



Chaos or Coherence?

Strengths, Opportunities and Challenges for Australia's Integrity Systems

*National Integrity Systems Assessment (NISA)
Final Report*

December 2005



**TRANSPARENCY INTERNATIONAL
AUSTRALIA**

*Affiliate of Transparency International
the coalition against corruption*



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National Integrity Systems Assessment (NISA)

An Australian Research Council-funded Linkage Project conducted by
Key Centre for Ethics Law Justice & Governance, Griffith University and
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EXECUTIVE SUMMARY

Introduction & Background

Australia's 'National Integrity Systems' are the institutions, laws, procedures, practices and attitudes that encourage and support integrity in the exercise of power in modern Australian society. Integrity systems function to ensure that power is exercised in a manner that is true to the values, purposes and duties for which that power is entrusted to, or held by, institutions and individual office-holders.

This report presents the results of the Australian Research Council-funded project *Conceiving and Implementing National Integrity Systems Assessments (NISA)*, conducted in 1999-2005 by Griffith University and Transparency International Australia, into how different elements of integrity systems interact, which combinations of institutions and reforms make for a strong integrity system, and how Australia's integrity systems should evolve to ensure coherence, not chaos in the way public integrity is maintained.

The term 'National Integrity System' was coined by the foundation managing director of Transparency International, Jeremy Pope, to describe a changing pattern in anti-corruption strategies in which it was recognised that the answer to corruption did not lie in a single institution, let alone a single law, but in a number of agencies, laws, practices and ethical codes (Figure 1).

The assessment dealt with a range of new methodological issues in developing a new approach to integrity system assessment for Australia and potential application elsewhere. These include: how integrity should be defined; how relevant integrity institutions should be identified (including as 'core' or primary institutions; 'distributed' or dispersed strategies); and how the many institutional and non-institutional elements of an integrity system should be described. The assessment resulted in a useful new, natural metaphor — a bird's nest, in which a multiplicity of small elements make up the system, often individually weak, but clearly interdependent and stronger as a whole (Figure 6).

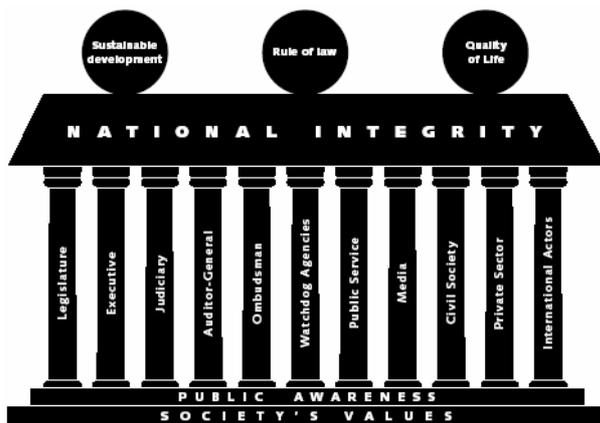


Fig. 1. Transparency International's NIS Greek Temple (Pope 2000)

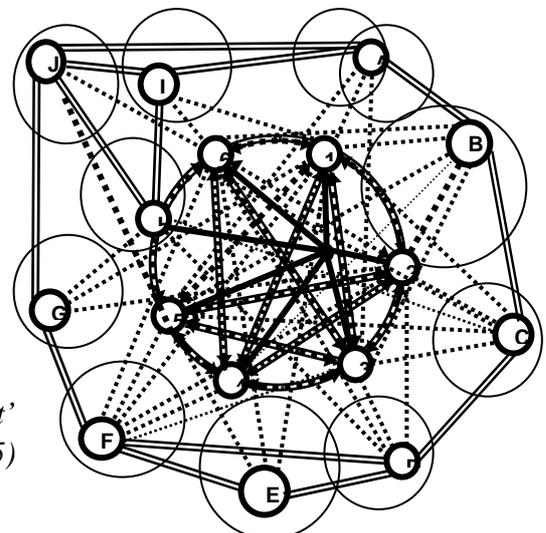


Fig 6. Integrity Systems 'Bird's Nest'
(Sampford et al 2005: 105)

Table 5: Sectoral and Jurisdictional Studies — Key Issues and Findings

Ch 3. Queensland public sector	Ch 4. New South Wales public sector	Ch 5. Commonwealth public sector	Ch 6. Local government	Ch 7. Business sector	Ch 8. Civil society sector
1. Executive and parliamentary accountability	1. Parliamentary and political integrity	1. Ministerial ethics, entitlements, honesty, public service relations	1. Contrasting bases for enforceable standards of councillor conduct	1. Walking the talk: external support for business integrity systems.	
		2. Role of the Senate and Senate committees			
		3. Integrity in electoral financing	2. Electoral financing and disclosures	2. Integrity training in leadership and management development	
2. Legislative bias / symbolic legislation		4. Whistleblower protection & management			
3. Policy fragmentation	2. Independence and overall ethical direction for the public service	5. Fragmented leadership or championing of public sector ethics		3. Development of integrity systems in specific industries	
4. Operational coordination issues between core integrity agencies	4. Greater integrity agency cooperation			4. International influences and constraints	
5. Strategic / systemic administrative investigative & review capacity	3. Effectiveness of so many core integrity institutions	6. Lack of anti-corruption body / proposed limited jurisdiction	3. Resources for integrity investigation & complaint resolution	5. Transparency and disclosure mechanisms	
6. Jurisdiction over commercialised etc services			4. Contracting out and private sector relationships.		
7. An over-reliance on investigation and enforcement measures	5. Balance between investigation/coercion and education/prevention	7. Reporting & monitoring (over-reliance on fraud control)		6. Further research into core institutions	
8. Limited ongoing monitoring and reform					

Sectoral & Jurisdictional Studies

The project had five phases, structured by sector and jurisdiction:

- Queensland pilot public sector integrity system assessment (1999-2001)
- Business integrity system assessment (RMIT School of Management, 2001-02)
- Commonwealth public sector assessment (Charles Sturt University, 2001-04)
- New South Wales public sector assessment (University of Sydney, 2002-04)
- National comparative and intersectoral research (Griffith University, 2003-04).

Key issues and findings from each of the sectoral and jurisdictional studies are listed in Table 5.

The Assessment — Consequences, Capacity, Coherence

The new methodological framework developed by the project was based around assessing the integrity systems' 'consequences' (or impacts), 'capacity' and 'coherence'. A combination of empirical research, documentary analysis, existing literature and expert workshops under these three themes were used to identify a range of current strengths, opportunities, and challenges confronting Australia's integrity systems:

1) Consequences

Current strengths and opportunities

- Use of evidence-based tools to monitor effectiveness
- Use of public feedback, satisfaction and trust measures
- Parliamentary oversight committees
- Activity and efficiency performance measures.

Challenges and further action

- Trust in leadership: the ultimate measure?
- Fragmented and uncoordinated data gathering.

2) Capacity

Current strengths and opportunities

- Financial accountability
- Comprehensive legislated ethics and enforcement frameworks
- Financial and human resources in core investigation agencies
- Corporatisation and contracting out
- Devolved governance and distributed integrity capacity.

Challenges and further action

- Parliamentary leadership and integrity
- Whistleblower protection
- Civic education, awareness and rights
- Electoral integrity and political parties
- Business sector regulatory capacity.

3) Coherence

Current strengths and opportunities

- Growing acceptance of mutual accountability
- Parliamentary oversight committees
- Relations between core and distributed integrity institutions.

Challenges and further action

- Policy and operational coordination between core integrity agencies
- Parliamentary leadership and integrity
- Parliamentary inquiries and executive accountability
- Ministers, ministerial advisors and the public service
- Business sector regulatory coordination
- Independent oversight for civil society organisations.

Summary of Recommendations

The assessment resulted in 21 recommendations for government, business, civil society groups and members of the general community concerned to ensure continual improvement in Australia's integrity systems. All project participants look forward to monitoring progress towards the increasingly effective, capable and coherent integrity systems envisaged by this report.

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.

PART I

INTRODUCTION AND BACKGROUND

1. The Aims of the Assessment

What are National Integrity Systems?

Australia's 'National Integrity Systems' are the sum total of institutions, laws, procedures, practices and attitudes that encourage and support integrity in the exercise of power in modern Australian society. Integrity systems function to ensure that power is exercised in a manner that is true to the values, purposes and duties for which that power is entrusted to, or held by, the institutions and individual office-holders concerned.

The term 'National Integrity System' was coined by the foundation managing director of Transparency International, Jeremy Pope, to describe a changing pattern in anti-corruption strategies in which it was recognised that the answer to corruption did not lie in a single institution, let alone a single law (Pope 1996; 2000; see also Langseth et al 1997; 1999). It is now increasingly recognised that integrity is being promoted and corruption combated in many societies through a number of agencies, laws, practices and ethical codes, combining the three elements of ethical standard-setting (or values-based leadership), institutional design and management, and legal regulation (Sampford & Wood 1992; Sampford 1994).

But how do the different elements of these modern integrity systems interact? Which combinations of institutions and reforms make for a strong integrity system? How can the supporters of such a system be confident that it is being effective? How should regulatory systems evolve to ensure coherence, not chaos in the way public integrity is maintained?

This report presents the results of the project *Conceiving and Implementing National Integrity Systems Assessments (NISA)*, which was conducted between 1999 and 2005 by Griffith University and Transparency International Australia to help answer these questions. This project represented a first attempt to 'map' a single country's integrity systems in search of an improved understanding of how such systems interact, where strengths and gaps are most readily found, and what actions might help ensure the best integrity systems into the future.

Why a National Integrity Systems Assessment (NISA) of Australia?

Australia is not generally regarded as rife with corruption. For example, it ranked third out of 25 democracies in the inaugural Public Integrity Index compiled by the US Centre for Public Integrity (Uhr 2004), and as the world's 9th cleanest country out of the 158 countries listed in Transparency International's 2005 Global Corruption Report (TI 2005).

Nevertheless, Australia's integrity systems are not solely preventative, reflecting Australians' real experience of corruption in various forms. As the current chairman of Transparency International Australia has noted, even if Australia may appear to do relatively well compared with some other countries, 'our own cycles of integrity failures, scandals, inquiries and reform appear to be ongoing' (Costigan 2005). Some experts assess post-colonial Australia's 'wish to be well regarded as honestly governed' as 'accompanied by a [corruption] tolerance level too elevated for comfort and a resistance

to corruption too slowly aroused' (Perry 2001). A study of corruption and democracy by the Democratic Audit of Australia also found plenty to remark upon (Hindess 2004).

In short, integrity regimes matter in Australia because few people believe that public integrity can be taken for granted. This partly reflects that they include a variety of specific reforms that have been hard won. It partly reflects recent patterns in popular-political attitudes, shared with other democratic nations, in which public trust in institutions has been under challenge. It also reflects a deeper democratic culture in which distrust itself plays a positive role in the life of institutions, used to 'enculturate trust' in business and government (Braithwaite 1998), with the 'terms of trust' that define ethical standards being in a state of continuing renegotiation (Uhr 2005a).

The National Integrity Systems Assessment was part of a long standing research relationship between the Key Centre and Transparency International that commenced in 1997. The project was conceived by Charles Sampford, Jeremy Pope, and Peter Rooke of TI Australia, as an opportunity to develop new approaches to the evaluation of integrity systems in developed country contexts, as well as learn the lessons of comprehensive integrity reforms such as pursued in Queensland's post-Fitzgerald period in the 1990s (Preston et al 2002). It was initially commenced with seed funding from the Key Centre and TI Australia and then won support from what is now the Australian Research Council Linkage program. The six main aims of the assessment were to:

1. Compare the nature of ostensibly similar integrity-related institutions in different jurisdictions;
2. Identify the ways in which the elements of the NIS interrelate, as well as any gaps or overlaps between those elements;
3. Assess the strengths and weaknesses of the present Australian integrity systems and recommend improvements;
4. Provide a benchmark for comparison between jurisdictions and against which changes in the effectiveness of the integrity system can be measured;
5. Provide a basis for action by relevant Australian governmental and non-governmental agencies and organisations, including Transparency International; and
6. Provide a case study for other countries, both developed and developing.

The assessment had as its backdrop, a rich emerging international field of other similar integrity and integrity-related governance assessments. Table 1 opposite shows some commonalities and differences in focus between a variety of key assessment approaches, including others sponsored by TI, Washington's Centre for Public Integrity, the OECD and the World Bank. The Australian National Integrity Systems Assessment was able to achieve some key advances in approach of relevance to all these previous evaluation models, as outlined below and in the next chapter.

Table 1. Common Elements of Western Integrity & Governance Assessments

Assessment model/approach				
National Integrity Systems	OECD Anti-Corruption Mechanisms	OECD Ethics Infrastructure	Public Integrity Index	Governance Matters
Transparency International	OECD, Paris		Centre for Public Integrity (US)	World Bank
Pope 1996, 2000; Doig & McIvor 2003; Larmour & Barcham 2004	OECD 1996	OECD 1999,2000	Camerer 2004	Kaufman 2003
Key elements to be assessed				
Legislature	Oversight by legislature	Political will	Electoral & political processes	Political stability
Executive		Effective legal framework	Branches of government	Rule of law
Judiciary	Specialised bodies to prosecute corruption			
Auditor-General	Supreme financial audit authority	Efficient accountability mechanisms	Oversight and Regulatory Mechanisms	Control of corruption
Ombudsman	Ombudsman			
Watchdog Agencies	Anti-corruption regulation			
	Corruption investigation bodies			
Public Service	Human resource mgt procedures	Supportive public service conditions	Administration and Civil Service	Regulatory quality
	Financial mgt controls			
	Organisational mgt controls			
	Guidance & training for public officials	Workable codes of conduct		
Professional socialisation mechanisms				
Media	Transparency mechanisms		Civil Society, Public Information and Media	Voice & accountability
Civil Society		Active civil society		
Private Sector				
International Actors				

The methodology of a National Integrity Systems Assessment (NISA)

The research plan for Australia's National Integrity Systems Assessment was exploratory, and encountered a range of challenges and limitations comparable to other assessments, some of which were not entirely overcome. The project had five phases, structured primarily by sector and jurisdiction, with the number of jurisdictions inevitable limited by the available funding:

- Queensland pilot public sector integrity system assessment (1999-2001)
- Business integrity system assessment (RMIT School of Management, 2001-02)
- Commonwealth public sector assessment (Charles Sturt University, 2001-04)
- New South Wales public sector assessment (University of Sydney, 2002-04)
- National comparative and intersectoral research (Griffith University, 2003-04).

Part II (chapters 3-7) of the report describe these Queensland, NSW, Commonwealth and Business studies in greater detail, including the researchers involved and other resulting publications. Table 5 at the beginning of Part II summarises the key issues and findings arising from these studies. Key supporting analysis is also available in the refereed proceedings of the Australasian Political Studies Association (Adelaide, September 2004), the Integrity Issue of the *Australian Journal of Public Administration* (June 2005) and on the project website www.griffith.edu.au/centre/kceljag/nisa.

The final phase of the project began while the NSW and Commonwealth public sector studies were still in progress, and was led by Dr A J Brown with major contributions from Carmel Connors, Professor Brian Head, Dr Megan Kimber, Scott MacNeill, Professor Charles Sampford, Dr Arthur Shacklock and Dr John Uhr (ANU). This phase involved methodological revision, supplementary research, comparative analysis of the results of the previous and in-progress studies, convening of analytical workshops, and preparation of publications including this report.

As a major objective was to develop the methodology for such assessments in the future, clearer focus can now be given to what *should* have been done, or would be done if the project was conducted again, than necessarily what *was* done. The Appendix to this report contains sample methodological recommendations from the project, in the form of an 'Overview' of the type of package we might advise for future National Integrity Systems Assessments in a range of countries. This approach has already been adapted for use in a NISA project being carried out in Georgia in the Caucasus, funded by the Soros Foundation with support from the Open Society Institute Georgia (OSGF) and Transparency International Georgia.

While this is simply an indicative methodology, and would vary considerably from country to country, its three-stage process provides an outline of the key research activities and themes used to structure the final Australian analysis:

1. Scoping Study. This is pivotal to defining 'integrity' in the specific institutional, political and cultural context in which the assessment is to take place, and for accurate description and preliminary mapping of the integrity 'systems' involved, before assessment and evaluation is attempted. Various workshops were held throughout the Australian project in the defining stages of the separate sectoral studies described in

Part II. The key methodological lessons arising for this foundational stage of the assessment are further discussed in chapter 2.

2. The Assessment. This stage requires careful decisions about the criteria against which final judgments will be reached as to the health or otherwise of the integrity systems described and preliminarily mapped in stage 1; about the research activities tailored to produce reliable empirical data relevant to these criteria; and about a structured process of multidisciplinary expert analysis to produce robust conclusions about the meaning of that data.

In the Australian project, most of the sectoral studies themselves involved a search for — rather than were guided by — consistent criteria for evaluating the systems involved. While the research described the relevant systems in greater detail than before, the primary method for framing conclusions also often defaulted to the approach adopted by other similar assessments, in which the identification of problem areas has relied on contrasting the theory or intention of integrity systems with their reality or practice. A critical limitation of this approach is that theory or intention may be based on ‘ideals’ which are inherently difficult to attain, and which do not themselves support definitive judgements as to when they have been compromised too much; nor what reforms might provide answers; nor when the theory or intention may itself be wrong (Brown & Uhr 2004).

The Australian project team ultimately chose to structure the analysis around three key themes arising from the sectoral studies, and other similar evaluations: the *consequences, capacity, and coherence* of the systems involved (Brown 2003). This approach was endorsed by ‘Integrating Integrity’, a workshop of key researchers and integrity practitioners held at Griffith University in November 2003. These three themes work together as interrelated ‘lenses’ on the structure, operations and effectiveness of Australia’s integrity systems, providing a more objective ‘real-world’ platform for identification of priority reforms.

The assessment themes are explained in more detail in Part III of the report (chapters 9-11 respectively), which present the substantive conclusions of the Australian project in these terms. As outlined in chapter 9, the NISA project team was also consulted internationally on its approach, contributing to the OECD Public Governance Committee’s report ‘Measures for Promoting Integrity and Preventing Corruption: How to Assess?’ (OECD 2004), which resulted in a highly similar framework as shown below in Table 2.

3. Framing of Recommendations. In Australia this was assisted by two major events: a ‘Strategic Themes’ workshop of expert researchers and integrity practitioners, held at the University of Melbourne in August 2004; and the release of a draft report for public and expert comment, at the 5th National Investigations Symposium (Sydney, November 2004), a major biennial conference hosted by the New South Wales Ombudsman, Independent Commission Against Corruption and Institute of Public Administration (NSW).

The twenty-one recommendations for Australia’s national integrity systems resulting from these analyses and consultations are set out in chapter 12.

Table 2. OECD Integrity System Assessment Criteria & NISA Assessment Themes

OECD Criteria Checklist (OECD 2004:10)		NISA Themes
QUESTIONS	CRITERIA	
Are integrity policy instruments (e.g. legal provisions, code of conduct, institutions, procedures) in place?	Formal existence of components of policy instruments.	NISA Stage 1 – Scoping
Are integrity policy instruments capable of complete functioning (realistic expectations, resources and conditions)?	Feasibility of specific policy instruments.	NISA Stage 2 - Capacity
Did the integrity policy instrument achieve its specific initial objective(s)?	Effectiveness of specific policy instruments.	NISA Stage 2 - Consequences
How significantly have policy instruments contributed to meeting stakeholders' overall expectations (e.g. actual impact on daily behaviour)?	Relevance , the contribution of specific policy instruments and actions to meet stakeholders' overall expectations.	
Do the various elements of integrity policy coherently interact and enforce each other, and collectively support the overall aims of integrity policy?	Coherence of measures, relationship with other elements of the policy.	NISA Stage 2 - Coherence

Conclusions and recommendations

As indicated above, Part III (chapters 9-11) presents the overall conclusions of the assessment under each of the three assessment themes. The conclusions are divided between identifiable *strengths* in current systems; important *opportunities* to develop or extend current systems; *challenges* that are equally important but more problematic for policymakers to address; and *further action* in research or evaluation in specific areas.

Each of the report's recommendations is introduced at the most relevant point in these chapters 9-11, and presented in full in chapter 12. To help readers understand the recommendations as an holistic package of reforms and actions, they are not numbered in the order in which they are first introduced. Rather their numbering reflects the groupings in which they appear in the final chapter:

Recommendations 1-7: Integrity from the top: core integrity institutions

Recommendations 8-15: Walking the talk: distributed integrity institutions

Recommendations 16-21: Investing in integrity: education, evaluation and research.

'Core' integrity institutions, often also called 'central' or 'coordinating' bodies, are bodies for which a primary or major purpose is the pursuit of integrity in other organisations. 'Distributed' integrity institutions are the more diffuse integrity-related strategies and networks operating routinely *within* and *through* most organisations. The important distinction between these levels of institution is explained in chapter 2, and is used to structure the analysis through much of the report.

As a quick guide, Table 13 (in chapter 12) cross-references each recommendation with the assessment themes, sectors and jurisdictions to which it relates, as well as to the relevant sections of the report.

Drawing on our own analysis and the published opinions of many other experts, each recommendation is intended to provide a fresh departure point for reform, indicating priority areas for action in which the research team found a preferred solution to be reasonably clear. Some recommendations have already been taken up or are under active discussion, as outlined in chapters 9-11.

All project participants look forward to monitoring progress towards the increasingly effective, capable and coherent integrity systems envisaged by this report.

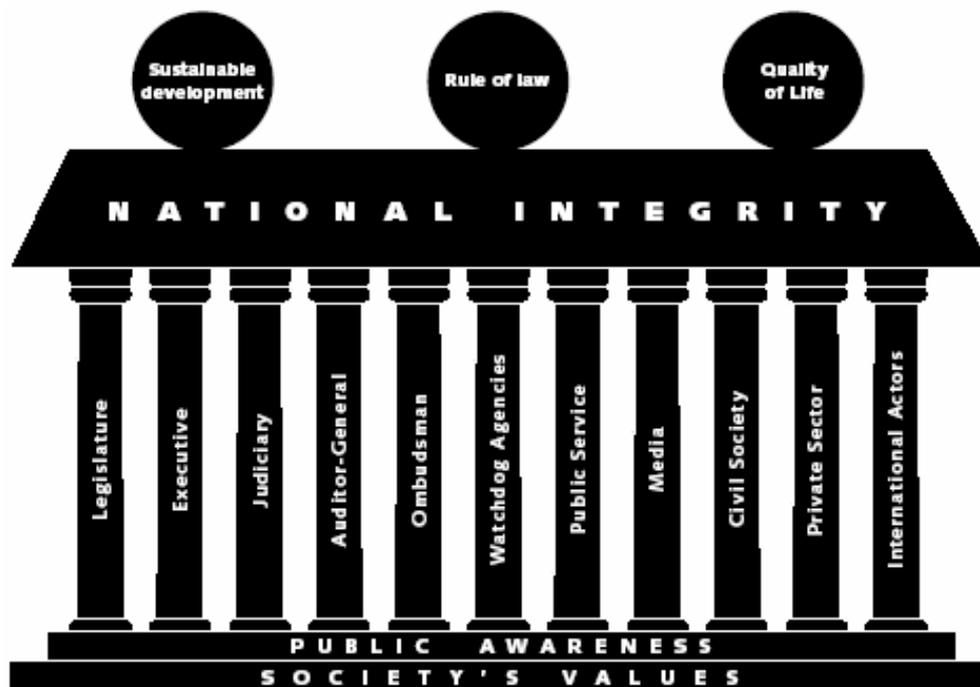
2. Mapping National Integrity Systems: A Conceptual Guide

The National Integrity System as a Greek Temple

Before moving to substantive assessment of Australia's national integrity systems, it is important to review several key conceptual issues which underpin the way any 'integrity system' is described, and on which the logic of the assessment therefore rests.

A familiar starting-point for the concept of the National Integrity System articulated by Transparency International (TI) since the mid-1990s is TI's graphical metaphor of an ancient 'Greek temple' (Figure 1). This metaphor clearly captures the types of institutions commonly found in an integrity system (its 'pillars'), but also how different elements of an integrity system interact in terms of 'horizontal' or mutual accountability. As Pope (2000:36) describes, 'the pillars are interdependent but may be of differing strengths. If one pillar weakens, an increased load is thrown onto one or more of the others. If several pillars weaken, their load will ultimately tilt... crash to the ground and the whole edifice collapse into chaos.'

Figure 1. Transparency International's NIS Greek Temple (Pope 2000)



This useful metaphor is only a starting point, however, particularly as both the individual institutions involved and the overall framework will clearly vary from country to country. Any assessment based simply on examining whether a nation has these institutions in this configuration cannot escape the problems of reform proposals that 'emphasise the same factors everywhere, and thus do not really fit anywhere' (Johnson in Quah 2003:244; see further Brown & Uhr 2004). Consequently, at least five important background questions arise.

Defining Integrity

How we assess an integrity system depends to a significant degree on how we define ‘integrity’, not just in relation to the personal integrity of individuals, but also the institutions through which most political and economic power is exercised. The English word ‘integrity’ is derived from the Latin *integritas*, meaning ‘unaffected, intact, upright, reliable’; the same root has given us ‘integer’, the mathematical term for a ‘whole’ number as opposed to a fraction (Preston in KCELJAG & TI 2001:1; Uhr 2005a:194). ‘Integrity’ also operates as a conceptual opposite to ‘corruption’, which means decay, deterioration or perversion from an original or ‘whole’ state; in physical terms, corruption is ‘the destruction or spoiling of anything, especially by *disintegration*...’ (Oxford English Dictionary; Heidenheimer & Johnson 2002:6-9).

When it comes to our society’s major institutions, and the individuals that constitute them, how do we judge power as being exercised in an ‘upright’, ‘whole’, ‘uncorrupted’ manner? It is by reference to the values, purposes and duties for which that power is entrusted to, or held by, the institutions and individual office-holders concerned. When individuals and institutions act in a manner that is true to these values, purposes and duties, we say they have integrity. Truth and honesty are not synonyms for integrity, but provide fundamental elements; as one Canadian integrity commissioner said, ‘the virtue of integrity... includes honesty, together with worthiness, respect and an expectation that a promise made will be kept, absent some factor or circumstance beyond the control of the promiser’ (Evans 1996). Personal and institutional honesty are interrelated, relying on the ability of officeholders to justify their actions in terms of the values, purposes and duties that define their official roles.

From this understanding of integrity, comes a definition of integrity *systems*. Integrity systems are our society’s means — be they institutions, laws, procedures, practices or attitudes — of pursuing integrity in daily public life. The many and varied ingredients of our integrity systems can be identified by asking three key questions:

- *How do we identify the values, purposes and duties for which power is entrusted to, or held by, individuals and institutions?* Often these vital benchmarks are publicly stated and defined in advance, in law or explicit agreements, undertakings or codes; but they can also be implicit, understood, or change in meaning or implication over time, and only become subject to discussion after things appear to go wrong.
- *When and how do we expect officeholders to justify their actions with reference to these benchmarks?* Often this occurs publicly, as a matter of routine or in response to controversy; but in fact, most of the time we expect integrity to be achieved through ongoing self-discipline and good management, relying on leadership, professionalism, self-reflection by individuals and organisations, and the simple intuitive adherence to relevant fundamental values by officials.
- *How do we determine whether or not actions are true to these values, purposes or duties — i.e., how do we decide when the justifications are satisfactory?* Just because someone ‘wins’ a publicity campaign or even an election, we do not necessarily accept that their actions displayed integrity. A wide range of institutions and processes play a role in deciding whether official actions are ‘true’ to key values and purposes, and may vary widely according to the circumstances.

The institutions and processes we identify in response to these questions make up our society's 'integrity systems'. Importantly, these are more than simply systems for ensuring accountability or responsibility, even though these terms are often used interchangeably when describing many of the institutions involved. Officeholders can be perfectly accountable in many legal and technical senses while still breaching standards of 'integrity'; and similarly, their actions can be defended as highly responsive or responsible, in policy or political terms, even when quite corrupt in others — as discussed in more depth elsewhere (see Table 3; Brown & Uhr 2004; Uhr 2005a:189).

As Table 3 also indicates, public integrity can itself be viewed in at least three quite different ways which, if left unreconciled, may each obscure the path to integrity in a more 'holistic' sense. The American political scientist Pat Dobel (1999) identifies these as distinct 'institutional-legal', 'effectiveness/implementation' and 'personal-responsibility' models for examining integrity. As shown in Figure 2, the TI Greek temple itself involves a comparable trinity, since the institutional pillars of the temple also require a foundation of 'society's values' on which to rest and a host of less formal 'rules and practices pillars' separately described. Different but related trinities have also been suggested by the OECD and, since 1992, in Sampford's argument that reform requires three mutually supporting elements of ethical standard setting, legal regulation and institutional reform. Similar considerations apply to the definition of corruption, which is often assumed to mean only the technical-legal offence of bribery, but clearly can also mean a much wider spectrum of corrosive abuses of power (Brown, forthcoming).

The first lesson for any comprehensive attempt to assess an 'integrity system' is that the definition of 'integrity' cannot be taken for granted. Rather, multiple meanings of integrity need to be considered, if necessary through additional linguistic and cultural analysis, if the scoping phase is to adequately identify all the key institutions and processes that should logically be assessed. Rather than assuming a consensus, differences in the meanings given to key terms like 'integrity' should themselves be used as analytic tools to explore what is by its nature likely to be a contested landscape.

Table 3. Defining Accountability, Responsibility and Integrity (Brown & Uhr 2004)

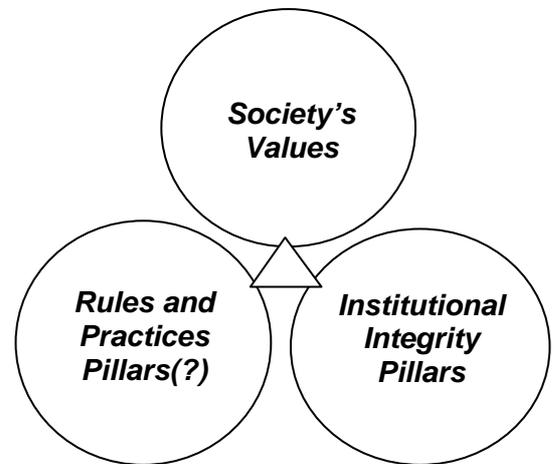
Meaning (Dobel's model)	Technical (<i>Process-rational</i>) (Institutional-Legal)	Substantive (<i>Value-rational</i>) (Implementation / Effectiveness)	Personal (<i>Pre/post-rational</i>) (Personal- Responsibility)
'Accountability'	Individual actions are, or can be held to account.	Individual actions invite, are open to accountability.	Accountability <i>makes</i> person trustworthy.
'Responsibility'	Individual actions are, or can be held responsible.	Individual actions are responsive, responsible.	Person <i>is</i> responsible, trustworthy.
'Integrity'	Actions accord with stated purposes/ values; trust is honoured.	Actions are honest, honourable.	Person <i>is trusted</i> , has honour.

Figure 2. Threefold Dimensions of Integrity

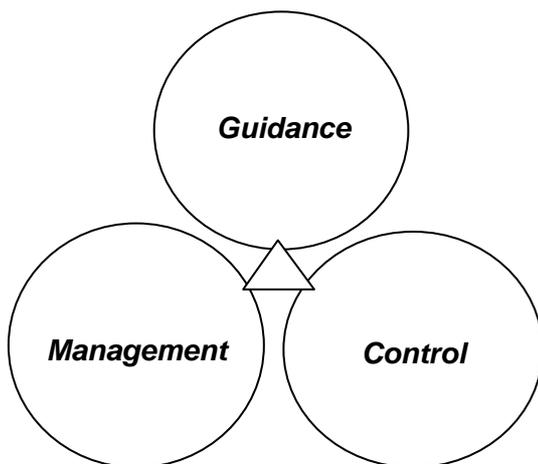
*Fig 2a. Dobel's models of integrity
(Dobel 1999)*



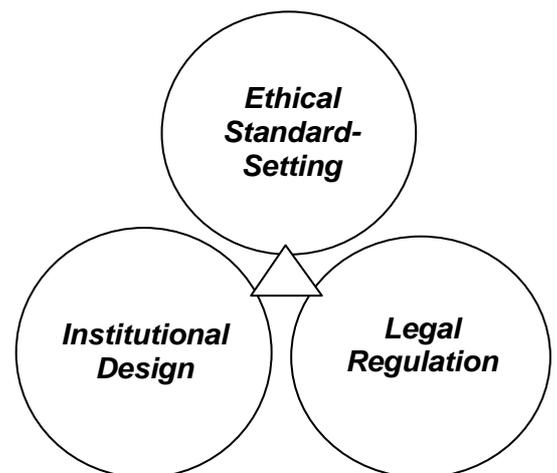
*Fig 2b. Transparency International
Greek Temple (Pope 1996, 2000)*



*Fig 2c. Elements of OECD Ethics
Infrastructure (OECD 1996, 2000)*



*Fig 2d. Sampford's trinity of reform
(Sampford & Wood 1992; Sampford
1994; Preston et al 2002:164-170)*



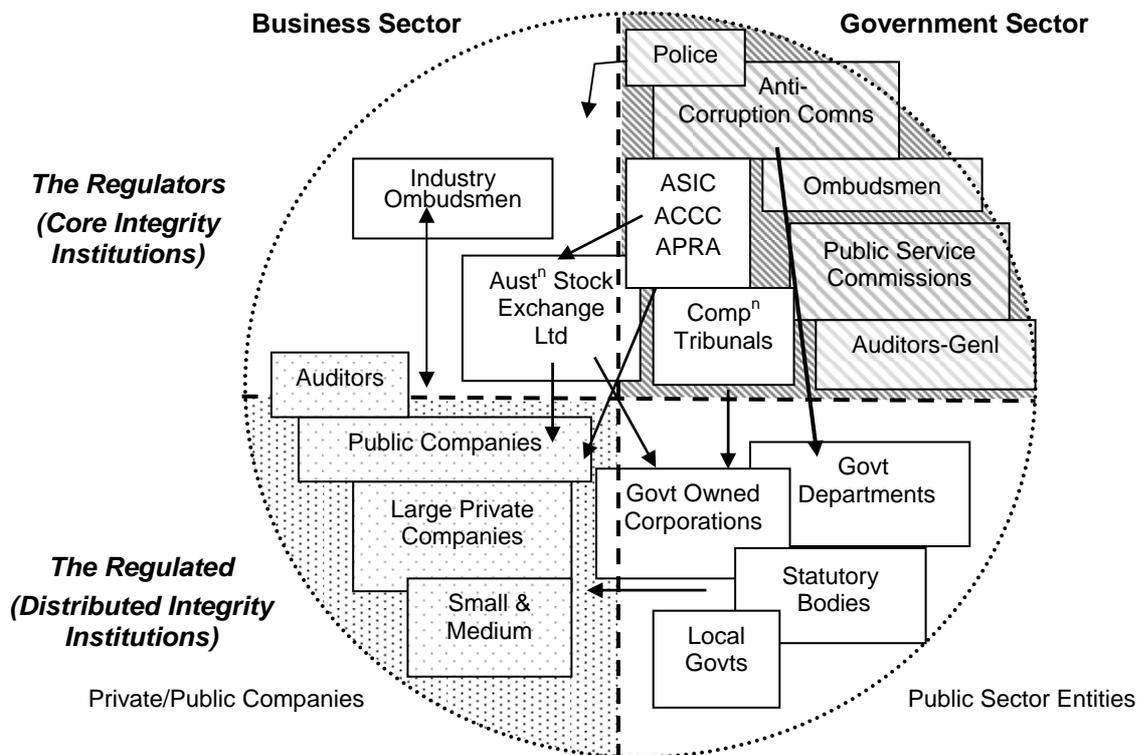
Identifying Integrity Institutions - Sector, Level and Jurisdiction

A second major set of questions at the scoping stage concern the range of institutions and processes that will form the focus of the assessment. While 'public integrity' is often assumed to mean 'public sector' or 'government' integrity, in fact, it means integrity as it applies to any or all institutions of public importance, in which officeholders have legal or ethical duties to the wider society. Integrity systems are, therefore, found in and across different sectors: government, business, and civil society. While the bulk of the Australian assessment concerned the government sector (chapters 3-6), business integrity was a significant focus (chapter 7), and civil society integrity systems remain an important, if understudied, component (chapter 8).

Similarly, in each of these sectors, integrity systems can be found at different levels of social organisation. The natural assumption in many governance assessments is to evaluate the ‘core’ integrity institutions in a given sector — i.e. those agencies whose sole or primary purpose is the pursuit of integrity in other organisations, often also called ‘central’ or ‘coordinating’ agencies, such as ombudsman offices and anti-corruption commissions. Most of the institutional pillars in the TI Greek temple are ‘core’ integrity bodies of this kind. However, as the preceding section showed, to focus only on such obvious institutions is to miss key dimensions of how integrity is typically most efficiently achieved through ‘distributed’ institutions and other more diffuse strategies and networks operating routinely *within* organisations.

Figure 3 below demonstrates the importance of both these issues — sector and level — by depicting key relationships between core and distributed integrity institutions, in both the government and business sectors.

Figure 3. Key Integrity Institutions by Sector & Level (Brown 2003)



Finally, all these institutions, in any or all of these sectors, may exist in multiple jurisdictions within the same country — and moreover, the extent of replication may be different in different sectors. Under Australia’s federal structure, the business integrity institutions shown on the left of figure 3 are now largely organised as a single national system, but there are nine versions of the right-hand government systems — one for the federal government, each of the six states and two territories. Table 4 below emphasises the institutional diversity that even a small federal system can create, with the federal and state systems all producing significant differences in the structure of their ‘core’ public sector integrity agencies.

*Table 4. Some Core Public Integrity Institutions in Australia
(based on Brown & Head 2004, 2005)*

	Auditor-General	Ombudsman	Police Complaints Authority	Police Integrity Com ⁿ	Anti-Corruption Com ⁿ	Crime Com ⁿ
NSW	1	2	3		4 (ICAC)	5
Queensland	1	2	3 (CMC)			
WA	1	2	3 (CCC)			
South Australia	1	2	3			
Commonwealth	1	2				3
Victoria	1	2 (inc. Office of Police Integrity)				
Tasmania	1	2				

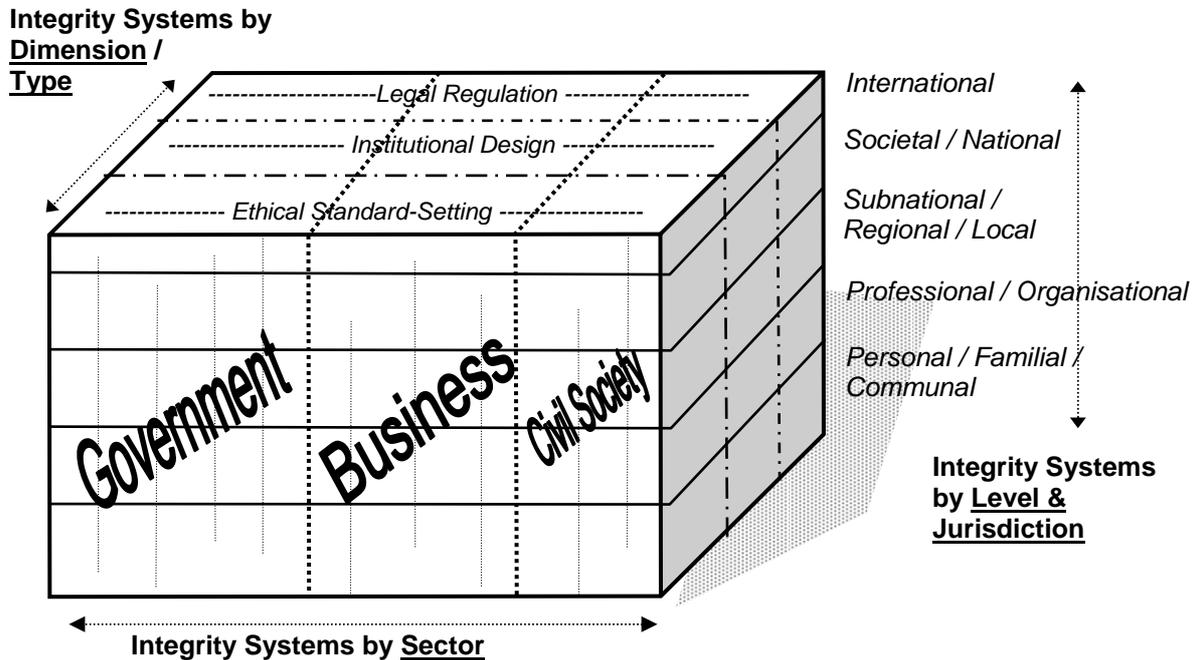
NB This table does not include Health Care Complaints Commissions and a range of other specialist independent integrity bodies, other than those dedicated to police.

Describing the Elements of an Integrity System: Greek Temple Revised

The third major threshold question is how to deal with all the issues identified so far, in what might otherwise appear to be a simple process of describing a nation's integrity systems. If a taxonomy of Australia's integrity systems was compiled based on the discussion above, taking into account the presence of three different types of integrity institution/process (ethical standard-setting, institutional design and legal regulation), at two levels (core and distributed institutions/process), across 11 sectors and jurisdictions (nine government, one business and one civil society), the assessment would need to investigate and describe at least 66 categories of integrity institution/process before even identifying individual key agencies, let alone mapping their relationships, let alone assessing the health or effectiveness of the system as a whole.

The answer is simply to recognise that the process of identifying and describing the constituent 'elements' of a nation's integrity systems is multidimensional. In any given context, it must be conducted from first principles or 'the ground up', rather than in terms of a preconceived institutional template. As a contrast with the two-dimensional image of the integrity system as a Greek temple (figure 1), figure 4 opposite presents these issues of classification as a three-dimensional structure. This summarises a conceptual approach which may lead to a variety of decisions as to the various categories of system 'elements' that it is particularly important to describe, map and evaluate in any given assessment exercise. The lesson of this approach is that decisions on how to focus the assessment need not be made arbitrarily, or be limited by default assumptions that have never been critically analysed regarding what constitutes an 'integrity system'. Rather, it is possible to make these decisions in an informed way, and make explicit the reasons why specific areas are not being concentrated upon. As parts II and III of this report show, this approach ultimately supported a sufficiently comprehensive understanding of a number of key areas of Australia's integrity systems to support a range of new conclusions.

Figure 4. A Conceptual Approach to Integrity System Description



Towards a Theory of Coherence: Mutual Accountability and the NIS Bird's Nest

The fourth threshold question in the scoping phase of the assessment was how the relationships between the many different elements of an integrity system should be mapped in order to produce a more coherent picture of the system as a whole. As described in chapter 1, 'coherence' was identified early in the project as a key theme around which much of the Australian assessment should focus, and subsequently endorsed by the OECD as one of the key criteria against which any such assessment should be undertaken. The central question 'chaos or coherence?' was first posed as the title of a key interagency workshop held in the pilot Queensland phase of the project in August 2000 (KCELJAG & TI 2001:142).

This focus on coherence reflects a number of factors, including the desire to test the emerging theory that corruption was better resisted and suppressed through an holistic, multifaceted systems approach than through single institutions or laws; to allow better comparative analysis of what such 'holistic' systems looked like; and to provide a basis for assessing anecdotal evidence that such systems, while more likely to be successful than isolated or stand-alone reforms, suffered their own different weaknesses in terms of coherence and coordination.

While it provided an original graphic metaphor for integrity systems, the Greek temple at Figure 1 did not provide a comprehensive basis for 'mapping' the relationships between integrity system elements. This was not only because it focussed heavily on core institutions, but because the main relationship it described was overlap or *redundancy* — the proposition that if one or more institutions failed, up to a point, integrity could still be maintained. Figure 3 provides a different 'map' of key relationships, but only some integrity institutions, and only in terms of traditional regulatory organisational *hierarchy*.

Further another key form of relationship was readily identifiable at the outset, not captured by either graphical device — the proposition that an increasingly important feature of integrity systems is that of *horizontal* or *mutual accountability*, in which integrity is more likely to be achieved because a variety of integrity institutions and processes are used to hold each other accountable in a network, as well as operating on agencies and individuals through traditional top-down supervision (Schedler et al 1999; Pope 2000:24-26). The archetypal example of mutual accountability remains the Anglo-European constitutional ‘separation of powers’ between legislative, executive and judicial branches of government, but increasingly extended to newer institutions as well as checks by non-government actors. In Australia, the case for recognising a range of core public sector integrity institutions as a new ‘fourth branch’ of government has been endorsed by the Chief Justice of New South Wales, also a former Commonwealth prime ministerial advisor and agency head:

... there have been a number of candidates for a ‘fourth branch’ designation over the years. The number does not matter. The idea does. The primary basis for the recognition of an integrity branch as a distinct functional specialisation, required in all governmental structures, is the fundamental necessity to ensure that corruption, in a broad sense of that term, is eliminated from government. However, once recognised as a distinct function, for which distinct institutions are appropriate, at a level of significance which acknowledges its role as a fourth branch of government, then the idea has implications for our understanding of constitutional and legal issues of broader significance (Spigelman 2004).

Whether semi-constitutionalised in this fashion, or left as a more diffuse network linking all branches of government as well as other sectors, an integrity system based on mutual accountability is one in which vertical lines of accountability turn into ‘a circle, or criss-crossing pattern’, in which the problem of ‘how to guard the guardians’ is solved by the fact that ‘every member is accountable to at least one other, or possibly several others’ (Mulgan 2003:232). Figures 5a and 5b opposite apply this concept graphically, similarly drawing on a basic concept presented by Australian regulatory specialist John Braithwaite (1998). An important recent extension is also to understand these relationships not simply as a network of guardianship, but as a ‘lattice of leadership’:

The ‘lattice...’ implies that public trust in government is more reliably placed when the various institutions of government share the task of self-regulation, with each relevant institution acting in ways that bring out the greatest public responsibility in those institutions with which they share public power (Uhr 2005a:155).

Following similar logic, and drawing on its empirical evidence, the Australian assessment identified not one but three distinct, important forms of relationship between the different institutional elements of the integrity system. These relationships include: *constitutional relationships* such as mutual accountability; but also involve *policy relationships* which determine how integrity is managed across a given sector or jurisdiction, for example through the coordination of enabling and regulatory legislation and overlaps or gaps in jurisdiction; and *operational relationships* in the day-to-day activities of core and distributed integrity institutions alike. The nature of these different types of relationship, the challenges they

*Figure 5a. Formal Models of Two Conceptions of Trust
(Braithwaite 1998: 354)*

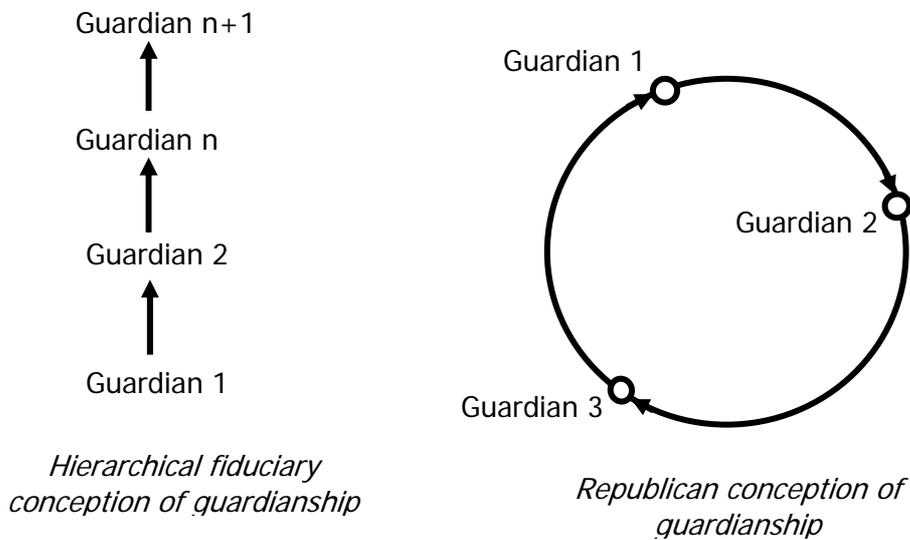
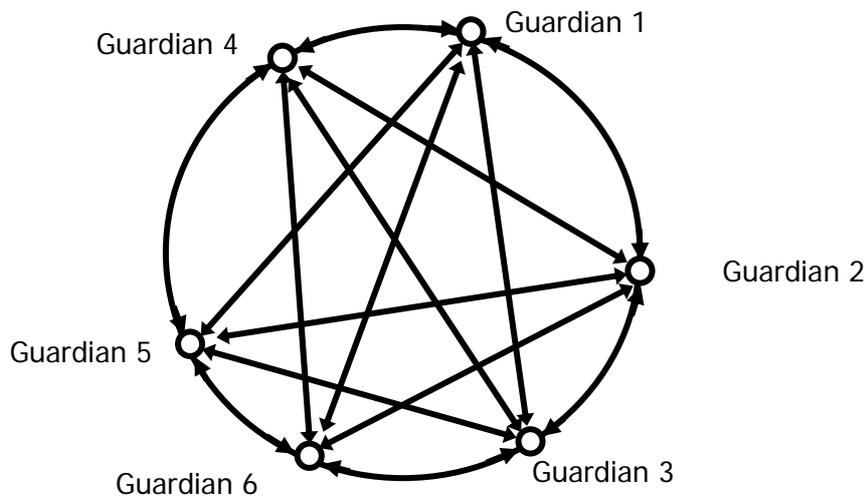


Figure 5b. A Model of Mutual Accountability

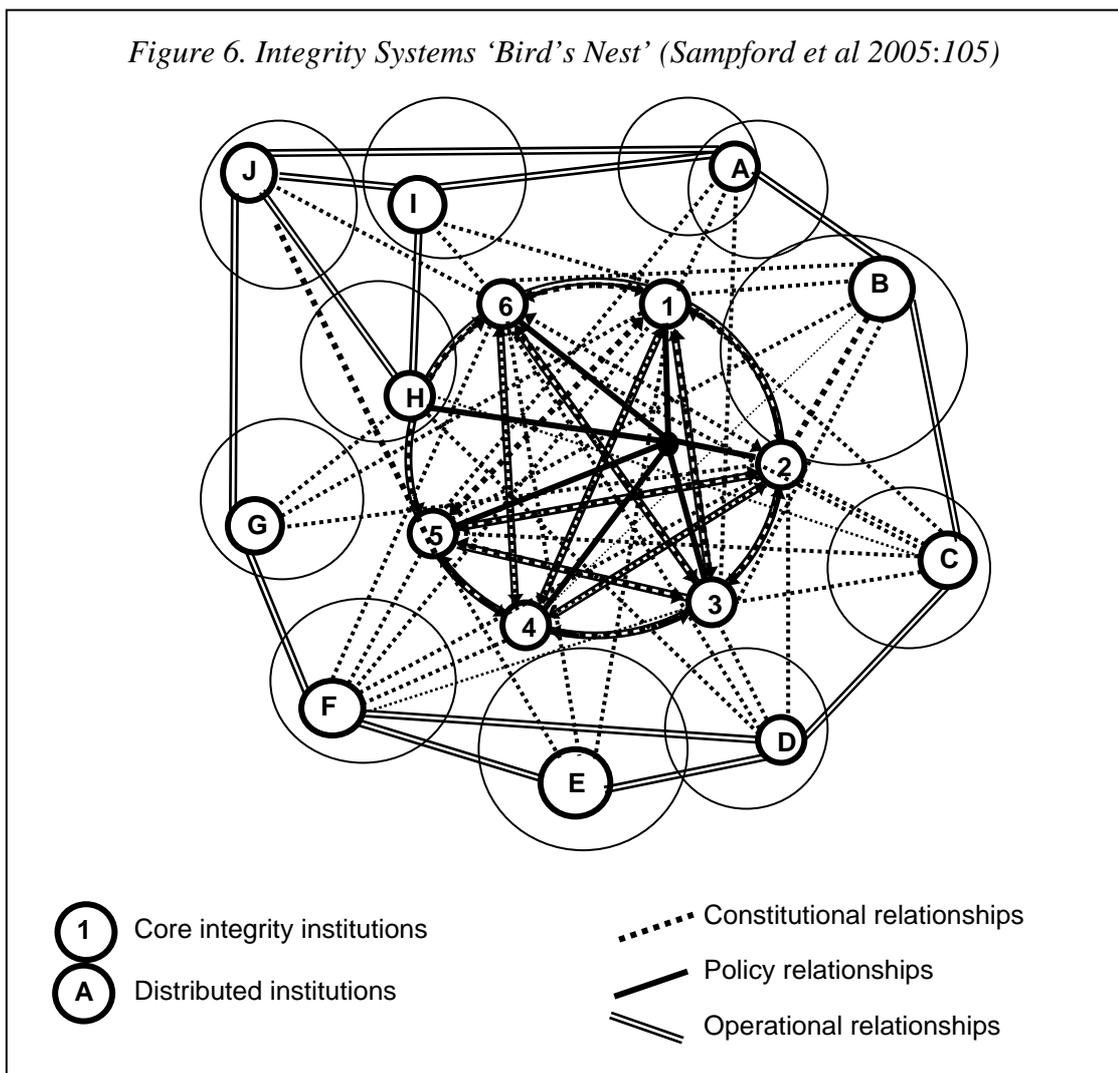


pose, and their implications for the future are discussed in more detail through the rest of the report, particularly in chapter 4 which presents the empirical results of the consequential analysis of NSW's public sector systems, and chapter 11 dealing with the issue of coherence across integrity systems as a whole. However, these results also provide a new starting-point for understanding the intricacy of the interrelations and interdependencies that increasingly define our integrity systems. Hence, the scoping of future assessments can proceed knowing not only that coherence is a significant issue and important assessment theme in its own right, but also that accurate description of the integrity system can usefully begin by charting this diversity of relationships.

The mapping of these relationships can be undertaken in a variety of ways during the assessment, including the type of network analysis demonstrated in the report and mentioned in the NISA Overview (Appendix 1).

Nevertheless conceptually, a useful new metaphor for an integrity system emerges from the manner in which these different relationships might be mapped together, taking into account both core and distributed institutions, as depicted by Figure 6. This is not a neat human-built structure metaphor, but the messier natural metaphor of a bird's nest (first suggested by Professor Sampford in 2003 and described in Sampford et al 2005). This metaphor is useful not only because it resonates with lessons of integrity available in the natural world, such as 'ecological integrity' (Preston 2001; Brown 2003), but also because a bird's nest performs a vital function of securing something delicate, important and easily shattered (an egg, or in this case, public integrity). As with the pillars of a Greek temple, if a few twigs in the nest are broken or removed, the nest may have cracks but the egg can remain fairly secure. It is only when a critical mass of twigs fail that the whole nest is in danger of collapse. Unlike a temple, however, the metaphor of a nest emphasises both the great multiplicity of small elements that make up the system, and the fact that the twigs and other materials from which nests are constructed are usually individually weak, and incapable of providing any significant support by themselves.

Figure 6. Integrity Systems 'Bird's Nest' (Sampford et al 2005:105)



The Australian integrity system assessment shows this also to be true of integrity systems, which tend to rely on a diversity of individually quite weak elements for their relative ongoing success, rather than a few strong pillars carrying a heavy load. Indeed as figure 6 demonstrates, the twigs that really make up the integrity system bird's nest are not the individual institutions, but the cumulative interactions between institutions, binding and defining their operations. Like nests, integrity systems also need constant tinkering and repair. Australian history suggests that they may also have a seasonal character in which periods of neglect are followed by periods of rebuilding and renewal. We hope that many of the recommendations in this report will contribute to that process.

Integrity system mapping: a descriptive, diagnostic or normative exercise?

The fifth and final question in the scoping phase of such an assessment is: whether the exhaustive task of mapping existing integrity institutions and processes is intended simply to aid the description of a complex system, prior to analysing it; or whether, in itself, this will help policymakers diagnose where problems or opportunities might lie; or whether it can help provide a standard, ideal map of 'good' integrity institutions and relationships that all states or countries could be expected to emulate.

Unfortunately, it is easy to assume that such an analysis can point the way to an 'ideal' integrity system to which all should aspire, simply by copying the same institutions in a similar configuration. However, as with many economic analyses, assumptions that particular institutions hold the key to public integrity begs the question: why, so often, these 'pillars' also appear empty or hollow? Part of the answer may lie in the fact that many such institutions are wholly imported, overlaying or replacing earlier, different integrity systems. Further, many key democratic institutions have a hard time working even in well-established democracies (Dobel 1999:10), as this report shows.

As discussed further in the Appendix, the NISA approach does not assume a particular institutional matrix to be 'normal' or preferred. Instead, the descriptive approach outlined is intended to emphasise that integrity system development lies in innovation, diversity and adaptation of old institutions to contemporary challenges in ways that ensure solutions are durably embedded in local political culture.

To extend the bird's nest metaphor from the previous section, institutional diversity is almost as vital as biological diversity. Birds typically make their nests from material to hand, rather than flying it in from far away; and if a new nest is constructed in a new place, it does not matter that the material is different, or that it takes a different size or shape; indeed, it may fail unless built from its local environment. For these reasons, some of the most important lessons of the Australian integrity system assessment lie less in the specific types and configurations of institutions discussed than its offerings as a new set of approaches for assisting communities to take stock of their own integrity systems in order to map their own particular path to their own version of public integrity.

PART II

SECTORAL AND JURISDICTIONAL STUDIES

Table 5: Sectoral and Jurisdictional Studies — Key Issues and Findings

Ch 3. Queensland public sector	Ch 4. New South Wales public sector	Ch 5. Commonwealth public sector	Ch 6. Local government	Ch 7. Business sector	Ch 8. Civil society sector
1. Executive and parliamentary accountability	1. Parliamentary and political integrity	1. Ministerial ethics, entitlements, honesty, public service relations	1. Contrasting bases for enforceable standards of councillor conduct	1. Walking the talk: external support for business integrity systems.	1. Further research
		2. Role of the Senate and Senate committees			
		3. Integrity in electoral financing	2. Electoral financing and disclosures		
2. Legislative bias / symbolic legislation		4. Whistleblower protection & management			
3. Policy fragmentation	2. Independence and overall ethical direction for the public service	5. Fragmented leadership or championing of public sector ethics		3. Development of integrity systems in specific industries	
4. Operational coordination issues between core integrity agencies	4. Greater integrity agency cooperation			4. International influences and constraints	
5. Strategic / systemic administrative investigative & review capacity	3. Effectiveness of so many core integrity institutions	6. Lack of anti-corruption body / proposed limited jurisdiction	3. Resources for integrity investigation & complaint resolution	5. Transparency and disclosure mechanisms	
6. Jurisdiction over commercialised etc services			4. Contracting out and private sector relships		
7. An over-reliance on investigation and enforcement measures	5. Balance between investigation/coercion and education/prevention	7. Reporting & monitoring (over-reliance on fraud control)		6. Further research into core institutions	
8. Limited ongoing monitoring and reform					

3. Queensland Public Sector Integrity System

Background and overview

Queensland is the second largest of Australia's eight states and territories, and holds about a quarter of its population. It was progressively settled by Europeans from the 1820s, separated from New South Wales in 1859, was a representative parliamentary democracy from inception and became a state of the Australian federation in 1901. In 2002-03, the Queensland public sector had 303,000 employees, making it Australia's third largest public sector employer. Its selection for a pilot study of the public sector integrity system flowed from the fact that its post-Fitzgerald reform process in 1989-1995 had been one of the triggers for Jeremy Pope's coining of the term 'integrity system', as well as its familiarity to Griffith University researchers.

The pilot assessment followed a scoping meeting in late 1999 involving members of the most prominent integrity agencies co-chaired by Professor Charles Sampford and Mr Henry Bosch AO, then Chair of TI Australia. The assessment was undertaken by a team led by Professor Noel Preston and Ms Dallas Adair. The primary research activity took the form of semi-structured interviews of representatives from 24 public agencies; a workshop of agency representatives on issues of operational coherence; a pilot survey on agency interactions completed by 12 agencies; a final focus group of agency representatives; and substantial desktop analysis of official documentation and existing research. The results were published in the Queensland Integrity Handbook (KCELJAG & TI 2001) and *Encouraging Ethics & Challenging Corruption* (Preston et al 2002), on which the following analysis is based. Feedback on the pilot was also sought at a number of international conferences including Global Forums II and III, 10th and 11th International Anti-Corruption Conferences and the second International Institute of Public Ethics conference, Brisbane 2002.

Core and distributed institutions

While much of Queensland's political system is typical of Westminster-style parliamentary democracy, it is atypical in two major respects. In 1922, the Queensland parliament abolished its own upper house (Legislative Council), giving the majority lower house party (the government) far more exclusive control over legislation than in any other jurisdiction. Possibly related, it has experienced long periods of government by a single political party, including the National Party from 1957 to 1989 with Premier Bjelke-Petersen as Leader from 1968-1988. Widespread political corruption and politically-protected police corruption led to the 1987-1989 *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* chaired by G. E. (Tony) Fitzgerald QC, whose recommendations triggered major reforms in the 1990s. These included the Criminal Justice Commission (since 2001, the Crime & Misconduct Commission) and the Electoral & Administrative Review Commission (EARC) (1990-1993), both of which successfully fostered ongoing reform throughout public institutions.

The Queensland assessment involved interviews with the Department of the Premier and Cabinet, Office of the Queensland Integrity Commissioner, Office of Public Service Merit

and Equity, Department of Local Government & Planning, Queensland Treasury, Department of Public Works, Office of Gaming Regulation, Queensland Police Service, Supreme and Magistrates Courts, Director of Public Prosecutions, Legal Aid Queensland, Queensland Legislative Assembly, Queensland Parliamentary Committee System, Parliamentary Public Accounts Committee, Office of Parliamentary Counsel, Electoral Commission of Queensland, Queensland Audit Office, Parliamentary Commissioner for Administrative Investigations (Ombudsman), Office of the Information Commissioner (Qld), Criminal Justice Commission, Queensland Crime Commission, Queensland Government Agent Program, and Brisbane City Council.

The study did not generally extend to the ‘distributed’ integrity institutions in Queensland Government line agencies, for example those responsible for developing, monitoring, promoting and enforcing agency codes of conduct under the *Public Sector Ethics Act 1994*, and internal financial accountability and fraud prevention processes. However, it confirmed the feasibility of research to assist public integrity agencies in self-diagnosing or confirming key issues of integrity system capacity and coherence, and of distinguishing between ‘core’ and ‘distributed’ integrity institutions for purposes of analysis.

Key issues and findings

The Queensland public sector integrity system has many continuing strengths, not least due to the extensive and well organised EARC-led reform process which enjoyed strong bi-partisan support from the public and politicians alike. Key reforms already found in most other Australian jurisdictions included the introduction of ‘new administrative law’ measures, and transparent and independent electoral boundary-setting arrangements; the establishment of the Crime & Misconduct Commission (then Criminal Justice Commission), following closely on the founding of the NSW Independent Commission Against Corruption and WA Official Corruption Commission. Leading reforms for their time included the regime for agency codes of conduct under the *Public Sector Ethics Act*, a *Legislative Standards Act 1992*, a powerful Scrutiny of Legislation Committee, and Australia’s first Integrity Commissioner to provide advice on conflict-of-interest issues to ministers, their advisors and senior government officials.

Problems or weaknesses identified in the system tended to be interrelated, and include:

1. *Executive and parliamentary accountability.* Although there is limited public support for its reintroduction, the lack of an upper parliamentary house removes one major potential institution for review of legislation and the initiation of committee inquiries. No compensating system exists in Queensland other than the jurisdiction of the Crime & Misconduct Commission to investigate official misconduct by parliamentarians. Although Queensland was first to institute an integrity advisor serving the political executive, like all Australian parliaments it lacks an enforceable ethics regime developed and tailored specifically to the roles of parliamentarians and ministers.
2. *Legislative bias & symbolic legislation.* The 1990s reform process also favoured legislative solutions as EARC was reporting to Parliament whose primary remedy is legislation. Some legislation has since been identified as potentially too symbolic in nature with weaknesses in implementation, for example, the *Whistleblowers Protection Act 1994*.

3. *Policy fragmentation.* While the 1990s reforms were comprehensive, their pursuit as separate manageable projects meant that they were often pursued individually and were sometimes fragmented, and that later reforms (e.g. introduction of the positive ethics components) had less than their full potential impact in and on a reform-fatigued public service. These issues combined with the new public management approach of 'leaving it all to the CEOs' left public sector managers with an onerous challenge to integrate reforms at an operational level, including integrated training rather than a piecemeal approach, as well as inadequate methods for monitoring the impact and effectiveness of the reforms.
4. *Operational coordination issues between core integrity agencies.* There is little or no institutional support, and often institutional barriers, for coordinated public outreach, complaint-handling and investigative efforts by different agencies dealing with like policy or operational matters. Coordination does occur (e.g. in the simultaneous CJC and Audit-General reports on the 1999 'NetBet' affair) through an informal Integrity Committee made up of the Integrity Commissioner, CMC, Auditor-General, Ombudsman and Office of Public Service; but this arrangement could cease at any time and has no statutory basis, permanence or authority.
5. *Strategic / systemic administrative investigative & review capacity.* The assessment documented concerns that the Queensland Ombudsman had historically been less than proactive in its attention to systemic maladministration risks, since possibly rectified through reviews and resource increases to the office; and that the Auditor-General was falling behind other jurisdictions in the lack of a statutory authority to conduct performance audits as opposed to financial compliance audits. Queensland is also rare in Australia in not having established an independent tribunal for determinative 'merits review' of the substance of administrative decisions, although such review powers are often conferred on the Magistrates Court
6. *Jurisdiction over commercialised, corporatised and contracted out services.* The need for the public sector integrity system to 'follow the money' and ensure ethics and probity standards in such services remained a live issue.
7. *An over-reliance on investigation and enforcement measures.* Notwithstanding the introduction of positive ethics approaches (including a world renowned approach to Public Sector Ethics), the focus on established wrongdoing by individuals and early establishment of the Criminal Justice Commission led to an over-reliance on that body to itself raise standards (rather than enforce standards already raised) and far stronger commitments of public resources to the investigatory elements of the integrity system than to standard-setting and preventative elements.
8. *Limited ongoing monitoring and reform.* For similar reasons, with the provision of the sunset clause governing EARC (contrary to the recommendations of the Fitzgerald Commission), there is also no body for ongoing monitoring and review, limiting the scope for comprehensive performance measurement and/or adjustment of the integrity system to rectify inherited or new imbalances, and increasing the risk of reform advantages being lost or new reforms being piecemeal.

4. NSW Public Sector Integrity System

Background and overview

New South Wales is Australia's fifth-largest jurisdiction, but is the most populous. It was the original British colony established in 1788, obtaining responsible government in 1855. In 2002-03, the NSW public sector had 480,000 employees, making it Australia's largest public sector employer. It was selected for study due to its size, political significance, the support of the NSW Corruption Prevention Network, and the expertise available from the University of Sydney. The study was conducted in 2002-2004 by Dr Rodney Smith, Shelly Savage and Richard Mills (a former Deputy Commonwealth Ombudsman).

The primary research involved structured interviews and administering questionnaires to senior officials from 20 public agencies, desktop analysis of official documentation and existing research, and exposure of draft results to the practitioner-based Strategic Themes Workshop (Melbourne, August 2004) and the Australasian Political Studies Association (Adelaide, September; see Smith 2004, 2005a). The agencies included seven 'core' integrity agencies, two central coordinating agencies and 11 line agencies. While open to any relevant issue, the study and survey focused on the relationships between agencies using an interview schedule and questionnaire revised and expanded from the Queensland pilot as well as insights from the Commonwealth study. The instruments were designed with the assistance of a focus group convened by the NSW Corruption Prevention Network. Research was also subsequently undertaken into the views of around 20 public interest groups and journalists working on NSW public integrity issues (Smith 2005b).

Core and distributed institutions

New South Wales has been a representative democracy for 150 years, making it one of the world's oldest continuous democracies, but from its years as a penal colony has retained something of a reputation for integrity failures. For example between 1993 and 2003, an average 49 per cent of NSW residents saw public sector corruption as a major problem, with a further 42 per cent viewing it as a minor problem (based on ICAC 2003:7). Like Queensland, NSW has long experience of most of the 'pillars' and 'rules and practices' of an 'integrity system' suggested by Transparency International (Pope 2000).

Unlike Queensland and the territories, but like all other states and the Commonwealth, NSW has retained a bicameral parliament. With reform of the Legislative Council including direct election by proportional representation in 1978, the Council is one of the state's stronger integrity institutions in which Opposition and minor parties are often able to form majorities to pass motions against the Government, and use committees to investigate corruption and maladministration. In 1991-1995, a variation occurred when the Greiner Coalition Government was also forced to rely on the support of Independent Members of the Legislative Assembly, agreeing to a 'Charter of Reform' which emphasised public sector integrity. In 1992, this reliance led to the forced resignation of Premier Greiner and Environment Minister Moore, after a finding by the NSW Independent Commission Against Corruption (ICAC) that they had acted corruptly in the

‘Metherell affair’.¹ Their legal appeal to the Supreme Court was later upheld, but the events had a lasting impact on standards and relations in the integrity system.

The ICAC was created by the Greiner Government itself in 1988 and plays a pivotal role among the ‘core’ integrity institutions, which also include the Audit Office and the Ombudsman, as well as others including the Administrative Decisions Tribunal, Police Integrity Commission and Health Care Complaints Commission (Table 6).

The study investigated in detail the relationships between such institutions — as well as between them — and the ‘distributed’ integrity functions exercised by the 11 line agencies, enabling analysis consistent with the ‘bird’s nest’ analogy of likely networks described in chapter 2. This confirmed that NSW integrity efforts are indeed spread across a wide range of agencies. Asked to nominate the relative importance of integrity agencies and organisations to their own agency, the senior public servants interviewed for this study answered as per Table 6, which shows the mean rating of each agency’s importance as judged by respondents (the lower the figure, the more important the agency) and the number of respondents judging each agency to be at least ‘fairly’ important.

<u>Agencies and Organisations</u>	<u>Mean Rating Of Importance^b</u>	<u>Number Thinking Agency At Least ‘Fairly Important’^c</u>
Ombudsman*	1.2	17 of 19
Independent Commission Against Corruption*	1.4	18 of 19
Audit Office*	1.6	18 of 19
Premier’s Department*	1.8	14 of 19
Parliamentary Committees*	2.2	12 of 20
Courts*	2.3	13 of 20
Police Force*	2.4	10 of 19
Administrative Decisions Tribunal*	2.6	10 of 20
Police Integrity Commission*	2.9	5 of 20
Health Care Complaints Tribunal*	3.3	2 of 19
Office of the Children’s Guardian*	3.4	3 of 20
Privacy Commissioner	3.6	2 of 20
Commission for Children and Young People	3.7	2 of 20
Cabinet Office	3.9	1 of 20
Coroner	3.9	1 of 20
Police Integrity Commission Inspector	3.9	1 of 20
Official Visitors	3.9	1 of 20
Royal Commissions	3.9	1 of 20
Joint Investigative Response Teams	3.9	1 of 20
Judicial Commission	3.9	1 of 20
Director of Public Prosecutions	3.9	1 of 20
NSW Crime Commission	3.9	1 of 20
<u>Community Relations Commission</u>	<u>3.9</u>	<u>1 of 20</u>

Notes:

^a Agency respondents were shown a list of agencies and organisations and asked to rate the importance of each in dealing with integrity issues for their own agency. The listed agencies are indicated with an * in this table. Respondents were invited to add further agencies to the list and rate them. Agencies had to be nominated as at least ‘fairly important’ by at least one agency to be included in the table.

^b The response categories were: ‘very important’, scored 1; ‘fairly important’, scored 2; ‘not very important’, scored 3; and ‘not at all important’ and ‘can’t say’, both scored 4. Mean scores can thus range from 1.0 to 4.0, with a mid-point of 2.5. The lower the score, the more important the agency or organisation in the eyes of the respondents.

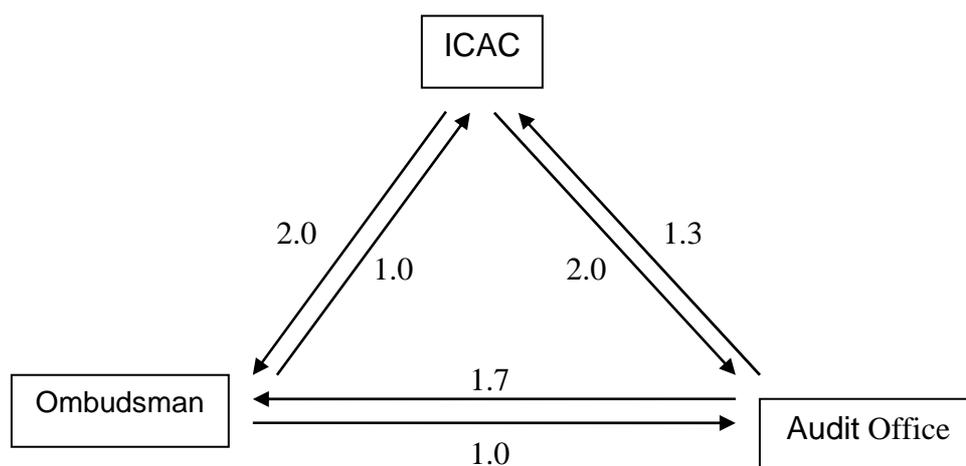
^c Since respondents were not asked to rate their own agencies in this question, some agencies have been rated by only nineteen respondents, rather than twenty.

A close examination of Table 6 suggests that ‘core’ NSW integrity agencies can be divided into three groups. The central core consists of generalist investigative agencies — the ICAC, the Ombudsman and the Audit Office — who are seen as important by almost all other agencies. Less central, but still important, are the central legislative, judicial and executive agencies — parliamentary committees, courts and police, and the Premier’s Department — as well as the Administrative Decisions Tribunal. The third group consists of less important organisations with general oversight (such as Privacy Commissioner) and specialist integrity agencies important only for specific agencies (Police Integrity Commission and Health Care Complaints Commission).

Significantly, the three central core agencies were not established simultaneously or as parts of a coherent system. For example, the NSW Ombudsman has seen substantial expansion and now has the largest staff of any Ombudsman in Australia — 168 employees in 2002-03 compared with 82 for the Commonwealth and 50 for Queensland. The ICAC has had a more controversial path due to the 1992 events and its failure to uncover police corruption, a factor that led to the Wood Royal Commission into Police Corruption (1994-1996) which, in turn, led to creation of the Police Integrity Commission, removing the ICAC’s role of investigating police corruption. The Police Integrity Commission has received solid funding since 1996-97. It has a staff of around 100. While the ICAC since 1998-99, has lost around one quarter of its staff and seen its budget cut. An independent review of the future of the ICAC was undertaken during the life of the project at the behest of parliamentarians with ongoing concerns about its power — a reminder of continuing and perhaps permanent tensions.

Despite the uncoordinated pattern of their development, the core NSW integrity agencies appear to be fairly coherent at an operational level, at least by their own judgements (Figure 7). Interviews with these agencies suggest that close links were maintained in a

Figure 7. Relationships Between the Independent Commission Against Corruption, NSW Ombudsman and NSW Audit Office



Note: The direction of the arrows indicates direction of judgements made by the agencies. Each score is the mean of three items covering judgements about the *importance* of an agency on integrity matters, the *quality* of the agency’s advice and actions, and the *promptness* of the agency’s advice and actions. Potential scores range from 1.0 (very important, very good quality and very prompt) to 4.0 (not at all important or can’t say, poor quality and poor on promptness), with a midpoint of 2.5.

range of ways, including formal referrals of matters, cooperation on investigations, staff movements from one agency to another, and awareness of each others' publications.

Taking this bird's eye view, the NSW integrity system can appear relatively coherent and manageable, with a handful of closely aligned agencies centrally concerned with integrity work and a larger number involved only in a relatively peripheral or specialised way. However, Table 6 revealed 22 agencies and organisations exercising significant integrity functions for others, suggesting issues of inter-agency coherence could be significant. From the perspective of individual agencies on the ground, working with 'distributed' integrity functions, the picture is indeed quite different (Table 7).

Table 7: Relationships between NSW Public Sector Agencies and Integrity Agencies

	ICAC	Omb	Aud-Gen	Prem	Courts	Parl	Police	ADT	HCCC	PIC	OCG	Other 1	Other 2	Other 3	Total
Agency 3	+	++	+		++	++		+			+	++	++	++	10
Agency 18	++	+	++	++	++	++	+	++		+		+			10
Agency 7	++	++	++	++	++	+	++	+				++			9
Agency 9		+	+	++	+	+	+			+		+	+		9
Agency 13	++	++	+		++		++	+	++	++		++			9
Agency 4	++	++	++	+	+		++	++			+	++			8
Agency 8	++	++	++	++			+		++		+	++			8
Agency 16	+	++	++	++	++	+		+		++					8
Agency 17	++	++	++	++	+	++	++	+							8
Agency 20	++	++	++	++	++	++		+				+			8
Agency 19	++	++	+	+		+	++	+							7
Agency 10	++	+	++	++	++	++									6
Agency 11	++		++			+	++			++		+			6
Agency 5	++		+	++	++		+								5
Agency 6	++	+	++	++	+										5
Agency 12	+	+	+			+						++			5
Agency 14	+	++	+	+				++							5
Agency 1	++	++		+		+									4
Agency 2	++	++	+		+										4
Agency 15															0

Notes:

++ indicates 'very important' to the agency.

+ indicates 'fairly important' to the agency.

The 'Other' columns refers to 'very' or 'fairly' important integrity agencies and organisations not listed in the interview schedule/questionnaire but raised by the respondent.

The mean number of important integrity organisations with which agencies have to deal is 7.7, with some dealing with nine or ten. There is no clear relationship between the type of agency and the number of integrity bodies which it views as important, though line agencies with clients who pose clear integrity or vulnerability risks tend to fall above the median figure. The anomaly in this table is Agency 15, whose respondent claimed that none of the integrity agencies were important, not because Agency 15 had no contact with them but because the respondent judged those integrity agencies as having uniformly failed. Following the logic discussed in chapter 2, it is also possible to depict the multiplicity, and occasionally the inadequacy of relationships that make up this system, in a graphical form — as shown in Figure 8.

Figure 8. The NSW Integrity System Bird's Nest

Fig 8a. Relationships Between Seven Formally Important Integrity Agencies

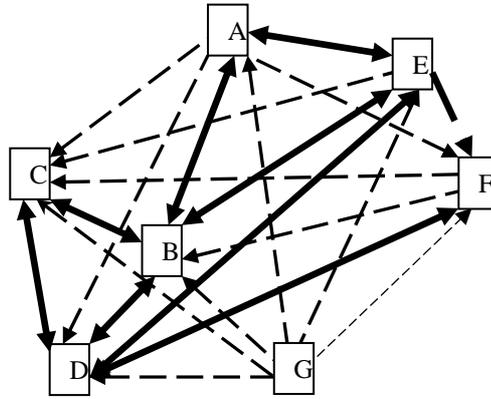


Fig 8b. A Typical Relationship between the NSW Integrity Bird's Nest (Agencies A to G) and a Line Agency (H)

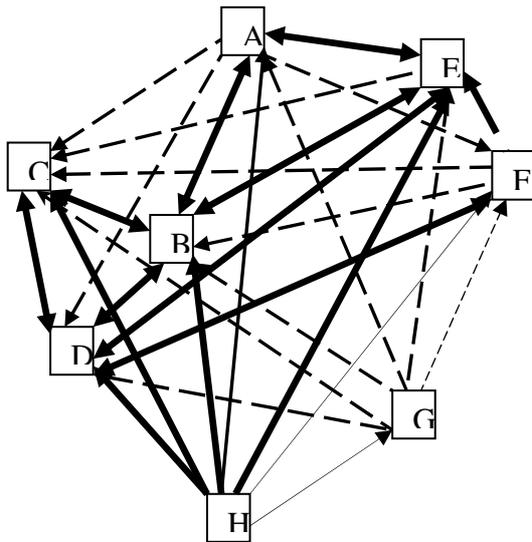
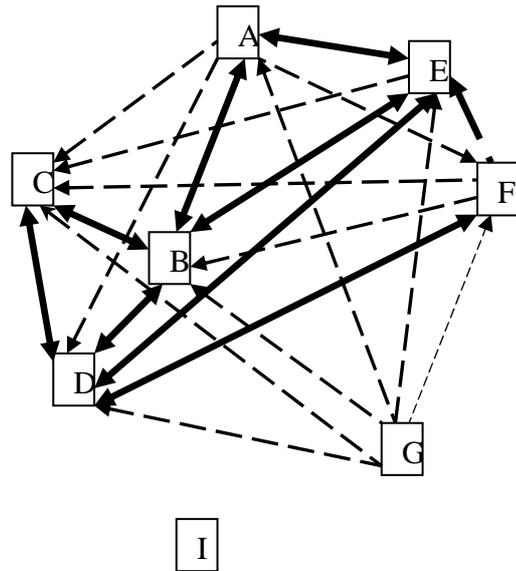


Fig 8c. An Atypical Relationship between the NSW Integrity Bird's Nest (Agencies A to G) and a Line Agency (I)



Notes to Figure 8

- Boxes A-I represent NSW Government agencies, made anonymous to meet the wishes of some respondents in the study. A to E are either central coordinating agencies or integrity agencies with wide remits; F and G are integrity agencies with specialist remits; H and I are line agencies.
- Each line summarises the judgements of the two connected agencies' respondents about three issues: the *importance* of the other agency on integrity matters, the *quality* of the other agency's advice and actions, and the *promptness* of the other agency's advice and actions.
- The thicker the line, the stronger is the overall relationship between two agencies. The thickest lines represent relationships in which the agencies are considered at least 'fairly important', the quality of advice and action is at least 'fairly good', and that advice and action is at least 'fairly prompt'.
- Thinner lines indicate weaker relationships. No line indicates no relationship or a failed relationship.
- Double-headed arrows indicate more or less reciprocal relationships. Dashed lines with a single arrowhead indicate asymmetrical relationships, in which positive judgements by one agency are not reciprocated nearly as strongly; the arrow head points to the agency judged by the other to be more important etc.
- Lengths of lines do not have any significance.

All these results indicate that for the majority of NSW agencies, the coherence of the integrity system is a potential problem. Fortunately, when agencies were asked to rate the level of coordination between integrity agencies, responses tended to be positive: of 18 agencies that answered this question, two thought the level of coordination was very good and ten that it was fairly good, against four who thought it not very good and two that it was poor. The clearest division emerged between the integrity/central agencies and line agencies. All but one of the integrity and central agencies judged coordination to be at least fairly good, while all the critics of coordination were found among the line agencies, who seemed to feel a lack of coordination more sharply than the integrity and central agencies. According to one agency, the consequences include resource diversion and staff fatigue in agencies responding to overlapping investigations, encouragement of ‘gaming’ among complainants who lodge complaints with a range of agencies, and poaching of staff by integrity agencies competing for the small pool of personnel with forensic skills and resulting loss of corporate memory.

Regardless of judgements about the level of coordination, all agencies, implicitly or explicitly, acknowledged that cooperative relationships between agencies were important. Only one respondent raised the idea that outright competition between integrity agencies could be desirable. None seemed satisfied with a situation in which integrity agencies operated without regard for the operations of each other.

Key issues and findings

While public integrity is a continually live issue, and NSW clearly possesses the strongest integrity system of any Australian government based on pure number of core integrity institutions, the study revealed a number of significant current issues:

1. *Parliamentary and political integrity.* The fairness of the electoral system has progressively improved since 1978. As shown in 1992 and subsequently, there is also some enforceability of parliamentarians’ integrity through oversight by the ICAC. However, there are questions regarding the comprehensiveness of this regime as well as the capacity, timeliness and independence of the Electoral Funding Authority responsible for monitoring donations, expenditure, and public funding to candidates, two of whose three members are nominees of the Premier and Opposition Leader.
2. *Independence and overall ethical direction for the public service.* Public debate reveals strongly conflicting opinions about the pros and cons of direct ministerial control over public service appointments, since the abolition in 1988 of the independent Public Service Board that controlled NSW public service appointments through most of the 20th century. This control has strengthened a ‘winner takes all’ element in NSW political culture through control over appointment and removal of senior public servants. Apart from arguments over the relative benefits of independence and responsiveness, however, it is clear that since 1988 there has been little by way of positive ethical framework to assist ministers or public servants to navigate their new relationships, with NSW possessing no equivalent statute-based regime for public service codes of conduct to those of other jurisdictions (chapter 10).
3. *Effectiveness of so many core integrity institutions.* A number of respondents to the study suggested possible alternative integrity systems, involving fewer agencies in order to reduce duplication and increase efficiency in the integrity effort. However,

there is a general lack of impetus for merging agencies, and it would be politically difficult as shown by a short-lived proposal in 1999 that Irene Moss be both Ombudsman and ICAC Commissioner to allow better coordination and division of responsibilities. Consequently, though there is certainly no suggestion that any more integrity agencies should be created, mergers appear unlikely.

4. *Greater integrity agency cooperation.* Most of the agencies canvassed in this study believed greater cooperation was desirable, and willingness to cooperate is often present, both among integrity agencies and the other public sector agencies that they scrutinise. However, agencies reported two sets of barriers to greater cooperation: legal, particularly in the operation of the *Privacy Act* which inhibits agencies sharing information; and the refusal of budgetary bodies to allow funds to be spent on cooperative projects between agencies. This was demonstrated in 2001 when a major proposal for a 'one-stop shop' involving most complaint handling bodies, to be called *Complaints NSW*, was prevented first by concerns from the Government Accommodation Management Committee, and then by a refusal by NSW Treasury to permit the expenditure of available funds on capital investment (see NSW Ombudsman 2002:23; NSW Parliament 2003:30; Smith 2004). Failures of coherence among NSW integrity agencies flow not just from the agencies themselves, but also from the political, legal and budgetary frameworks within which they operate.
5. *Balance between investigation/coercion and education/prevention.* As in Queensland, a live issue exists regarding the relative levels of resources that integrity agencies should direct to 'positive' and 'negative' ethics functions. Consistently with some elements of NSW political culture, integrity agencies such as the ICAC have been criticised for 'not taking enough scalps' and emphasising education and prevention. However, the study confirmed that, while important, investigations and prosecutions should not be the sole measures of successful integrity agency activity, the crucial element being whether these investigations bring about wider change. Some agencies reported positively that core investigative agencies had recently begun providing advice on a range of remedial and prevention activities where previously they not gone beyond simple forensic investigation.

The study suggested that a model of combining coercion with reform seemed to be preferred by most agencies, but was not well established in practice. This identified a key challenge for integrity agencies to direct their resources into investigations that promote organisational reform and cultural change, while again highlighting the lack of a centrally-organised 'positive' ethics regime for the whole NSW public sector.

¹ In June 1992, then New South Wales Premier, Nick Greiner and his Environment Minister, Tim Moore, were found to have acted corruptly in appointing former ministerial colleague-turned-independent MP Dr Terry Metherell to a lucrative public service position so as to clear the way for a by-election in his seat of Davidson. (Greiner and Moore were subsequently cleared.)

5. Commonwealth Public Sector Integrity System

Background and overview

The Commonwealth Government was established at federation in 1901. With 244,000 employees in 2002-03, it was Australia's fourth-largest public employer, with nationally-distributed operations and responsibility for the bulk of public revenue collection and over 50 per cent of total public expenditure. The Commonwealth study was conducted in 2001-04 by Peter Roberts, a former senior manager in the Commonwealth Attorney-General's Department, now with Charles Sturt University's Centre for Applied Philosophy & Public Ethics and Investigative Studies & Crime Reduction. The primary research involved semi-structured interviews of representatives of 13 public agencies; a revised survey on agency interactions completed by another 6 agencies; desktop analysis and existing research; and exposure of draft results to the Strategic Themes Workshop (August 2004) and Australasian Political Studies Association (Adelaide, September 2004; see Roberts 2004a&b, 2005).

Core and distributed institutions

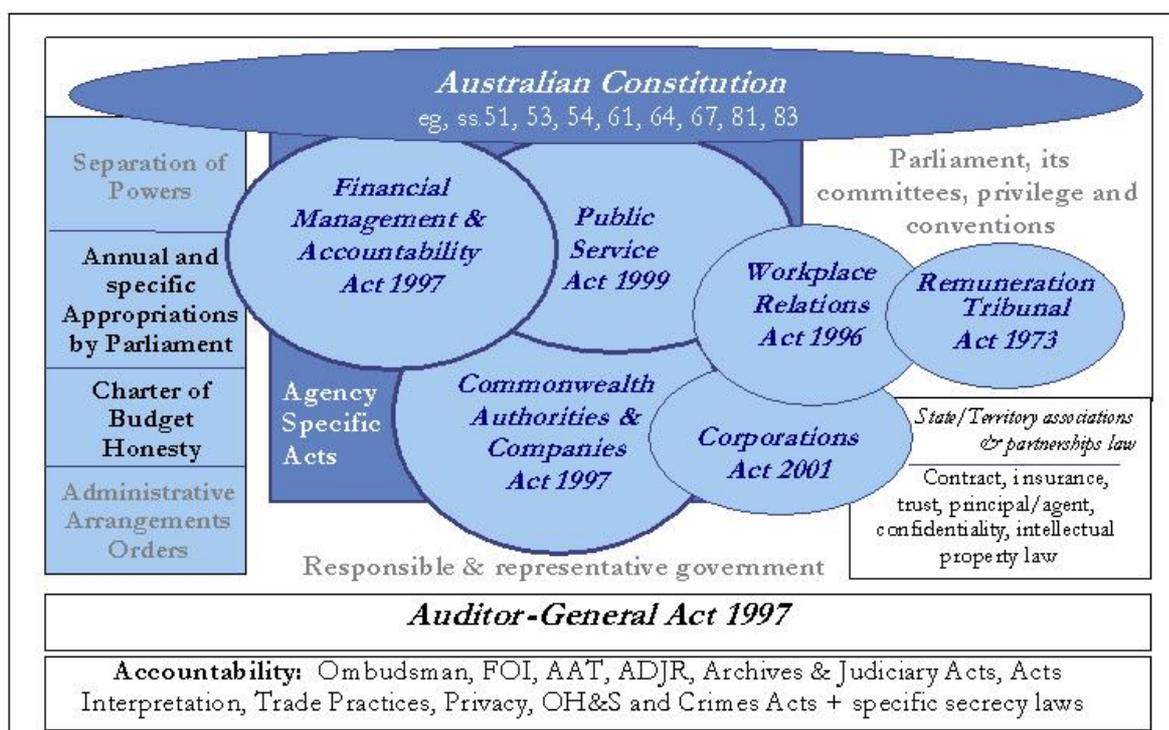
The bicameral Commonwealth Parliament and Australian Public Service were established in 1901 — the former based on a Westminster-style lower house with single-member constituencies and a US-style federal Senate based on direct election by proportional representation with each state voting as one electorate. Many Commonwealth agencies date only from the 1940-50s and the development of the modern welfare state.

By apparent contrast with most state governments, the Commonwealth government is often regarded as free of a significant corruption problem. Reasons sometimes offered include higher standards of conduct, the modern nature of Commonwealth administration, low Commonwealth involvement in service delivery with high corruption risk (such as day-to-day law enforcement and licensing), and sophisticated financial controls. However, the Commonwealth's heavy reliance on financial accountability and fraud control as integrity mechanisms also means a low sensitivity to detection and prevention of corruption *other than* fraud, as discussed below. Some commentators observe the Commonwealth also has other integrity challenges (Uhr 2004a; Hindess 2004). In 2005, these were further highlighted by revelations about systemic abuses of power by the Commonwealth Department of Immigration — including the unlawful detention and deportation of Australian citizens — in the four years since tightened 'border protection' policies.

Eight of the agencies interviewed and/or surveyed had central responsibility for integrity matters: Attorney-General's Department, Australian Electoral Commission, Australian Federal Police, Australian National Audit Office, Australian Public Service Commission, Department of Finance and Administration, Office of the Director of Public Prosecutions, and Commonwealth Ombudsman. The remaining 11 agencies were 'line' agencies, i.e. responsible for 'distributed' integrity functions such as the Australian Taxation Office, Department of Defence and Department of Health and Ageing.

Commonwealth government integrity is influenced by a large number of diffuse governance arrangements, as shown by the legal elements in Figure 9. The interviews and surveys (which used the same template as NSW but were distributed late in the project and attracted only 10 responses) revealed a fairly consistent picture of four ‘central core’ integrity institutions: the ‘big three’ agencies — the Australian Public Service Commission, Australian National Audit Office and Office of the Commonwealth Ombudsman — plus scrutiny of government by parliamentary committees (particularly Senate Estimates). The news media were also identified as a significant influence on ‘service-wide’ integrity from agency perspectives.

Figure 9. Legal Elements affecting Governance in the Commonwealth (from Barrett 2004)



Source: Department of Finance & Administration.

However, the study also suggested that Commonwealth governance arrangements effectively work as three (or four) separate integrity systems, overlapping only indirectly and not necessarily coordinated in their operation. The most comprehensive and pervasive system is found in highly sophisticated and statutorily-based financial management arrangements, with the key institutional players being the Department of Finance and Administration and the Australian National Audit Office (ANAO), with close oversight by the Parliamentary Joint Committee of Public Accounts and Audit. The ANAO's key role stems from its operational roles in performance audits, financial control and administration audits, financial statement audits, and assurance and control assessment audits. The ANAO plays an active role in defining and promulgating best practice in a wide range of financial management areas. It also views fraud control and anti-corruption procedures as a crucial element in integrity. These functions and comprehensive procurement guidelines combine to make the Commonwealth's financial accountability system very robust, providing strong mechanisms for ensuring awareness and compliance with key requirements of the *Financial Management & Accountability Act 1997* for:

- ‘ethical use of resources’ by Commonwealth managers (section 44);
- every Commonwealth agency to have a strong and legally binding fraud control plan (section 45); and
- every agency to have an Audit Committee (section 46).

The Commonwealth’s heavy reliance on these systems for integrity purposes raise issues of awkwardness in the subsuming of corruption within fraud control and inherent problems of consistent implementation. However, the fraud control policy is, by far, the closest systemic element existing in the Commonwealth which can be described as a whole-of-government approach with strong political support. It bridges between the comprehensive financial accountability systems, the criminal justice regime and the increasingly devolved corporate governance arrangements across the Commonwealth.

The second, largely parallel system relies on administrative complaint investigation and recommendations by the Commonwealth Ombudsman, including recommendations regarding internal complaint-handling systems, as well as oversight of integrity in the Australian Federal Police. The importance, independence and quality of Ombudsman investigations appear well recognised throughout Commonwealth administration. Significantly, however, other key elements of the Commonwealth’s administrative review system such as the Administrative Appeals Tribunal were less prominent; there have been criticisms of the wide discretions in the *Freedom of Information Act 1982* being used to unreasonably withhold sensitive information; and debate surrounds curtailment of the application of judicial review of administrative decisions in migration and refugee matters. Apart from clear support for the Ombudsman, it is noticeable that most of the administrative law package was introduced 20-25 years ago, at a time of pressure from legal and academic commentators to make the Commonwealth more directly accountable to the community; but this impetus has largely dissipated.

The third, again largely parallel system, relates to the positive ethics role of the Australian Public Service Commission (APSC), under the revised legislative package for employment of the Australian Public Service introduced in 1999. In integrity terms, the most important elements of this legislative package are a statement of APS values (section 10, *Public Service Act 1999*), code of conduct (section 13) and procedures for handling breaches within agencies (section 15). As the Commonwealth has moved rapidly away from uniform employment arrangements and a centralised human resources approach, this approach performs a crucial role in setting down what it means to be a public servant, including high integrity standards, while also providing agency heads with a range of sanctions for breaches of the APS code including termination of employment. Importantly, the Commissioner also conducts extensive evaluation of the take-up of these arrangements, including a statutorily required annual ‘state of the service’ report, providing qualitative and quantitative feedback (see chapter 9).

Interview and survey results suggested that of the ‘big three’, the APSC’s leadership role gave it greatest recognition within the public sector as a service-wide integrity agency. This recognition is significant for the agency with the least legal authority, having only limited reach and very limited employment powers due to the now highly devolved structure of the Australian Public Service. Further, only around half of Commonwealth employees (131,000 staff) are employed in APS agencies. On the whole, the study

indicates that despite the importance and high respect for the more recent role of the APSC, it was not easy to identify which agency (or agencies) is actually providing leadership in integrity in the practical day-to-day operations of administration. The heavy reliance on standard corporate governance systems gives monitoring agencies like the Ombudsman and ANAO a stronger influence on the day-to-day integrity-related practices of agencies than might have been expected or is necessarily reflected in their institutional mandates.

Key issues and findings

The strongest systemic elements assisting in integrity and prevention of corruption were:

- the highly sophisticated financial management arrangements with statutory basis;
- independent and highly regarded investigation, prosecution and judicial processes;
- active and independent monitoring by the Ombudsman and the Auditor-General;
- the role of Senate committees in using their powers of review to back up the statutory accountability arrangements, boosted by the infrequency with which the government controlled the Senate from 1980 until July 2005.

The major problems or issues identified in this study were:

1. *Ministerial ethics, entitlements, honesty to parliament, and public service relations.* Serious issues of ministerial standards, including the roles of ministerial advisors, dominated public debate in much of the study period. Much of this debate centred on the lack of enforceability of ministerial and other parliamentary standards, the former being subject to a purely discretionary code published by the Prime Minister in 1996 and 1998 (Uhr 2005a:142-5). Issues ranged from entitlements, conflicts of interest, and post-separation employment, to the honesty of ministers and staff in accounting to the public and parliament on matters including the ‘children overboard’ affair (October 2001; see Weller 2002), the reasons for going to war with Iraq, and government anti-terrorism policy. These issues also flowed into active debate about increased political pressures on senior civil servants, potentially impacting adversely on their capacity to fulfil obligations to provide frank and neutral advice.
2. *Role of the Senate and Senate committees.* Although Commonwealth’s accountability systems effectively appear to function with the Senate at their peak, the roles of the Senate have been repeatedly attacked by executive governments of all political persuasions over a long period. With the government party regaining majority control of the Senate as a result of the 2004 federal election, it is not clear to what extent the Senate will continue to play the role it has and whether this will limit the effectiveness of the other elements of the Commonwealth’s integrity systems which supported and were supported by Senate enquiry. Nor is it clear whether this will have a wider impact on the functioning of the integrity system as a whole.
3. *Integrity in electoral financing.* Under the *Commonwealth Electoral Act 1918*, the Australian Electoral Commission is required, after each federal election, to report on the operation of the Commonwealth’s Funding and Disclosure scheme. However, despite providing substantial public funds to political parties (\$33 million in 1998) with little supervision of expenditure, the scheme does not place any limits on private

donations nor require disclosure of donations in time to provide transparency in electoral choices. Consequently, scandals about improper influence remain.

4. *Whistleblower protection and management.* The present minimal scheme under s16 of the *Commonwealth Public Service Act 1999* is inadequate. Among other constraints the scheme only applies to APS employees, not the entire public sector nor employees of Commonwealth contractors; the nature of the matters covered is vague, since it relates to breaches of the APS code but has no clear connection to integrity lapses otherwise defined; protection from reprisal is limited to those from within the agency relevant to the complaint; and there is no clear independent investigative or remedial capacity, given the limitations on the statutory role of the APSC and employment-related jurisdiction of the Ombudsman. The APSC itself reports that the scheme is dogged by ‘a significant level of confusion’ (APSC 2004:112).
5. *Fragmented leadership or championing of public sector ethics.* The emphasis upon encouraging agencies to manage their own governance arrangements means that the whole-of-government integrity system does not have any clear leader or champion. While the Australian Public Service Commission, in part, has *de facto* filled this role, the lack of integration between the Commonwealth’s integrity systems, limited jurisdiction and resources of the APSC, and lack of statutory authority and coordination currently limit this role. Traditionally, whole-of-government leadership and coordination on probity of Commonwealth administration has also been provided by the Administrative Review Council; but its role, focused on administrative law, has recently gone under-recognised, and includes neither the APSC nor the ANAO. As a result, the Commonwealth has no clear coordination mechanism.
6. *Lack of anti-corruption body / proposed limited anti-corruption jurisdiction.* An obvious omission in the Commonwealth’s law enforcement arrangements, given the scale and significance of Commonwealth operations, is the lack of an anti-corruption body. A proposal by the Australian Law Reform Commission for a body with limited jurisdiction (ALRC 1996) was never actioned, nor alternative resources allocated. In June 2004, the Howard Government announced that such a body would finally be established, styled an Inspector-General of Law Enforcement (IGLE) but details have been scant and the proposed jurisdiction clearly limited to law enforcement bodies (see Brown & Head 2004, 2005; Brown 2005). There is now a clear case for a general purpose Commonwealth anti-corruption agency which includes educative, research and policy functions.
7. *Reporting and monitoring implications of the over-reliance on fraud control.* A major reason why few corruption problems are reported in the Commonwealth may be that the classification and reporting of ‘corruption’ is subsumed within ‘fraud’. Statistical evidence reported by the Australian Federal Police and Director of Public Prosecutions certainly indicates this, and ANAO surveys of fraud suffered by agencies indicate that in 1997-2002, 22.5 per cent of all reported fraud cases were classed as ‘internal fraud’, which, on most other definitions, would be classed as corruption. However, the Commonwealth Fraud Control Guidelines (2002) define fraud as *including* ‘bribery, corruption or abuse of office’, rather than defining specific offences such as fraud or bribery as subsets of corruption.

Reasons for this redefinition may include the historical impetus for the Commonwealth's campaign against fraud in the 1980s being community concern with tax evasion and welfare fraud, i.e. fraud perpetrated on the Commonwealth from outside; and the fit with the new public management agenda pursued by successive governments in which contracting-out of public services lends weight to commercial rationales for dealing with improper behaviour. In the Commonwealth's case, this definitional approach runs two risks. First, a strong focus on pecuniary corruption may have displaced the fundamental need for integrity to be measured in terms of fulfilments of commitments to a wider range of shared values, including moral values, and that corruption prevention emphases may be skewed towards fixing control systems rather than on personal and cultural dimensions. Second, some corruption activity may go unnoticed as reporting mechanisms make it difficult to ascertain the exact level of corruption. This has policy implications for the government in that it may be difficult for the Commonwealth to be sensitive to any sudden rise in the incidence of corruption and to take the steps to deal with it.

6. Local Government Integrity Systems

Background and overview

Australia's local governments are created by state legislation, but also receive substantial direct Commonwealth funding and are a permanent and important part of Australia's federal system of government. There are about 675 councils nationally, responsible for an average of 6 per cent of total public sector expenditure (around \$18 billion annually), and varying in size from Brisbane City Council which is larger than the state government of Tasmania, to councils with extremely small populations and a handful of staff, but which also often serve geographically large areas. Local government figured prominently in both the Queensland and NSW studies, and represents a distinct and important institutional sector through not studied comprehensively in its own right. In addition to the state government studies, current issues in local government integrity were identified by Geoff Baker, Queensland Department of Local Government, and John Warburton, Internal Ombudsman with Warringah Council (NSW; see also Warburton & Baker 2005).

Core and distributed institutions

Local governments are local democracies, typically directly elected based on residential franchise rather than just rate paying qualifications, and consisting of one council of up to around 15 members, a mayor who may be either directly elected or chosen by councillors, and an appointed CEO or general manager responsible for operations. There is no formal separation of powers between legislative and executive functions, and local governments have a constitutional history as, in effect, town or shire 'corporations'. Despite being a directly-elected sphere of government, councils are also typically designated as units of state administration for a range of financial and other accountability purposes such as freedom of information and whistleblower protection.

This mix of identities — local democracy, corporation and state agency — combined with breadth of responsibilities, planning and licensing discretions, and high proximity to public and customers, place Australian local governments at a unique conjunction of integrity challenges. Their weak financial position also limits the resources available for integrity functions. One Commonwealth Standing Committee (2003) recently reported that total own-purpose funding for local government may be outstripped by the possible \$20 billion lost annually through the duplication costs of the federal system as a whole. This burden is increased by the growth of federal and state regional programs for which local government provides institutional support but for which it is not itself responsible, and in which responsibility is often blurred, exacerbating systemic integrity risks at local and regional levels. One of the clearest results of resource shortage is absence of full-time remuneration for elected councillors across the vast bulk of local government, leaving them as part-time councillors holding down full-time jobs, and exposed to a wide range of pecuniary interests inevitably interwoven with official business. Due in part to this higher risk of structural corruption, local government is often regarded as more vulnerable to governance failure than other levels of government (Dollery et al 2003).

Core local government integrity institutions tend to be the same core institutions of state government, with the important addition of regulatory roles sometimes exercised by state

Departments of Local Government. These regulatory roles differ between states as a result of legal frameworks, state capacity and political attitudes to local government, and differing historical imperatives depending on the degree of integrity capacity developed by local government itself. For example, NSW and Western Australian authorities have histories of active state intervention extending to the sacking of entire councils on integrity grounds (in NSW three councils, Warringah, Liverpool and Rylstone in the last three years alone). Other states such as Queensland have similar powers on paper, but no such history of their exercise, with no evidence that their councils are more corrupt (and possibly less so). Whether even those state agencies with track records in such intervention have the requisite capacity to do so effectively, is a live issue.

In few states is there in existence significant state government capacity for proactive assistance, education and training for raised integrity standards in local government, beyond occasional specialist officers employed by state watchdogs. Capacity-building, more typically, falls to local government training organisations, Local Government Associations, and local councils and staff themselves.

Distributed integrity capacity in local government varies enormously depending on size and circumstances. Councils such as Brisbane City are large enough to possess their own Fraud Investigation and Contracts and Risk Management Units, but this is rare. In NSW, at least five councils have provided or are investigating options for their own quasi-independent ‘ombudsman’ to investigate and resolve integrity issues outside the normal chain of accountability relationships, and so prevent the need for external intervention: Sutherland, Warringah, Kuringai, Wollongong City (whose position is currently vacant) and Parramatta (which is examining the implementation of regional ombudsman on a shared basis with other adjacent councils).

Codes of conduct for council staff are usually in place, and provide a positive framework for establishing and ensuring ethical standards in administration. A more complex difficulty relates to enforceable code of conduct and disciplinary regimes for individual elected councillors. In Queensland, legislative amendments are proposed to require minimum codes, and to empower councils to discipline (i.e. suspend) their own councillors, with questions over other mechanisms for investigating councillors for misbehaviour short of the criminal convictions currently needed to terminate their office. The scheme would still rely on public vigilance and electoral consequences as the primary discipline on councillors. By contrast, a proposed NSW *Local Government Amendment (Discipline) Bill* proposes extended powers for the Department of Local Government to make such determinations, leading to suspensions for up to six months.

Key issues and findings

1. *Contrasting bases for enforceable standards of councillor conduct.* Contrasts between state approaches to enforceable ethics regimes for councillors highlight the complexity of problems of structural corruption built into the under-resourced state of local government. Presently, elements of proposed regimes (including minimum content for councillor codes) include greater formal separation between legislative and executive operations, and increased use of independent decision-making panels. While valuable, such responses highlight the base need for minimum effective remuneration standards for councillors so as to remove pecuniary pressures (and

excuses) for structural conflicts of interest, and for continuing structural reform of local government (including increased resources) to build its overall stature to the point where greater public vigilance is commanded.

2. *Electoral financing and disclosures.* Local candidate financial disclosure regimes are currently split between political party regimes (where disclosure occurs through state and Commonwealth electoral systems) and donations received directly by candidates, whether party-affiliated or independent, which must be disclosed under a local government regime. In addition to the lack of transparency caused by the ability for local donations to be obscured through the party system, there has been direct criticism that disclosure is only made after an election, and not in time to inform electors that, as frequently occurs, particular developers have helped finance the election campaigns of particular councillors whose official duties will then include voting on their particular developments. Formal state inquiries triggered by this issue include a NSW Commission of Inquiry resulting in the dismissal of the Tweed Shire Council in mid-2004, and a Queensland CMC Inquiry into the Gold Coast City Council presently underway.
3. *Resources for integrity investigation and complaint resolution.* Even in NSW where state investigative capacity is relatively strong, the NSW Ombudsman and Department of Local Government respectively receive around 800 and 850 complaints per year about local government. In Queensland, there has, at times, been discussion of the need for an Integrity Commissioner devoted to local government. However, the preferred solution is reduction of the need for external intervention through effective national resourcing of local government to develop its own semi-independent core institutions e.g. through regional ombudsman's offices and other cooperative integrity support functions. At present, there is little capacity for local government to develop such institutions in a strategic as against an *ad hoc* way.
4. *Contracting out and private sector relationships.* Proximity to local business interests, state pressure for the commercialisation and contracting-out of services, and increased use of Public-Private Partnerships (PPPs) to fund key local infrastructure have all made public-private divides increasingly irrelevant to the maintenance of integrity in official duties, policies and programs. There is an acknowledged need for regulatory frameworks that provide incentives or sanctions for councils to ensure they are equipped to enter into and maintain private sector relationships with high levels of probity, and for integrity obligations such as complaint-handling mechanisms to automatically extend into contracted services where publicly funded, irrespective of by whom they are provided.

7. Business Sector Integrity Systems (BIS)

Background and overview

Australian business organisations are many and varied, playing a crucial role in wealth generation, employment and the provision of consumer goods and services throughout the Australian economy. In 2002-03, there were 1.3 million companies of different types registered with the Australian Securities & Investments Commission. The study of business integrity systems was at two levels. The first involved a strong focus on the distributed integrity systems present within individual companies, conducted by RMIT School of Management (2001), led by Associate Professor David Kimber and Joel Lucas. The primary activity involved empirical research in 23 case-study business organisations, including interviews and focus groups of 72 employees plus 160 anonymous on-line written surveys, review of documentation, other desktop research, and a findings workshop (see Lucas & Kimber 2004; Kimber et al 2001).

In addition, subsequent analysis by RMIT and other researchers including Dr George Gilligan, Monash University, located some of the key issues within the broader matrix of core integrity institutions for business. Time and resources did not permit extensive work in this larger area, but both levels of study confirmed the mix of personal, structural, institutional and social components causing significant variations in the efficacy and visibility of business integrity systems, often making their mere identification, let alone evaluation, a huge and difficult task.



Figure 10.
Significant influences
in business integrity systems

Core and distributed institutions

Corporate activity in Australia can be divided into three classes of entity: commercial (i.e. non-financial) entities; non-prudentially-regulated financial entities; and prudentially-regulated financial entities. The core regulatory institutions governing these differ significantly. Another reason why the study of core business sector integrity institutions was complex was the inevitable focus of regulatory institutions on additional concepts of integrity to those involving faithfulness to principles of fiduciary and contractual duties, social responsibility and/or publicly-stated goals — such as the integrity of markets and the national economy as a whole. The increasingly international nature of the business environment was also a factor, making for a complex picture of influences (figure 10).

Major national core institutions responsible for both types of business integrity, include:

- Australian Securities and Investments Commission (ASIC), responsible for implementation of the *Corporations Act 2001* which sets the governance frameworks for all companies, as well as consumer protection responsibilities in relation to financial entities (whether or not prudentially regulated);
- Australian Prudential Regulation Authority (APRA) responsible for the prudential regulation of some financial entities including insurance companies and superannuation funds;
- Australian Competition and Consumer Commission (ACCC), responsible for enforcing the competition and consumer protection provisions of the *Trade Practices Act, Prices Surveillance Act* and Competition Code;
- Australian Stock Exchange Limited (ASX), formed in 1987 through the amalgamation of the six state stock exchanges, which was originally a mutual organisation of stockbrokers but since 1996 a publicly listed company; and
- Industry Ombudsman's offices and complaint schemes, which like ASX are not government regulators but largely voluntary self-regulatory schemes, including the Banking Ombudsman, Telecommunications Industry Ombudsman and similar.

In addition to federal or nationally-operating core institutions, and a range of national governance-related NGOs such as the Australian Institute of Company Directors, each state has a variety of industry regulatory and licensing bodies. Major national accounting and auditing firms, and the professional associations of accountants, auditors and other professionals also play key roles. Significantly, some of the key tools, approaches and concepts of organisational responsibility used by these system-wide actors proved highly comparable to the types of tools and concepts developed for organisational-level use in the public sector (Shacklock et al 2004).

Distributed integrity institutions consist of business-level integrity systems (BISs) which were the focus of the RMIT study. BISs were most evident in two types of enterprise:

- large, stable, often multi-national corporations (MNCs) who had developed well articulated values principles, clear objectives and policy guidelines, and well documented operational procedures taking account of integrity management; and
- small-medium enterprises (SMEs) with strong leaders who had a well-articulated perspective on integrity, which was communicated and accepted by employees. In

such circumstances it was part of the organisational culture and driven by a known peer-supported ‘way things are done around here’. In these organisations, integrity was noted as a key factor preserving reputation and sustaining the business, and was based on open and regular communication rather than formal documentation (in fact ‘red-taping the systems’ was seen as a potentially negative influence).

Although integrity was revealed to be a universally desired and well-understood factor in business, understandings and management approaches vary significantly. Whilst integrity is commonly identified as an important personal attribute, directly related to the character traits of individuals, few organisations directly incorporated integrity assessment as part of employee selection processes. In some cases, while integrity perspectives were emphasised in strategy and policy documentation, line managers and operational staff were openly cynical about BISs influencing work practices. Accounting and audit procedures, legal compliance, asset protection, quality control, health, safety and security were often identified as key integrity system issues, but most organisations surveyed did not appear to have a co-ordinated approach to ensuring integrity management in all these arenas took place or was aligned. Competition, cost pressure and the desire for ‘lean organisations’ were cited as factors inhibiting the development of fully integrated systems. When organisations did not have well established BISs, they apparently relied on external influences — the personal integrity of their employees and the influence of strong regulatory environment — to maintain their business integrity.

The study provided strong indications that many organisations in Australia need to take a more holistic approach to BIS development and maintenance, in which strategy, planning, policy development and implementation processes take account of the many factors influencing the organisational culture of the enterprise (figure 11):

Figure 11. A conceptual map of business integrity systems (Kimber et al 2001)



Key issues and findings

Walking the talk: external support for business integrity systems. Public policy and subsequent legislation must take account of business integrity maintenance as a key social concern. It is important to recognise the inter-relationships between personal, organisational and social integrity and to ensure public policy supports and sustains all themes in a mutually reinforcing manner. The study indicated that greater attention is needed within organisations to the impact of decision-making on personal integrity in areas ranging from recruitment and selection to daily operational practices. Many in business are troubled by contradictions and tensions created by organisational decision-making which ignores the impact on people's personal values and principles, and is driven by the pressures for immediate business results. Greater awareness of the dangers of 'window dressing' and 'lip service' is required.

Integrity training in leadership and management development. Integrity awareness must become a more recognised theme in leadership training and development. There should also be greater emphasis on integrity training in university postgraduate management programs such as MBAs, professional training programs, in-house training etc, if integrity standards are to rise and the recent financial collapses of major corporations are to be averted.

Development of integrity systems in specific industries. Further investigation of specific industries where integrity systems are not well developed is necessary. Industry practices in certain fields, such as the building industry, indicate that there is a need to increase awareness of the value of well-developed integrity systems and for core integrity institutions, particularly regulators, to be present and active.

International influences and constraints. Increased attention is needed on how BISs activities influence international trade, and *vice versa*. Australian businesses vary significantly in their understandings about business practices on other countries and how they need to respond to international integrity issues.

Transparency and disclosure mechanisms. A major constraint on the operationalisation of integrity systems is scepticism towards the integrity of senior management in many Australian organisations, exacerbated by media coverage emphasising the differentials of rewards between executives and employees, as well as other interests. This theme needs to be tackled through greater transparency relating to role expectations, remuneration, and material interests perceived as influencing corporate duties, as well as genuine moves to limit inequitable reward systems.

Further research into core institutions. The studies confirmed the need for further close analysis of the interrelationships of core business integrity institutions, at a policy and operational level, including potential for closer cooperation.

8. Civil Society Sector Integrity Systems

Background and overview

Like business organisations, civil society organisations are regularly identified as potential ‘pillars’ of integrity systems due to the pressure they exert on government and business for improved standards and behaviour. However, they also represent an institutional sector in their own right, in which important organisations place themselves under duties of accountability to their own members or communities, and carry out a wide range of functions in which there is a broader public interest.

The NISA project did not study integrity systems governing civil society organisations in depth, but noted their importance and direct cross-over with many institutional issues affecting both the government and business sectors.

Core and distributed institutions

The core integrity institutions applying to civil society organisations vary greatly:

- Some organisations, e.g. environmental or aid charities may be not-for-profit companies limited by guarantee, subject to some elements of corporate regulation mentioned briefly in chapter 7, as well as to specific regulators of charities;
- Some organisations may be specially incorporated by statute to carry out community or publicly-funded functions, such as many Aboriginal Councils and Associations, or local Aboriginal land councils, subject to specific registration requirements;
- Organisations such as political parties are subject to regulation, reporting and possible investigation by Electoral Commissions, on public interest grounds in respect of their own internal processes (such as candidate preselection, and private donation disclosures) and/or as a condition of receipt of substantial public funding;
- Some public advocacy groups, either in receipt of public funding or to be eligible to participate in certain public policy processes, may be subject to conditions monitored by government departments regarding their internal governance, including membership size and representativeness requirements;
- Some civil society organisations exist wholly or largely to provide community services involving significant public responsibilities such as education, health and child care services, and even when doing so on a purely private basis, can be subject to increasingly strong regulation (such as compulsory staff checks and mandatory incident reporting under state-wide child protection legislation);
- Some civil society organisations — like some business organisations — provide public services under grants or contracts from government that carry integrity conditions enforceable by the granting/contracting party.

The distributed integrity systems present within civil society organisations are equally diverse, and may be directly influenced by the above relationships. At minimum, civil society organisations are typically incorporated or unincorporated associations governed by a constitution identifying objects and regulating behaviour — a contract between founding members and endorsed by new ones. However, relatively little appears to be

known about the mechanisms used by civil society organisations in general to deal with integrity issues as they arise — with their traditionally not-for-profit nature, community objectives and voluntary character generally providing the basis for self-regulation.

The existence of core and distributed integrity institutions, and the relationship between them, is now a critically important issue in Australia for a variety of reasons. Political party and electoral integrity, and contracting-out have been mentioned in previous chapters. The clearest demonstration of the issue is the controversy that engulfed the Anglican Church in 2001-2003 over inadequate past handling of complaints of sexual abuse of students in church-affiliated non-government schools. The public response eventually forced the resignation of the Governor-General of Australia, Dr Peter Hollingsworth — the former Archbishop of Brisbane — notwithstanding that the events had occurred prior to his appointment. Another Anglican Archbishop, Ian George (Adelaide) was forced to resign over similar issues of past complaint-handling in 2004.

While these problems are by no means restricted to the Anglican Church, they emphasise the systemic issues involved. Pressure for a government-funded royal commission into these matters has, at times, been strong, notwithstanding that these matters of ‘public’ integrity had no government involvement. Demonstrating the need for transparency but the lack of a current institutional framework for providing it, the Premier of Queensland agreed to table the report of the church’s own board of inquiry into the matter in state parliament (May 2003) so as to place it on the public record and accord it parliamentary privilege. In 2004, the Anglican Church Synod resolved to establish its own national register of church workers accused of sexual misconduct, but rather than congratulating the church for an improved internal integrity measure, some critics attacked it as an attempt to keep such matters ‘in-house’ and prevent their public reporting. Such debates highlight the complexities and uncertainties currently surrounding the best systems for ensuring civil society organisation integrity.

Key issues and findings

1. *Further research.* The development of integrity systems in and for different types of civil society organisations is clearly significant, and warrants further research in its own right in Australia as well as careful consideration in any other national integrity system assessment. In particular, careful consideration is needed of how distributed integrity capacity can be strengthened; and of how external oversight of particular types of civil society organisations can also be strengthened without unduly comprising their need to retain sufficient autonomy and independence from government to remain an effective voice for civil society.

PART III

THE ASSESSMENT

9. The Consequences of Australia's Integrity Systems

If individuals should act with integrity, and public office needs integrity, then managerial leadership and institutional design should aim to sustain it. ... No easy cost-benefit analysis justifies this central role of integrity. But I believe integrity anchors personal moral life, is true to the role of office in democracy, and results in better governance and higher quality of judgment and political life.

Dobel, *Public Integrity* (1999:21)

'Efficiency', narrowly defined, rather than social values, often dominates policy in this climate of 'economic correctness'. Yet, the thinking bureaucrat knows that 'efficiency' is meaningless if you do not know what values you are supposed to be efficiently achieving.

Preston, Sampford & Connors,
Encouraging Ethics and Challenging Corruption (2002:5)

9.1 Overview

The 'consequences' or direct impacts of Australia's integrity systems provide the first of three overall themes for assessing the institutions and processes described in the previous chapters. Many of these consequences are difficult to quantify in the terms of neo-classical performance measurement or other forms of management theory. Nevertheless, each relevant institution and organisational program within an integrity system has some designated purpose, and is typically supported by at least some allocation of public or private resources — all of which usually entails some strategy of evaluation or monitoring irrespective of whether the program has been identified as part of this larger 'system'.

As a result the assessment of an integrity system does not start from scratch. A wide range of information typically exists to help tell us whether the many individual institutions and governance strategies that make up the integrity system are achieving their desired results and impacts.

The problem with this information is that, despite its obvious importance, it is often patchy and partial, and is not integrated in ways that necessarily support conclusive judgements about the performance of single institutions, let alone the system as a whole. This is an international problem, as shown by the OECD, whose surveys of member-countries' public sector ethics programs provided extremely scant evidence when it came to hard performance assessment information (OECD 2000:69-72). As mentioned in chapter 1, the NISA project also contributed to a subsequent OECD project to develop clearer frameworks for assessments to fill this gap (OECD 2004). As a result, much of the detailed description of the various sources of performance information on Australian public sector integrity programs is available in a separate report to the OECD (Brown et al 2004). In this description, we identified four major different categories of measures: **implementation measures, activity & efficiency measures, institutional effectiveness measures, and outcome measures**, as shown in Table 8. Altogether, 26 different existing integrity system measurement activities were described:

Table 8. Integrity Policy Assessment 'Measures' in Australia (from Brown et al 2004)

Category	Description & Sub-categories	Examples described in Brown et al 2004
1. Implementation measures	<i>Measures directed toward major, one-off or occasional initiatives — including institutional reforms — to ensure agreed actions have been implemented</i>	
	1.1. Central review	<i>Cth, NSW, Qld</i>
	1.2. Central research	<i>Cth, NSW, Qld</i>
	1.3. Best practice case studies	<i>Cth, Qld</i>
	1.4. External investigation	<i>Frequent</i>
	1.5. NGO/university review	<i>Various</i>
2. Activity & efficiency measures	<i>Measures directed towards more routine, ongoing activities, such as the day-to-day operations of integrity bodies or ethics officers, to ensure that agreed systems are functioning, and providing basic value-for-money</i>	
	2.1. Caseload reporting	<i>Cth</i>
	2.2. Accessibility	<i>NSW</i>
	2.3. Training reporting etc	<i>-</i>
	2.4. Performance audit	<i>Cth, NSW</i>
	2.5. Productivity review	<i>Cth</i>
3. Institutional effectiveness measures	<i>Measures directed towards evaluation of the overall performance of particular integrity agencies, or justifications for the creation of new ones, and tend to be more qualitative and political</i>	
	3.1. External investigations	<i>Cth, NSW, Qld</i>
	3.2. Law reform bodies	<i>Cth</i>
	3.3. Royal commissions	<i>Cth, Qld, Tas, WA, NSW, Qld</i>
	3.4. Parliamentary committees	<i>Cth, NSW, Qld, WA</i>
	3.5. NGO/university research	<i>Various</i>
4. Outcome measures	<i>Measures directed to the substantive outcomes of integrity activities, to ensure these activities are positively enhancing ethical standards, corruption resistance, public trust, and the quality of democratic life.</i>	
	4.1. Central ethical standards / corruption risk research	<i>Cth, NSW</i>
	4.2. Agency ethical standards / corruption risk research	<i>WA</i>
	4.3. University research/review	
	4.4. Integrity recognition	<i>Vic, NT, ACT, NSW</i>
	4.5. Integrity testing	<i>-</i>
	4.6. Caseload outcomes	<i>Cth, Qld</i>
	4.7. Public trust: public agencies	<i>-</i>
	4.8. Public trust: integrity agencies	<i>Cth, NSW, Qld</i>
	4.9. Public trust: general	<i>-</i>

As outlined in chapter 1 (Table 2), the OECD's indicative assessment framework elected to divide the consequential impacts of integrity programs between two criteria: the **effectiveness** of specific policy instruments; and **relevance** — the contribution of specific policy instruments and actions to meeting stakeholders' overall expectations (OECD 2004:10). While elements of this distinction can be seen in the measures summarised in Table 8, the Australian assessment project found 'effectiveness' and 'relevance' to be so interrelated that it was better to retain a single general assessment theme covering both measures.

There is no doubt from the many sources of existing information, that Australia's integrity systems have many and varied real impacts — they do have consequences. In assessing available data on these consequences, the major choices were (a) to attempt to integrate this information into a more holistic, overall picture of the performance of integrity systems; or (b) to highlight different specific examples of how the effectiveness of various system parts are currently measured, draw more specific but limited conclusions from this information, and make recommendations regarding gaps in information and in the coordination of the information as a whole.

A first major conclusion is that, in fact, only the latter course (b) is currently possible. As in many areas of governance or public policy, it is not feasible to integrate all available information on the direct consequential impacts (or outputs) of integrity systems into one single 'model' for monitoring their behaviour — not in the same way, for example, that diverse economic indicators are combined to evaluate the changing health of the economy. Nevertheless, our analysis revealed existing performance measurement regimes to be fragmented and uncoordinated to an unnecessary and undesirable degree by comparison with other very complex and contestable areas of public policy. This issue is dealt with below as a significant challenge for Australia's integrity systems.

Therefore, the resulting analysis is necessarily limited; it supports no overall single assessment of the direct consequences of Australia's integrity systems, but instead points to strengths, opportunities and challenges in the methods by which consequences can be better measured and monitored on an ongoing basis. For reasons outlined in Part II, the analysis and recommendations only extend to the public sector. In all sectors, however, the development of more regular, agreed methods of monitoring the performance of integrity systems is clearly crucial to achieving smoother processes of institutional adaptation and adjustment, as well as counteracting the influence of *ad hoc* policy crises, scandals, and officeholders' shorter-term perceptions of their own self-interest in major decisions of integrity system design.

9.2 Current strengths and opportunities

Use of evidence-based tools to monitor effectiveness

The first of four areas of current strength is the extensive and repeat use by some core public integrity agencies of evidence-based techniques for gaining thorough, scientific pictures of the take-up of particular ethics measures in organisations, principally through employee surveys drawn from random representative samples. Much of this work was pioneered by the NSW Independent Commission Against Corruption in the 1990s, which

along with the Queensland Crime & Misconduct Commission and WA Corruption & Crime Commission now continues this research in the form of Public Sector Profiling and corruption risk assessment surveys. However, the most prominent example is probably now the Australian Public Service Commission's Employee Surveys, complementing self-reporting by agencies with actual data of employee experience, contributing to its annual, legislatively-required State of the Service Report (see e.g. Uhr 2005b; categories 1.2, 4.1 and 4.2 in Table 8).

The particular importance of this work lies in the fact that such social-science based analysis of employee perceptions and experiences can provide a much more holistic and useful barometer of how integrity systems are working than, for example, the use of statistics for numbers of investigations launched, criminal or administrative charges laid, or successful criminal or disciplinary action (category 4.6). The latter statistics can be ambiguous — high numbers can indicate both a successful integrity system, in terms of investigative capacity and strength of the rule of law, and an unsuccessful one in terms of high incidence of offences, low ethical standards, and poor prevention. In Australia, numbers of criminal prosecutions for corruption are generally regarded as low, often provoking questions as to whether the cost of investigative bodies is justified, but paradoxically, this statistic is also a likely a sign of overall success.

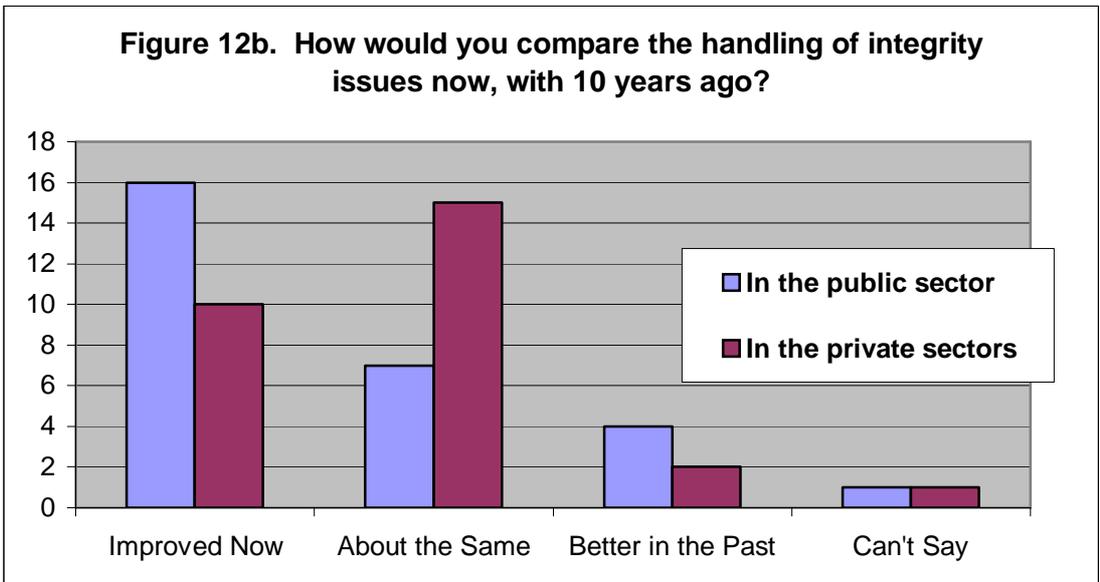
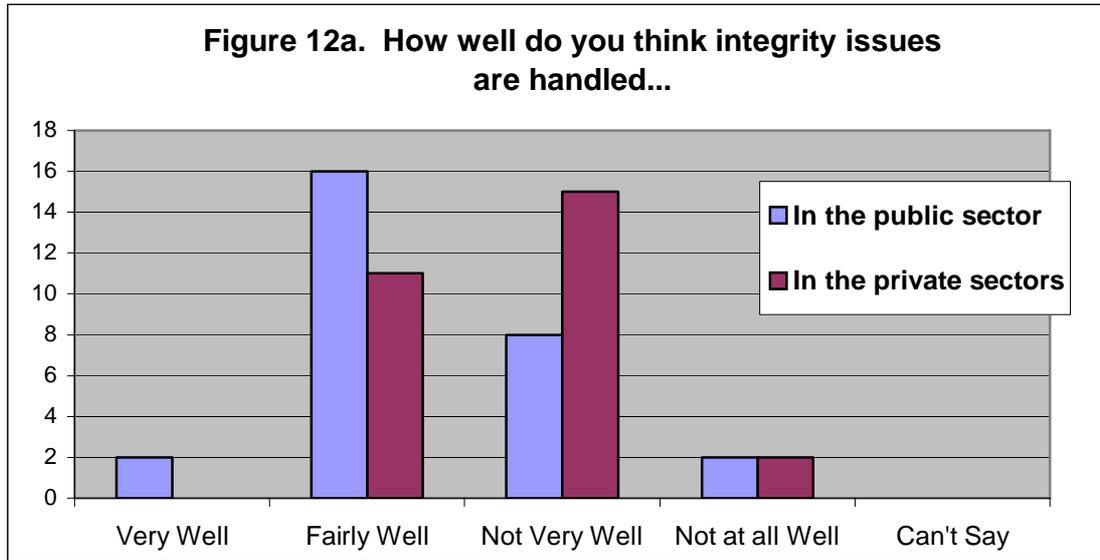
While more holistic, research-based evaluation is important, it is also in a state of evolution that could help such research more definitively demonstrate what is being achieved by integrity systems. It is particularly vital that jurisdictions build on their strengths by maintaining such research programs for the long-term, rather than just as special 'fashionable' projects. Further, such surveys need to be developed as more than simply an 'implementation' measure (to identify whether core agencies' programs are being implemented by organisations) and also used to develop more substantive measures of ethical standards in organisations themselves. Agencies may do this themselves, but the independence and public reporting that accompanies a program of research coordinated and monitored by core agencies is important to both quality and credibility.

A further important opportunity exists for supplementing empirical quantitative research into employee attitudes and experiences with greater qualitative ethnographic work involving the same individuals over time, rather than always random samples.

For example, notwithstanding the difficulty of finding reliable measures, some of the most persuasive indications of progress in the NISA study came from asking agency representatives whether the handling of integrity issues was better or worse over time. In the NSW study, 16 out of 18 agency respondents were satisfied that the NSW public sector had improved its handling of integrity issues over the past ten years, and this was true even of respondents who judged integrity issues to be badly handled (chapter 4, Smith 2004). Similarly, when the project asked a group of 28 senior integrity practitioners from across public and private fields to identify how well they thought integrity issues were handled, a substantial number thought things had improved (though much less for the private sector); see Figure 12 below.

Finally, as will be discussed further below, all jurisdictions face the challenge of better coordinating and integrating such data with other measures, to provide a more holistic overview. These opportunities are reflected in *recommendations 2, 17, 18 and 19*.

*Figure 12. How Well Do You Think Integrity Issues Are Handled
(NISA Strategic Themes Workshop Survey, Melbourne, August 2004)*



Use of public feedback, satisfaction and trust measures

A special strength in performance measurement by some elements of public integrity systems lies in the extension of empirical measures of organisational ethical standards and corruption resistance, to empirical monitoring of public awareness and satisfaction with specific integrity services. Such research is used by a variety of core agencies including the Commonwealth Ombudsman, NSW ICAC and Queensland CMC (see Table 8, category 4.8). Some agencies such as the ICAC also have 'operations committees' or advisory committees with public participation, a related feedback mechanism.

Whereas the proportion of substantiated complaints or investigations can mean multiple things, as mentioned above, public attitudinal research can provide more objective, longitudinal benchmarks. For example, in the Commonwealth Ombudsman's third survey of past complainants in 1997, 50 per cent of respondent clients whose complaint the

office had exercised a discretion not to investigate indicated they did not find the office's decision reasonable; whereas in the previous year, only 38 per cent had so indicated. This increase was seen as cause for 'significant concern' given the importance of the Ombudsman's reputation as an independent decision-maker (Commonwealth Ombudsman 1997:95-99). Conversely in the year 2000, 78 per cent of those whose complaints the office had declined to investigate, still indicated that they would consider using the office in the future — a significant indication of some level of public confidence in the competence and impartiality of the office (Commonwealth Ombudsman 2000:4).

Many Australian integrity agencies do not use such methods, however. Further, the relatively low response rates of those who do (often around 30 per cent) emphasise that members of the public who are dissatisfied with the integrity system may not regard research commissioned by the agencies themselves to be sufficiently independent to warrant response. Important opportunities exist for extending the use of such approaches, or even mandating such feedback mechanisms in the work of agencies; developing more coherent and consistent methodologies for their conduct; and exploring more independent means of conducting such research. An example of existing independent, university-based research of direct relevance to this opportunity is provided by the Australian Survey of Social Attitudes. Some key results indicating current levels of public confidence in key institutions are set out opposite in Table 9, showing responses from 4,270 citizens surveyed nationally in August-December 2003 (ASSA 2003). Respondents are not currently questioned on their confidence in all core integrity institutions, e.g. ombudsman's office or anti-corruption bodies, but the potential clearly exists to extend this type of research into a comprehensive, cost-effective data-gathering program.

Table 9 also demonstrates that the value of evidence relating to public attitudes lies not in establishing any immediate, objective benchmark of performance, but in the lessons that can be drawn from changes in confidence over time. Confidence in key institutions seems quite low — nationally around 69 per cent of respondents indicated either 'not very much' or 'no' confidence in the courts and legal system, and 66 per cent indicated 'not very much' or 'no' confidence' in the public service (Tables 9.1, 9.2). However it is impossible to say these institutions are failing; what is more important is whether confidence increases or falls, and how this might be linked to possible causes. Confidence in police is comparatively strong, with less than 28 per cent of respondents indicating 'not very much' or 'no' confidence, despite the fact that around 30 per cent of respondents also believe there to be a lot of corruption in their police force (Tables 9.3, 9.4). The opportunity to develop a much more comprehensive evaluation program, including making better use of independent research of this kind, is reflected in *recommendation 19 (evidence-based measures of organisational culture, public awareness and public trust)*.

Parliamentary oversight committees

As chapters 3-5 revealed, Australia's public sector integrity systems have an increasingly important component in parliamentary committees whose sole or primary task is to oversight core integrity institutions, such as ombudsman's offices and anti-corruption commissions. Relatively new examples include the NSW Committee on the Independent

Table 9. Public confidence in key institutions, by state (ASSA 2003)

9.1. The courts and the legal system

[V45. How much confidence do you have in... the courts and the legal system?]

	% of respondents								
	NSW	Vic	Qld	SA	WA	Tas	ACT	NT	Nation
A great deal of confidence	3.8	5.8	4.0	1.6	5.0	6.0	6.5	0.0	4.4
Quite a lot of confidence	23.2	29.1	21.2	22.6	22.5	22.2	27.3	20.0	24.3
Not very much confidence	46.0	43.9	49.2	48.9	44.4	46.2	41.6	66.7	46.1
No confidence at all	24.7	18.5	24.6	25.5	27.2	23.9	22.1	13.3	23.3
Can't choose	2.3	2.7	1.0	1.4	0.8	1.7	2.6	0.0	1.9
(N=	1392	1074	695	368	378	117	77	15	4116)

9.2. The public service

[V47. How much confidence do you have in... the public service?]

	% of respondents								
	NSW	Vic	Qld	SA	WA	Tas	ACT	NT	Nation
A great deal of confidence	1.7	1.9	2.4	2.4	1.3	1.7	7.8	0.0	2.0
Quite a lot of confidence	27.9	27.7	28.5	30.3	32.0	33.6	44.2	40.0	29.1
Not very much confidence	50.4	50.5	49.8	48.1	49.7	44.0	33.8	53.3	49.6
No confidence at all	15.9	16.0	16.5	13.8	13.2	14.7	14.3	0.0	15.5
Can't choose	4.0	3.9	2.7	5.4	3.7	6.0	0.0	6.7	3.9
(N=	1386	1073	695	370	378	116	77	15	4110)

9.3. The police

[V51. How much confidence do you have in... the police in my state (or territory)?]

	% of respondents								
	NSW	Vic	Qld	SA	WA	Tas	ACT	NT	Nation
A great deal of confidence	10.8	14.0	14.1	16.8	8.2	16.8	7.9	6.7	12.6
Quite a lot of confidence	54.7	60.9	59.1	58.6	55.0	56.3	72.4	73.3	57.9
Not very much confidence	26.8	18.5	21.4	18.9	28.3	18.5	14.5	13.3	22.7
No confidence at all	6.0	4.7	3.9	3.8	7.4	5.9	5.3	0.0	5.2
Can't choose	1.7	2.0	1.6	1.9	1.1	2.5	0.0	6.7	1.7
(N=	1395	1073	697	370	378	119	76	15	4123)

9.4. Police corruption

[V101. Please tell us how much you agree or disagree with each of the following statements... There is a lot of corruption in the police force in my State (or Territory)]

	% of respondents								
	NSW	Vic	Qld	SA	WA	Tas	ACT	NT	Nation
Strongly agree	10.2	7.5	6.7	4.3	13.0	7.4	5.2	0.0	8.4
Agree	26.3	20.4	17.9	11.2	31.1	13.9	13.0	13.3	21.8
Neither agree nor disagree	38.0	38.8	39.4	41.2	32.4	32.0	40.3	46.7	38.1
Disagree	16.0	22.4	24.9	28.2	16.1	31.1	24.7	20.0	20.9
Strongly disagree	2.1	3.5	4.3	6.4	1.3	4.9	6.5	13.3	3.3
Can't choose	7.5	7.3	6.7	8.8	6.2	10.7	10.4	6.7	7.5
(N=	1407	1076	698	376	386	122	77	15	4157)

Surveys conducted August-December 2003

Commission Against Corruption; NSW Committee on the Office of the Ombudsman and the Police Integrity Commission; Queensland Parliamentary Crime and Misconduct Committee (formerly Parliamentary Criminal Justice Committee); and the WA Joint Standing Committee on the Corruption and Crime Commission. Other examples, such as the Public Accounts Committees that also typically oversight Auditors-General, have a history of many decades. Such committees are also increasingly linked nationally, through conferences such as those hosted by the Parliament of Western Australia (WA 2003) and Australasian Study of Parliament Group (NSW)(see Smith 2005b).

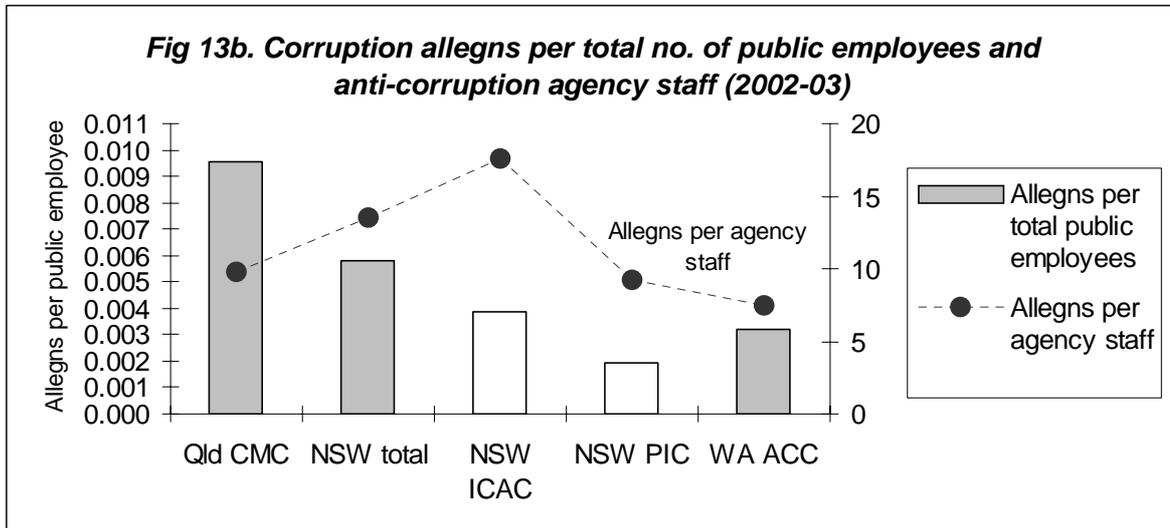
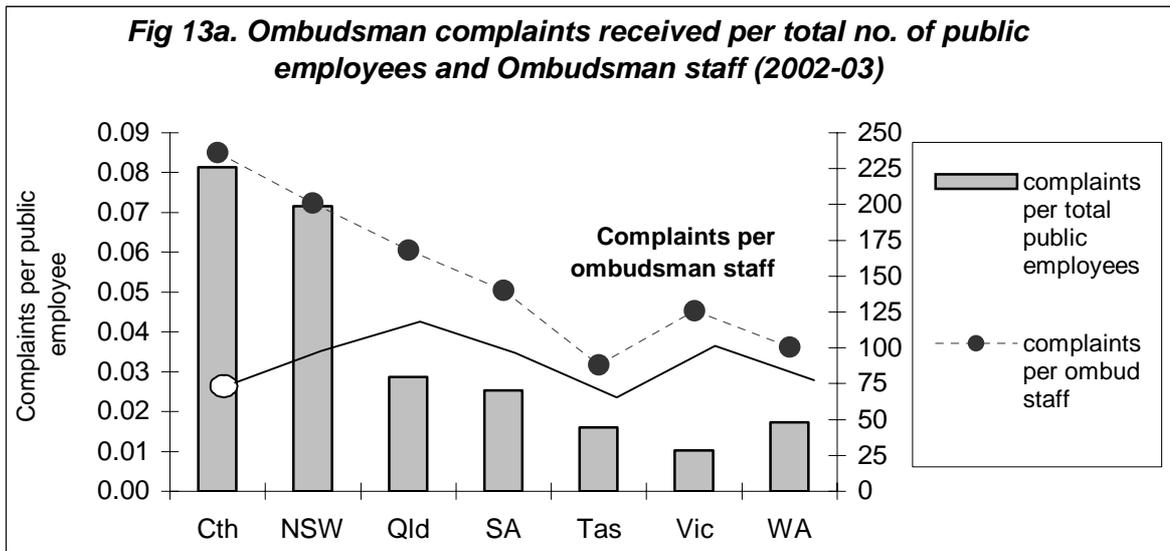
The existence and role of such committees is now a vital aspect of the coherence of Australia's integrity systems, as further discussed below in chapter 11. Significant gaps in the coverage of such committees are addressed by *recommendation 3(standing parliamentary and public oversight mechanisms)*. In addition, a major opportunity for system development exists in their role as integration points for much relevant information regarding the effectiveness of integrity agencies and programs, crucial to popular and policy judgements about their consequences and impacts. Parliamentary committees review integrity agencies' annual reports, and conduct hearings on their performance using reported outcomes, public or 'in camera' evidence given by the agencies, public submissions or complaints against the agencies, and research by parliamentary staff. These committees, therefore, function not only as a mutual accountability mechanism, but as a primary means by which Australian society conducts any holistic evaluation of the performance of key integrity bodies on a regular basis (usually yearly or three-yearly; category 3.4 in Table 8).

While these committees are, on balance, strength of Australian integrity systems, their evaluation methods are not necessarily as clearly structured, transparent, policy-based and consistent as they could be. There is a substantial public interest in jurisdictions working to share not just the broad principles, but detailed methods that are, or could be, involved in integrity agency review to foster a 'best practice' model of core integrity agency evaluation. An in-depth comparative study of the different types of information collected and/or used by parliamentary committees when evaluating integrity bodies, is needed as a first step to constructing a more routine, politically acceptable framework (or sub-framework) of performance assessment. By regularising a framework based on this experience, integrity agencies and parliamentarians alike can develop more consistent and potentially less volatile understandings of how integrity performance is to be evaluated from year-to-year. *Recommendation 18 (parliamentary oversight review methodologies)* addresses this important opportunity.

Activity and efficiency performance measures

This is not an area of existing strength, but rather an area of weakness providing another important opportunity for policy development in the functioning of integrity systems. Like all public agencies, core integrity institutions and programs have a variety of published activity and efficiency measures (category 2 in Table 8 above). For core investigative agencies, these reveal notional case-handling 'efficiencies' such as presented in Figure 13, comparing the number of cases handled by ombudsman's offices and anti-corruption commissions in 2002-2003, relative to the size of jurisdiction (measured in total public sector staffing) and number of staff in these agencies.

Figure 13. Core integrity agency casehandling efficiencies



In Figure 13a, the columns and left axis show the number of complaints received, relative to size of jurisdiction. The dotted lines and right axis show the varying caseloads of these agencies per staff-member, showing variation in the case-handling efficiency demanded. Ombudsman’s offices may be handling anywhere between less than 100, and over 200 matters per staff member. However at present, there is little consistency in the compilation of this data, sufficient to support meaningful comparative analysis. The figures are influenced by whether the ombudsman accepts only written complaints, or also in-person and phone complaints, as well as its profile and the extent to which the ombudsman’s office acts as a clearinghouse for other agencies. The caseload per staff member may again depend on how many cases are actually investigated, rather than simply processed — the additional line shows the cases that the Commonwealth Ombudsman elects to *investigate* per staff member, giving an indication that efficiencies may not be so variable.

Figure 13b shows similar data for the four major independent anti-corruption bodies, two of whom were in NSW (with their total also shown separately). The Queensland CMC

dealt with more corruption-related cases as a proportion of its catchment than the other states, but its staffing perhaps meant it was better able to cope than, for example, the NSW ICAC, which has suffered staff reductions as described in chapter 4. However these figures also suffer limitations in consistency. There is also no Commonwealth parallel to the state figures assembled in Figure 13b, because there is effectively no independent Commonwealth anti-corruption body, and significant uncertainty surrounding the way in which the reporting of ‘corruption’ is subsumed within procedural definitions of ‘fraud’, rather than *vice versa* (see chapter 5, and *recommendation 1: Commonwealth integrity and anti corruption commission*).

At present, this basic activity and efficiency data is the most comprehensive available on routine agency performance, yet it provides limited insights of any real value. Variations in definitions, methods and data-collection limit its usefulness as a measure of good or bad practice. Australian governments require the collection and publication of such data, but do not appear to use it to assess anything other than (possibly) efficiency against past performance, which is itself subject to many variables. The data does not seem to even play a role in official debate over the resourcing of agencies, discussed further in chapter 10. This is surprising given the importance of public confidence that the resourcing of integrity agencies is adequate, and the evidence that current institutional configurations and resources are merely a creature of historical accident.

A major opportunity exists to turn such data to more useful effect, albeit with substantial research and policy development needed to rationalise, standardise and expand the basic activity and efficiency measures applying to integrity bodies. Standardisation is crucial before effective comparative analysis (one of the simplest evaluative tools) can be used to judge the relative performance of like bodies, and promote the identification and transfer of best practice. Expansion is needed to identify meaningful qualitative performance indicators, where this is possible. Such a revamped approach to performance evaluation may appear expensive and time-consuming to agencies with limited budgets, but compared to most areas of public policy in which comprehensive benchmarking is now regarded as unavoidable — e.g. health and other social services — such an overhaul is, in reality, the minimum that should reasonably be required.

While some like agencies have engaged in discussions regarding common benchmarking, this reform is likely to require external triggers and independent research, as well as resource injections from outside. Accordingly, the need for strategic investment in the redevelopment of core agency activity and efficiency measures is an important feature of *recommendation 17 (public review of integrity resourcing and performance measurement)*, discussed further in chapter 10.

9.3 Challenges and further action

Trust in leadership: the ultimate measure?

Is it possible to locate any single ‘capstone’ indicator of the effectiveness or otherwise of an integrity system — other than say civil war or other clear signs of a failed state? According to Dobel (1999:xii) the ultimate measure of the design and leadership of institutions is ‘the quality of integrity and judgment that they produce’, highlighting that

the consequences of a well-functioning integrity system should include quality decisions and services. On one hand, integrity cannot be measured simply in terms of whether governments achieve their goals. Public integrity is a subject that will never lend itself to definitive, short-medium term performance measurement of the kind used in most areas of public service delivery or corporate planning and reporting. Even good governance measures based on economic growth, gross national product, or even poverty alleviation cannot serve as surrogates for integrity standards. At the same time, however, these things are not irrelevant to how we ultimately judge our institutions.

Table 9 above showed how public perceptions of integrity-related institutions can be used to help evaluate their effectiveness as individual elements of the integrity system. Overall, the most important consequences of effective integrity systems may relate to evolving features of civic participation, institutional cohesion and community well-being that are not easily measurable other than in highly qualitative or subjective ways over a long period of time. The best immediate surrogate for these may be a hybrid of public confidence and public trust.

Figure 14. Overall indicators of public trust (ASSA 2003)

14a. Confidence in the Federal parliament

[V46: How much confidence do you have in... the Federal parliament?]

Value	Categories	N	
1	A great deal of confidence	186	 4.5%
2	Quite a lot of confidence	1428	 34.2%
3	Not very much confidence	1816	 43.5%
4	No confidence at all	592	 14.2%
9	Can't choose	150	 3.6%
	Not asked / missing	98	

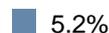
14b. Pride in Australian democracy

[V180: How proud are you of Australia in... the way democracy works?]

Value	Categories	N	
1	Very proud	521	 24.5%
2	Somewhat proud	1130	 53.1%
3	Not very proud	277	 13.0%
4	Not proud at all	58	 2.7%
9	Can't choose	144	 6.8%
	Not asked/missing	2140	

14c. General levels of trust

[V54: Generally speaking, would you say that most people can be trusted or that you can't be too careful in dealing with people?]

Value	Categories	N	
1	Can be trusted	1621	 38.9%
2	Can't be too careful	2325	 55.8%
9	Can't choose	218	 5.2%
-2	Skip/missing	106	

While public confidence and trust are not ‘catch-all’ indicators of good governance (Bouckaert & Van de Walle 2003), they are, in some respects, the essential focus of integrity systems, based as these values are on the fact that in modern complex societies, human beings are forced ‘as far as they can, to economize on trust in persons and confide instead in well-designed political, social, and economic institutions’ (Dunn 1988/2000:85-6).

The challenge is to develop ways to measure public confidence in the leadership of institutions that more accurately reflect both the value placed on integrity in our society and realistic expectations that it can be achieved. This challenge requires a new methodology for reconciling and integrating existing social science work. For example, we know that in 1976, about 20 per cent of a national sample of Australians answered ‘high’ or ‘very high’ when asked how they would rate federal and state politicians on issues of ethics and honesty, but that in 2000, only about 10 per cent answered this way (Goot 2002). In Figure 14a, we also see that around 58 per cent of the Academy of Social Sciences in Australia (ASSA) 2003 respondents indicated ‘not very much’ or ‘no’ confidence in the federal parliament generally, similar to other major institutions in Table 9. However this ingrained distrust of political leaders may not be a sign of integrity system ineffectiveness, indeed it may be a fundamental ingredient of an effective one — as Figure 14b shows, the vast majority of respondents (78 per cent) were nevertheless proud of ‘the way democracy works’ in Australia. The meaning of such figures also depends on whether citizens are inclined towards trusting others in general (Figure 14c).

The challenge of developing better overall indicators of these ultimate outcomes is reflected in *recommendation 19*.

Fragmented and uncoordinated data gathering

As the previous sections make clear, the information that is already available relating to integrity system performance is fragmented, not least because there have been few attempts to design and apply systematic and objective assessment methodologies. Most prominent evaluation efforts are still *ad hoc*, and sometimes scandal-driven.

Chapters 3-5 and 10 also emphasise that integrity institutions and practices are not immune from institutional politics, but rather subsist in a real-world policy and political environment. Reporting by agencies is often driven by their perennial need to justify existing or requested resources. Internal evaluations are often fragmented, depending on the specific agency driving the research — anti-corruption bodies tend to survey the public sector on issues of corruption perception and risk, whereas public service commissions tend to survey on awareness of positive codes of conduct and adherence thereto, without clear links between what are actually two sides of the same coin. Evaluations by government are often knee-jerk or *ex post facto* justifications for financial or political decisions already made. Unlike many more routine areas of public policy, there is little standardisation across any of these different types of evaluation.

The opportunities identified above provide avenues for standardising, bringing together and supplementing existing routine and often unglamorous data, and putting it to better uses. However, the task of developing it into a more systematic framework for regular, credible and publicly intelligible evaluation of the consequences of integrity systems is a

larger, even more important challenge. Until such time as the major sources of information about the impacts of the integrity system are integrated, and larger gaps filled, there can be no truly comprehensive assessment in any single jurisdiction, let alone across jurisdictions. While the search for best practices in integrity system assessment are still in relative infancy as an analytical and academic exercise, there is certainly scope for innovation, particularly in the integration of research to monitor the effectiveness of a wider range of integrity system elements, both positive and enforcement-related.

As in many areas of policy, one explanation for the lack of a more integrated, coordinated approach is the lack of effective institutional champions to promote or guarantee such an approach. The institutional coherence does not necessarily currently exist to support development and implementation of more coherent, evidence-based evaluation frameworks of the kind that are otherwise clearly feasible, as shown above and reflected in *recommendation 19*. The importance of creating a more effective institutional vehicle for this approach underlines the need for the type of governance review councils advocated in *recommendation 2(governance review councils)*.

10. The Capacity of Australia's Integrity Systems

10.1 Overview

The second theme of the assessment moves beyond the evidence of how integrity systems are performing, to examine evidence of gaps or deficiencies in the basic resources — ‘capacities’ — which the system needs to function. One of the most common conclusions of many conventional governance assessment approaches (see chapter 1, Table 1) is that the jurisdiction or sector *appears* to possess the necessary institutional ingredients of a ‘model’ integrity system, but that these institutions either do not exist or are incapable of functioning properly in practice.

Even with the best intentions, governments may pass laws or establish institutions related to integrity, but not know how to guarantee them the necessary financial resources or legal powers to have an impact. Even well-resourced institutions may fail if their strategies are not well-grounded in key elements of existing bureaucratic, business or public culture, or because their staff do not possess the necessary skills. All these problems raise issues of capacity — from institutional capacity in terms of ‘core’ and ‘distributed’ institutions, to broader social or community capacity in understanding and support for integrity processes. The many key capacities in integrity systems include:

- Legal capacity. Are integrity institutions properly constituted, and do integrity institutions and practitioners have the formal powers or jurisdiction they need to fulfil their tasks?
- Financial capacity. Are the budgets of integrity institutions right for their tasks, and is the right share of financial resources across society and within organisations being devoted to integrity functions?
- Human resource capacity. Are sufficient numbers of employees dedicated to integrity functions either in core institutions or distributed among organisations?
- Skills, education and training. Do integrity practitioners or staff in general have the right professional training and background to discharge their important roles?
- Political/community will. Do senior political and business officeholders possess, or are they sufficiently empowered by the community to find, the will to provide genuine leadership in integrity matters?
- Community capacity. Is there sufficient broader social or community understanding and support for integrity processes?
- Balance. Are financial, human, legal and management resources being adequately shared between the different positive and negative strategies in the integrity system, such as effective leadership training as against criminal investigations?

The NISA project did not seek to exhaustively audit all these areas. The studies in Part II, existing literature and supplementary analysis were used to identify a number of significant strengths, opportunities and challenges in key areas of financial, legal and human resource capacity. While issues relating to the public sector are dealt with in more depth, later issues in this chapter also extend to the business sector.

10.2 Current strengths and opportunities

Financial accountability

The first of five key areas of strength in Australia's public sector integrity systems is the cornerstone role played by formal processes of financial accountability. These processes are key integrity strategies distributed throughout the public sector, whose core institutions — Auditors-General and public audit agencies — have also expanded their roles since the 1980s to include positive, holistic evaluation methodologies in the form of performance audit capacities. This process has been led by the NSW and Commonwealth Auditors-General (Barrett 2004; Coghill 2004), and is now well established, even if some states, e.g. Queensland (chapter 3), are yet to take up this opportunity to the same extent.

Nevertheless as emphasised in chapter 5, dealing with the Commonwealth government's integrity systems, in all jurisdictions strong financial accountability processes play a key role. This is not least because they permeate the entire sector — with no institution or officeholder beyond their reach — even when other integrity strategies remain patchy, fragmented, or limited in their application to groups of agencies or to elected leaders. As well as being an important area of capacity in their own right, this fact highlights that financial accountability processes also provide some of the major 'glue' holding basic elements of the integrity system together.

Comprehensive legislated ethics and enforcement frameworks

The second area of strong capacity lies in the introduction by most governments of more comprehensive legislated ethics regimes, including both positive (i.e. ethical standard-setting) and enforcement dimensions. As chapter 7 showed, this trend is also highly relevant to developments in the business sector. Current ethics regimes, developed in the 1990s period of 'new public management', emphasise devolution of responsibility for values-based governance to individual agencies and their management. The assessment has confirmed the pivotal importance of the overarching legislative framework within which this occurs, providing requirements and incentives for ethical standard-setting processes to be set in train, including minimum standards and frameworks of enforceability through codes of conduct adapted to agencies' individual missions and circumstances. This 'positive ethics' approach needs to clarify how the organisation's key ethics are to be institutionalised in practice.

Table 10 below summarises the ethics and related obligations present in Australian public sector management legislation, as cornerstones of this positive approach. Confirming the discussion in chapter 4, it highlights that NSW is now the only Australian government to have no statutory framework of minimum ethics standards applying generally to its public officers. Further, chapter 5 pointed to the partial nature of the Commonwealth system, which provides a strong framework in relation to the approximately 130,000 public officers within agencies managed under the *Public Service Act 1999*, but not the similar number lying outside such agencies, and not a variety of senior officeholders including statutory officers, members of parliament and ministers.

Table 10. Comparison of Ethics and Related Obligations for Public Officials
(NSW Ombudsman 2004)

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
Statements of values/ principles	✓	✓	-	✓	✓	✓	✓	✓	✓
Standards of behaviour	✓	✓	-	✓	✓	✓	✓	✓	-
Standard of decision-making	✓	✓	-	✓	✓	-	✓	✓	-
Standard of advice	-	✓	-	✓	✓	✓	✓	-	-
Standard of performance	✓	✓	-	✓	✓	✓	✓	✓	✓
Standard of service	✓	✓		✓	✓	✓		✓	✓
Obligation to comply/uphold law / standards	✓	✓	-	✓	✓	✓	✓	✓	✓
Obligation to report conflicts / corruption/ waste	✓	✓	-	✓	✓	✓	✓	-	-
Use and disclosure of information	✓	✓	-	-	-	✓	✓	-	✓
Use of property/ resources	✓	✓	-	✓	✓	✓	✓	-	✓
Use of position/ powers	✓	✓	-	✓	✓	-	✓	-	-

- ACT *Public Sector Management Act 1994, Public Sector Management Standard 1 — Ethics*
 Cth *Public Service Act 1999, Public Service Regns 1999, Public Service Commissioners Directions (Chapter 2) — APS Values*
 NT *Public Sector Employment and Management Act, Public Sector Employment and Management Regns, CPE Instruction No. 13 — Code of Conduct*
 Qld *Public Service Act 1996, Public Sector Ethics Act 1994, Public Sector Ethics Regn 1999*
 SA *Public Sector Management Act 1995, Public Sector Management Regns 1995 (ccl.5, 15), CPE Determination 9 — Ethical Conduct, Code of Conduct*
 Tas *State Service Act 2000, State Service Regulations 2001, State Service Commissioner - Direction No. 2 & 14 — State Service Principles, Gifts & Benefits*
 Vic *Public Sector Mgt and Employment Act 1998, CPE Directions — Code of Conduct*
 WA *Public Sector Mgt Act 1994, Public Sector Standards Commissioner — Code of Ethics 2002*

One of the clearest strengths of such frameworks is their comprehensiveness, providing a better overall articulation of the values and principles that should guide *all* public officers, irrespective of the specific nature of their role. Examples include, Queensland Queensland's *Public Sector Ethics Act 1994*, as mentioned in chapter 4. There are also other parallels that could not be covered in detail in this study such as Western Australia where an Office of Public Sector Ethics (OPSE) was established within the then WA Public Service Commission to commence major new standard setting and integrity building processes in 1992-94. The OPSE later became the Office of the Public Sector Standards Commissioner (Shacklock 1994). It is important that all jurisdictions, particularly NSW but also the Commonwealth, follow through and also take up this opportunity in full, as reflected in *recommendation 8 (statutory frameworks for organisational codes of conduct)*. *Recommendations 19 and 20 (core integrity institutions*

in the business sector) identify the need for further investigations into how this approach is best applied in the business and civil society sectors.

Paralleling the extension of these ‘positive’ ethics frameworks, a matching strength of current public integrity legislative regimes is the extension of more comprehensive compliance (or investigation and enforcement) frameworks. Again, the particular strength of some regimes is their comprehensiveness — in some jurisdictions (e.g. NSW, Queensland) *all* public officials are now covered by statutory definitions of corruption or official misconduct, irrespective of their particular role, as well as subject to the associated jurisdiction of one or more investigative agencies (e.g. the NSW ICAC, and Queensland Crime & Corruption Commission). This contrasts with ‘traditional’ but fragmented models in which ombudsman’s offices can investigate administrative wrongdoing by appointed officials, but not elected ones; any other forms of ethical breach and any breach by elected officials must effectively transgress criminal thresholds to be independently investigated or actioned. Part of the strength of a more comprehensive legislated framework is that, just as the positive values of integrity are defined and promoted, applicable definitions of wrongdoing are not restricted to criminal behaviour but take public service values, duty and trust (or breach thereof) as more comprehensive points of reference for independent review and action.

The single most important opportunity for building on these strengths lies in the Commonwealth public sector. In June 2004 the Commonwealth Government announced it would establish a new ‘independent national anti-corruption body’ (Ruddock & Ellis 2004; see Brown & Head 2004, 2005; Brown 2005). As discussed in chapter 5, there are signs that such an injection of anti-corruption capacity is overdue. In recent years, the Commonwealth has also suffered signs of a lack of comprehensiveness in its enforcement capacities, typified by the anomalous policy definition of ‘corruption’ as a subset of ‘fraud’, discussed in chapters 5 and 9. The creation of any new Commonwealth anti-corruption body would certainly be the most significant reform to the framework of the Commonwealth’s core integrity institutions in over 20 years.

There are also signs, however, that the opportunity to develop a more comprehensive ethics and anti-corruption regime will not be maximised. Although the June 2004 announcement was apparently intended to bring the Commonwealth into line with the states with more comprehensive anti-corruption jurisdictions (NSW, Queensland, Western Australia), the detail of the announcement, confirmed by the Prime Minister’s office in response to the draft NISA report, was that the new agency’s jurisdiction would be limited to two law enforcement agencies: the Australian Federal Police and Australian Crime Commission. This proposal has some similarity to a recommendation by the Australian Law Reform Commission that oversight of these agencies be transferred from the Commonwealth Ombudsman to a National Integrity & Investigations Commission (ALRC 1996), but even that recommendation had broader potential.

Even if ‘law enforcement’ were the only area of Commonwealth activity in which more anti-corruption capacity is needed, there would be little logic in excluding many *other* Commonwealth agencies with major compliance and law enforcement powers — including the Australian Customs Office, Australian Taxation Office, Australian Security & Investments Commission, and Department of Immigration. In fact, there is a larger argument that to represent a serious injection of capacity and meet national best practice,

a more comprehensive approach and general jurisdiction are needed to ensure that capacity for independent anti-corruption investigation is boosted across the whole Commonwealth sector rather than in select fragments (Brown 2005). A preferable approach is detailed in *recommendation 1*.

Financial and human resources in core investigation agencies

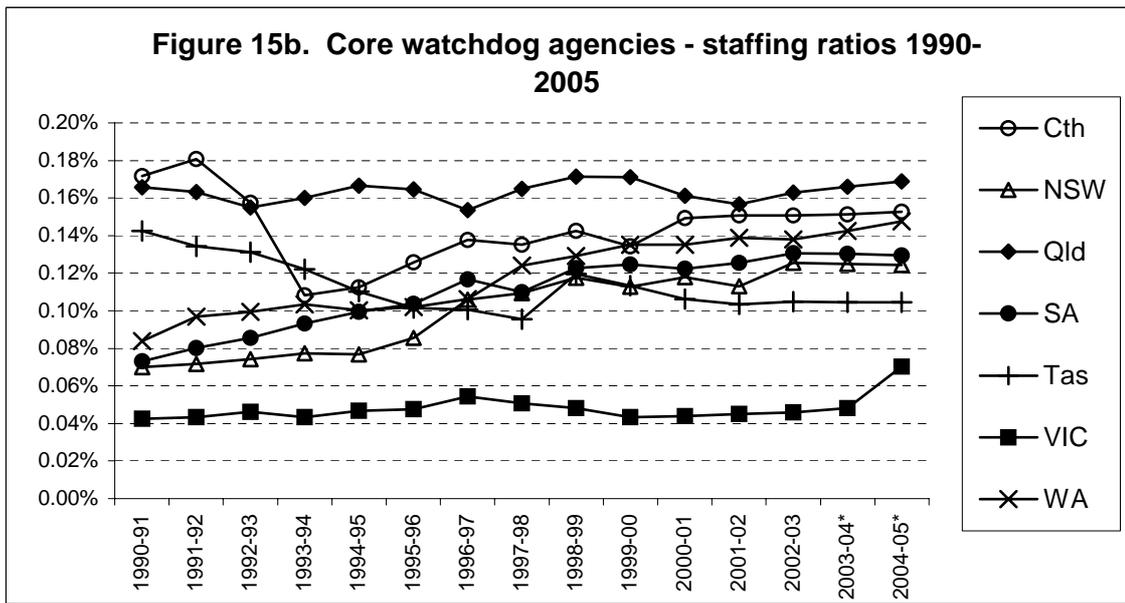
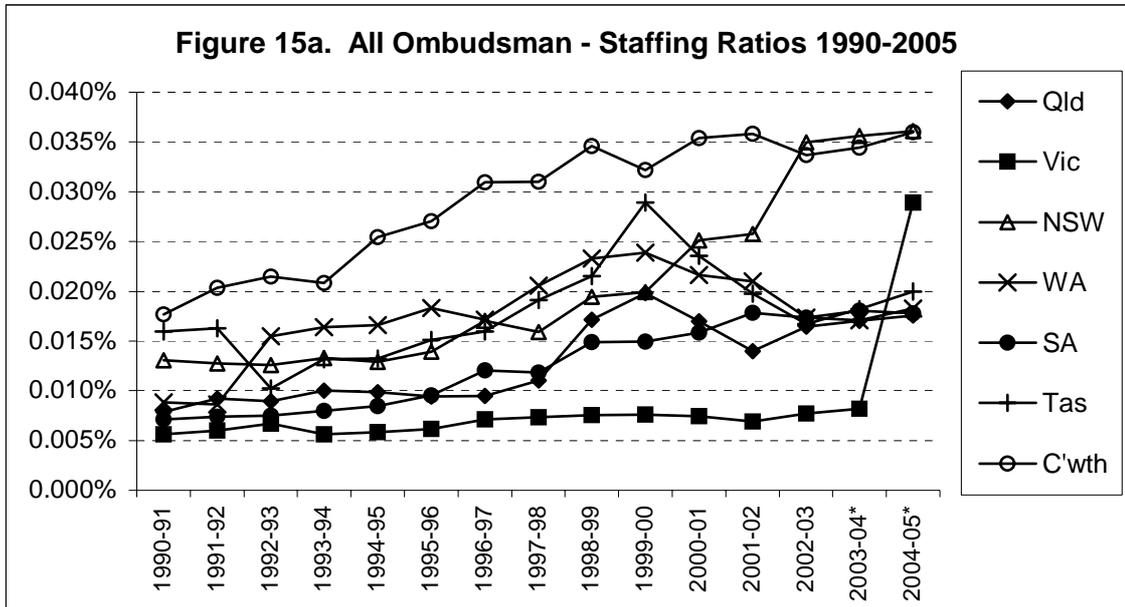
A third area of strength lies in the operational capacities of many of the core integrity institutions on which the effective working of public integrity systems relies. As noted above, some Australian jurisdictions possess not only a comprehensive legislative approach to ethics and enforcement, but have also sought to ensure core investigation agencies have the basic financial and human resources to perform their tasks.

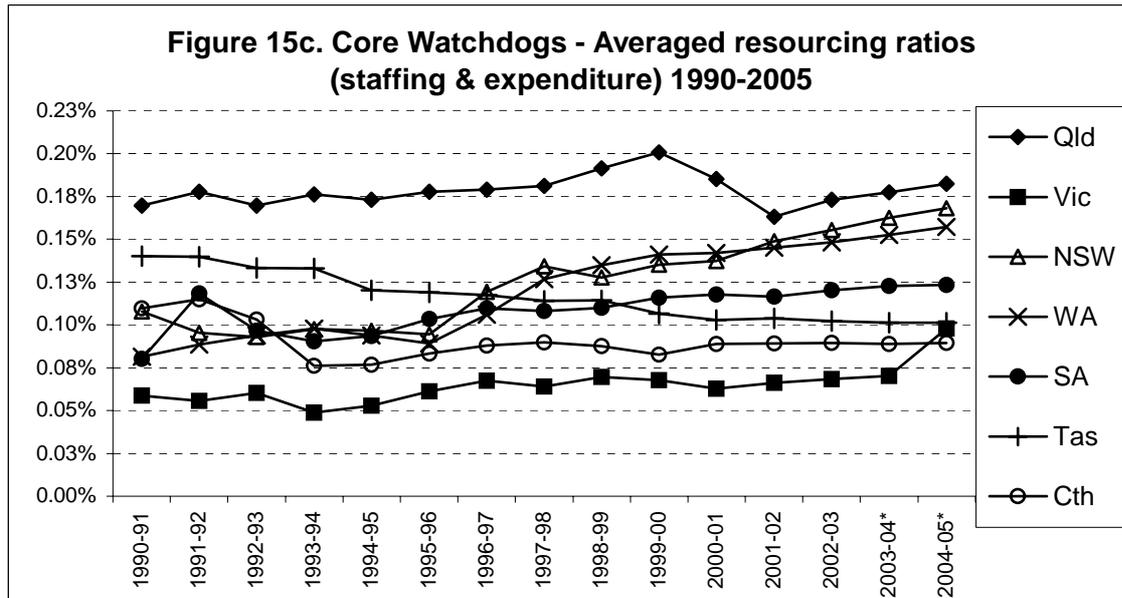
A key question for the assessment was whether a minimum level of adequate resourcing could be identified across the nation to help establish whether all governments were meeting this expectation. This question has been complicated by the fact that the configuration of core integrity institutions in each jurisdiction is different, as noted in chapter 2 (Table 4). However in 2003-2004, the importance of the question was underlined by public debate over the difference between those integrity systems that had continued to rely on a general-purpose ombudsman as the main or sole investigations agency since their inception in the 1970s (Commonwealth, Victoria, Tasmania) and those that had added anti-corruption commissions of the type mentioned above (NSW in 1988 and 1997, Western Australia in 1989, and Queensland in 1990). This debate centred on organised crime and police corruption scandals in Victoria, and whether the Victorian Ombudsman had sufficient capacity to handle such matters — a debate linked to the Commonwealth announcement in the last section (Brown & Head 2004; 2005). The Victorian government's response in 2004 was to create the new Office of Police Integrity (OPI) as an organisation with its own statutory basis and considerable new resources, but within the existing ombudsman's office and headed by the existing Ombudsman.

To better compare the overall resourcing of such core institutions, given their different configurations and significant variations in the size of the jurisdictions involved, we supplemented the insights in chapters 3-5 with a comparison of staffing and financial resourcing, calculated as a ratio of total public sector staffing and total public expenditure in each jurisdiction over a 14 year period (see Brown & Head 2004):

- Figure 15a opposite compares the staffing of all federal and state ombudsman's offices, showing the Commonwealth Ombudsman as the best resourced until recent expansions in the NSW Ombudsman's office (see chapter 4), and the Victorian Ombudsman's recent jump from low to high after the 2004 expansion;
- However, Figure 15b shows a different picture when all the bodies listed in Table 4 are considered (not including crime commissions, including the crime commission components of the Queensland and WA commissions). While NSW has the most core agencies, even their combined staffing leaves them in mid-field, and the relatively low staffing of Victoria's Auditor-General returns that state to the bottom of the graph even with the Ombudsman's expansion; and
- In Figure 15c, a different composite measure is used of relative staffing *and* relative budget size (a direct average of staffing and budget ratios) to allow for outsourcing and more expensive forms of operation. This produces another different picture again,

suggesting that proportionally to its financial responsibilities, the Commonwealth now has the least well-resourced group of agencies, and that the three states with stand-alone anti-corruption bodies (NSW, WA, Qld) indeed devote significantly more resources overall.





The great variation in the resourcing levels of different governments, sometimes clearly quite independently of the number of institutions they possess, suggests that historical accident alone may be the best explanation for resourcing levels. Although basic financial and staffing capacity is clearly present in some jurisdictions, this variability lends weight to claims that resourcing has a limited rational basis and is too exposed to the winds of political change (see Parker 1978:285; Rayner 2003:27; chapter 4). One factor is that resources can depend on when agencies acquired their functions, with older organisations continuing to be limited by the budget formulae that prevailed at the time of their establishment, even though different formulae would lead to significantly higher resources if they were abolished and re-established today.

Overall, this assessment points to three important opportunities. First, it confirms that the Commonwealth government should take the opportunity of a new institutional reform to inject a significant amount of new resources into its core institutional capacity. This underscores the case for a body with a sufficiently general jurisdiction to warrant such an injection, rather than a smaller body with the lower staffing that more restricted jurisdictions and functions would entail (see *recommendation 1*).

Second, this analysis confirms the importance of a further, more comprehensive and official effort to benchmark the resources needed for effective integrity investigation and oversight. While those jurisdictions with standing anti-corruption commissions also appear to afford the most overall resources, the correlation is not necessarily direct. It clearly remains more important for government to get resources right overall, provided that all key functions are covered, than have a new agency for every function. In NSW, multiple bodies may not necessarily make for the strongest resources or optimum configuration.

To support the development of optimum frameworks and introduce some more coherent policy to current *ad hoc* decisions, it is important that governments now turn their attention, for the first time on a national basis, to effective benchmarks for the resourcing of these core integrity functions. Suitable benchmarks will be found with further policy and econometric work undertaken through an appropriate public review process and married with a standardised approach to understanding agency caseloads as discussed in

chapter 9. *Recommendation 17* addresses this need, suggesting one sensible vehicle for such a review being a one-off joint public inquiry by the Productivity Commission and Australian Law Reform Commission with the participation of state treasuries and law reform commissions.

The third opportunity relates to the potential for a more coordinated strategy of skills and career development for current and prospective staff in the integrity system. The growth in number and overall size of core integrity institutions over the last 20 years, combined with the expansion of distributed institutions and programs, highlights the strategic significance of the careers of those who serve in and move between such institutions. Not only are administrative and anti-corruption investigations complex and delicate by nature, but increasingly the positive problem-solving and management roles of integrity practitioners are being recognised. Interdisciplinary postgraduate or vocational training in key areas of integrity practice is currently limited. The clear opportunity for a higher education-based strategy to grow and consolidate the relevant skills is reflected in *Recommendation 13 (professional development for integrity practitioners)*.

Corporatisation and contracting out

A fourth area of strength for some jurisdictions, and opportunity for others, is the development of positive strategies for ensuring integrity and accountability in the delivery of public services, notwithstanding changes in the structure of delivery through corporatisation and contracting-out. Contracting-out also poses identifiable integrity risks in the private sector, due to increased agency risks and lengthened supply chains (chapter 7). Despite increased efficiency and responsiveness, corporatised and out-sourced services since the late 1980s have been characterised by significant accountability ‘gaps’. However, the only real reason why public integrity oversight often still stops at the point of contracting-out is an outdated formulation of integrity agency jurisdiction based on the legal character of the organisation as a commercial entity, rather than the public nature of its services. In relation to corporatised entities such as government-owned corporations (GOCs), there should, in fact, be no doubt that when it comes to the ‘fundamental choice’ needed on questions of governance, accountability and ethical behaviour, ‘we must treat GOCs as if they were public entities’ (Bottomley 2003). Increasingly, there is little reason to differentiate between the basic integrity standards and strategies needing to be employed by public and private service providers (see e.g. Demack 2003:12).

The solution adopted by some jurisdictions (e.g. NSW) is to extend core public integrity institutions’ jurisdictions to include discretion to investigate complaints into publicly-funded services regardless of provider. While other responses exist, including industry-specific integrity mechanisms (e.g. industry ombudsman’s offices), these responses do not provide universal coverage of contracted services and particularly where industry-controlled such responses can appear compromised. Such mechanisms also do not typically extend to programs funded by government grants, rather than contract. The importance of extending this approach as the standard practice throughout the integrity systems is reflected in *recommendation 4 (jurisdiction over corporatised, contracted & grant-funded services)*.

Devolved governance and distributed integrity capacity

The final area relates to opportunities for developing the human and financial resources devoted by organisations in general to setting and maintaining high integrity standards. As discussed above, the capacities required for distributed integrity institutions and strategies to be effective are not simply ‘core’ audit and investigation capacities, but ethical leadership and problem-solving capacities embedded in the normal management systems of organisations. These capacities are obviously vital in all organisations, whether in the government, business or civil society sectors.

Comprehensive legislative frameworks of the kind discussed above is one strength of many present systems, but a variety of issues surround how effectively these frameworks currently play out at organisational levels. While there is positive evidence that the Commonwealth government’s approach is translating into real systems at least in respect of ‘APS’ agencies (chapter 5, APSC 2004), in some jurisdictions there are continuing doubts as to real levels of awareness and commitment towards agency codes of conduct (e.g. chapter 3). Considerably more research is needed into the level of financial and human resources placed behind processes of ethical standard-setting, education, prevention and the institutionalisation of integrity, as against the more expensive and reactive processes involved in the investigation and remediation of integrity breaches (see *recommendation 2*). In many sectors, there is also need for more effective coordination between ‘core’ and ‘distributed’ institutions, a significant issue of coherence discussed further in chapter 11 (see *recommendation 9: relations between organisations and core integrity agencies*).

In addition to these recommendations, a major opportunity exists to better institutionalise ethical leadership capacities in the everyday management of organisations, by formally embedding these in the career structure of managers through recruitment and appointment processes. While statutory integrity frameworks are often strong, as are senior managers’ willingness to institutionalise high standards, these basic management processes often do little to help organisations ‘walk the talk’. Even in the public sector, there are no minimum integrity training prerequisites for promotion to management levels. If governments, regulators and organisational leaders are serious about ensuring that integrity is core business in organisations, it is time that the governance of public agencies and suitably-sized businesses and civil society organisations required staff to have satisfactorily completed up-to-date, accredited training in integrity, accountability and ethics institutionalisation as a prerequisite for appointment to middle and senior management levels. *Recommendation 12 (minimum integrity education and training standards)* recognises that making such training a formal prerequisite, rather than simply a competitive advantage, is one of the few effective ways for organisations to ensure a heightened integrity capacity and clarity about the standards against which managers can and will be held accountable.

Finally, chapter 6 identified a particular structural deficiency in distributed integrity capacity in the public sector in the area of local and regional governance. Local government has traditionally been under-resourced in Australia, constraining the extent to which local democratic systems have been able to realise high standards of integrity. Until recently, local government integrity has been chiefly dependent on the same accountability requirements as state government agencies, notwithstanding the ill-fitting

nature of this regime for an elected, general-purpose sphere of government in its own right, with individual governments usually much smaller in size and capacity than most state agencies. The growth of federal and state regional programs for which local government provides institutional support, but for which responsibility is often blurred, exacerbates systemic integrity risks at local and regional levels. There is an important opportunity for Commonwealth and state governments to fund a comprehensive review, collaboratively with local government, of the most effective framework for building and delivering integrity system capacity at the local and regional levels, recognising the growing responsibilities of local government in the Australian federal system and increasing complexity of regional-level institutions (see *recommendation 15: regional integrity resource-sharing and capacity-building*).

10.3 Challenges and further action

Parliamentary leadership and integrity

Five more complex areas of challenge or further research also arose from our assessment of integrity system capacity. In the public sector, the first and most striking challenge is the lack of effective ethical standard-setting and enforcement regimes governing elected parliamentarians and ministers. As noted earlier and in chapters 3-5, whereas oversight and enforcement capacities are typically strong in relation to appointed officials, they are weaker in relation to elected ones. Most public jurisdictions and much of the corporate sector now function under statutory schemes requiring development of enforceable codes of conduct or statements of official responsibilities, but the development of legislative and ministerial ethics regimes has been ‘a saga of avoidance, delay, resistance and doubt’ (Preston 2001b). The Commonwealth parliament’s system, in which ‘neither house has a code of ethics or conduct, and there is no move towards an ethics or integrity commissioner’ is one of ‘puzzling self-regulation’ (Uhr 2005a:147). This lack of enforceable parliamentary and ministerial standards contrasts strongly with the systems in place for other public officials and most private sector officeholders.

Table 11 reviews the recent state of play regarding parliamentary and ministerial ethics regimes. As at 2003, only three parliaments (NSW, Victoria and WA) had a code of conduct for members and ministers. While all had interest disclosure regimes, these themselves typically suffer from problems, to be discussed further below. The most significant problem is the lack of any real implementation or enforcement capacity in relation to any of these regimes. Best practice is found in Queensland and NSW, which have both ethics advisors with no enforcement role, and integrity agencies whose jurisdiction may include a ‘substantial breach of an applicable code of conduct’ by parliamentarians (NSW ICAC) or official misconduct by parliamentarians (Queensland CMC).

*Table 11. Summary of codes of conduct in Australian parliaments
(adapted from Department of Parliamentary Library 2003)*

	Cth	NSW	Vic	Qld	Tas	SA	WA	ACT	NT
Register of interests	✓	✓	✓	✓	✓	✓	✓	✓	✓
Members’ code		✓	✓	✓	✓		✓		
Ministerial code	✓	✓	✓			✓	✓	✓	
Post-separation employment					✓	✓	✓	✓	
Ethics/standards mechanism for providing advice		✓		✓					
Mechanism for conducting investigations		✓		?					

While some legislators still argue that their accountability through the ballot-box and scrutiny from electors and the media are sufficient, such mechanisms are widely recognised as inadequate to ensure integrity. Recently the Senate Finance & Public Administration Legislation Committee (2002:ii-iii) demonstrated continuing resistance, expressing in principle support for a Commissioner for Ministerial and Parliamentary Ethics to ‘develop and implement an education program for members of parliament about ethics in public life and to advise them on the proposed code of conduct’, but continued to reject the principle that any officer of the parliament, other constitutional authority or ‘outside body’ should be empowered to investigate or adjudicate on the conduct of members.

Sampford argues that ministers be able to gain independent ethical advice on contemplated action and gain ethical clearance for action in compliance with that advice (Sampford 2001). However, this will only work if the failure to seek and take such prior advice can have significant consequences through subsequent investigation for breach. The absence of meaningful avenues of public complaint and adjudication of those complaints has become a ‘deficiency that needs to be remedied if there is to be any improvement in the level of public confidence in the integrity of the parliamentary system’ (Carney 2000:396). A comprehensive overhaul of these regimes is crucial to addressing lack of public confidence in parliamentary and ministerial self-regulation. In the Commonwealth sphere, the need for more guaranteed mechanisms for ensuring the truth is told on matters of national importance has been demonstrated by a range of controversies including the ‘children overboard’ affair, reasons for going to war with Iraq in 2003, and government anti-terrorism policy, as discussed in chapter 5.

The need for a new base standard in parliamentary and ministerial integrity regimes is reflected in *recommendation 6 (enforcement of parliamentary and ministerial standards)*. For reasons of coherence also discussed in chapter 11, it is important that such reform also functions to restore the degree of effective accountability of the executive government to the parliament. This is achievable through a boosting of the independence and authority of parliaments’ presiding officers, as well as parliamentary rather than executive control over the gazettal of codes and appointment of the commissioner to investigate, when necessary, whether codes have been transgressed. Minimum subjects for statutory codes include: restrictions and disclosure requirements regarding secondary employment and other non-official interests; post-separation or post-retirement employment of ministers (see Holland 2002); abuse of parliamentary privilege; abuse of cabinet privilege in respect of documents requested under FOI; and honesty in public statements.

Whistleblower protection

A second major challenge lies in the restricted capacity of Australian integrity systems to make use of one of their single most important assets — the ethical standards and professionalism of those employees prepared to speak up about integrity breaches that would otherwise go uncorrected (‘whistleblowers’). Whistleblowing is a fundamental resource for the integrity system; organisations’ capacity to manage whistleblowers positively and encourage further reporting of wrongdoing by others is vital (McMillan 1994; Brown 2001; Brown, Magendanz & Leary 2004). The implementation of even the

most comprehensive public sector whistleblower protection regime is often questioned (Queensland, chapter 3), and the Commonwealth's scheme has been identified as positively inadequate (chapter 5). The legislation hinges on an ability to transform organisational cultures in ways still not widely understood (Dempster 1997; Martin 1997; De Maria 1999). Indeed, substantial differences between state and territory regimes mean no single government has currently achieved what would constitute 'best practice'. Comparable regimes are now extending to the private sector, through the Australian Standard on Whistleblower Protection Programs for Entities (AS 8004-2003) and reforms such as Part 9.4AAA of the *Corporations Act 2001*, but are likely to suffer similar limitations in the absence of a more comprehensive approach.

In 2005, a consortium of 13 public integrity agencies and Transparency International Australia embarked further Australian Research Council-supported research into the development of more effective operational approaches to whistleblower protection within organisations, legislative frameworks, and coordination between core and distributed integrity institutions (see www.griffith.edu.au/whistleblowing). However, some of the key principles for reform of such regimes, particularly at the Commonwealth level but also in Victoria, Tasmania and Western Australia, are already clear and are reflected in *recommendation 11 (whistleblower protection and management)*.

Civic education, awareness and rights

Some of the strongest capacities underpinning Australia's integrity systems relate to citizens' awareness, vigilance and legal capacity to seek the rectification of wrongs either against themselves personally or the broader public interest. A strong sense of the duty felt to be carried by citizens to participate directly in the governance of their institutions is reflected in Australia's traditions of compulsory electoral enrolment and voting, with the positive effect that even when unimpressed by official conduct, citizens nevertheless remain engaged in the governance process (Goot 2002).

Nevertheless there are four signs of tension in these vital areas of capacity. The first of these is continuing weakness in civic and community education about the importance of integrity in the institutions that govern society. The lack of effective civic education in primary and secondary schooling became widely acknowledged in the 1990s (Krinks 1999) and is now being addressed through initiatives such as the Commonwealth Government's 'Discovering Democracy' program. However, there is a need to significantly expand such programs, and to focus on education in substantive issues of ethical leadership, integrity and how it is achieved, rather than simply technical and historical understandings of the architecture of formal institutions. There is also a heightened need for the engagement of public interest groups and commentators in the design of community awareness programs about citizens' rights. The need to address this challenge is reflected in *recommendation 16 (civic education and community awareness)*.

The second major problem relates to gradual curtailment of the effective legal capacity of citizens to challenge government actions that affect them personally or conflict with the public interest. Significant liberalisation of the ability of citizens to challenge government actions occurred in the 1970s-1980s, with the introduction of the 'new administrative law', but despite empirical evidence that judicial review of administrative action is

effective, commitment to the philosophy of such review has somewhat lost its original impetus (Creyke & McMillan 1998; 2004; chapters 3 and 5). For example, the Commonwealth government has attacked such systems as harbouring a ‘grievance industry’ rather than supporting an integrity regime (Mulgan & Uhr 2001:162). Over several years, the rights of non-citizens to equitable levels of administrative justice have been curtailed, and public concern has now extended to systemic abuse of official powers by immigration authorities, including in respect of Australian citizens (chapter 5). Most recently, concerns have arisen over new laws regarding the monitoring, arrest, detention and control of those judged likely to commit terrorism offences, with governments severely curtailing citizens’ access to due process, independent oversight and review.

More incrementally, issues of cost, access to justice and often limited or fragmentary availability of formal ‘merits review’ systems already mean that, for most Australians, even in less contentious areas, administrative justice is more difficult to attain in practice than in theory. There has been little comprehensive evaluation of the relative strengths of ombudsman and hearing-based merits review, notwithstanding growing dependence on the former, as the only no-cost to citizens review mechanism, and significant disparities in jurisdiction, method and powers. All these signs of fraying and fragmentation in commitment to citizens’ civil and political rights have, as their background, an institutional framework which affords scant constitutional or legislative protection to *any* citizens’ rights, with Australia having no constitutional Bill(s) of Rights and only one general-purpose Human Rights Act (in the ACT). The need for substantial renewal of Australian systems for citizen-initiated review of government action is reflected in *recommendation 5 (access to administrative justice)*.

The third area of concern relates to citizens’ rights to know about interests and issues that could reasonably be expected to influence the conduct of officials. As discussed in chapters 4-7 and above, requirements for officeholders to disclose material personal interests *via* official registers are now standard for politicians and senior public officials, as these requirements are in corporate governance. Similar principles inform legislative regimes requiring the disclosure of electoral contributions by political parties and candidates, in a bid to bring transparency to the ‘invisible world of political donations’ (see Ramsay et al 2001; Tham 2003; Tham & Orr 2004). However, there is growing evidence that such disclosure systems are fundamentally ineffective. They require technical compliance with disclosure obligations (lodgement of returns or completions of registers) in ways that may encourage officials to avoid conflicts of interest, but do little to inform citizens or affected persons of such a conflict at an opportune time.

The classic example of this problem lies in disclosure of electoral contributions, which typically does not occur until *after* the election concerned, by which time electors have already cast their vote based on incomplete knowledge. Along with other criticisms, this deficiency reveals the extent to which disclosure regimes have fallen out of step with current best practice in comparable areas of governance, such as corporate principles of ‘continual disclosure’ to protect the integrity of the stock market. By applying a similar approach to the disclosure of interests by senior public officials and political candidates, and making use of modern information technology, it is time to systematically overhaul disclosure regimes to satisfy the goal of actual knowledge of disclosed interests on the part of those who need to know (*see recommendation 10: effective disclosure of interests*

& influences). Consideration should also be given to the introduction of formal requirements for ongoing disclosure of all relevant dealings that could reasonably give rise to a suspicion of compromise, such as minimum standards of recordkeeping when ministers or their advisors meet major media figures or known political donors.

The final challenge relating to citizen awareness concerns freedom of information (FOI). While all Australian governments now have such laws, their operation in practice is frequently at odds with the principle of access (Willis 2002:174; Fraser 2003). At a Commonwealth level, government has shown itself reluctant to review FOI requirements in ways which might help restore the principle of 'right to know', e.g. through implementation of the Administrative Review Council and Australian Law Reform Commission report, *Open Government* (1995). A recent Australian Public Service Commissioner has strongly questioned whether Commonwealth practices and attitudes are consistent with the express principle that FOI legislation be interpreted to extend, 'as far as possible, the right of the Australian community to access information held by the Government' (Podger 2005).

Achieving this principle necessitates higher standards of recordkeeping; curtailment of the practice of requiring formal FOI applications when it is readily within the discretion of administrators to simply release documents; abandonment of systems of exemptions based on 'classes' of records rather than actual contents; and reversal of the present onus on applicants to challenge non-release (of records they cannot see) to ensure instead that non-release is justifiable in the eyes of an umpire who can see them. The need for a quantum shift in approach is reflected in *recommendation 14 (freedom of information)*.

Electoral integrity and political parties

A fourth challenge lies in the capacity of Australia's integrity systems to ensure honesty and accountability on the part of civil society organisations with particularly important roles in the governance of society as a whole. Some examples have been discussed earlier, including the range of organisations mentioned in chapter 8, and non-government organisations that deliver publicly-funded services, mentioned above.

The most important example of non-government organisations whom current integrity systems are struggling to effectively regulate is political parties. Political parties historically developed as private organisations and retain that legal status, but their interrelationship with — and often control over — the workings of government give them a different and sensitive status in political practice. Their willingness to make disclosures about campaign contributions mentioned above (and in *recommendation 10*) has a parallel issue in the fact that political parties also draw on substantial public funding (\$33 million for federal elections alone, in 1998:see chapter 5). This funding is not provided under contract or for a service, but rather was initiated as an integrity mechanism to curtail the need for parties to raise ever-larger amounts of private money.

It is an open question whether this goal has been achieved, since parties in receipt of public funds are nevertheless not limited in the amounts or sources of private money they can solicit; nor are they obliged to account in detail for how this money is expended. Candidate pre-selection and other party processes are also subject to limited scrutiny. While judicial review is available to members directly aggrieved by poor conduct, there is

a case for ‘more interventionist and vigilant’ regulatory approaches, and removal of responsibility for some key ‘public interest’ processes from their control (Orr 1999; Tully 2003).

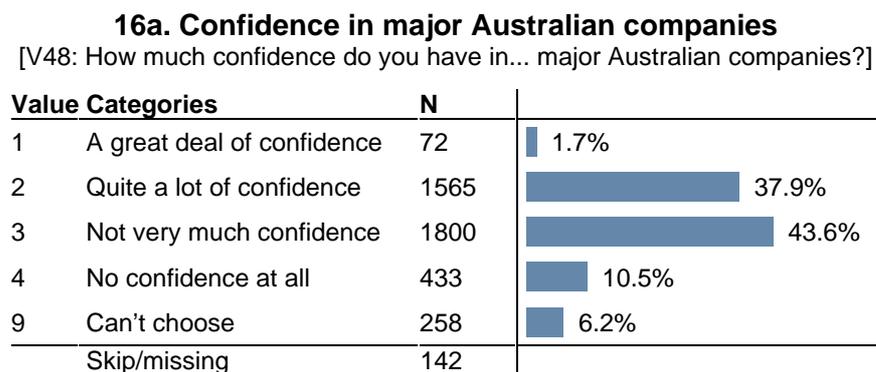
The assessment did not reach definitive conclusions on how integrity system capacity should be developed in relation to political parties and other influential non-government organisations such as churches. However, these issues, together with those identified in chapter 8, emphasise the importance of further research on how the nation’s integrity systems need to develop in the civil society sector, as reflected in *recommendation 20*.

Private sector regulatory capacity

As indicated in chapter 7, the NISA project did not analyse issues of capacity among core integrity institutions for the business sector, in the same depth as for the public sector. This is notwithstanding that analysis of distributed integrity capacity in business showed basic issues of capacity and coherence to be comparable with those in the public sector.

However, the project generally confirmed the need for analysis of ‘public’ integrity systems to extend beyond its traditional focus on government institutions, to all organisations with publicly-significant duties including those of business to shareholders, investors, consumers and fellow citizens. Previously, some governance reformers have assumed that the main relevance of the business sector to integrity systems was as a ‘pillar’ of public sector integrity in its own right (Langseth et al 1999:145; Pope 2000:137-151), rather than as a group of institutions whose own integrity is often at issue (Brown & Uhr 2004:7). If there was any doubt regarding Australians’ attitudes to this, it is dispelled by Figures 16a&b below, which show general confidence in business and in public regulation of business to both be fairly low.

Figure 16. Public perceptions of business & media (ASSA 2003)



16b. When big businesses break the law, they go unpunished

[V99: Here are some statements about crime and the law in our society. Please tell us how much you agree or disagree with each of the following statements: When big businesses break the law, they often go unpunished.

Value Categories	N	
1 Strongly agree	1659	39.5%
2 Agree	1740	41.4%
3 Neither agree nor disagree	382	9.1%
4 Disagree	224	5.3%
5 Strongly disagree	118	2.8%
9 Can't choose	80	1.9%
-6 Not asked/skip/missing	67	

16c. Media in Australia effective in keeping governments honest

Please tell us how much you agree or disagree with each of the following statements: the media in Australia is effective in keeping governments honest.

Value Categories	N	
1 Strongly agree	119	5.6%
2 Agree	669	31.5%
3 Neither agree nor disagree	610	28.7%
4 Disagree	555	26.1%
5 Strongly disagree	132	6.2%
9 Can't choose	40	1.9%
-6 Not asked	2145	

Figure 16c also emphasises the same issues in relation to the mass media, which can be both publicly and privately owned, and play vital roles in ensuring integrity on the part of other institutions in society, but which themselves face ethical challenges and need to be governed by integrity regimes of their own (Johnson 2000; Gordon-Smith 2002; Sampford & Lui 2004).

As mentioned in chapter 7, business integrity systems also include a diversity of core integrity institutions whose roles and capacities could not be evaluated in this assessment. It is, nevertheless, important that the kinds of analysis conducted above in relation to public institutions are extended in further analysis of the business sector, and in the integrity regimes governing particular areas of business, as reflected in *recommendation 20*.

11. The Coherence of Australia's Integrity Systems

11.1 Overview

The third and final theme of the assessment is that of 'coherence'. It is now widely established that integrity systems rely not on single key institutions or laws, but on a diversity of agencies, strategies and measures, working in a mutually supportive fashion. As seen in chapter 1, the OECD's proposed assessment framework has also adopted the NISA approach and poses the final question: 'do the various elements of integrity policy coherently interact and enforce each other, and collectively support the overall aims of integrity policy?' (OECD 2004:10).

Until recently, however, little attention has been given to how different elements of integrity systems *should* interact, given there are also occasions on which we expect them to conflict or work independently. When should integrity institutions stand apart, holding each other mutually accountable? When can their operations be more collaborative? How are 'core' and 'distributed' functions coordinated, and integration achieved between ethical leadership, enforcement and practical day-to-day management?

The first lesson of the analysis is that integrity systems involve quite different types of interrelationships between institutions, all working at the same time in an intricate network, 'lattice' or 'bird's nest' as described in chapter 2. In the assessment, we identified three major types of relationship, as shown in Table 12. At present there are significant opportunities, but also stresses and strains, in most of these areas. The assessment has revealed the coherence of Australia's integrity systems to be a significant issue in both positive and negative ways.

In the terms of the title of this report, *chaos or coherence*, the nation's integrity systems are, in fact, characterised by both. There is a strong element of coherence in many areas; where it exists, it is fundamental to integrity systems' endurance and relative success. The strengths and opportunities listed below complete our analysis of these positive elements. However, the analysis in the preceding chapters has also shown significant gaps in the way in which integrity systems currently operate, together with a range of choices for the future. As set out below, even in areas of strong coherence, unless the opportunities are taken up to renew and build on these strengths, there are reasons to be concerned for the long-term health of the systems. There are also a number of key challenges confronting the coherence of Australia's integrity systems, some of them revealing potentially deep fractures in the nation's ethical and accountability frameworks. While there is a natural element of 'messiness' in the operation of any integrity system, our overall conclusion is that Australia's integrity systems are often significantly more chaotic and less coherent than is desirable, and significant improvements could easily be achievable through relatively straightforward reforms.

Table 12. Key institutional relationships in the integrity system
(Brown 2003:21; Sampford et al 2005)

Type of relationship Examples	Institutional Options
<p>Constitutional</p> <p>Accountability relationships, including the extent to which different institutions can act as integrity checks on others.</p>	<p>Judicial independence</p> <p>Constitutional entrenchment and/or statutory independence of particular bodies or officeholders</p> <p>Constitutional or legislative provisions defining jurisdiction of bodies / indemnifying bodies or particular officeholders</p> <p>Requirements for political bipartisanship in the formation and management of key bodies</p> <p>Parliamentary and public oversight systems for key bodies (including judiciary)</p> <p>Constitutional/legislative rights of public complaint, administrative, legal or political challenge to the decisions of key bodies</p>
<p>Policy</p> <p>Relationships needed to establish coherence and consistency in the way in which integrity is managed across a given sector or jurisdiction, including:</p> <p>Coordination of enabling and regulatory legislation</p> <p>Identifying and rectifying gaps in jurisdiction</p> <p>Ensuring or removing overlaps in jurisdiction</p> <p>Putting joint positions to government</p> <p>Coordination of reform, research, evaluation, performance measurement and professional development</p> <p>Balance between coercive investigations, enforcement, and positive standard-setting, leadership, organisational and cultural change</p>	<p>Routine policy coordination by executive government</p> <p>Occasional royal commissions or policy inquiries</p> <p>Standing royal commissions or independent policy review bodies</p> <p>Amalgamation of agencies</p> <p><i>Ad hoc</i> interagency and interdepartmental liaison</p> <p>Standing interagency committees</p> <p>Statutory frameworks for voluntary codes of conduct</p> <p>Statutory frameworks for enforceable codes of conduct</p> <p>Statutory coordination mechanisms / governance review councils</p>
<p>Operational</p> <p>Investigations and prosecutions</p> <p>Public outreach and promotion; fieldwork</p> <p>Complaints services, case receipt and referral</p> <p>Research</p> <p>Intelligence-gathering</p> <p>Workplace education and prevention services</p> <p>Support to ‘distributed’ integrity practitioners</p> <p>Support to corporate management on implementation of integrity policies</p>	<p>Co-location</p> <p>Amalgamation of agencies</p> <p><i>Ad hoc</i> interagency and interdepartmental liaison</p> <p>Standing interagency committees</p> <p>Statutory coordination mechanisms / governance review councils</p> <p>Legislative and administrative authority to undertake joint activities</p> <p>Budget incentives to coordinate activities</p>

11.2 Current strengths and opportunities

Growing acceptance of mutual accountability

The first of three areas of strength and/or opportunity involves the extent to which the principle of mutual accountability at the heart of the integrity system has become more accepted among the institutions involved. This has not been without conflict, as mentioned in chapters 3 and 4. In 1992, the NSW Metherell affair saw the former state premier challenge adverse corruptions findings by the relatively new ICAC in the NSW Supreme Court, creating tensions over the role of anti-corruption bodies *vis-à-vis* parliament and the executive which continue today. In Queensland, a change of government in 1996 brought an inquiry into the then six-year-old Criminal Justice Commission (now CMC) headed by retired judges, whose brief was terminated after the Queensland Supreme Court found they suffered from a reasonable apprehension of political bias (chapter 3, Preston et al 2002:129-131). The Commonwealth Ombudsman has also experienced strong reactions from some agencies, including judicial review, when they have asserted their power to make the recommendations that they see fit.

Much of the public debate surrounding such conflict has been expressed in terms of ‘who guards the guards’; and even ‘who guards the guards who guard the guards’. In a variety of instances, this question has been answered through the pre-existing institutional framework, in the form of the judiciary’s conventional powers of judicial review of the legality of the actions of other government bodies. In other words, the issues of mutual accountability described in theory in chapter 2 have played out in practice in some of the important constitutional relationships that define Australian public sector integrity systems. Key agencies are ‘independent’ in their exercise of statutory powers, but not ‘unaccountable’ in that the legality of their action remains reviewable by another independent institution (the courts); and the breadth of powers is always ultimately defined by parliament who can alter the framework but only through a public process for which legislators will, in theory, be held accountable by the electorate.

Significantly, a wider range of key custodians of different integrity processes are now recognised as ‘independent’ (but still ‘accountable’) actors in the integrity system, not simply core investigation and review agencies. Not all can be mapped here, but a key example is that of standing, statutory electoral commissions. As recently as 15-20 years ago, some jurisdictions still set parliamentary electoral boundaries and regulated the administration of elections through ‘one-off’ temporary commissions and other administrative processes under a high degree of direct control by the government of the day. Today, the independence of permanent electoral commissions is increasingly well-institutionalised, even if, at a federal level, there is ‘potential for the nibbling at the edge’ (Hughes 2003).

While some elements of mutual accountability are recent, it is important to note that others have been deeply entrenched in Australia’s constitutional framework for many decades. The federal political system divides and constrains power in various ways, leading to circumstances where both federal and state governments may hold each other to public account. In terms of integrity systems, the fact that each federal and state jurisdiction has room to develop its own approach (as seen institutionally in Table 4,

chapter 2), contributes indirectly to the integrity systems of others through demonstration of new approaches or competition in standards. Similar analysis of 36 different State Ethics Commissions in the United States has shown that even if the diffusion and adaptation of ideas were undesirable, it would probably be unavoidable (Smith 2003). In Australia, however, the advantages of this diversity have not precluded the advantages of significant national coherence, for example in the recent but increasing coordination of research and policy activity between like state agencies (e.g. NSW ICAC, Queensland CMC, and WA Corruption & Crime Commission).

However, while overall the practice of mutual accountability is now increasingly common and entrenched, it is important to note that it continues to work as much through conflict, as it does through harmony; and that while some key institutions may gain new independence, others may lose it. For example, at the same time that new investigative, review and regulatory agencies have found their place in the system, the traditionally independent judiciary has come under increased attack from both legislators in general and the executives in particular — even at the level of Australia’s highest court (see generally Patapan 2000). The revival of tensions between these institutions has called into question a range of old relationships such as the traditional role of Attorneys-General (Justice Ministers) acting as first law officers and therefore as a constitutional servant of the court, as well as government. These institutions have also prompted debates about the need for reform and transparency in areas such as the use of judges in administrative roles and the mechanisms by which the executive make judicial appointments. At time of writing, substantial public debate surrounded the need for truly independent judicial oversight of significantly expanded police powers in relation to the detection and prevention of terrorism offences, as against mechanisms by which the executive government reviewed and approved its own actions in this area.

While mutual accountability is an increasingly real strength of integrity systems, open questions remain as to how this is best institutionalised. The ‘constitutionalisation’ of a broader range of agencies is probably justified (as implied by Spigelman 2004), but not all such agencies can be constitutionalised; and different agencies are likely to need different (if any) levels of constitutional protection over time. Australian practice confirms the understanding of contemporary mutual accountability to be a dynamic and unfolding story.

Parliamentary oversight committees

A second, more specific strength in the system of mutual accountability can be more readily identified. Special-purpose parliamentary committees have taken on an increasingly important role as both a performance assessment mechanism (as discussed in chapter 9.2), and as an accountability mechanism standing at the interface between the newer ‘core’ integrity agencies, the parliament, the executive, and the public (see Smith 2005b). While the roles of these committees may be defined as much by conflict as harmony, their place in the institutional framework ensures their deliberations are public, guaranteeing some transparency in the resolution of these conflicts.

Moreover, in receiving the reports and reviewing the performance of integrity agencies, parliamentary committees play a fundamental role in helping ensure the policy and

operational coherence of the integrity system by also supporting these agencies' work, as will be seen below. As well as providing critical review of integrity agencies, parliamentary committees often also identify or support their needs for additional resources or for legislative reform, and make it considerably more difficult for issues of operational importance to the integrity system to be ignored by executive government.

While its existence alone affords a basic strength, this element of integrity system coherence also entails various opportunities. First, as reflected in *recommendation 18*, the review methodologies used by such committees need to be made more coherent. Second, as reflected in *recommendation 3*, while oversight committees' deliberations are public, there is a role for the more structured use by integrity agencies and committees alike of *direct* public consultative committees or similar mechanisms. These mechanisms can both assist in performance assessment and enhance the transparency of the oversight exercised by parliamentary committees, for example, by creating another point of debate over how the performance of agencies should be judged.

Third, there are significant gaps in the use of such committees in identifying where the integrity system lacks overall coherence and may be subject to a variety of risks or fractures. The most noticeable example is at a Commonwealth level where important special-purpose joint parliamentary committees help in routine oversight of the Australian National Audit Office, Australian Electoral Commission, Australian Crime Commission, and Australia's security services; but it is left to general-purpose committees (usually the Senate Standing Committee on Finance and Public Administration) to occasionally review the role of the Commonwealth Ombudsman. While there need not be a special-purpose committee for every relevant agency — indeed in some jurisdictions the same special-purpose committee already supervises two or three integrity agencies — it appears increasingly important that every integrity agency receive oversight and support from some such committee. These principles are reflected in *recommendation 3*.

Relations between core and distributed integrity institutions

The third area of clear strength in current integrity systems lies in the policy and operational coherence embedded in many jurisdictions' relationship between the roles of core integrity institutions and the distributed integrity functions lying with individual agencies. While the number and importance of core 'independent' regulatory and oversight agencies have increased across both public and private sector integrity systems, it is well-established throughout the theory and practice of Australian governance that bigger and better 'watchdog' agencies will never alone ensure higher levels of integrity. The assessment confirmed that the institutionalisation of integrity is dependent on positive leadership and the ability of management to set and maintain appropriate ethical standards with the participation of staff, clients and the general public. While Australian integrity systems rely, in part, on a range of agencies with extremely strong legal powers of investigation and oversight, in practice, the role of central agencies is at least as important as a supportive resource for those working in organisations to achieve coordinated outcomes 'on the ground' as agents of regulation and enforcement.

While understanding of this approach is a general strength, more can be done to maximise it in practice. As noted in the research supporting chapter 4 (Smith 2004,

2005a), some key NSW integrity agencies are credited with only recently adopting roles consistent with this approach. Moreover, as shown in chapter 10, in some jurisdictions and sectors, important opportunities remain to enhance this approach in practice, not only through the development of more comprehensive legislative frameworks (*recommendation 8*) but through making integrity, accountability and ethics a more fundamental feature of recruitment and promotion regimes (*recommendation 12*).

To achieve a more general effective balance between the roles of core and distributed institutions in all jurisdictions, some jurisdictions need to take the opportunity from others' best practice. Chapters 3-8 all contain lessons regarding the ease with which the principle of 'letting the managers manage' can be taken too far at the expense of a coordinated approach. Left to natural management instinct, agency or company heads will often choose to deal with integrity breaches in the lowest-cost, lowest-profile manner — for example, by letting a guilty officer resign without the full facts becoming known — even though this action means that systemic contributing factors to the breach are not analysed, and the individual concerned may remain an integrity risk to other organisations. Best practice now involves principles of continuous disclosure, in which, notwithstanding its primary responsibility for the ethical culture of the organisation, agency management is required to report all significant integrity issues or problems to 'core' agencies, to ensure effective decisions are made about solutions. Similarly, in some circumstances — such as whistleblower protection — the lack of clear statutory coordination in some jurisdictions has allowed doubts about the effective implementation of legislation to persist unaddressed for years. In some settings, the core-distributed relationship and its associated balance of approaches has worked in too cyclical a fashion, with strong regulation overshadowing managerial discretion in response to 'scandal' or 'crises', then largely withdrawn in order to 'let the managers manage', to be reinvented when organisational systems alone again prove insufficient.

An ongoing balance requires coordinated communication between integrity agencies and organisations in relation to individual integrity issues, systemic issues and the information needed by organisations and core agencies alike to monitor ethical climates over time. The opportunity for enabling legislation to better institutionalise constructive relationships between core institutions and organisational systems is reflected in *recommendation 9*.

11.3 Challenges and further action

Parliamentary leadership and integrity

The first of six important challenges for the coherence of integrity systems was introduced in chapter 10, concerning the patchy nature of the integrity regimes governing Australian parliaments and ministers, and the lack of independent advice, investigation and enforcement capacity. The same issues are reinforced not only as logical issues of gaps in capacity, but as weaknesses in the extent to which key elements of mutual accountability work in practice as against theory. As Figure 5a (chapter 2) emphasises, in principle the integrity of ministerial (executive) action is ensured by the executive's accountability to parliament, and the integrity of ministers and parliamentarians alike is

ensured by their accountability to ‘the people’. In practice, the ability of ‘the people’ to hold their elected officials to account simply through an election every three or four years, means this constitutional relationship is attenuated.

For this, arguably the most fundamental dimension of the integrity system to work, there must also be mechanisms to ensure that appropriate parliamentary and executive standards are set and maintained, and that alleged integrity breaches can be investigated and publicly reported upon, even when it might be in the perceived self-interest of all political parties to let the truth languish. The frequent absence of comprehensive parliamentary integrity regimes can also have a debilitating effect on other parts of the integrity system if political leaders are not prepared to subject themselves to the same or equivalent integrity processes as other public officials. These issues of coherence underline the importance of *recommendation 6*.

Parliamentary inquiries and executive accountability

The second challenge focuses less on the relationship between the public and parliamentarians as actors in Australia’s integrity systems, and more directly on the relationship based on executive accountability to parliament. The core principle of Westminster accountability is that the executive sits in parliament in order to remain accountable to it, not in order to control all parliamentary affairs (by virtue of its command of the confidence of the lower house). However, the contemporary relationship involves a problem recognised throughout Westminster systems, of *de facto* executive control of the affairs of parliament. As chapters 3-5 indicate, non-government-controlled upper houses and/or multi-party committees have provided key mechanisms for rebalancing this relationship by periodically holding the political executive to account, particularly through their ability to initiate parliamentary inquiries even when this may be unpalatable to the government of the day. Lacking a second parliamentary chamber since 1922, Queensland’s risk of integrity failures remains higher on this score, notwithstanding other reforms. Risk has also intensified at Commonwealth level since the period of the Fraser government (1975-1983) which involved a series of deliberate strategies to strengthen the position of the executive *vis-à-vis* parliament and the public service (Weller 1989; Russell 2002).

As noted in chapter 5, the advent of a government-controlled Senate in July 2005 (for the first time in over two decades) has reduced the likelihood of parliamentary inquiries to play this vital role. Principles of mutual accountability dictate that all parliamentarians should have some facility to use parliamentary powers to contribute directly to executive accountability, other than through the simple power to ask questions. Best practice would involve entrenching the availability of select parliamentary committees to play this role, as reflected in *recommendation 7 (independent parliamentary select committees)*. This recommendation proposes a mechanism for recognising the entitlement of all elected parliamentarians to initiate at least some parliamentary inquiries, while limiting the number of such inquiries that may be commenced to the proportion of electoral support that members command.

Ministers, ministerial advisors and the public service

A third challenge involves the current effectiveness of principles of mutual accountability surrounding ministers, given the increased numbers and roles of ministerial staff over the past 30 years, and increased powers of ministers (and staff) *vis-à-vis* the tenure and relative independence of senior levels of the public service. Ministerial staff are a fixed part of the accountability chain (Walter 1986; Maley 2000). However, at a federal level, this link appears to have been substantially damaged, with the ‘Children Overboard’ affair in 2001 revealing that informing staff is no longer regarded as the same as informing the minister, because ministers do not take responsibility for whether or not their staff passed on the information. The question has thus arisen whether there are now ‘staff who can act on their own behalf, who can be disowned if necessary and who are not accountable to parliament... the first steps down a path that leads to Haldeman and Ehrlichman, plausible deniability and the Nixon Whitehouse’ (Russell 2002; Weller 2002; Tiernan & Weller 2003). Two Senate committees, the Australian Public Service Commission and others have suggested the need for a discrete code of conduct for ministerial staff, but this has been opposed by government Senators (Keating 2003:94).

The failure of ministers to hold their staff responsible for advice not passed on (or take responsibility for it themselves) is now also linked with concerns that governments may be increasingly disinterested in receiving informed, frank or fearless advice from the public service and increasingly likely to use increased powers of direct appointment and dismissal over senior public servants to avoid streams of advice that may be accurate but unwelcome. While there is no simple answer to questions as to whether public service responsiveness has increased as a result of such powers, there is a problem ‘not that the public service has been politicised in a partisan sense’ but that public servants have been ‘politically inept in an advisory sense... too keen to serve, and not sufficiently sceptical and alert to warn’ (Weller 2002:68-70). Some restoration of procedures to protect senior public servants from arbitrary dismissal has been suggested (Keating 2003:95-97).

The assessment concluded that the roles of ministerial staff need to be tied back to their ministers and included in ministerial codes of conduct; and principles governing minimum due process to be followed by ministers in the event of disagreement leading to termination of senior officers was similarly an appropriate subject for the ministerial code — with the enforcement mechanism being the same risk of inquiry and exposure through a semi-independent inquiry. These issues further strengthen the case for the type of robust regime canvassed by *Recommendation 6*.

Policy and operational coordination between core integrity agencies

With an increasing number of agencies playing ‘core’ roles in integrity, a fourth set of major issues of coherence lie in policy and operational areas, rather than simply the issues of mutual accountability set out above. Each of chapters 3-5 shows a different history and approach regarding policy and operational coordination.

In Queensland (chapter 3), the modern integrity system emerged from a comprehensive reform program in which the development of many of the key institutions was linked through the principles articulated by the Fitzgerald Inquiry and developed in more detail by the Electoral & Administrative Review Commission (EARC). However, there was

fragmentation between some reforms from the outset, while others crept in at implementation. The winding-up of the EARC pursuant to its ‘sunset’ provisions left no clear institutional coordination mechanism. More recently, the challenge of better policy and operational coordination has been met by the ‘Integrity Committee’ comprising the Ombudsman, Auditor-General, Chair of the Crime & Misconduct Commission, Public Service Commissioner, and parliamentary Integrity Commissioner.

As an ‘informal’ forum (Demack 2003), the committee’s existence is not guaranteed; its roles and responsibilities are flexible; and it only occasionally comes to public notice (e.g. Parnell 2004). Nevertheless, in the absence of any other significant mechanism, it is crucial to coordination of some of the activities of key bodies. In June 2005, in response to the draft report of the NISA project, key Western Australian integrity agencies formed a similar ‘Integrity Coordinating Group’ (ICG), comprising the Ombudsman, Corruption and Crime Commission, Auditor-General and Public Sector Standards Commissioner. While also informal in its constitution, the WA ICG has adopted more formal terms of reference based on *recommendation 2* of this report, is supported by a interagency working party, has publicised its own existence across the public sector, and has adopted a formal work program based around key issues of operational coordination.

In NSW (chapter 4), the development of core integrity institutions has been the most *ad hoc*, with successive assessments of the shortcomings of previous institutions leading to new ones, arguably without some of the underlying systemic difficulties facing all such agencies being realised. The result has been a proliferation of bodies with clear and distinct problems of coordination, including jurisdictional gaps, ‘buck-passing’ between organisations, increased ‘gaming’ or ‘forum-shopping’ by complainants, confusion in the eyes of citizens and end-users, and alienation of line agencies having to contend with multiple requirements and investigations. Also, as shown in chapter 10, a proliferation of integrity organisations does not necessarily guarantee higher ‘capacity’ overall.

Nevertheless, the challenges of coherence demonstrated in NSW have also now provoked a very high level of informal cooperation and coordination between key agencies, if only from sheer necessity. While largely dependent on personal networks, a level of operational coherence has been achieved which appears to largely meet the needs of most agencies. The largest apparent challenge is the lack of formal or ‘whole of government’ support for a coherent system. One possible indicator of this has already been noted in chapter 10, given NSW’s conspicuous lack of a ‘positive’ public sector ethics framework compared with all other jurisdictions. However, it was clearly demonstrated in 2001 by the NSW Treasury’s blocking of the sophisticated proposal for a ‘one stop shop’ system — *Complaints NSW* — for receipt and referral of all public complaints and enquiries about NSW public officials, government agencies, health and legal professionals and community services. As the NSW Ombudsman reported at the time:

It seems incomprehensible that such a project, supported by so many agencies, was stopped by the refusal to extend an authorisation limit to spend funds that were available (NSW Ombudsman 2002:23; NSW Parliament 2003:30).

The blocking of *Complaints NSW* triggered other coordination reforms, including a new Part 6 of the *Ombudsman Act* (NSW) allowing agencies such as the Ombudsman, Health Care Complaints Commission, Legal Services Commissioner, Anti-Discrimination Board

and Privacy Commissioner to more easily refer complaints and share information. Nevertheless, the NSW public integrity system's story is more one of coordination *despite* any structural or institutional support, than because of it.

The Commonwealth public integrity system (chapter 5), which governs Australia's fourth-largest public sector in employee terms, has had a different history again. Its core integrity investigation agencies have not multiplied in the same way as Queensland or NSW, at least until now. However as discussed in chapters 5 and 10, Commonwealth decisions regarding whether or how to expand the integrity system through creation of a new anti-corruption body have thrown up new challenges about policy and operational coherence, not necessarily all being comprehensively addressed (Brown 2005). Issues such as the limited reach of the *Public Service Act*, APS Values, and Code of Conduct regimes, also suggest that a level of coherence which may have existed in previous eras of Commonwealth public management is often still assumed to exist, when in fact the nature of 1980s-1990s restructuring has made the integrity system quite fragmented. Financial accountability and fraud control regimes have played a stronger role in making the system operationally coherent than in other jurisdictions, but these are not necessarily integrated with other measures, and suffer some of their own coherence questions. While the effects of this fragmentation are difficult to directly gauge, and considerable institutional effort is still going into integrity-related strategies, the Commonwealth's integrity systems are, arguably, the least coherent in Australia in policy and operational terms.

At the same time, one of the stronger elements of the Commonwealth integrity system in recent history also provides the nation's strongest institutional mechanism of policy and operational coherence, even if only taking in part of the system. In the 1980s-1990s, many key state integrity reforms *apart from* the introduction of new stand-alone integrity agencies drew on the 'new administrative law' reforms previously initiated by the Commonwealth in the 1970s-1980s, such as codifying and liberalising judicial review of administrative action, creating general-purpose merits review tribunals, and freedom of information (FoI). While state governments may have more recently instituted other temporary or informal integrity coordination mechanisms, this alternative and earlier Commonwealth focus included a statutory policy coordination mechanism in the form of the Administrative Review Council, established by Part V of the *Administrative Appeals Tribunal Act 1975* (Cth). The Council includes the President of the Administrative Appeals Tribunal (typically also a Judge of the Federal Court), Ombudsman, President of the Australian Law Reform Commission, and up to 11 other members with extensive practice or knowledge in industry, commerce, public administration, industrial relations or administrative law. Typically these include one or more senior agency heads. While the focus of the Council is on legal, quasi-legal and rights-based mechanisms of administrative review, in practice, it is the nearest thing to a Commonwealth integrity coordination mechanism, with a considerably stronger statutory basis and existence than any state mechanism. Only one state has followed this precedent, albeit with a less comprehensive membership and even clearer legal focus — the Tasmanian Administrative Review Advisory Council, August 2004 (see www.tarac.tas.gov.au).

Taking these lessons together, a variety of mechanisms have been developed for achieving policy and operational coherence across, or at least in major parts of, public integrity systems, confirming the significance of the coordination challenge. While

informal committees and networks have natural advantages, the importance of integrity and of integrity system coherence are such that policy and operational coordination should not be left to chance, changing enthusiasms of individual agencies, or the personal rapport that may or may not exist between individual agency heads. Among the most important policy issues requiring coordination in principle and practice are the research, performance measurement, capacity-building and capacity-sharing needs identified in chapters 9 and 10, as well as the capacity to monitor longer-term integrity trends and ensure coherence in development of new integrity-related laws and institutions. Among the most important operational issues are the public's interest in more seamless and user-friendly complaint services, outreach and community education, shared information, research and intelligence, and better coordination of integrity policies at the 'coalface' of public sector management by better integrating and simplifying the diverse accountabilities imposed on individual public servants by the integrity regime.

Together, the experiences point to the need for governments to build and consolidate on the coherence of their integrity systems by establishing a statutory coordination body akin to the Commonwealth's Administrative Review Council, but with the broadened focus and membership of a 'governance' review council. By taking this opportunity, governments can bypass ongoing debate over whether there should be greater consolidation or pluralist dispersion of accountability mechanisms, both of which are valid options (Brennan 1999). The establishment of statutory 'governance review councils' would permit further expansion in specialist integrity agencies if required, even in jurisdictions which already possess multiple agencies, while still containing and compensating for the practical disadvantages of fragmentation. All these considerations are presented in the model proposed by *recommendation 2*.

Private sector regulatory coordination

As discussed in chapter 7, the business integrity systems component of the assessment identified the policy and operational coordination of core business integrity agencies to be an important issue for further research, commensurate with some of the public sector issues earlier in this chapter. However, time and resources did not permit extensive inquiry. Generally, the project confirmed the value of a consistent and integrated network analysis of institutional coherence in business integrity systems on a comparable scale, as reflected in *Recommendation 20*.

Independent oversight for civil society organisations

Chapters 8 and 10 identify significant issues of coherence in relation to civil society integrity regimes which similarly could not be studied. The primary needs appear to be not only identification of the relevant core agencies and assessment of their capacity and coordination, but the fundamental principle that civil society organisations — like public sector or business ones — may sometimes need to rely on independent oversight if public trust in their integrity is to be maintained or restored. However, few mechanisms exist for providing such oversight. The need for closer study of these issues is reflected in *Recommendation 21(civil society integrity systems)*.

Table 13. Recommendations - National Integrity Systems Assessment (Australia) 2004

Recommendation	Relevant Assessment Themes			Report pages	Sectors/Jurisdictions to Which This Recommendation Applies				
	Conseq ^s	Capacity	Coherence		Government			Business	Civil Society
					Common -wealth	State/ Territory	Local		
Integrity from the top: core institutions									
1. Commonwealth integrity & anti-corruption commission		✓	✓	58, 66, 68	✓				
2. Governance review councils	✓	✓	✓	52, 61, 70, 87, 89	✓	✓	✓	✓	✓
3. Standing parliamentary & public oversight mechanisms	✓	✓	✓	56, 83	✓	✓			
4. Jurisdiction over corporatised, contracted & grant-funded services		✓	✓	69	✓	✓	✓	✓	✓
5. Access to administrative justice		✓	✓	75	✓	✓	✓		
6. Enforcement of parliamentary and ministerial standards	✓	✓	✓	73, 85	✓	✓			
7. Independent parliamentary select committees		✓	✓	85	✓	✓			
Walking the talk: distributed integrity institutions									
8. Statutory frameworks for organisational codes of conduct	✓	✓	✓	64, 84		✓ (NSW)		✓	✓
9. Relations between organisations and core integrity agencies	✓	✓	✓	70, 84	✓	✓	✓	✓	✓

10. Effective disclosure of interests & influences		✓	✓	75, 76	✓	✓	✓	✓	✓
11. Whistleblower protection and management		✓	✓	74	✓	✓	✓	✓	✓
12. Minimum integrity education and training standards		✓		70, 84	✓	✓	✓	✓	✓
13. Professional development for integrity practitioners		✓	✓	69	✓	✓	✓	✓	✓
14. Freedom of Information		✓	✓	76	✓	✓	✓		
15. Regional integrity resource-sharing and capacity-building		✓	✓	71	✓	✓	✓		✓
Investing in integrity: education, evaluation and research									
16. Civic awareness and community education		✓	✓	74	✓	✓	✓	✓	✓
17. Public review of integrity resourcing and performance measurement	✓	✓	✓	52, 58, 69	✓	✓	✓		
18. Parliamentary oversight review methodologies	✓	✓	✓	52, 56, 83	✓	✓			
19. Evidence-based measures of organisational culture & public trust	✓		✓	52, 54, 60, 61, 64	✓	✓	✓		
20. Core integrity institutions in the business sector	✓	✓	✓	64, 77, 78, 89				✓	
21. Civil society integrity systems	✓	✓	✓	89					✓

12. Recommendations

The 21 recommendations introduced in chapters 9-11 are intended for all Australian governments, the business community, the general public and civil society groups concerned to ensure continual improvement in Australia's integrity systems. The recommendations are not exhaustive. Rather than detailing every possible reform, they present a mixture of priorities and overarching principles for development of effective integrity systems as a whole. They reflect conclusions typically applicable throughout Australia, but in some cases relate more strongly to a particular identified jurisdiction.

Table 13 summarises the areas of the recommendations, their relationship with the assessment themes above, and the sectors/jurisdictions to which they most relate. As explained in chapter 1, the recommendations form three groups:

Recommendations 1-7 relate to core integrity institutions, i.e. bodies established wholly or largely to ensure proper discharge of power by organisations and their officeholders. As outlined in the preceding chapters, these relate primarily to the public sector.

Recommendations 8-15 relate to distributed integrity institutions, i.e. organisational strategies devoted to setting and maintaining integrity standards within the organisations through which most power is exercised. Recommendations 8-13 apply across all sectors, while recommendations 14 and 15 raise public sector issues.

Recommendations 16-21 relate to education, evaluation and research. Recommendations 16-19 reflect the need for further investment in community and official knowledge about integrity systems, and the last two emphasise the need for further research into capacity and coherence issues in the non-government society sectors.

12.1 Integrity from the top: core institutions

Recommendation 1. Commonwealth integrity & anti-corruption commission

That the Commonwealth Government's proposed new independent statutory authority be tasked as a comprehensive lead agency for investigation and prevention of official corruption, criminal activity and serious misconduct involving Commonwealth officials, based on the following principles:

1. *That the agency's jurisdiction not be limited to select agencies but include all Commonwealth officials from secretaries or equivalent down, including employees of Commonwealth-owned corporations, and any other persons involved or implicated in wrongdoing affecting the integrity of Commonwealth operations;*
2. *That the agency be made (i) an ex officio member of the Commonwealth Governance Review Council or other integrity coordination body created pursuant to recommendation 2, or failing that the existing Administrative Review Council, and (ii) subject to parliamentary oversight by a suitable parliamentary standing committee, preferably the same committee responsible for overseeing other core Commonwealth integrity agencies (see recommendation 3);*
3. *That the jurisdiction of the agency also include Commonwealth parliamentarians and ministers provided that, if recommendation 6 is taken up and an effective parliamentary and ministerial integrity system established, the agency's jurisdiction is only triggered by a request of the*

Parliamentary Integrity Commissioner, presiding officer of either House, or where in the opinion of the agency head an important matter of public interest would otherwise go uninvestigated;

4. *That the agency be charged with a statutory responsibility to promote integrity and accountability as well as investigate wrongdoing, and be given a commensurate positive title rather than one defined by crime, misconduct or corruption;*
5. *That the agency be empowered and required to:*
 - (i) *undertake inquiries of its own motion as well as receive and investigate complaints from whatever source;*
 - (ii) *exercise concurrent jurisdiction and participate in a statutorily-based investigations clearing house with other federal investigative agencies including the Commonwealth Ombudsman and Australian Federal Police; and*
 - (iii) *share all relevant information with other Commonwealth and state integrity institutions, and conduct cooperative investigations with them including delegating its own investigatory powers, when in either its or their opinion their own jurisdiction is also involved;*
6. *That the Commonwealth review its operational definitions of corruption to include internal fraud and any other offences or types of serious misconduct with the potential to seriously affect public integrity, and revise its reporting, monitoring and prevention policies accordingly.*



Capacity



Coherence



Consequences

See pages 58 66, 68.

Recommendation 2. Governance review councils

That each Australian government establish, by constitution or statute, a governance review council or similarly titled body to:

- (i) *Promote policy coherence and operational coordination in the ongoing work of the jurisdiction's main core integrity institutions;*
- (ii) *Coordinate research, evaluation and monitoring of the implementation of ethics, accountability and administrative review legislation, including the balance between different aspects of integrity systems (e.g. education, prevention and enforcement);*
- (iii) *Report to the public on the 'state of integrity' in the jurisdiction;*
- (iv) *Ensure operational cooperation and consistency in public awareness, outreach, complaint-handling, workplace education, prevention, advice and investigation activities, including greater sharing of information between integrity bodies;*
- (v) *Foster cooperation between public sector integrity bodies, sector-specific or industry-specific integrity bodies and like integrity bodies in the private sector (e.g. industry ombudsman's offices);*
- (vi) *Provide ongoing advice to government and the public on institutional and law reforms needed to maintain and develop the jurisdiction's integrity regime; and*
- (vii) *Sponsor comparative research, evaluation and policy discussion regarding integrity mechanisms in other jurisdictions, nationally and internationally.*

The council should have a permanent secretariat to hold occasional public reviews and compile complex reports, and have a membership including the heads of all the jurisdiction's core integrity institutions (Ombudsman, Auditor-General, anti-corruption commissioner, public service head, parliamentary standards commissioner, etc), expert and community representation, and an independent chair.

Capacity Coherence Consequences

See pages 52, 61, 70, 87, 89.

Recommendation 3. Standing parliamentary & public oversight mechanisms

That all Australian parliaments establish (or where necessary, rationalise) a system of independent public oversight for all of their core integrity institutions, consisting of:

- (i) a standing multi-party parliamentary committee, supported by staff; and*
- (ii) either a standing public advisory committee, or failing that, an extensive program of public participation when conducting annual or three-yearly parliamentary reviews.*

Capacity Coherence Consequences

See pages 56, 83.

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

That all governments review the traditional legislative methods for defining the jurisdictions of integrity institutions, away from characterisations of decision-makers or service-providers as 'public', 'private', 'commercial' or 'corporatised' and towards increased discretion for integrity bodies to investigate and/or hear any relevant matter involving any decisions or services flowing from an allocation of public funds.

Capacity Coherence Consequences

See page 69.

Recommendation 5. Access to administrative justice

That all governments join in a national review of the current availability of substantive administrative law remedies to citizens aggrieved by official decisions, recognising:

- (i) Partial, and often complete lack of protection for basic civil and political rights in Australia's Constitutions and other fundamental laws, and the extent to which this continues to constrain the operation of administrative law;*
- (ii) Continuing increases in the cost of legal services and continuing comparative lack of legal aid support for administrative as against criminal and family matters;*
- (iii) Continued lack of availability of hearing-based merits review systems in some jurisdictions, either with comprehensive jurisdiction or at all;*
- (iv) The continuing, but unmonitored conferral of administrative merits review functions on some lower state courts as a substitute to establishment of a merits review tribunal, with little evaluation of the value or equity of this approach;*

- (v) *Current trends to a less equitable ‘two-tiered’ system of administrative review in which the only truly no-cost review mechanism (ombudsman) is only able to offer remedies based on negotiation and recommendation, and determinative remedies are available only to those in a position to pay; and*
- (vi) *Widespread community concern regarding the need for effective legal protection of citizens against excessive use of official power by governments or individual officials in the name of border control and anti-terrorism.*

That this review be overseen by the coordination body in recommendation 2, or otherwise by existing administrative review and/or law reform bodies or the national standing committee of Attorneys-General, with extensive public participation.



Capacity



Coherence



Consequences

See page 75.

Recommendation 6. Enforcement of parliamentary and ministerial standards

That all Australian parliaments establish, by constitution or statute, a comprehensive regime for the articulation and enforcement of parliamentary and ministerial standards including:

1. *A statutory requirement for a code of conduct for each house of parliament, for presiding officers of each house, and for ministers (including ministerial staff), dealing with certain minimum subjects, prepared through a public process, and formally adopted and published;*
2. *A requirement for the appointment of the presiding officer by way of a two-thirds majority of the house, by secret ballot;*
3. *A multi-party ethics and privileges committee in each house responsible for:*
 - (i) *preparing and updating the codes for that house and its presiding officers;*
 - (ii) *preparing and updating the ministerial code, in the case of the lower house committee in consultation with the upper house committee and the government;*
 - (iii) *making recommendations to parliament and government regarding appointment of the parliamentary integrity advisor and standards commissioner; and*
 - (iv) *receiving and reviewing reports of the standards commissioner.*
4. *A parliamentary integrity advisor appointed by the government in consultation with the ethics and privileges committees of both houses, with the functions of (a) general guidance to members, ministers and their staff on integrity matters, (b) maintenance and publication of material interest registers of members, ministers and staff (see also recommendation 9), and (c) confidential written advice on conflicts of interests, probity of allowances and entitlements and like matters; and*
5. *A parliamentary standards commissioner, appointed:*
 - (i) *by the government on the joint recommendation of the ethics and privileges committees and joint resolution of both houses;*
 - (ii) *for a minimum term of 5 years, at a salary fixed by an independent remuneration tribunal, removable only by a two-thirds majority of a joint sitting of parliament on the basis of proven misbehaviour or incapacity;*
 - (iii) *with power to: receive complaints from any person, or initiate any investigation of their own motion, regarding possible breach of a parliamentary or ministerial code of conduct or equivalent matter; make such inquiries as they see fit, including the power to enter*

premises and compel evidence; refer matters to other relevant official bodies for joint or independent investigation; make reports of their investigations in the first instance to the ethics and privileges committee and/or the prime minister, and where in the public interest, to the parliament and the public; and, in their reports, reach such opinions as to facts and make such recommendations as they see fit.

Capacity Coherence Consequences

See pages 73, 85.

Recommendation 7. Independent parliamentary select committees

That Australian parliaments adopt a new procedure for the initiation of inquiries by select parliamentary committee, and appointment of committee chairs, aimed at encouraging bipartisanship in the conduct of parliamentary business and reducing the control of the Executive over such inquiries. The new base procedures should be:

- (i) *for initiating an inquiry by way of select parliamentary committee, a system based on each member holding say five (5) votes that may be cast in favour of establishment of an inquiry in any one calendar year, with a fixed threshold of say twenty-five (25) such votes needing to be cast to establish an inquiry; and*
- (ii) *for appointment of committee chairs, an election requiring a two-thirds majority of the committee (consistently with recommendation 5 above).*

Capacity Coherence Consequences

See pages 85.

12.2 Walking the talk: distributed integrity institutions

Recommendation 8. Statutory frameworks for organisational codes of conduct

That there be a legislated basis for all integrity systems for any sector in any jurisdiction, applying to all officials or officeholders irrespective of whether they are appointed or elected, including a statutory framework by which every organisation is required to develop, monitor and implement an enforceable code of conduct relevant to its own mission and circumstances, based on consultation with staff and clients/community, reflecting statutorily-defined minimum contents, community-wide values, and mechanisms showing how rewards, incentives and sanctions are linked to standards of behaviour.



Capacity



Coherence



Consequences

See pages 64, 84.

Recommendation 9. Relationships between organisations and core integrity agencies

That the statutory frameworks for each sector/jurisdiction's integrity system be reviewed to ensure more explicit key principles reflecting the mutually supporting functions of core and distributed integrity institutions, including requirements for:

1. *Inclusion of organisational integrity capacity-building as a statutory object of core integrity institutions;*
2. *Core integrity institutions to consult with organisations and other integrity agencies in the preparation of policies, guidelines and capacity-building activities, with a particular focus on achieving coherence in their application in daily practice;*
3. *All managers to promptly inform senior management, and senior management to promptly inform relevant core integrity agencies, of all cases in which a reasonable suspicion is formed that corruption, official misconduct, organisational impropriety, serious maladministration or a similar integrity lapse has occurred; and*
4. *At least once every five years, all organisations to: evaluate the take-up of their code of conduct, including a formal survey of not less than 10 per cent of employees; in so doing, take account of guidelines for such evaluation published by core integrity agencies; make available the results of the evaluation (including anonymised raw data) to core agencies; and review and update their code of conduct in light of the evaluation.*



Capacity



Coherence



Consequences

See pages 70, 84.

Recommendation 10. Effective disclosure of interests & influences

That all regimes for the regulation and disclosure of material interests reasonably capable of being perceived as influencing the official or corporate duties of those in positions of trust, be reviewed to comply with new standards of minimum best practice, based on:

1. *Continuous disclosure by officeholders of material interests (including political parties' gifts, contributions and electoral expenses) within statutory timeframes appropriate to the level of the*

interest, but in all cases within the shortest practical timeframe of the interest changing or arising;

2. *Immediate publication and continual updating of interest disclosures by the registrars/regulators of such disclosure obligations, including the establishment of on-line disclosure registers and active advertisement of mechanisms for accessing such information to those entitled to know; and*
3. *Statutory prohibitions, supported by criminal sanctions, against officeholders acquiring any new personal or other material interest (including direct or indirect acceptance of gifts, contributions or donations to political parties) other than in circumstances where those entitled to know have reasonable opportunity to become aware of the interest prior to relevant decisions (such as voting in an election).*



Capacity



Coherence



Consequences

See pages 75, 76.

Recommendation 11. Whistleblower protection and management

That the legislated basis for all integrity systems for any sector in any jurisdiction, include a scheme to facilitate ‘whistleblowing’ by current and former employees about integrity concerns that is at least consistent with Australian Standard 8004-2003, plus the following principles:

- (i) *A statutory requirement, either directly or through organisational codes of conduct, for employees to report suspected corruption, fraud, defective administration or other integrity lapses to a person able to effect action;*
- (ii) *The criminalisation of reprisals against public interest whistleblowers or other internal integrity witnesses wherever this role is a factor of any significance in detrimental action taken against them (whether official or unauthorised);*
- (iii) *Provision of statutory defences to any legal action for breach of confidence, official secrets or defamation where the whistle is blown to an authority empowered to take action; or to the media, in circumstances where this is objectively reasonable;*
- (iv) *Training for managers in the avoidance, detection, investigation and prosecution of reprisal actions (whether giving rise to criminal, disciplinary or civil liability);*
- (v) *Statutory requirements for all organisations to develop and promulgate internal disclosure procedures (IDPs) (including, in the private and civil society sectors, all organisations over an appropriate size); and*
- (vi) *A statutory whistleblowing coordination role for a core integrity agency in each of sector, to which all significant employee disclosures must be notified, and whose duties include (a) guidance on effective investigation, resolution and management and (b) a discretion to directly and fully investigate alleged reprisals.*



Capacity



Coherence



Consequences

See pages 74.

Recommendation 12. Minimum integrity education and training standards

That the corporate governance regimes for public sector agencies, publicly-listed companies, and private companies and civil society organisations above a defined employee or financial threshold, be reviewed to require up-to-date training in integrity, accountability and ethics institutionalisation systems through an accredited independent tertiary institution, as a prerequisite for the appointment of all senior managers (including directors, public officers and statutory officers).

Capacity Coherence Consequences

See pages 70, 84.

Recommendation 13. Professional development for integrity practitioners

That Australian higher education institutions develop a nationally-relevant program of advanced professional training (including research-based training) in integrity systems, policy, inquiry and law reform, suitable for both government and business sectors and making up the core of a recognised postgraduate qualification in public administration, management, accounting and/or law.

Capacity Coherence Consequences

See page 69.

Recommendation 14. Freedom of information

That all Australian governments revise their Freedom of Information laws to better respect the general principle of a public ‘right to know’, by establishing:

- (i) A clear principle that citizens are entitled to free and immediate access to such government records as they may request, without the need for a formal application, other than in circumstances in which it can be demonstrated that release would specifically damage or compromise someone’s rights or legitimate interests (other than public officials or agencies) or the public interest (other than as defined simply by the self-interest of public officials or agencies), or pose an unacceptable risk of such damage;*
- (ii) A reversed onus of proof so that where a public agency requires an applicant to submit a formal application for records due to its assessment of actual or unacceptable risk of damage, and then determines to reject that application for any reason other than privacy or personal (but not commercial) confidentiality, the agency must first make its own successful application for non-release of the records to the Information Commissioner, Ombudsman or other independent review agency — or release the records.*

Capacity Coherence Consequences

See page 76.

Recommendation 15. Regional integrity resource-sharing and capacity-building

That Commonwealth and state governments fund a comprehensive review by Australian local government of the most effective framework for building integrity system capacity at the local and

regional levels of government, recognising the historic under-resourcing of local government, the growing responsibilities of local government in the Australian federal system, and the increasing complexity of regional-level public institutions.



Capacity



Coherence



Consequences

See page 71.

12.3 Investing in integrity: education, evaluation and research

Recommendation 16. Civic education and community awareness

That Australian governments significantly expand programs for the development of civic education (both school-based and adult) to include a stronger direct focus on the theory and practice of the nation's integrity systems, with a focus on the nature of ethical decision-making, and awareness of public rights to complain, to access official information, and to independent review of official decisions; and that they directly involve public interest groups in the design of this expansion.



Capacity



Coherence



Consequences

See page 74.

Recommendation 17. Public review of integrity resourcing and performance measurement

That Australian governments collaborate in a national review of the optimum resourcing levels and arrangements for core and distributed integrity institutions, including:

- 1. Actual and preferred standards for resourcing of core public integrity institutions as a proportion of sector staffing and expenditure (taking into account levels of resources devoted to distributed integrity systems, and identifying where additional distributed capacity does or does not offset weakness in core capacity);*
- 2. More consistent and transparent budget formulae for determining the appropriate levels for recurrent or new funds for core agencies;*
- 3. More appropriate and consistent measures of the annual activities and efficiencies of core integrity agencies, along with methods for validating such measures;*
- 4. More appropriate and consistent classifications of the government statistics needed to provide baseline information on integrity agency core business; and*
- 5. Benchmarking of the resources spent on performance evaluation by or for integrity institutions, against performance evaluation in other public policy areas.*



Capacity



Coherence



Consequences

See pages 52, 58, 69.

Recommendation 18. Parliamentary oversight review methodologies

That Australian parliaments commission a joint comparative study of the methods used by standing parliamentary and public advisory committees in the oversighting of core integrity institutions, with a view to identifying:

1. *The range of information used by standing committees as indicators of the qualitative performance of integrity systems;*
2. *Current best practice in the methods used by parliamentary standing committees to monitor the effectiveness of integrity bodies;*
3. *The resource needs of effective parliamentary oversight of integrity bodies; and*
4. *Minimum and optimum best practice in the use of direct public consultation and participation in the evaluation and oversighting of integrity agency effectiveness.*

**Capacity****Coherence****Consequences**

See pages 52, 56, 83.

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

That Australian governments provide additional funding to their core public integrity agencies to collaborate in a joint long-term research program into the optimum use of social science and other evidence-based research for evaluation of integrity system performance, including:

1. *Extension and consolidation of existing best practice in ‘state of the service’ and ‘profiling the public sector’ research by Commonwealth and state agencies;*
2. *Establishment of routine methodologies for workplace-based research by individual agencies, consistent with an ongoing evaluation plan coordinated by core agencies (see also recommendation 9);*
3. *More routine, consistent and independently validated research into public awareness and public experience of core integrity institutions in all jurisdictions; and*
4. *Longer-term research into measurement of public trust in institutions as a barometer on integrity system health and performance.*

**Capacity****Coherence****Consequences**

See pages 52, 54, 60, 61, 64.

Recommendation 20. Core integrity institutions in the business sector

That a supplementary integrity system assessment be undertaken focusing on the consequences, capacity and coherence of core integrity institutions responsible for Australia’s business sector — including their relationships with the distributed business integrity systems already studied — to more accurately gauge the health of Australia’s business integrity systems including opportunities for enhanced best practice and their role in the nation’s integrity systems as a whole.

**Capacity****Coherence****Consequences**

See pages 64, 77, 78, 89.

Recommendation 21. Civil society integrity systems

That a supplementary integrity system assessment be undertaken focusing on the core and distributed integrity systems in Australia's civil society sector, recognising overlaps with but also gaps between integrity regimes governing the government and business sectors, in order to more accurately gauge their overall health including opportunities for enhanced best practice and their role in the nation's integrity systems as a whole.

**Capacity****Coherence****Consequences**

See page 89.

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**Institute for Ethics, Governance and Law
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Key Centre for Ethics, Law, Justice and Governance

N.I.S.A.

National Integrity Systems Assessment: An Overview

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What is a ‘National Integrity System’?

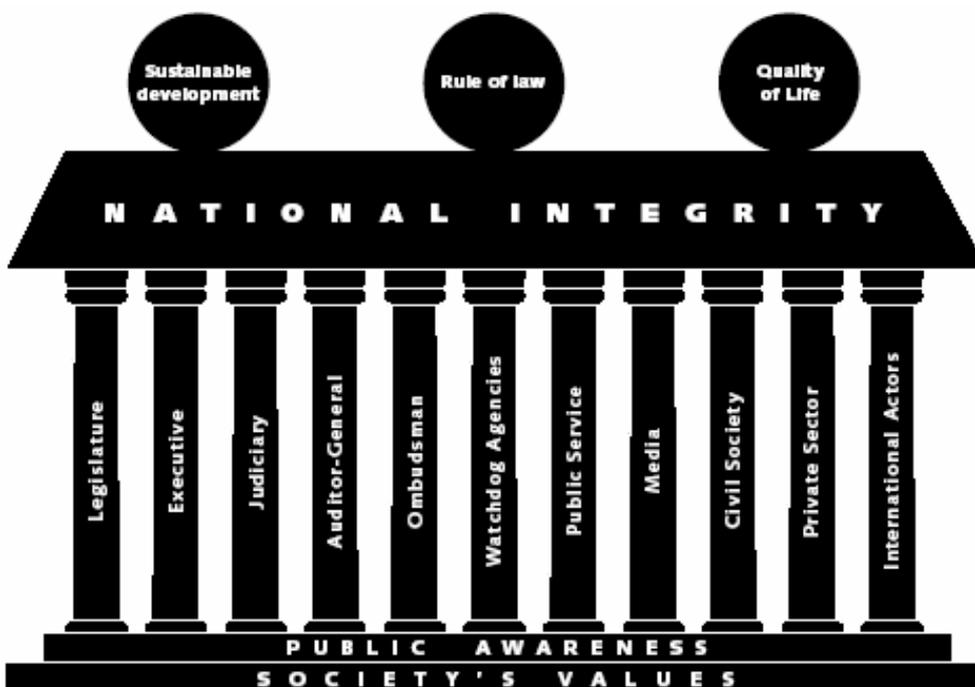
A National Integrity System (NIS) is the sum total of institutions, processes, people and attitudes working to increase the likelihood that official power is exercised with integrity in any given society.

In the modern globalising world, it is increasingly recognised that official corruption is not just a problem of individual ‘bad apples’ in government or business, but a systemic problem requiring systemic solutions. Prior to the 1990s, a common response was the creation of a single, very powerful, anti-corruption agency along the lines of the Hong Kong Independent Commission Against Corruption (ICAC). However, this model was criticised for placing too much reliance on a dangerously powerful single institution. The approach to reform taken in Queensland and Western Australia (two Australian states plagued by corruption) reflected a new approach. The answer to corruption does not lie in a single institution, let alone a single law, but rather in the institutionalisation of integrity through a number of agencies, laws, practices and ethical codes.

This approach has been given various names including an ‘ethics regime’ (Sampford 1993) and ‘ethics infrastructure’ (OECD from 1998) but the term with the widest currency is ‘national integrity system’ (Pope 1996, 2000).

There are several ways of representing a National Integrity System. The best known is of a Greek temple in which national integrity is supported by a number of institutional pillars based on society’s values and public awareness and which support, in turn, the rule of law, the quality of citizens’ life and sustainable development.

Figure 1. NIS Visual Metaphor 1: Greek Temple (Pope 2000)



The Greek temple is a powerful and well known visual metaphor. However, it has a number of short-comings:

- a. Temples are built to a specified design (generally of a single architect) and are built over a relatively limited time frame, whereas integrity systems tend to grow over time with institutions created by different ‘builders’.
- b. The pillars have to be of equal height whereas integrity institutions are of different strengths and sizes (which would mean that the lintel of ‘national integrity’ could very rarely be horizontal)
- c. Pillars can be rigid and strong, whereas integrity institutions are often relatively weak and flexible. The strength of an integrity systems is based on something that is not part of the temple image — the ‘cross-bracing’ that gives the mutual support that the institutions provide each other.

There is no reason for the temple metaphor to be abandoned, since all metaphors convey a part of the phenomena which they seek to represent. Moreover, the Greek temple was, in some respects, a particularly suitable way of representing the post-Fitzgerald reforms in Queensland (Australia) which partly inspired the concept. However, another metaphor is needed to augment it. Sampford has suggested the metaphor of a ‘bird’s nest’ — built up over time from the material that is available and in which the components are individually weak but, in combination, are very effective in holding up something rather fragile (eggs in real birds’ nests and ‘integrity’ in the metaphorical nest).

If a few twigs in a bird’s nest are broken or removed, the nest may have gaps and weaknesses but the egg (public integrity) remains fairly secure. It is only when a critical mass of twigs fail that the whole nest is in danger of collapse and the egg of being broken (at which point the strength of some of the remaining twigs counts for little). This critical point may only be obvious after the collapse has occurred — after which reconstruction is difficult. Bird’s nests, like integrity systems, need frequent tinkering and strengthening with new material being added from that which is available.

The diversity of the world’s birds and their nests provides a convenient reminder that there is no one ideal, let alone transportable, design for an integrity system. In different systems, different institutions perform similar functions. Introducing a ‘pillar’ from another system may do little good because it does not link with existing integrity institutions and may even do harm if it damages existing relationships. Institutional diversity is almost as vital a part of the human condition as biological diversity. Birds typically make their nests from material to hand, rather than flying it in from far away. The materials may include twigs or larger objects that suit the purpose or cover a gap. If a new nest is constructed in a new place, it does not matter that the material is different, or even that it takes a different size or shape, provided that it performs its vital function. Indeed, the nest will not succeed if its design is not suited to its local environment and is built into the tree in which it must sit, rather than of a design to suit trees growing on distant shores.

Every country and jurisdictions already has a national integrity system of some description in place, whatever its challenges. Even if it is not effective in promoting and supporting public integrity, it will contain some institutions that could become vital

elements in an effective integrity system. Institutions that play no part in the integrity system in one country may play a prominent role in others (e.g. religious institutions do not appear in most descriptions of western integrity systems but the Catholic Church played a critical role in the emergence of the Polish integrity system and faith based NGOs may be an important part of an emerging Indonesian system).

In an effective integrity system, the relationships between the various elements of the system will be rich and varied. Relationships will be those based on powers and responsibilities set out in the constitution and other laws, on mutual involvement in each others knowledge gathering or policy formation, and on support for each other's operational effectiveness. Some relationships will be supportive, some procedural and some will involve checks and balances (although these should not be seen as limiting and negative but as part of the way that the integrity system keeps its elements to their mission and prevents them from abusing their power for other purposes).

Figure 2. Elements of European Union Assessments
(from Brown et al 2004/2005)

Assessment model/approach

National Integrity System (TI)	OECD Anti-Corruption Mechanisms	OECD Ethics Infrastructure	Public Integrity Index (Centre for Public Integrity)	Governance Matters (World Bank)
Pope 1996, 2000	OECD 1996	OECD 1999,2000	Camerer 2004	Kaufman 2003

Key elements to be assessed

Legislature	Oversight by legislature	Political will	Electoral & political processes	Political stability
Executive		Effective legal framework	Branches of government	Rule of law
Judiciary	Specialised bodies to prosecute corruption			
Auditor-General	Supreme financial audit authority	Ethics coordinating body	Administration and Civil Service	Regulatory quality
Ombudsman	Ombudsman			
Watchdog Agencies	Anti-corruption regulation	Workable codes of conduct	Private Sector	International Actors
	Corruption investigation bodies			
Public Service	Human resource mgt procedures	Professional socialisation mechanisms	Civil Society, Public Information and Media	Voice & accountability
	Financial mgt controls			
	Organisational mgt controls	Professional socialisation mechanisms	Civil Society, Public Information and Media	Voice & accountability
	Guidance & training for public officials			
Media	Transparency mechanisms	Active civil society	Civil Society, Public Information and Media	Voice & accountability
Civil Society				
Private Sector	Transparency mechanisms	Active civil society	Civil Society, Public Information and Media	Voice & accountability
International Actors				

Assessing National Integrity Systems

Transparency International chapters and allied researchers have since conducted preliminary studies of the National Integrity Systems of a large number of countries. These NIS studies have been similar to a range of other international governance assessments, focusing on the existence or absence of many of the different institutions that often have a direct role in the fight against corruption (see Figure2).

Conceptual and Theoretical Foundations

1. Integrity, corruption, accountability are conceptually linked

TI has defined corruption as the ‘abuse of public power for personal and political ends’. By contrast, integrity is ‘the use of public power for officially endorsed and publicly justified purposes’. The latter definition is primary because you cannot know what is an abuse if you do not know what the correct ‘use’ is. The form of official endorsement will vary from system to system but, in a democracy, the officially endorsed uses of public power are those set by the elected government and legislature. Indeed, democratic competition is about differing views about how public power should be used for the benefit of citizens. Officials are accountable if they are required to demonstrate that they have used their power in officially approved ways.

This kind of institutional integrity is analogous to individual integrity. An individual has integrity if they are true to their principles and do what they say they will. Institutions have integrity if they operate to further the goals that are publicly set by democratically elected governments.

2. Discouraging corruption is merely a part of promoting integrity

Integrity systems are not built around the negative goal of limiting corruption but the positive goal of maximising integrity. The negative goal is necessarily implied by the positive one — if power is to be used in officially sanctioned ways, it should not be abused by being diverted to other ends. It is not enough to avoid corruption. (That goal could be more certainly achieved by abolishing the relevant power — no power, no abuse.) Institutions need to achieve the goals set for them by the people’s representatives.

In placing power in the hands of individuals or groups, human communities are taking a risk — that the benefits to be gained from use for the justified purposes of the institution outweigh the risks of its abuse. Integrity systems are designed to increase the likelihood of the benefit of intended use and reduce the risk of the abuse.

3. Integrity is not achieved by laws or institutions alone

Legal institutions alone do not dictate how society is governed. As argued by one of NISA’s architects, effective institutional reform relies on a mix of (1) ethical standard-setting, and (2) institutional design and management, as well as (3) legal regulation (Sampford and Wood 1993, Sampford 1994 and Sampford et al 2005). Other experts similarly point to different models of integrity found in Western societies: a ‘personal-responsibility’ model and an ‘effectiveness-implementation’ model, as well as a ‘legal-

institutional’ model (Dobel 1999). The NISA process uses these theories by looking beyond formal laws and institutions to what actually happens in practice, and to social and cultural values as explaining how power is exercised.

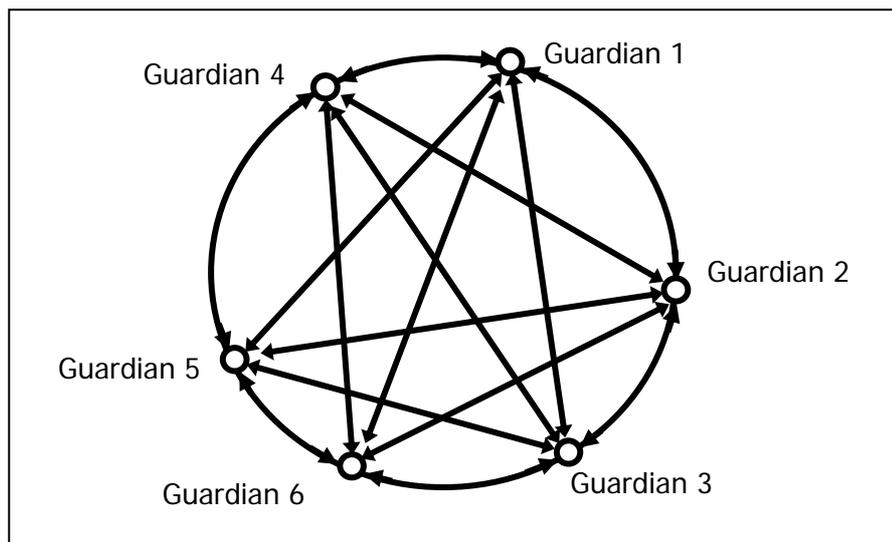
An important element of the institutional design is to identify the forms of individual behaviour that make it more likely that institutional power will be used for the democratically endorsed goals. Negative incentives (from reprimand to gaol) need to be attached to abuses of that power. However, positive incentives (from promotion to public honours) need to be attached to the behaviours that most further the goals set for public institutions.

4. Integrity is supported by ‘mutual accountability’

The relationships between these different ‘elements’ become just as important as the individual elements involved. For example, in Anglo-European governments, the ‘separation of powers’ between legislative, executive and judicial functions sets out important relationships designed to help contain abuse of official power.

Increasingly in both Western and non-Western countries, such principles of ‘horizontal’ or ‘mutual’ accountability can be seen in the way a broad range of institutions are governed (Schedler et al 1999; Braithwaite 1998; Mulgan 2003). The NISA process seeks to map not just these accountability relationships, but also the policy and operational relationships that define how integrity is pursued and protected in practice (Sampford et al 2005). Assessing the strengths and weaknesses in these relationships, as well as in individual institutions, is central to assessing the strengths and weaknesses of the integrity system as a whole.

**Figure 3. A Model of Mutual Accountability/Guardianship
(from Sampford et al 2005)**



5. Integrity is not just a ‘government’ or ‘public sector’ issue

Experts and policymakers have often made the mistake of treating official corruption as if it were a ‘public sector disease’ — as if business people that induce public officials to abuse their power, or who abuse the trust placed in them by shareholders, investors or

consumers are not also corrupt. NISA can provide a framework for assessing the integrity systems that govern all major institutions, not just public institutions.

6. Integrity concepts, standards and methods are relative to each society

The officially sanctioned uses of power will vary from society to society and from time to time as governments set goals for institutions to further. While no society values the abuse of power, what constitutes abuse depends on what the publicly declared officially sanctioned uses are. The ways in which societies promote integrity and discourage corruption will vary. We should not assume that similar institutions or laws will operate similarly in all societies, or that any practice seen as corrupt in one society must also be corrupt in others (Lindsey & Dick 2002). Often the solution to corruption has been seen as free-market economic reform, even when there is little evidence this is the case (Kotkin & Sajo 2002). NISA is based on the principle that while power can be abused in any society (Alatas 1999), the manner in which this will manifest as corruption, and the types of institutions and practices needed to support integrity, will differ from society to society, region to region, and even from locality to locality.

NISA's Australian Background

The NISA 'mapping' process was developed in Australia in 1999-2004 as part of substantial research collaboration between Transparency International and the Key Centre for Ethics, Law, Justice and Governance. The first project sought to improve the measurement of corruption and this project sought to improve our understanding of the integrity systems that sought to prevent it. Each was supported by Transparency International, Transparency International Australia and the Australian Research Council.

Australia has a relatively well-developed integrity system, and ranks as the world's 9th 'cleanest' country according to Transparency International's annual Corruption Perception Index (2005). However, Australia was not chosen as the site for the first NISA because it was perceived to be corruption-free, but because its integrity systems were developed in direct response to major corruption problems in the 1970s-1980s. The north-east Australian state of Queensland provided one of the original examples for Jeremy Pope's description of the NIS trend after revelations of official and business corruption led to comprehensive governance reform. This reform was in line with the recommendations of anti-corruption commissioner Tony Fitzgerald QC who saw 'no purpose in piecemeal solutions which only serve to conceal rather than cure the defects in the existing system' (see Preston et al 2002). Another Australian state, Western Australia, went through a similar process (Shacklock 1994).

The Australian NISA confirmed that even well-developed integrity systems suffer from coordination and coherence problems, putting major accountability institutions at ongoing risk; and that reforms that exist on paper may sometimes be only poorly or partially implemented in practice (see Brown et al 2004/2005). The approach outlined below is not intended to extend the particular lessons of Australian experience to other countries, as much as a *general process* for assessing how any integrity system is performing, even one involving very dissimilar institutions.

Stage 1. Scoping Study

The National Integrity Systems Assessment (NISA) consists of three main stages. The first stage is a scoping study to:

- Conduct a National Integrity Workshop to establish (or confirm) political and stakeholder support, and determine scope and timeframe;
- Commence researcher familiarisation with the historical and sociological context in which the NISA will occur, and identify the in-country expertise available to conduct or support the Assessment;
- Conduct a preliminary NIS mapping exercise; and
- In consultation with local partners, design and cost the methodology for the Assessment and execute it.

The extent of the scoping work may depend on the extent of preliminary work already carried out.

Historical and Sociological Assessment

A comprehensive appreciation is needed of the historical and sociological background to the assessment. If not already thoroughly familiar with the specific cultural context, external consultant researchers need to establish:

- The linguistic and cultural basis for in-country concepts of ‘integrity’ and ‘corruption’, as opposed to international governance dialogue;
- The history of existing major institutions and of previous programs of attempted governance reform;
- The availability of in-country expertise to support and/or participate in the Assessment process;
- The cultural, religious, ethnic, class, party-political, economic and or value bases for in-country differences of opinion over the nature or extent of corruption problems, or their degree of significance; and
- Skills or training needs for external researchers, including language and/or cross-cultural training.

Preliminary NIS Mapping

The Mapping Workshop consists primarily of participating researchers, in-country experts, experienced officials from key integrity agencies and NGO representatives. The aim of the Workshop is to identify as many as possible of the ‘elements’ that make up, or bear upon, the integrity system in question, classifying these in terms of:

- Core institutions — established largely or solely for the promotion of integrity, including investigative and public management agencies;
- Distributed institutions — the sections or areas of other organisations (public agencies or companies) with primary responsibility for the promotion of integrity within those organisations;

- Contextual institutions — political or regulatory actors with direct influence over integrity matters or who, occasionally, play important roles in integrity issues, including non-government actors; and
- Key ‘non-institutional’ or ‘extra-institutional’ elements — important social forces with a direct bearing on the ability of integrity systems to develop and function, including economic factors and sources of social or cultural values such as education systems or religious institutions.

Preliminary NIS mapping is one of the simplest-sounding but most important stages of the Assessment. Whereas core institutions may be reasonably easily identified, a more comprehensive picture may be more difficult to achieve as typically the relevant institutions and practices will have grown up in an *ad hoc* manner over time and may not always be obvious. This new picture of the integrity system will automatically allow in-country policymakers to begin more clearly identifying strengths and weaknesses in their systems. It will also define what work is required in Stage 2 as these elements, and the relationships between them, will form the focus of the assessment.

National Integrity Workshop

The National Integrity Workshop is a meeting involving political and opposition leaders, senior government officials, business leaders, civil society organisations, interested international agencies and independent experts and researchers.

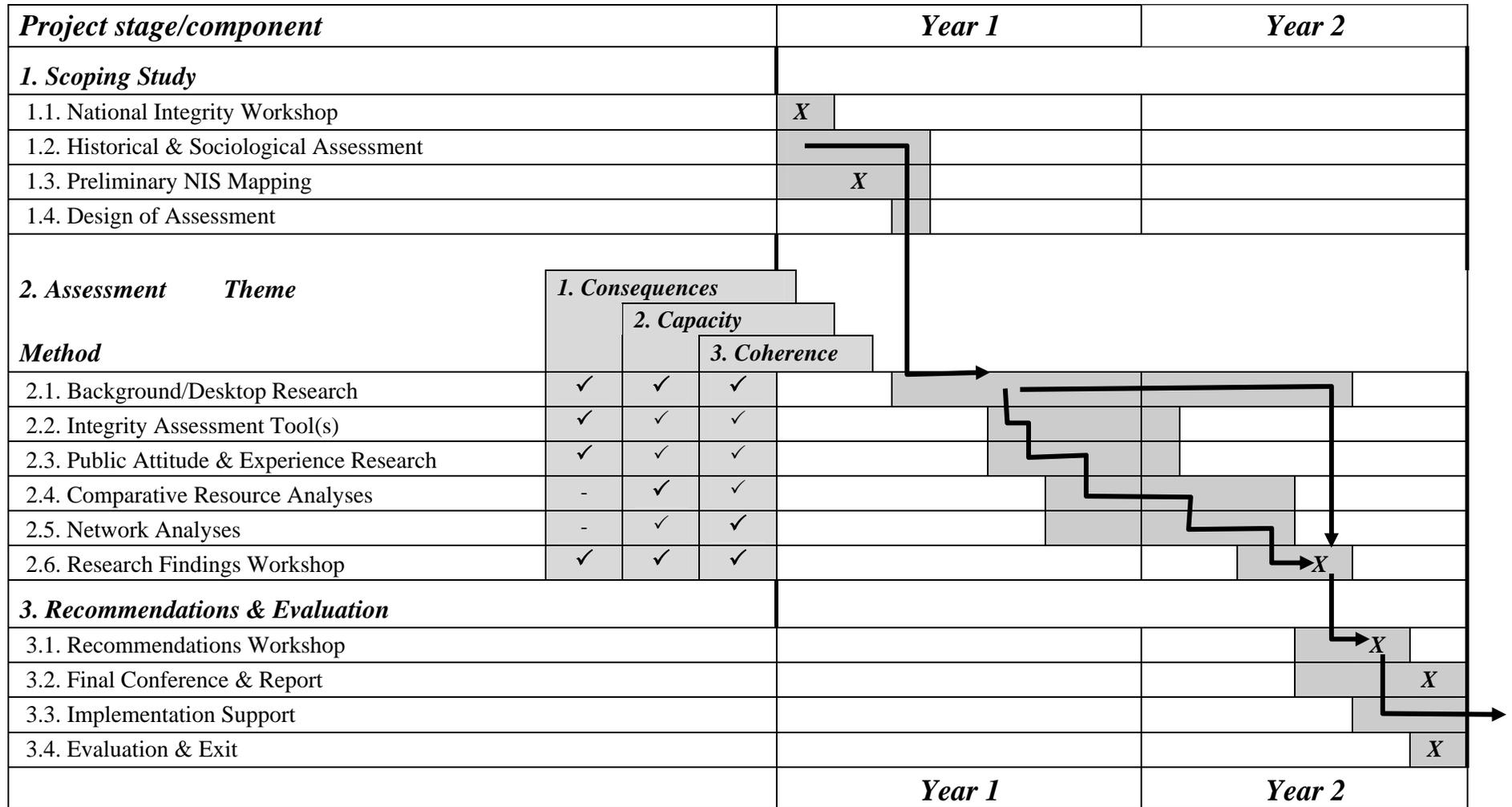
A Workshop of this kind is the recommended commencement point for the NISA process. Unless substantial consensus exists or can be created in support of the need for a thorough evaluation, the research needed to support the assessment may not be viable. Similarly, it may be impossible to move from research findings to concrete recommendations.

Other practical outcomes from the National Integrity Workshop include:

- Decisions on the jurisdictional scope of the Assessment (i.e. public sector and/or business sector and/or civil society sector);
- Decisions on the jurisdictional levels to be included (i.e. national and/or state, provincial, regional and/or local jurisdictions);
- Identification of political or policy timeframes that will impact on the timing or sequencing of Assessment activity;
- Identification of potential sources of funding support for the assessment and implementation of recommendations;
- Formation of a Steering Committee to oversee the project, supervise consultants and evaluate the project.

Design of Assessment (see Figure 4).

Figure 4. National Integrity Systems Assessment (NISA): An Overview



Stage 2. Assessment

The major phase of the NISA process is the assessment itself. Unlike other governance assessments, NISA does not commence with a pre-determined list of preferred or expected institutions for evaluation. Rather, it is framed around the preliminary mapping of integrity elements drawn up in-country in the scoping phase.

The main themes of the assessment are designed to support both overall judgements about the health of the integrity system as a whole, and particular findings and recommendations about priority areas for reform. These themes were drawn up by the Australian research team based on questions arising from initial pilot studies of integrity systems within Australia and in the Pacific region.

The themes are not mutually exclusive: for example, the ability to effectively identify and measure consequences depends, in part, on capacity; the capacities of integrity agencies and strategies will impact on their degree of coherence; considerations of coherence should dictate how integrity resources are distributed; and so on. For this reason, the particular judgements and findings are reached through a variety of specific assessment methods, each serving one or more themes. Examples of these methods are further outlined in Figure 4 and below.

A. Consequences

The first theme seeks answers to important questions about the consequences, or outcomes, of the integrity system's functioning:

- *How do we know what the integrity system is achieving?*
- *What is the current evidence that the integrity system might be under-achieving in some areas?*
- *How will we measure the integrity system's achievements in the future?*

This theme needs to be considered first as it will enable the assessment to commence the collection of more reliable evidence about how integrity institutions are performing, using methods that can then be developed and repeated in-country in order to monitor the effectiveness or otherwise of the resulting reforms.

Existing research and experience suggests that few, if any, countries currently possess integrated or holistic methods for monitoring the overall effectiveness of their integrity systems. For example, in Australia, there are at least 26 different sources of information relevant to gauging the performance of integrity policies in the public sector alone. These fall across four main categories: implementation; activity and efficiency; institutional effectiveness; and outcome measures (Brown et al 2004).

In most countries, therefore, clear information will not already exist on which definitive judgments about existing integrity strategies can be based. If such information did exist, the need for a NISA approach would be vastly reduced. Thus, each NISA project will take stock of existing sources of performance information and make suggestions for new performance measurement methods. Generally, the development and piloting of new performance measurement methods will be beyond the scope of a NISA .

B Capacity

One assessment theme seeks answers to fundamental questions about the way in which skills, powers and other resources are distributed to and through the integrity system:

- *Where are the strengths and weaknesses in our ‘core’ and ‘distributed’ integrity institutions?*
- *Where are more resources needed, and what form should these take?*
- *What is an effective balance between the resources needed for different integrity-related functions, such as positive ethics education as opposed to criminal investigation and enforcement?*

Capacity is a fundamental and recurring theme in any integrity system. Even when major integrity institutions exist, such as ombudsman’s offices or anti-corruption agencies, the single most common complaint is that these are insufficiently funded, staffed or empowered by law to have an impact.

Consequently, many institutional ‘pillars’ in an integrity system might be present. These pillars may satisfy a superficial check-list approach to integrity system assessment but, in fact, they might be broken or ‘hollow’ in practice. Within organisations and across a given sector, there may also be imbalance in the effort placed behind some integrity measures (such as pursuing ‘bad apples’) at the expense of lower profile, longer term ethics strategies such as improved management systems and workplace training and education.

NISA provides opportunity for a variety of research methods to be deployed to build up a comprehensive picture of how existing resources are distributed and where system strengths and weaknesses might lie.

C. Coherence

The second assessment theme includes questions designed to consider the extent to which the integrity system works as a system:

- *Do current corruption problems stem from over-concentrations of power or decision-making discretion? Is there effective mutual accountability between the major integrity institutions?*
- *Are the different functions of integrity institutions effectively coordinated? Are there gaps or conflicts in legal jurisdiction? Are the policy objectives of different integrity measures properly aligned?*
- *Is there effective cooperation between agencies on day-to-day operational matters? Is there effective integration of different ethics functions into the responsibilities of officials and officeholders?*
- *Are there checks on the abuse of power by integrity agencies? Is there a provision for filling in the cracks?*

These questions identify that a complex matrix of relationships exists between different elements of the integrity system, both formal and informal. These can be identified as of at least three major types:

- **Constitutional relationships** — such as the mutual accountability;
- **Policy relationships** — necessary for coherence and consistency in the way in which integrity is managed across a given sector or jurisdiction, including coordination of enabling and regulatory legislation, and identifying and rectifying gaps in jurisdiction; and
- **Operational relationships** — such as investigations, prosecutions, public outreach, fieldwork, intelligence-gathering and sharing, and education and prevention, as well as the all-important balance in operational settings between ‘positive’ ethics measures, institutional strategies and legal enforcement.

These issues make it clear that there is no such thing as a ‘perfect’ degree of coherence in an integrity system. Whereas sometimes integrity will be served by close relationships between different actors, at other times, integrity relies on institutions being forcefully independent. NISA therefore relies on a range of analyses to arrive at an evaluation of coherence that is specific to each country, based on relevant political and administrative theories, political culture and history, and empirical evidence of how different core integrity agencies interrelate.

The assessment methods used to arrive at answers under these themes will vary from context to context, but the following five research methods are considered fairly generic and applicable to most contexts.

This relates back to the capacity questions. What we need to do is to ask what agencies need to do to assist each other and what resources they have. If you look at the list of what others want of them, do they have the resources to do it. It is also a question of how efficiently the resources are deployed. This is where other projects would aim to assist individual institutions to develop their capacity with the NISA suggesting what work can be done.

Figure 5. Relationship Between Assessment Methods & Themes

Assessment Theme Assessment Method	1. Consequences	2. Capacity	3. Coherence
1. Background/ desktop	✓	✓	✓
2. Integrity assessment tools	✓	✓	✓
3. Public attitude & experience research	✓	✓	✓
4. Comparative resource analyses	-	✓	✓
5. Network analyses	-	✓	✓

✓ Primary assessment method(s) ✓ Secondary assessment method(s)

D. Assessment Methods

Background and desktop research

NISA requires a degree of documentary research. This includes secondary literature where available. All previous reports or texts on integrity and corruption issues will obviously be relevant.

Equally important are primary statistics from a wide range of legal, administrative and policy areas. Where not readily available from official archives, parliamentary records or annual reports, these will need to be compiled from original records, or made the subject of original empirical research. Particularly important will be:

- Ongoing historical and sociological analysis to support external researchers' ability to interpret and advise upon the unique circumstances of the country concerned;
- Primary data on the history, legal basis, staffing, structure, financial resources, and day-to-day activities of all core and distributed integrity institutions within the system; and
- Specific data relevant to integrity system performance, including attempted and successful prosecutions for corruption offences, surveys of attitudes towards corruption, and similar.

This desktop research will directly support further development of the NIS mapping commenced in Stage 1, most, if not all, of the remaining assessment methods, the preparation of final findings and reports, and the development of the case to funding agencies and policymakers to support implementation of the recommendations. This research support is required throughout the project.

Integrity assessment tool(s)

Assuming the existence of the basic statistics described above, the first avenue of original research is likely to be the adaptation and deployment of one or more Integrity Assessment Tools (IATs) in select organisations (public, private and/or civil society depending on scope of the assessment).

A wide range of IATs are in use in some countries, enabling core integrity agencies and managers to 'profile' the ethical climate of organisations, as well as to monitor areas of corruption risk (see for example Shacklock et al 2004). Such tools include anonymised surveys and interviews conducted by independent researchers, establishing first-hand evidence of current perceptions and experiences of corruption and integrity within key areas of policy-making, service delivery and official decision-making.

The first stages of NISA will identify suitable organisations in which to deploy one or more customised IATs, supported by strategies suitable to the circumstances, to verify the likely accuracy of responses. The IATs will also gather first-hand evidence of employees' perceptions of existing integrity measures, mechanisms and institutions, in order to establish:

- Current sources of integrity values that are being effective;
- Current investigation, enforcement or management strategies that are perceived to be weak or strong; and
- Benchmarks for employee attitudes towards different integrity mechanisms as well as integrity systems as a whole.

As well as providing some direct evidence of current strengths and weaknesses in the systems governing the specific organisations involved, the development of appropriate IATs is a crucial element of an integrated model for ongoing monitoring and assessment of the performance of the assessment ('Consequences'). This assessment method also serves a direct capacity building function by helping in-country researchers and officials develop appropriate tools for ongoing monitoring and improved decision-making.

Public and client attitudes and experiences

Public and/or customer experience of corruption problems and integrity system responses is a second, vital source of information for the Assessment. Transparency International's Global Corruption Barometer (GCB), instituted in 2001-2002, currently provides one source of some such information on a country-by-country basis.

Through surveys and interviews of general population samples and/or client groups in specific areas of business or administration, NISA provides an opportunity to collect direct evidence of:

- Overall levels of public confidence in the integrity system; and
- Public experience and levels of confidence with specific integrity-related institutions or strategies, including levels of coordination and the operational performance of integrity agencies.

As with the use of Integrity Assessment Tools within organisations, empirical research into public experiences and attitudes also has a direct capacity-building function. It helps build an integrated model for integrity system performance measurement in the future, establishes benchmarks for that measurement, and helps generate the political will for positive reforms by providing a voice to the collective experience of the populace that may have previously been muted or absent.

The piloting of IATs and public attitudinal/experiential research can be conducted in parallel and, to some extent, as part of an integrated empirical program, with the results feeding directly into the following analyses. Sample sizes and data collection methods can also be tailored to the available time and resources, bearing in mind that the less previously collected data there is available, the more time and resources will be needed to amass information to support useful findings.

Comparative resource analyses

The primary assessment activity on the issue of integrity system capacity will be comparative analyses of the various resources available to core and distributed integrity institutions in the system. Capacity can take many forms including:

- Financial capacity. Are the budgets of integrity institutions right for their tasks, and is the right share of financial resources across society and within organisations being devoted to integrity functions?
- Human resource capacity. Are sufficient numbers of appropriate employees dedicated to integrity functions either in core institutions or distributed among organisations?
- Legal capacity. Do integrity institutions and practitioners have the legal powers or jurisdiction they need to fulfil their tasks?
- Skills, education and training. Do integrity practitioners or staff in general have the right professional training and background to discharge their important roles?
- Political/community will. Do senior political and business officeholders either possess, or are they sufficiently empowered by the community to find the will to provide genuine leadership in integrity matters?
- Community capacity. Is there a sufficient broader social or community understanding and support for integrity processes?
- Balance. Are financial, human, legal and management resources being adequately shared between the different positive and negative strategies in the integrity system, such as effective leadership training as against criminal investigation and prosecution?

Each of these questions can be subjected to individual in-depth analysis in its own right, depending on available data, time and resources. All have a direct bearing in helping to identify possible strengths and weaknesses in the existing ethics infrastructure, especially when combined with the empirical evidence gained from IATs and public attitudinal research.

Further insight can also be gained through comparative analysis of the results achieved, especially on questions of finance, human resources and balance. By tracking past data or establishing a benchmark for future comparison, a longitudinal analysis can help identify fluctuations in institutional support or other problems.

Comparison between jurisdictions can also provide entry-points for analysis by revealing different institutional options, efficiencies or deficiencies on the part of different governments, or levels of government. With sufficient resources, any given country can be benchmarked against whichever other country it considers itself to be most comparable. Alternatively, insights can be drawn from comparison of regions within the country itself.

Figure 6. Indicative Resource Analysis for Core Integrity Agencies over Time (Brown & Head 2005)

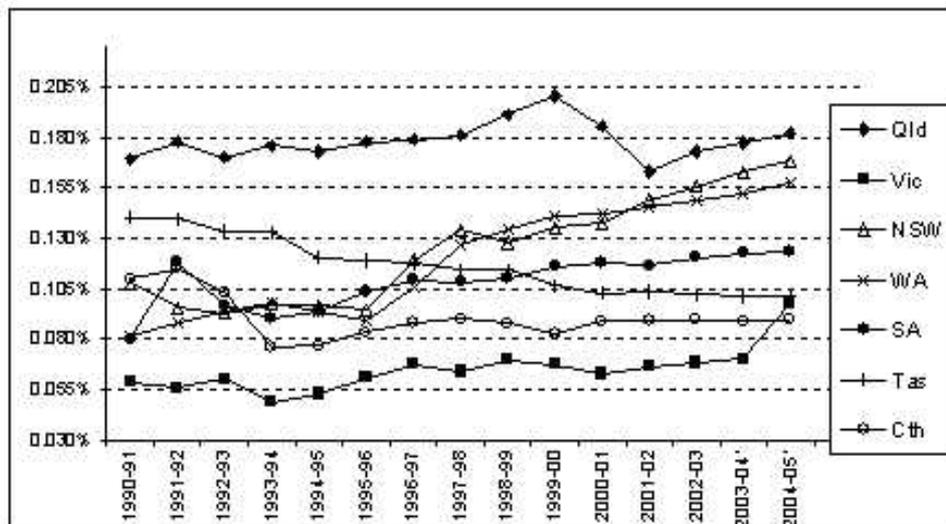


Figure 6 provides an example from the Australian NISA of a longitudinal comparison of financial and staffing resources of the core public integrity agencies of each of Australia's six state governments as well as its national (Cth) government. It shows dramatic variations between jurisdictions, even when adjusted for differing sizes of regions and operations, as well as substantial fluctuation over time. Conclusions drawn from these results are now the subject of intense debate in Australia.

Network analyses

The final major assessment methods focus most directly on questions of coherence, and are designed to establish a more complete picture of how the different institutional elements of the integrity system interrelate. The different types of relationships involved can be assessed in different ways. For example, desktop analysis can usually establish whether constitutional relationships are proving effective, by combining political theory, history, law, public policy, contemporary public debate (e.g. media reporting) and reported criminal, administrative and constitutional cases.

NISA also provides opportunity for direct empirical assessment of policy and operational relationships through three methods. This is done by a network analysis of the health of relationships between agencies as reported by senior managers. In Australia, this approach has been successfully piloted *via* written questionnaire and structured face-to-face interviews. Through this method, speaking confidentially where necessary to independent researchers, integrity agency representatives are able to identify where the strengths and weaknesses lie in their cooperation with other agencies and/or forces within business or government.

Research Findings Workshop

The culmination of the assessment activity is a research findings workshop in which these studies are presented by in-country researchers with the support of external consultants to an expert forum convened to review and validate the results.

The workshop would take a minimum of one day and preferably up to three days and consists of the researchers plus invited national and international experts as well as key official commentators and Steering Committee members. Research reports are pre-circulated on each of the activities undertaken, plus a draft project report dealing in detail with the research outcomes on each activity and theme, and integrating the results under the three assessment themes to produce overall findings and tentative recommendations.

Stage 3. Recommendations & Evaluation

Recommendations Workshop

The final stage begins with a further workshop to determine the final recommendations that flow from the Assessment. Whereas the findings workshop confirms the research conclusions, the purpose of the recommendations workshop is to frame suggested political and policy responses for reform of the integrity system itself. To be successful, the workshop requires a high level of representation from policymakers, and is a closed-door version of the original National Integrity Workshop. If necessary, the research findings and recommendations workshops could be held together.

Feedback from government

It is usually appropriate for Government to be given an opportunity to comment on the integrity assessment findings and recommendations relevant to the government sector before they are published — and to do the same for industry findings and recommendations. However, the final report is not subject to censorship or veto by either.

Final Report and Conference

The final public role for the researchers is to present findings in a final report. In most cases, this should be held in conjunction with a major event at which the final report can be launched. In most cases, a major conference is recommended which helps to publicise the initiative and at which official policy responses are announced and public consensus is built around the courses of action proposed.

Implementation Support

The in-country researchers and NISA consultants will also be available to provide ongoing support for implementation of the Assessment results. This can commence before finalisation of the NISA project, but would be negotiated as a separate project arrangement with sponsoring agencies.

Evaluation

Evaluation of the NISA process occurs in the final stages in three ways:

- Peer review of the research by in-country and international experts;
- Participation by the Steering Committee in the findings and recommendations workshops; and
- Final evaluation by the Steering Committee against the original assessment design.

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The Key Centre for Ethics, Law, Justice and Governance

The Key Centre for Ethics, Law, Justice and Governance (KCELJAG) was established as an Australian Research Council (ARC) ‘Key Centre for Teaching and Research’. It is the only ARC centre of excellence in either law or governance. Its total income has risen to over \$2.5m per annum, largely achieved through applied research in which industry partners play an active role. Its foundation director was Professor Charles Sampford and is currently led by Professor Ross Homel. It is the headquarters of IEGL (see below) and the ARC Governance Research Network which links all of Australia’s major governance researchers.

The Institute for Ethics, Governance and Law

(a joint initiative of the United Nations University and Griffith)

The United Nations University is a networked and distributed university with its headquarters in Tokyo but which does most of its work through centres around the globe — each of which covers a range of topics of interest to the agenda of the United Nations. There are nineteen such centres around the world. Each centre is itself intended as the hub of an international network to make the UNU something of a ‘network of networks.’

The Institute for Ethics, Governance and Law (IEGL) is the latest UNU centre. It was established as a joint initiative of the United Nations University and Griffith University at the suggestion of the Prof Ramesh Thakur, Assistant Secretary General of the United Nations who wanted to bring the interdisciplinary governance work led by Professor Sampford into the UNU. IEGL has its headquarters within KCELJAG. The Institute’s vision is to be a globally networked resource for the development of values-based governance through research and capacity building. It aims to engage other academic, non-government organisations (NGO’s), government, business and multilateral institutions and networks to improve governance and build institutional integrity in governments, corporations, NGOs and international institutions. Through the establishment of IEGL, Griffith has become a ‘United Nations University Associated Institution’ — one of only four of this kind in the world. IEGL is the only UNU centre in Australasia and is the only such institute with ‘ethics’, ‘law’ or ‘governance’ in the title.

Further Information

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