological issues

The Terms of Reference for this Inquiry include that "the committee will examine the various Australian state-based law enforcement integrity agencies in order to inform possible changes to the governance structure and operational processes of ACLEI to enhance its current operation and support the potential extension of ACLEI oversight to other Commonwealth law enforcement agencies".

This raises an immediate difficulty in that each of the state-based law enforcement integrity agencies has been based largely on the agencies that preceded it. Thus, the legislation, powers and organisation of the Corruption and Crime Commission (CCC) takes much from the Police Integrity Commission (PIC) in NSW and the Crime and Misconduct Commission (CMC) in Qld. And, moreover, the PIC took much of its inspiration from the predecessor agency to the CMC – the Criminal Justice Commission. Any problems with the arrangements of the earliest agency, which had little to base itself on, are in danger of being repeated in subsequent models.

It does however need to be recognised that the Victorian Government opted for a somewhat different model with the establishment of the Office of Police Integrity (OPI) and the provision of crime commission type responsibilities and powers to the Police through the agency of a Chief Examiner. The role of the Chief Examiner involves the effective implementation of coercive questioning powers granted to Victoria Police to assist in fighting organised crime. The Chief Examiner is to ensure that those powers are lawfully and properly used.

Prior to this arrangement, there seemed to be two major choices that State governments could select from; whether you included the crime commission in a separate agency or combined it with the integrity agency. As is well understood, Queensland and Western Australia have used the **merged model** of one agency with crime and corruption responsibilities, whereas NSW and the Commonwealth have used a **bifurcated model** with separate agencies for each area of responsibility.

A second major area of difference is whether the integrity agency specialises in police corruption/misbehaviour – a **specialist model**, or whether it has broader application to the public sector – a **generalist model**.

Having said this, it is perfectly understandable that those charged with oversight responsibility for the Australian Commission for Law Enforcement Integrity (ACLEI) take note of the successes, and perhaps failures, in these other integrity agencies. The difficulty however is that there is a bias for those within an existing arrangement to believe that their arrangement is best, and to advocate that its central features be replicated in other agencies. As a consequence it would not be surprising if the Committee found that those from a merged model prefer that arrangement and that those from a bifurcated model prefer their own.

Considering the above, it is submitted that the approach the Commission is using in examining the various state-based models, while having some utility, does have handicaps that need to be overcome to ensure that whatever features of the states agencies that is adopted constitutes best (or at least good) practice. At this point we would like to inform the Committee of research that is being carried out at Edith Cowan University in an endeavour to establish good practice models of police oversight.

ECU Research

A review of the literature has revealed that there is no agreement, or indeed little discussion as to what would constitute a good model for police oversight although the issue has well be recognised. Lewis & Prenzler (1999) concluded that "…it is doubtful that there is a single best model". This reinforces the reasons for conducting research into this particular area. How do you know what is a best model? How do you judge oversight agencies against each other without some tool of comparison?

The history of external police oversight models, such as those mentioned above, is not a long one. As a consequence, there are no longitudinal studies and little information to assist decision makers in the development of legislation and governance arrangements. To overcome this problem the study being undertaken at Edith Cowan University will be using Delphi Method of research.

The Delphi Method

The objective of using the Delphi technique is to gain reliable information through the creative exploration of divergent ideas and views in order to provide a suitable basis for decision making.

Whereas for most of the time there is a bank of knowledge that may be drawn upon by decision makers, on occasions this is not the case. The current and future use of external civilian agencies to oversight the activities of police and kindred occupations are such a case. Skulmoski, Hartman, & Krahn (2007) believe that the "Delphi method is well suited as a research instrument when there is incomplete knowledge about a problem or phenomenon" as is the situation with police oversight.

The Delphi method is an exercise in group communication among a panel of geographically dispersed experts (Adler and Ziglio, 1996). The technique allows experts to deal systematically with a complex problem or task with the essence of the technique being fairly straightforward. It comprises a series of questionnaires sent either by mail or via computerized systems, to a pre-selected group of experts. These questionnaires are designed to elicit and develop individual responses to the problems posed and to enable the experts to refine their views as the group's work progresses in accordance with the assigned task. After each round the responses are collated into a summary of judgments and reasoning and returned. Participants are then invited to revise their initial responses based on this summary so a convergence towards an accepted practice can be obtained. This is referred to by (Adler and Ziglio, 1996) as controlled opinion feedback.

The main point behind the Delphi method is to overcome the disadvantages of conventional committee action. According to Fowles (1978) anonymity, controlled feedback, and statistical response characterize Delphi. The group interaction in Delphi is anonymous in that individual comments and forecasts are not identified as coming from any one person, but are presented to the group in such a way as to suppress any identification. This anonymity, according to Helmer (1977), has advantages in that it overcomes normal group discussions where a tendency towards 'group think' can emerge and where other social interactive behaviours can hamper opinion forming (Wissema, 1982).

Baldwin (1975) asserts that lacking full scientific knowledge, decision-makers have to rely on their own intuition or on expert opinion. According to Helmer (1977) Delphi represents a useful communication device among a group of experts and thus facilitates the formation of a group judgement. The Delphi method has been widely used to generate forecasts in technology, education, health, social sciences and other fields (Cornish, 1977) and has the advantage of flexibility and iterative multistage processes to transform opinion into group consensus (Hasson, Keeney & McKenna 2000).

Delphi Participants

In undertaking this study it is important that a wider array of views be canvassed. This will involve actively inviting and encouraging those believed to have views and knowledge of value to participate in the study.

The study will seek participation from:

Oversight agencies, such as:
- CMC
- ACLEI
- PIC
- OPI
- CCC
- Police Ombudsman (Northern Ireland)
- Independent Police Complaints Commission (England and Wales)
- Commission for Public Complaints against the RCMP
- Independent Commission Against Corruption, Hong Kong.

Those who are oversighted, such as:
- All police agencies in Australia and New Zealand
- Royal Canadian Mounted Police
- Metropolitan Police (London)
- Police Service of Northern Ireland
- The police union or association related to each of the above

Those who oversight the 'oversighter', such as:
- Parliamentary Inspectors
- Standing Committees with responsibility for oversight agencies
- Public Interest Monitor (Qld)
- Ombudsman (all states and Commonwealth)
- Special Investigations Monitor (Vic)

External practitioners, such as:
- Royal Commissioners
- Counselling Assisting royal commissions
- Former heads of integrity agencies
- Canadian Association of Civilian Oversight of Law Enforcement, Canada.
- International Network for the Independent Oversight of Policing

Academics, such as
- All universities in Australia that have police studies
- Selected international universities

Areas for Examination

The study will be a comprehensive examination of the operation and function of integrity agencies, both current and future, with particular attention to the following areas:

- Jurisdiction
- Accountability
- Legislative basis
- Structure
- Independence
- Investigations
- Prevention functions
- Powers
- Prosecutorial or inquisitorial focus.

While it is acknowledged that there are a variety of factors that will affect the operational effectiveness of oversight agencies, it is expected that this research will identify certain common functions and arrangements that appear linked with success, and other factors that raise particular challenges.

A further benefit of this type of study is that it is future focussed. It does not limit itself to identifying what is the best arrangement at present as it also looks to predict what type of organisational, structures, powers etc. will be required in the future.

It is hoped that this study is of some interest to the Committee.

References

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