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Towards a Federal Integrity Commission: The Challenge of Institutional Capacity-Building in Australian Integrity Systems

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1. Introduction

How can society be satisfied that any government has established the right institutions to safeguard public integrity? Even if those institutions exist on paper, when can citizens be confident these bodies have been given the capacity to do their job properly?

These questions are basic to the methods used to assess the state of any government's 'integrity system', and inform political judgements about the adequacy of that system. They are also basic to the decisions that have to be made by any government as to whether their integrity institutions are adequate for the task, and if not, how those institutions should be developed. This paper analyses the institution-building questions that continue to confront the efforts of Australia's federal government to establish a complete and coherent integrity system.

In mapping the institutional choices that lie before the national government, Australia's national integrity system assessment was able to use the comparative analysis made possible by a federal system, to compare the differing institutional approaches of different jurisdictions within the same political system (Brown et al 2005a). The first part of the paper examines some of the fundamental issues that need to be addressed in any such comparison. How does the institutional framework for integrity currently vary between these jurisdictions? Given underlying differences between the jurisdictions, what is the most intelligent way to compare the 'net value' of the resources being dedicated to the anti-corruption effort? Are there differences in the integrity risks faced by different jurisdictions, that would justify major differences in frameworks or resourcing?

These questions also set the scene for the remaining analysis, by introducing the parallel – but different – institutional choices made by two Australian jurisdictions: the federal (Commonwealth) government, and the government of the state of Victoria. Since 2003, these jurisdictions have confronted, but responded differently to, relatively similar challenges regarding institutional capacity in the integrity field. Despite pressure from the federal government to do so, the Victorian government elected not to create a new anti-corruption commission in response to allegations of police corruption, instead initially grafting new anti-corruption functions onto an existing body. In parallel, the federal government also decided *not* to follow its own advice about the right 'model', establishing a new specialist body – the Australian Commission for Law Enforcement Integrity (ACLEI) – but not a generalist anti-corruption commission for the public sector.

Together, these developments point to some major unresolved issues of institutional design – not least the continuing need for Australia's federal government to further invest in generalist anti-corruption capacity. The growing evidence for this includes the unanimous assessment of the Senate Legal and Constitutional Legislation Committee, and the federal government's own track record in instituting at least three additional *ad hoc* inquiries into alleged abuses of federal power, outside the standing institutional framework, even while professing that the creation of ACLEI was enough to address any overall 'gap' in the federal integrity system.

The second part of the paper sets out a new schema for addressing these unresolved issues. Applying principles of institutional design developed through the national integrity system assessment (Brown & Head 2004, 2005; Brown et al 2005a: 62-78), five important issues of institutional design are highlighted:

(1) how to bring all federal officeholders within a realistic scheme of integrity scrutiny (either by expanding the jurisdiction of the Australian Commission for Law Enforcement Integrity, or rolling that agency into an existing or new body with appropriate investigative capacity);
(2) how to include senior officials such as Ministers within the scheme;
(3) how to ensure that information about integrity breaches is rapidly transmitted to the place where most effective action can be taken, including effective management of 'whistleblowing';
(4) how proactive integrity-building and corruption resistance strategies, rather than reactive investigations into alleged integrity breaches, are best pursued and monitored across the public sector; and
(5) how the different integrity institutions are best to be coordinated, including the important issues of coordination and oversight by parliamentary committee.

With relatively clear answers available to each of these questions, addressing them has become a clear test for current and future federal governments. As discussed in conclusion, this next phase of institutional development relies on an approach that complements and integrates the roles of existing institutions rather than proposing new bodies as a 'silver bullet' solution to perceived problems. Only through a more comprehensive process of institutional design can public integrity systems be properly strengthened.

2. Comparing institutional capacities and needs

How do integrity institutions differ?

In an integrity system, questions of institutional design frequently go to the heart of a system's capacity. As one of the three key themes in the assessment of Australia's integrity systems, 'capacity' can be seen as taking at least seven different forms, including (Brown et al 2005a: 62):

- Legal capacity – are integrity institutions properly constituted, and do they have the formal powers or jurisdiction they need to fulfil their tasks?
- Financial capacity – are the budgets of integrity bodies right for their tasks?
- Human resource capacity – are sufficient numbers of employees dedicated to integrity functions in both core and distributed integrity institutions?
- Skills, education and training – do managers and integrity practitioners have the right professional training and background to discharge their roles?
- Political will – do senior officeholders possess, or are they sufficiently empowered by the community to find, the will to provide genuine leadership?

- Community capacity – is there sufficient broader social or community understanding and support for integrity processes?
- Balance in distribution of capacity – are resources adequately shared between positive and negative strategies?

The institutional frameworks that make up the integrity system are not necessarily neatly concentrated. Often they are 'distributed' throughout the larger networks of governmental and other institutions that permeate society. However, 'core' integrity agencies, such as independent anti-corruption commissions and ombudsman's offices, clearly play a key role in the development of integrity systems, and in questions over whether those systems are working.

Where the number or configuration of these core integrity agencies differs significantly, there is frequently debate about the relative adequacy of different systems. Figure 1 sets out some of the basic differences in Australia, and charts the history of recent debates showing the institutional configurations as at the end of calendar years 2003 and 2007. At the top of the spectrum, the state of New South Wales has developed the largest number of independent integrity agencies (see also Smith, this volume). Having been the first Australian jurisdiction to institute an Independent Commission Against Corruption (ICAC) in 1988, perceived failures in the handling of police corruption matters led to a further commission of inquiry and establishment of a separate Police Integrity Commission in 1997.

At the bottom of the spectrum, as at 2003 several jurisdictions retained a model in which the only independent agency apart from an auditor-general was the office of the ombudsman, instituted in most jurisdictions in the 1970s (Brown et al 2005b; ACLEI 2007: 7-9).

The key institutional shifts in 2003-2007 relate to the federal (Commonwealth) and Victorian governments, both of which moved from that original model by creating a further independent agency to deal with police corruption. First, in 2004, the Victorian government expanded the roles and resources of its public sector ombudsman to include a new Office of Police Integrity (OPI). This body was akin to the NSW Police Integrity Commission but still housed within, and headed by, the Victorian Ombudsman – until separated in late 2007. The creation of OPI followed a major police corruption scandal (see Gilchrist & Bachelard 2004; Rennie 2007). However the Victorian government resisted public and media pressure to follow the same path as taken by the three other jurisdictions notable for their prior similar problems: Queensland, NSW and Western Australia. As shown in Figure 10.1, in each of those states, an independent royal commission into police corruption had led to establishment of a separate permanent anti-corruption commission, with the added functions of a crime commission in Queensland and Western Australia.

In contrast to the Victorian government's decision to build the capacity of *existing* institutions to fight corruption, the federal government reacted to similar issues by committing to the creation of a wholly new anti-corruption agency. In June 2004, the relevant federal ministers announced the creation of an "independent national anti-corruption body" in terms that also explicitly criticised the Victorian government for failing to do so (Ruddock & Ellison 2004). This announcement led eventually to the passage in June 2006 of the *Law Enforcement Integrity Commissioner Act* (Cth), and establishment of the Australian Commission for Law Enforcement Integrity (ACLEI) in January 2007. For the first six months of the Commission's operation, the establishment commissioner was the Commonwealth Ombudsman (ACLEI 2007: 1-5).

Figure 1. Some Core Public Integrity Institutions in Australia, 2003-2007

(see also Brown & Head 2004, 2005; Brown et al 2005: 13)

2003

	Auditor-General	Ombuds-man	Police Complaint Authority	Police Integrity Com^{n}	Anti-Corruption Com^{n}	Crime Com^{n}
NSW	1	2		3	4 (ICAC)	5
QLD	1	2	3 (Crime & Misconduct Commission)			
West Aust	1	2	3 (Corruption & Crime Commission)			
Sth Aust	1	2	3			
Cth	**1**	**2**				**3**
Victoria	**1**	**2**				
Tas	1	2				

2007

	Auditor-General	Ombud-sman	Police Complaint Authority	Police Integrity Com^{n}	Anti-Corruption Com^{n}	Crime Com^{n}
NSW	1	2		3	4 (ICAC)	5
Cth	**1**	**2**		**3** (ACLEI)		**4**
QLD	1	2	3 (Crime & Misconduct Commission)			
West Aust	1	2	3 (Corruption & Crime Commission)			
Sth Aust	1	2	3			
Victoria	**1**	**2**	→	**3** (OPI)		
Tas	1	2				

NB These tables do not include Public Service Commissions or equivalents, or Health Care Complaints Commissions and a range of other specialist independent integrity bodies, other than those dedicated to police.

Ultimately, in fact, the paths chosen by the Victorian and federal governments were not dissimilar. Both jurisdictions ended up with an independent new police integrity agency, in both cases via a transitional arrangement in which the existing ombudsman oversaw the agency's establishment.

Nevertheless, the contentious nature of the public debate over the initial differences (see Brown & Head 2005: 86-87) helps bring into sharp relief many of the intersecting questions of institutional design at the heart of this paper. Furthermore both jurisdictions have contributed to the diversity of Australian arrangements, rather than helping focus the debate over the 'right' integrity framework, because together they have added to rather than reduced the number of available models. This is because, despite having moved away from the original ombudsman-based model, neither government has actually moved to the more general anti-corruption models adopted by NSW, Queensland and Western Australia – even though this is what the federal government said needed to be done. In particular, while both governments have moved to develop a new body to address *police* corruption, neither government has moved to directly address risks of official corruption throughout the *remainder* of the public sector.

Does there remain a need for further institutional development in these jurisdictions? The answer is yes, but as seen through the remainder of the paper, there is no simple answer as to how this should be done. In particular, as a starting point, there is a clear need for more objective methods for determining both the case and direction for reform, than have informed the *ad hoc* decisions to date.

Estimating the 'net value' of integrity agency resourcing

In the hot debate over the wisdom of different institutional approaches, how might more objective methods be arrived at for estimating whether there is a case for reform, and if so, how much? Basic questions as to whether additional resources were needed, and if so in what configuration, were at the heart of recent reforms both in Victoria and at a federal level. In both cases, the response to a short-term integrity challenge involved the familiar assumption that a new government agency was automatically needed, as a means of demonstrating that more resources were to be thrown at the problem.

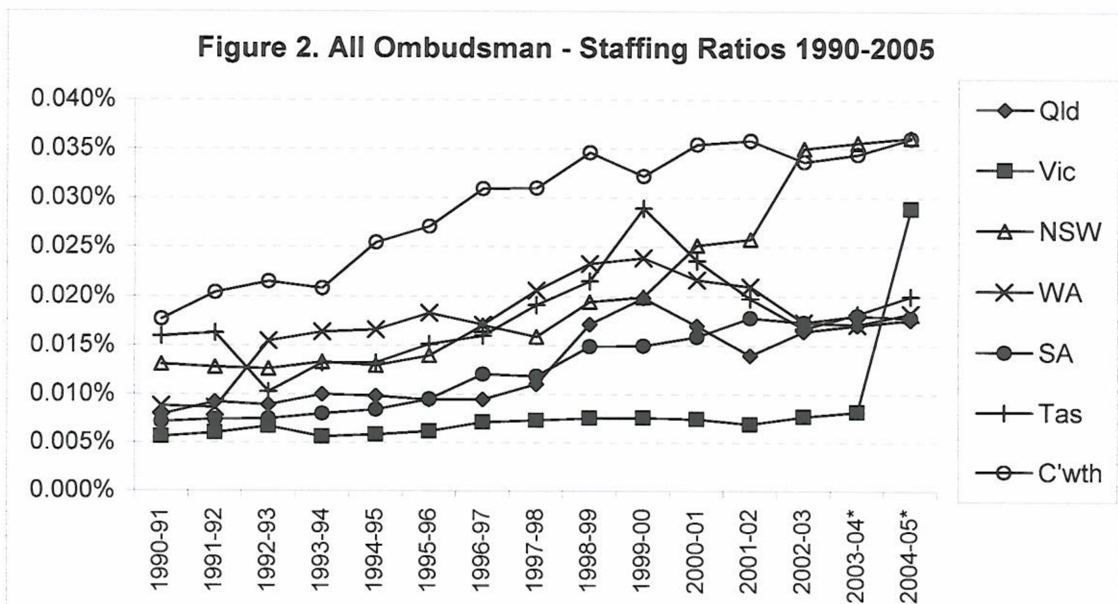
For example, by bypassing the establishment of a royal commission and a new agency, and simply expanding the ombudsman's office, the initial Victorian response was calculated to appear more measured and cost-effective than an institutional response on the Queensland or Western Australian model. State government figures were even happy to cite the (unfair) description of Queensland's Crime and Misconduct Commission, given by the Opposition in that state, as a "multimillion-dollar joke... that couldn't track an elephant through snow" (see Victorian Parliament 2004: 12). Nevertheless the Victorian government quickly came under pressure to be seen to be throwing 'enough' resources at the problem. In April 2004, it announced that the Ombudsman's budget would be boosted by $1 million per annum (from $3.5 to $4.5 million) to deal with police corruption. In June 2004, the size of the boost was increased tenfold to $10 million per annum, with the addition of the new Office of Police Integrity (OPI) expected to increase the ombudsman's office from around 30 to around 100 staff (see Bracks 2004; Victorian Parliament 2004).

These announcements came as direct responses to escalating media commentary on the significant budgets of the anti-corruption bodies in NSW, Queensland and Western Australia, even though the Victorian government had

determined it was not following any of these models. This comment was reinforced by the arguments of the Victorian Opposition parties and federal government, that a "properly formulated" independent commission was the way to go (Ruddock & Ellison 2004). However, for its part, the media comment itself referred only to the raw staff numbers and budgets of the interstate bodies (e.g. Bottom & Medew 2004), without demonstrating why this data was necessarily comparable. Assuming they faced similar corruption risks, the scale of the agencies and programs of different Australian governments already varied greatly, in line with their quite different areas and populations.

This knee-jerk approach to institutional design has obvious limitations. Not least is the fact that, given the different elements of 'capacity' listed earlier, it is simply unsafe to assume that the creation of a new integrity body will necessarily guarantee that corruption is more effectively addressed, especially if the new agency is weak or easily sidelined. As discussed below, these are real questions in relation to the federal government's approach. However the debates confirm that even if there is real commitment to injecting sufficient capacity to make up a perceived shortfall, governments tend to go into such reforms flying blind, without any reliable basis for gauging the original shortfall let alone what might represent an appropriate 'target' level of resources – irrespective of precise institutional configuration.

A first step towards a more informed approach is to take advantage of the opportunity for comparative analysis provided by a federal system, but provide some more realistic basis for comparing the level of resources given to integrity bodies in different jurisdictions. In the national integrity system assessment this was done by examining the financial and human resources given by governments to their core integrity agencies – individually and in aggregate – relative to the overall size of government business (see Brown & Head 2004). In other words, rather than comparing raw figures that on any analysis would be expected to be different, it is possible to compare the ratios of staffing and financial resourcing of these agencies to the total public sector staffing and total public expenditure of each jurisdiction. These ratios remain comparable over time, without adjustment needed for inflation.

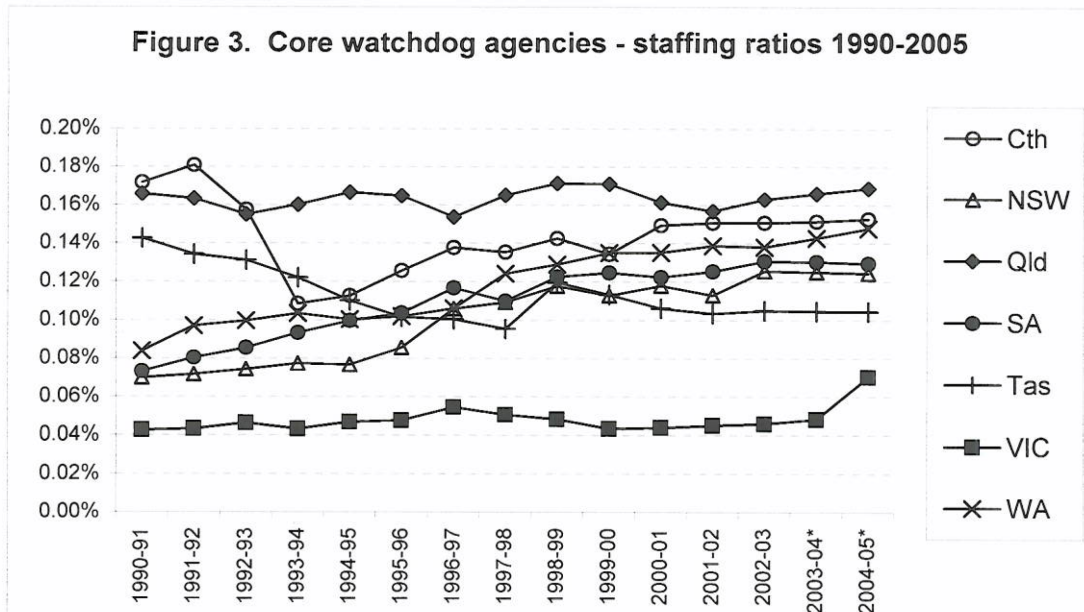


Note: * indicates projection at time of data collection.

Figures 2 to 4 shows the resourcing trends for most of the agencies depicted in Figure 1, over a 14 year period.

Figure 2 demonstrates the method by showing the staff numbers for each of the federal and state ombudsman's offices, as a ratio of the total public sector staffing in that jurisdiction. The Commonwealth Ombudsman was the largest such office, in relative terms, until recent expansions in the NSW Ombudsman's office brought these into alignment. It also confirms that the Victorian Ombudsman was the smallest (and potentially weakest) such office in Australia, relative to the size of the Victorian government's own operations, until the substantial expansion in 2004 with creation of the OPI.

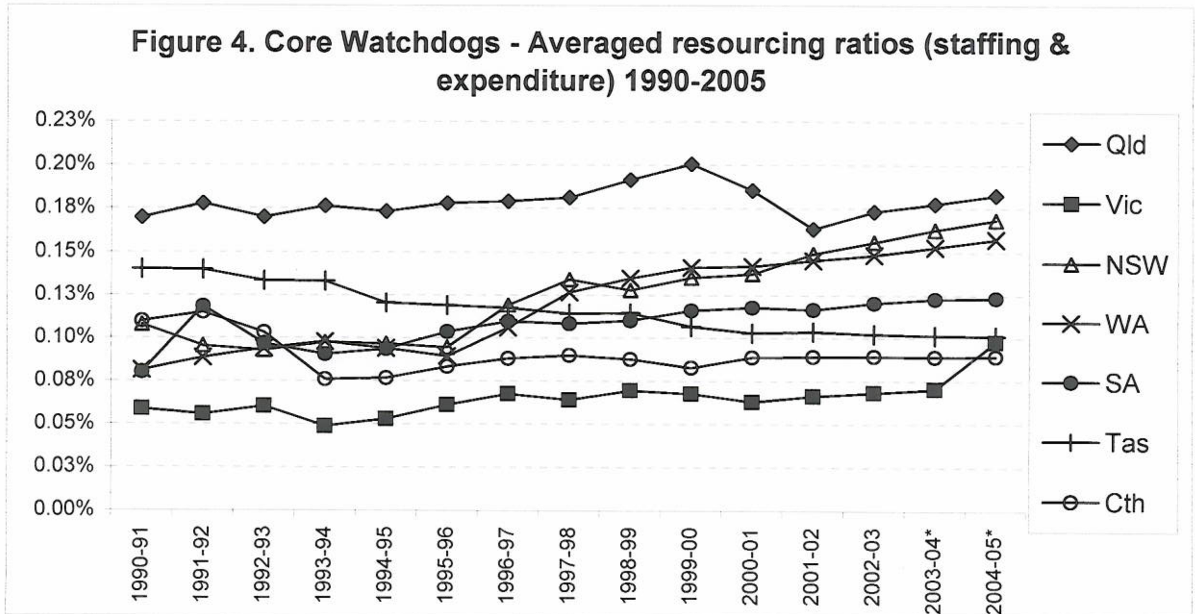
As already shown, however, ombudsman's offices do not exist in isolation in Australia's integrity systems, but share their accountability roles with other core agencies. Figure 3 shows the staffing ratios for all these core agencies combined (not including crime commission functions, which are not necessarily focussed on public sector integrity). This analysis reveals a number of points. It suggests that Victoria's arrangements were indeed still the weakest in staffing terms. However it also shows the Ombudsman's expansion with the creation of OPI did little, overall, to make up the extent of the comparative shortfall. It also confirms that having more agencies does not necessarily translate into having a stronger staffing ratio – as shown by the fact that NSW drops from the equal strongest in terms of ombudsman staffing, to only the middle of the group when all agencies are considered, despite having more agencies.



Note: * indicates projection at time of data collection. Figure includes all the agencies listed in Figure 10.1, other than crime commissions and the crime commission component (or estimate thereof) for Qld and WA. Figures for Victoria also include the former Police Complaints Authority. For full data see Brown & Head 2004.

Figure 4 compares the resources of the same core agencies on a different measure again – based not simply on core agency staffing, but a combined ratio reflecting *both* agency staffing relative to total public sector staffing *and* agency budget size relative to total public sector spending (with each factor given equal weight). The different results in this figure, from the previous, indicate that staff

numbers are not the only measure of the resources used by integrity agencies. This points to differences in the types of activities and functions of different bodies. It is well established that normal ombudsman-style complaint-handling is less expensive than the more resource-intensive activities regarded as effective responses to corruption, including more complex investigations, intelligence gathering and proactive corruption prevention activities (such as workplace education and training) (see ACLEI 2007: 18).



Note: * indicates projection at time of data collection. Figure includes all the agencies listed in Figure 10.1, other than crime commissions and the crime commission component (or estimate thereof) for Qld and WA. Figures for Victoria also include the former Police Complaints Authority. For full data see Brown & Head 2004.

On this last measure, the combination of relatively strong staffing and budget ratios suggests that the three jurisdictions with the highest overall levels of resources are, indeed, those with general-purpose anti-corruption agencies (Queensland, NSW and WA). Again, the result for NSW shows that this is irrespective of the number of individual agencies across which these resources are spread. By contrast, Victoria still retained the lowest overall resourcing at least until the addition of OPI, which still did not bring it up to par with any other state apart from Tasmania, but the gap was considerably less. These results suggest that irrespective of whether OPI is part of the ombudsman's office, or an independent agency as it has now become, Victoria still has some way to go in terms of additional injections of resources if it wishes its core integrity arrangements to be comparable with other states.

A further significant result, is that the same conclusion flows in respect of the federal government. Whereas Victoria always rated low on all measures, on this last combined measure the federal government appears to have had the least well resourced integrity sector overall, at the point that it took the decision to create the new Australian Commission for Law Enforcement Integrity (ACLEI). However by contrast with Victoria's expansion of the ombudsman's office through OPI, the federal government position has not significantly changed since that time – notwithstanding that it elected to form a whole new agency, rather than expand an existing one. Since commencing operations on 30 December 2006, ACLEI has

functioned with just 11 staff and an operating budget of $2.022 million per annum (ACLEI 2007: 22, 40). Given the small scale of this injection, the federal government is still essentially vying with Victoria and Tasmania for the honour of the least well-resourced integrity sector, irrespective of whatever appearances it might seek to claim from having created a new body.

This gap between appearance and reality should be accepted as a real problem by current and future federal governments. On one hand, the addition of any new agency to the federal integrity system represented, almost by definition, the most significant development in that system in 20 years (Brown 2005; see Senate 2006b: 20; ACLEI 2007: 1). Yet the net value of its creation remains open to question. By the end of ACLEI's establishment phase, the acting commissioner (Professor John McMillan) had concluded that while ACLEI had "significant investigation powers" on paper, including the power to conduct telephone interception and covert surveillance, "the reality" was that the agency did not have the budget to exercise those powers (Stewart 2007). Noting that only five staff members were involved in investigation work, Professor McMillan suggested that the agency probably needed a staff of "around 50" in order to exercise all the functions it had been given, even if it did not uncover any major new patterns of systemic corruption.

This result falls into line with warnings that the creation of a new anti-corruption body could be of relatively little substantive value, beyond some simply superficial or symbolic strengthening, if sufficient capacity did not follow (Brown & Head 2004: 88).

What scale and type of further institutional development would be needed, for these less well-resourced jurisdictions to approach parity with their better resourced cousins? As discussed through the second half of the paper, in addition to more resources to address law enforcement more effectively, a larger need remains both in Victoria and at a federal level to address corruption risks across the wider public sector, not simply those in the 'hot button' area of policing. Indeed this need is now demonstrably higher for the federal government than it is in Victoria. Before sketching how these needs might be addressed, however, it is necessary to address pervasive assertions that for some reason, Australia's federal government has less overall exposure to corruption risks than its state governments. Such assertions have long been made, in a manner that might justify a continuing low level of resources.

Is the Commonwealth different?

The arguments of individual governments that they are less prone to corruption, and therefore do not need comparable integrity institutions, are not actually restricted to federal governments. In Victoria, as late as 2004, the choice of a different institutional path to NSW, Queensland and Western Australia was still defended on the basis that no evidence had emerged of the 'systemic' corruption present in other states. Subsequently, however, the anti-corruption investigations of Victoria Police and the OPI confirmed that the picture was, in reality, much the same (Rennie 2007). Is the same thing true of the Commonwealth?

The suggestion of a reduced level of federal need was explicit at the birth of ACLEI, when the relevant ministers stated that "no evidence" existed of systemic corruption within the Australian Crime Commission (ACC), Australian Federal Police (AFP) or other federal law enforcement agencies, with the government determining simply that "an independent body" should be available to address corruption at the federal level "should it arise" (Ruddock & Ellison 2004). In March

2006, the Attorney-General repeated this position in the second reading speech for the Bill establishing the Commission. This had been a familiar refrain for many years – even on the part of the Harrison inquiry into federal police misconduct in 1997, which led to the dismissal of eight AFP officers (ACLEI 2007: 11, 13).

The presence of this presumption of relatively low corruption risk does much to explain the weak state of integrity resourcing, including the 'shell-like' quality of ACLEI noted above. Effectively without apology, the new body was set up not to fail, but simply to do very little, on the assumption that very little needed to be done. Even within the policing field, however, its establishment commissioner described the assumption that federal officers were less corruption prone than state officers as inherently "risky" (Stewart 2007). Coming as the apparent fruition of a long history of proposals to enhance the effective capacity of any external oversight body to deal effectively with police corruption risks (ACLEI 2007: 7-13), the result has potentially done little more than shift an existing problem from one body (the office of the Commonwealth Ombudsman) to another.

While there is a self-evident need for the federal government to at least resource any body in ACLEI's position to a level that allows it to fulfil its minimum statutory functions, there is also now wider evidence to challenge claims that the federal jurisdiction is generally different to state jurisdictions, in a manner that significantly reduces the need for standing integrity agencies. This includes empirical evidence of integrity risks as perceived by public servants themselves, and evidence of actions taken by government itself in response to various integrity challenges.

The empirical evidence takes the form of the responses of public employees to a 2006 survey about wrongdoing of which they had direct knowledge within their organisation, for the purposes of a large-scale study of whistleblowing (see Brown et al 2007). Table 1 sets out the proportion of a random sample of over 7600 public officials, drawn from 118 different federal and state agencies, who had seen direct evidence of each of the nominated types of wrongdoing within their organisation, sometime in the previous two years. This sample extended beyond simply law enforcement agencies.

While jurisdictions do vary in terms of the relative incidence of some observed behaviours, the broad pattern is similar. This result is consistent with the fact that all public agencies, having been established for important public purposes, involve their own risks of official positions or powers being abused – often irrespective of the precise nature of those positions or powers. Moreover, many of the integrity risks managed by public agencies are actually risks common to any type of organisation. Many of the types of wrongdoing identified in Table 10.1 relate as much to breaches of *organisational* integrity as they do to *public* integrity, often with few bright lines to distinguish between the two. Poorly run agencies with low organisational integrity are also frequently identified as those in which breaches of public integrity are less likely to be readily detected and more likely to become systemic – again, irrespective of precise function.

Clearly, this result also suggests that if there is a legitimate need for institutional capacity to address a range of integrity risks across the larger public sector at a state level, then a similar need exists across the larger federal public sector.

Table 1. Proportion of public employees surveyed with direct evidence of various wrongdoing types (Brown et al 2007: 17)

Wrongdoing type	Cth (n=2307) %	NSW (n=2561) %	Qld (n=1729) %	WA (n=1007) %	Total [a] (n=7663) %
Covering up poor performance	30.9	30.0	30.7	24.2	29.6
Incompetent or negligent decision-making	27.7	26.4	25.6	21.4	26.0
Improper private use of agency facilities/resources	27.0	22.5	24.3	23.2	24.3
Rorting overtime or leave provisions	22.2	20.7	20.3	19.2	20.9
Theft of property	13.7	14.1	15.5	15.5	14.5
Use official position for personal services/favours	10.1	13.4	12.4	11.1	11.9
Failure to correct serious mistakes	12.3	11.3	11.7	8.9	11.4
Misuse of confidential information	10.1	10.9	13.4	9.1	11.0
Giving unfair advantage to contractor etc	6.8	8.7	10.5	10.3	8.8
Theft of money	9.8	7.7	8.4	7.0	8.4
Intervening on behalf of friend or relative	6.1	7.7	8.2	5.7	7.1
Downloading pornography on a work computer	9.1	5.9	5.5	7.7	7.0
Racial discrimination against staff member	6.7	7.5	5.9	6.2	6.8
Making false or inflated claims for reimbursement	5.3	5.9	4.5	6.0	5.4
Racial discrimination against member of public	4.2	5.6	4.2	4.0	4.6
Misleading or false reporting of agency activity	3.7	3.6	3.5	2.9	3.5
Bribes or kickbacks	2.4	2.9	3.7	3.4	3.0
Unlawfully altering or destroying official records	2.7	2.7	3.1	1.6	2.7
Covering up corruption	1.6	3.2	2.1	1.2	2.2
Improper involvement of a family business	2.1	2.1	2.0	1.0	1.9
Hindering an official investigation	1.5	2.0	2.2	0.7	1.7
Failing to declare financial interest	1.0	1.6	1.3	1.6	1.4

[a] Includes 59 respondents for whom jurisdiction and agency unknown.

Does this evidence of a general need to address comparable integrity risks translate into a need for a strengthened framework of 'core' integrity agencies, to a level comparable with some state jurisdictions in the manner suggested by the earlier figures? After all, other forms of institutional strengthening might potentially be used to address similar challenges. However, a more conclusive answer is suggested by the recent actions of the federal government itself in response to various integrity challenges.

These actions take the form of federal decisions to establish at least three major *ad hoc* inquiries into alleged abuses of federal official power – the Palmer/Comrie, Cole and Clark inquiries – independently of the agencies concerned, but outside the existing framework of standing integrity integrity bodies. Each of these inquiries has also coincided with the period of the creation of ACLEI, even as the federal government has continued to maintain that the nature of its business involves significantly reduced risk of such abuses.

The Palmer and Comrie inquiries were administrative inquiries instituted by the federal minister for immigration in 2005, into growing evidence that federal immigration compliance and detention policies had resulted in the unlawful detention and deportation of a number of Australian citizens. In a bid to ensure public confidence, the commissioned inquiry heads were former commissioners of the Australian Federal Police and Victoria Police, who not only confirmed the key

incidents alleged, but uncovered a far-reaching pattern of systemic organisational failures and confirmed that a defective management culture was largely responsible for the incapacity of the department to prevent such failures or detect and remedy them when they had occurred (see Palmer 2005).

Importantly, the decision to constitute these inquiries as *ad hoc* administrative inquiries was publicly contested, given that it meant the inquiries lacked a clear legal basis, including either authority to compel witnesses or an ability to allow them to speak freely, without risk of defamation action or other repercussions. This was only rectified by re-commissioning the unresolved inquiries as cases under the investigation of the Commonwealth Ombudsman, followed by legislative and resource enhancements to allow that office to take on a more active, ongoing oversight role in relation to immigration compliance and detention activities.

The Cole Inquiry was established in early 2006 in response to a damning United Nations investigation indicating that the Australian Wheat Board (AWB) Limited had engaged in bribes of over $200 million to the government of Iraq, in breach of the UN sanctions regime, to secure and maintain lucrative wheat contracts (see Bartos, this volume). This time the inquiry was given the formal investigative powers of a royal commission, but as an *ad hoc* inquiry it remained formally limited by terms of reference set for the occasion by the government itself, restricting its ability to investigate full responsibility for the poor standards of accountability within AWB (a government agency until shortly prior to the events), the failure of the government's system of regulation and oversight of AWB, or the failure of the federal department of foreign affairs and trade – and relevant ministers – to heed warning signs regarding the company's illegal and unethical actions.

It was also publicly visible by the time that the Cole Inquiry reported in November 2006, that despite having originally promised to establish "an independent national anti-corruption body" along the lines of NSW, Queensland and Western Australia (Ruddock & Ellis 2004), this had not actually occurred. Instead the body eventually established by the government – ACLEI – only had limited jurisdiction over two federal agencies, and was incapable of satisfying corruption investigation needs of the type fulfilled, somewhat incompletely, by the Cole Inquiry.

The third inquiry headed by former NSW Supreme Court justice John Clarke, was commenced in April 2008. It concerns police and immigration department actions in July 2007 against Dr Mohamed Haneef, the second cousin of the brother of a British terrorist. Despite terrorism laws being used to hold Dr Haneef for 12 days without charge, charges then laid by the Australian Federal Police were cancelled by the Director of Public Prosecutions, and deportation action by the minister for immigration was declared unlawful by the Federal Court, raising concerns that federal officials – including the minister – had abused or overstepped their powers.

While ongoing at the time of writing, this further, *ad hoc* administrative inquiry suffered the same criticisms of legal inefficacy as the Palmer and Comrie inquiries (see Maley 2008). It also highlighted the continuing fragmentation of the federal integrity system, even after the creation of ACLEI. No consideration had apparently been given to commissioning the inquiry under the *Ombudsman Act 1976,* perhaps because under that Act, the investigation could not have extended to actions of the minister. Neither was consideration apparently given to commissioning the inquiry under the ACLEI legislation, notwithstanding the central role of the Australian Federal Police. Perhaps this was because neither the minister, the immigration department or the security agencies fell within ACLEI's jurisdiction; or perhaps because ACLEI is expressly restricted to the investigation of "corruption issues"

(though this in fact has a wide statutory definition, including any serious abuse of office by an AFP staff-member).

Together, these recent inquiries show that in practice, the federal government is anything but immune from the need for standing institutional capacity to address a wide range of integrity issues. They also reinforce that the most significant recent enhancement of core integrity agency capacity, through the creation of ACLEI, has done little if anything to address many of these wider needs. Instead, the federal government's responses tend to reinforce the high degree of fragmentation and incoherence in its public integrity system, as suggested elsewhere in this volume (Roberts, this volume). Far from there being much plausibility to assertions that the federal government has lower need for enhanced integrity system capacity, the question becomes the reverse – what institutional design issues need to be confronted, if the federal government is to restore confidence that it has the capacity to keep serious risks of integrity breaches to a minimum?

3. Key issues for federal institutional design

As previously reviewed elsewhere, objective analysis of existing integrity institutions exposes a wide range of roles, structures and powers (Brown & Head 2004; 2005). These differences translate into a complex range of institutional choices. Assuming a new agency is needed, is it intended to act independently or work closely with the agencies it oversights? Is it to be reactive, for example by responding to complaints, or more proactive and intelligence-driven? Are its investigations to be conducted in public or private? Does it have positive standard-setting, education and corruption prevention responsibilities as well as the usual compliance roles? What should be the limits of its jurisdiction? How should it relate to other integrity bodies, and be held accountable?

The first part of the paper demonstrated that while some of these questions have been approached in a rational manner in recent years, most responses have remained piecemeal. Five major issues stand out as needing to be addressed in the federal government's approach to integrity institutional design:

(1) how to bring all federal officeholders within a realistic scheme of integrity scrutiny;
(2) how to include senior officials such as ministers within the scheme;
(3) how to ensure that information about integrity breaches is rapidly transmitted to the place where most effective action can be taken;
(4) how proactive integrity-building and corruption resistance strategies, rather than reactive investigations into alleged integrity breaches, are best pursued and monitored across the public sector; and
(5) how the different integrity institutions are best to be coordinated, including the important issues of coordination and oversight by parliamentary committee.

(1) A comprehensive approach to integrity scrutiny

The first part of the paper demonstrated the continuing need for an integrity agency of general jurisdiction for the federal public sector. As described elsewhere (Roberts, this volume), the Commonwealth Ombudsman has played some of this role over the last 30 years, and can be expected to continue to play a leadership role in the

setting and maintenance of high standards of public administration. However, over the same period that ACLEI has been created, resource demands and investigative needs in the anti-corruption field have made it clearer that "in broad terms", the Ombudsman "should not be the chief agency responsible for investigating corruption allegations" (Commonwealth Ombudsman 2004).

Similarly, the Australian Public Service Commission (APSC) has its own important roles in the maintenance and monitoring of professional standards in the public sector. However these roles have not historically extended to more complex integrity investigations, of the kind dealt with by the core integrity agencies in other jurisdictions or the increasing number of *ad hoc* federal inquiries. Moreover the jurisdiction of the APSC is somewhat illogically limited to 'Australian Public Service' (APS) agencies, whose employees account for only around half of the Commonwealth public sector.

Given that the identified need is for standing capacity to oversight and undertake more complex corruption-style investigations, one persistent argument against a more comprehensive approach has been that this function can be handled by existing law enforcement agencies – notably, the Australian Federal Police. On this theory, the creation of the Australian Commission for Law Enforcement Integrity was all that was needed to bolster the integrity system, by bolstering the extent to which the AFP could continue to be trusted to handle such investigations in other areas of the public sector. This theory is perhaps the most rational explanation, if one is required, for the government's failure to adopt the type of "properly-formulated independent Commission - similar to those in WA, New South Wales and Queensland" that it insisted should be the model for Victoria (Ruddock & Ellison 2004). In all three of those states, it will be remembered, the anti-corruption agencies cover the entire public sector and not just policing.

The idea that public sector corruption matters can be left to the AFP, however, is one that has now clearly been exploded. The role of the AFP is to investigate criminal offences, but as shown earlier, the nature of complex integrity investigations is such that often, the sources and reasons for integrity breaches are not likely to be criminal. As much is confirmed by the definition of "corruption issue" under section 6 of the *Law Enforcement Integrity Commissioner Act 2006* (Cth), which as already noted, takes as its starting point whether there has been an 'abuse of office' rather than whether behaviour is necessarily criminal.

In practice, the AFP *may* become involved with major corruption investigations where criminal behaviour is clear – for example, in major fraud by a federal officer. However in general, unless the matter is exceptionally serious or sensitive, individual federal agencies are currently expected to investigate and prosecute such matters themselves. By contrast there is currently no expectation that the AFP would ever help deal with other types of alleged official misconduct, such as conflicts of interest, even in complex or serious cases. When reviewing the provisions of the *Law Enforcement Integrity Commissioner Bill*, the Senate Legal and Constitutional Committee concluded that, clearly, there were "limits to the effective jurisdiction of the AFP in relation to broader corruption or integrity issues that fall short of criminal behaviour" (Senate 2006b: 26).

Consequently, the federal decision to limit ACLEI's jurisdiction has been extensively questioned – from a number of perspectives. First, even law enforcement agencies have questioned why the jurisdiction is limited to just two such agencies: the Australian Federal Police (AFP) and Australian Crime Commission (ACC). In evidence to the Senate Legal and Constitutional Committee in April 2006, the AFP commissioner (Mr Mick Keelty) confirmed that in his view, this left "a gap"

in the integrity system, given that many other federal agencies also operated in the law enforcement field, with comparable powers and risk of abuse, who would not be subjected to oversight by the new body (Senate 2006a):

> If we are serious about this, and if it is not just a quick fix, then the AFP could benefit in its investigations if the ACLEI had a wider remit than what is proposed in the Bill.

In response to this, the Senate Committee concluded that there was "a strong rationale for ensuring that a wider group of law enforcement agencies" were brought within the new agency's jurisdiction, including Customs, the Australian Taxation Office and the Department of Immigration (Senate 2006b: 27). Indeed had this occurred, then in 2008, there may well been no need for the separately established Clarke inquiry.

For its part, in June 2006 the federal Opposition moved an amendment to the Bill, seeking to add Customs, Immigration and the Australian Transaction Reporting and Analysis Centre (AUSTRAC) to ACLEI's jurisdiction. However this extension was rejected by the government and defeated (Senate 2006c: 269). Instead the relevant minister (Senator Ellison) responded that he envisaged that "in the future" the jurisdiction "will be expanded to encompass other Commonwealth agencies which have a law enforcement function", adding that there was "no doubt" this would be the case (Senate 2006c: 272). One year later, however, a new minister (Senator Johnston) indicated there was as yet no plan to extend the jurisdiction (Stewart 2007).

A second objection to this limited jurisdiction was that its extension, if it ever occurred, was legislated so as to take place via regulation. This facility for allowing the government to add or remove further individual agencies from ACLEI's jurisdiction by regulation, was itself criticised by the Opposition's Senator Ludwig as "completely unacceptable":

> The Minister proposes to add [additional agencies] at his whim and convenience ... There is no guarantee that any of these agencies are or will be able to be investigated... Why should a Minister have a roving discretion to decide when an agency should or should not be investigated for corruption? (Senate 2006c: 270)

A third and final objection to the jurisdiction similarly highlights its fragmentary, piecemeal nature. Under the current legislation, even if the jurisdiction were extended to further law enforcement agencies, then sub-section 6(2) of the *Law Enforcement Integrity Commissioner Act* restricts ACLEI to dealing only with conduct relating to "the performance of a law enforcement function of the agency". Consequently even if a department such as Immigration were added to the jurisdiction, it would remain unclear – and likely be contested legally – whether corruption or misconduct involving functions such as the issuing or cancellation of visas, or the administrative detention of individuals, could be captured. Even in respect of the AFP and ACC, this attempt to focus the jurisdiction on 'law enforcement' means that there are some types of corruption allegations that ACLEI may not be able to investigate – for example, it is not clear that an AFP officer who accepted a kickback for an information technology contract would be performing a 'law enforcement' function (see also Senate Committee 2006b: 27).

Anticipating these issues, the Senate Legal and Constitutional Committee concluded that the creation of the ACLEI should not be the end of the story:

> The committee also considers that a Commonwealth integrity commission of general jurisdiction is needed, and there is an accountability gap that would be closed by such a

> body. … [C]onsideration should also be given to developing such a commission in the longer term (Senate 2006b: 28).

Consistently with the first recommendation of the national integrity system assessment (Brown et al 2005a: 65-66, 92-93), the time has clearly arrived for the creation of such an agency. The only real question is whether the federal government – having made its institutional choices in an *ad hoc* manner to date, somewhat akin to NSW – will continue that trend and create an entirely new body; or face the reality that these issues should have been dealt in conjunction with the creation of ACLEI in the first instance.

The history of these matters, the weak resourcing of ACLEI, and the more general need for the federal government to comprehensively revisit the fragmented state of its integrity system, all point to one conclusion. The federal government's clear need is for a standing agency with the capacity to undertake complex investigations on integrity matters, including but not restricted to those that might fit narrow definitions of 'corruption', wherever this might arise within federal government administration. Properly constituted, this body would be well able to service government demands for particular inquiries, such as the Palmer/Comrie, Cole and Clarke inquiries, in addition to conducting more routine reviews and investigations into less high profile matters, as well as other integrity functions. The important lesson from history to date, is the need for such a body to have a comprehensive, general jurisdiction. This means both an inclusive organisational catchment covering all federal employees and officeholders, and a wide conception of the breadth of issues into which the agency may need to enquire when investigating any particular kind of integrity breach, as opposed to a jurisdiction constructed in narrow or technical terms.

If the workload and/or existing resources of ACLEI meant that it was already a large body, then reason might exist for considering the creation of an additional body. However the reality is that no existing federal core agency is actually very large. As seen, ACLEI in particular is quite diminutive, to an extent that makes it questionable whether, as it stands, it is capable of building and retaining a critical mass of the necessary expertise even for its current basic functions. Consequently, the logical options for the future involve either expanding the jurisdiction of ACLEI, or rolling that agency into an existing or new body with appropriate investigative capacity.

As shown earlier, similar considerations also still apply in Victoria. The question there is similarly, how to expand the general anti-corruption jurisdiction for the remainder of the public sector – whether to create a new agency, expand the Office of Police Integrity (OPI), or entrust this function to the Ombudsman (see Hughes 2007). However in that jurisdiction, there are some differences. Unlike ACLEI, OPI was established with significant resources and a mission to find work. There may well remain a case for police corruption issues to be handled by a larger anti-corruption agency, much as there remains a case for the NSW Police Integrity Commission to be made a division of the ICAC rather then left as a stand-alone body. However, the size and roles of OPI mean that the decision to separate it from Ombudsman Victoria at least appears sustainable.

The situation in Victoria is further different to the federal government because Ombudsman Victoria has already commenced to handle some corruption issues, outside its traditional administrative complaint-handling roles. This is due to a separate jurisdiction over corruption complaints and disclosures granted by the *Whistleblowers Protection Act 2001* (Vic). The fact that the ombudsman is already

dealing with such matters – unlike, or at least to a much greater extent than the Commonwealth Ombudsman – makes it more logical to evaluate that experience before assuming that a new or different body should be handling them. This is especially the case given that even if a new or different body was needed, a decision would also be needed regarding its own roles, vis-a-vis the ombudsman, under the *Whistleblowers Protection Act.*

(2) The necessity of including senior officeholders

When the federal government moves to establish a general anti-corruption agency, an issue demonstrated by recent experience is the importance of ensuring its jurisdiction does not stop at the door of politicians. When the federal government originally pointed to Queensland, NSW and Western Australia has possessing "properly formulated" corruption bodies, it was also pointing to three jurisdictions where parliamentarians are not exempted from the integrity regime. Instead, albeit in sometimes differing ways, parliamentarians are recognised as being public officials to which any comprehensive public integrity framework should also apply.

This is not the situation at the federal level, where actions of ministers and other members of parliament are excluded from investigation by the Commonwealth Ombudsman. Indeed the lack of any standing arrangements for ensuring a high level of integrity on the part of federal parliamentarians has been described as a system of "puzzling self-regulation" (Uhr 2005:147). The need for this to be rectified is well demonstrated by recent history, where even in the absence of evidence of any systemic corruption on the part of federal politicians, several of the most serious inquiries have included questions about the actions or inactions of ministers. Similar questions have been asked in Victoria, about why, when governments are upgrading the integrity regimes that apply to public servants, there is no clear commitment to ensuring the same or equivalent regimes also apply to political representatives (Hughes 2007).

There are different options for how different political representatives might best be brought within the integrity system. They include equipping the parliament itself with a stand-alone integrity mechanism, such as an ethics or integrity commissioner, answerable to a multi-party parliamentary ethics committee, and capable of receiving and resolving information about any impropriety by individual politicians in a more transparent way. It is important, however, that such a commissioner also be able to draw on the resources of a more general integrity agency when more complex investigations arise, and that the general integrity agency not be restricted from investigating ministerial actions or failures in political accountability for events within government, wherever the public interest demands.

(3) Sourcing and referring the crucial information

The developments reviewed in the first part of the paper also highlight an important shift in the way in which information about integrity breaches can, and should, come to core integrity agencies. Historically, integrity agencies have often been expected to be reactive – only undertaking an investigation in response to a specific allegation or complaint. While this may remain appropriate for some integrity functions, such as the public complaint-handling functions fulfilled by ombudsmen, it is now widely appreciated as insufficient in respect of corruption issues and other forms of official misconduct:

> Ombudsmen's offices are complaint bureaux for dissatisfied citizens. They are incapable of dealing with organised corruption. Corruption is a consensual crime. Both parties to the arrangement are unlikely to complain – illegal gain flows to the police officer while criminals are unhindered in their pursuits. By the time, if ever, the matter is manifest as a complaint, the problem has usually assumed serious proportions (Le Grand 2004).

A more comprehensive approach to integrity recognises that information regarding integrity breaches and risks is best sourced in a number of ways: including public complaints; other public information, such as media reporting of problems; risk assessment methods; intelligence-gathering; management observation; and employee disclosures ('whistleblowing'). In many of these areas, core integrity agencies cannot act in a totally independent manner from the government agencies they are intended to oversight, because it is clear that much of the crucial information already exists within those agencies. Moreover as indicated by Le Grand, in many instances it will only be very late in the piece that problems already visible within organisations manifest themselves to an external agency as an independent complaint.

Institutional arrangements to ensure that the right information flows to an integrity agency in a timely way, rely both on having the right processes, and sufficient resources. An important breakthrough in the processes of Australian integrity systems was been the development of clearer relationships for the reporting of such matters between core integrity agencies and the government bodies they service. Part of the efficacy of integrity systems modelled on Queensland experience, lies in their adoption of the principle of 'mandatory reporting', whereby the heads of all government agencies are obliged to notify the core agency (in that case the Crime and Misconduct Commission) of all cases of suspected official misconduct. This in itself ensures that agencies have systems in place to deal with such matters, do not try to 'sweep them under the carpet', and that they are addressed to a consistent standard across different agencies. Mandatory reporting arrangements also enable the core agency to form an overall picture of integrity risks and trends, and ensure its own resources are devoted to assisting in those matters where its involvement is most needed.

The establishment of ACLEI saw the federal government directly confront this issue. Initially, a more reactive, complaint-handling model of oversight appeared to be proposed for this agency, which was to be titled the 'Inspector-General of Law Enforcement' comparable to the existing Inspector-General of Intelligence and Security (see Brown 2005). However in a positive development the *Law Enforcement Integrity Commissioner Act 2006* ultimately introduced a mandatory reporting arrangement for the first time in the federal jurisdiction, under which an agreed framework must be reached by which the agencies involved (AFP and ACC) report all matters in their own knowledge to the oversight agency. This provides a valuable precedent for the establishment of a more general anti-corruption jurisdiction at the federal level.

In Victoria, a measure of mandatory reporting was introduced for the first time in serious integrity matters, through a requirement for the ombudsman to be notified of public interest disclosures under the *Whistleblowers Protection Act 2001*. This development provides a separate reminder of the special circumstances in which such an arrangement may be necessary – for example, where an employee's internal

disclosure about defective administration might place them at risk of reprisal without external oversight, even though it might not otherwise justify referral to an independent agency in the same manner as a 'corruption' matter.

The management of complex disclosures of this kind, including a measure of independent oversight of the welfare of public officials involved, further dictates that the resourcing of core integrity agencies must be realistic. An effective integrity agency must have the capacity to service this ongoing interchange of information with the bodies in its jurisdiction, but also to conduct its own research and build its own intelligence, initiate investigations of its 'own motion', and use complaint trends and information from the public domain to identify systemic issues that call for larger investigations. Attracting the necessary information about serious corruption from whistleblowers, informants and those not benefiting from favourable treatment, requires having a reasonable public profile. No matter how strong its legal powers, an agency without the financial and staff resources to satisfy these operational needs is hampered in its ability to make a credible contribution to public integrity.

(4) 'Positive' integrity-building and corruption resistance

Since at least 1996, when the establishment of a new federal police oversight body was first recommended (ALRC 1996), it has been assumed that such an agency should follow the model of the Queensland and NSW anti-corruption agencies and undertake more than simply compliance and investigation functions. In 2004, arguments for a new integrity agency in Victoria similarly pointed out that additional resources were needed for more positive capacity-building, research and prevention functions, including workplace education on integrity issues, corruption risk assessments, and proactive reviews of the adequacy of agencies' systems and procedures for preventing and minimising integrity lapses.

Consistently with these broader, more positive functions, the federal government established the ACLEI with statutory objectives to not simply investigate corruption in the relevant agencies, but also "to prevent corrupt conduct" and "maintain and improve the integrity" of their staff members (section 3 of the *Law Enforcement Integrity Commissioner Act* 2006).

Two obvious problems stand out in relation to these heavy responsibilities. First, the corresponding section 15 of the same Act gives the Commission no specific functions aligned with achieving these objectives. Secondly, as discussed earlier, the Commission has not been given the resources to undertake such functions in any event. While ACLEI has indicated it will "review the anti-corruption plans of law enforcement agencies, conduct assessments of high-risk corruption areas of operations, and appraise the adequacy of agency safeguards to detect corrupt activity" (ACLEI 2007: 30), it remains unclear whether its need to respond to specific cases will ever allow it the time and resources to undertake these activities. It is well known that "one of the risks inherent in any complaints system is that the processing of large volumes of complaints becomes the sole function", detracting from prevention by preventing "a larger research-based risk management approach to integrity" (Prenzler 2004: 109).

For these reasons it remains an important design issue, not simply whether ACLEI or a larger commission will be given appropriate resources to pursue these functions, but whether they will be properly recognised in the enabling legislation. One of the few ways for legislative action to help ensure that resources are devoted

to these objects, in the face of inevitable internal pressure to service investigations, is to require the agency to also fulfil specific statutory functions – for example to:

- conduct the types of reviews cited above by ACLEI itself;
- independently assess levels of corruption resistance in the agencies within its jurisdiction, e.g. through annual surveys and reports;
- ensure that staff and clients of relevant agencies are aware of the Commission's existence and their responsibilities to report corrupt conduct, including empirical research to monitor that awareness;
- formulate and deliver training and education programs to agency staff on integrity and corruption issues; and
- undertake, coordinate and/or supervise integrity testing programs relating to agency staff.

It is also possible for these roles to be institutionalised in the structure of the organisation, for example by creating the person responsible for them as a statutory officer – such as an Assistant Commissioner (Intelligence, Research and Corruption Resistance), alongside an Assistant Commissioner (Investigations).

At the same time, many of the research, evaluation and outreach functions that need to be performed by an effective corruption agency are also not actually unique to that agency. Just as public integrity relies on more than simply an absence of corruption, so too other agencies, such as the ombudsman, audit office and public service commission have similar responsibilities to help public sector bodies embed effective approaches to high quality government administration and public sector standards. For these reasons, it is particularly important that the positive, integrity-building programs of any new anti-corruption agency are well integrated with the roles of other agencies. This issue raises its own institutional design questions.

(5) A coordinated and coherent system

As discussed throughout this volume, and throughout the Australian national integrity system assessment, ensuring that institutional reform contributes to a coherent integrity system is vital. Given that the maintenance of public integrity relies on the harmonious operation of so many different institutions and institutional forces, it is no surprise that such systems can become characterised by gaps, fragmentation and unintended *ad hocery* as laid out in the first part of this paper.

In the face of this risk, there are nevertheless positive trends at a federal level. The introduction of systems of mandatory reporting to core agencies on integrity issues, discussed earlier, itself is an important measure to close communication gaps and ensure greater coherence.

A second positive trend is the abandonment of the assumption that because each agency within the integrity system exists to serve a different primary function, it must therefore also have a legally exclusive jurisdiction. For example, unlike proposals as recent as those of the Australian Law Reform Commission (ALRC 1996), the establishment of ACLEI recognised that the creation of new anti-corruption oversight over federal agencies, did not mean that they should *not* also continue to be covered by the Commonwealth Ombudsman in relation to complaints that might not amount to corruption. Instead, these agencies have concurrent jurisdiction over the AFP and ACC:

> The Ombudsman will have a continuing role in relation to the AFP and the ACC, except in dealing with corruption issues. This will enable two complementary approaches to investigation to be brought to bear on different types of issues. Together, the Integrity Commissioner and the Ombudsman will provide the Australian public with the guarantee that the conduct of the key Australian Government law enforcement agencies is subject to comprehensive external review (Senator Ian Campbell, Senate 2006c: 54).

The proven problem of multiple agencies with exclusive jurisdictions, is not only conflict between agencies over who has power, but the tendency for matters that are on the periphery of either jurisdiction to fall through a crack between both of them. For example, in this situation, a complaint involving a 'minor' corruption matter may not be sufficiently significant to demand attention from ACLEI, relative to other matters, but might nevertheless be positively excluded from investigation by the ombudsman, even when it would be considered serious by complaint-handling standards.

While the benefits of concurrent jurisdictions has been realised for some time in several Australian states, it has come late to the federal government. One example of where the preference for exclusive jurisdictions instead persists, is in the statutory bar under section 5(2)(d) of the *Ombudsman Act 1976* preventing the Commonwealth Ombudsman from investigating any action relating to the employment of a public servant. While intended to prevent complaints to the Ombudsman from being used as an alternative mechanism for employment-related grievances, the fact that the Ombudsman cannot investigate an employment-related matter even on his own initiative, also prevents that office from making employment-related inquiries or taking any action to protect a federal officer who discloses defective administration, or otherwise assists an Ombudsman investigation. An effective solution would be a concurrent jurisdiction in which the Ombudsman could investigate such matters where he determined there was a public interest in doing so, while still not being otherwise obliged to do so.

The price of the greater coherence made possible by concurrent or overlapping roles, is the need for cooperation and coordination between agencies. In practice this already often occurs, and where it does not, structural incentives for doing so are in any event clearly desirable. In particular, as already noted, systems are particularly needed which require coordination between agencies in respect of their dealings with the government bodies they service, in the areas of outreach, education, monitoring and evaluation.

For example, the Australian Public Service Commission is currently the main collector of information relevant to awareness and adherence to public sector standards, through the annual State of the Service surveys and reports, at least in respect of APS agencies. The public sector would be better served by seeing this role enhanced to serve as many as possible of the information needs of all integrity agencies, rather than seeing all agencies develop their own surveys. Even more importantly, coordinated workplace education and executive training packages that incorporate the many different elements of public integrity are more likely to contribute to the maintenance of integrity, than confusing, fragmented packages.

One mechanism for supporting a coordinated approach is the institution of a coordinating committee or council of integrity agencies. This has been taken up in a number of jurisdictions (see Brown et al 2005a: 86-89). At a federal level, a valuable precedent exists in the form of the Administrative Review Council.

A coherent integrity system is also one in which the accountability of core integrity agencies is clear. Following the principles of mutual accountability discussed in many parts of this volume, the presence of multiple core agencies can help entrench public integrity because each is also held accountable by each other. For example, even though these agencies must also work as partners in the integrity system, the accountability of the new ACLEI is enhanced by the fact that it is subject to scrutiny by the Commonwealth Ombudsman (ACLEI 2007: 36). This principle of mutual accountability is an important one to be maintained in further reform.

The final mechanism for accountability is a sensible arrangement for oversight by the people through the parliament. Here there also remain signs of fragmentation at the federal level, which stand to be rectified in the event of more coherent reform. A number of important parliamentary committees exist which play vital roles in relation to public integrity, such as the Parliamentary Joint Committee on Public Accounts and Audit, but their roles are themselves largely uncoordinated. The Commonwealth Ombudsman receives occasional special attention from the Senate Standing Committee on Finance and Public Administration, but otherwise its pivotal role in the federal public integrity system goes largely unsupported at a parliamentary level.

This contrasts with the approach taken under the *Law Enforcement Integrity Commissioner Act 2006*, which created a special Parliamentary Joint Committee to oversight that agency alone, notwithstanding is comparatively small size and narrow role. Indeed a more logical arrangement would have been for a new Parliamentary Joint Committee on Law Enforcement, replacing the existing parliamentary committee on the Australian Crime Commission, to also oversight the AFP, ACLEI, and any other significant law enforcement issues (see Senate 2006b: 41-44). However in the absence of this, another more logical arrangement would be the establishment of a joint committee on public integrity, to help oversight and coordinate a number of the institutions that make up the federal integrity system. Whenever a general integrity commission is created to replace or expand the Australian Commission for Law Enforcement Integrity, this would provide a logical opportunity for this further reform.

4. Conclusion: towards a new federal integrity system

This paper has reviewed some of the complex issues that confront any government when considering how to respond to pressures for institutional reform to the integrity system. Frequently those pressures will be 'scandal-driven' and, as seen in the first part of the paper, the decisions made will often have a tendency to be *ad hoc* or 'knee-jerk'. There is a clear need for a considered approach, in which a more comprehensive process of institutional design is used to determine how public integrity systems are to be strengthened. This paper has suggested, using recent Australian experience, some key questions that can help inform that process.

The first part of the paper exposed these deficiencies in respect of the approaches both of the Victorian state government and, especially, Australia's federal government. Rather than flying blind in respect of assumptions about the levels of resources needed to make up shortfalls in the integrity system, it was shown that objective analysis is needed before assessments can be seen as reasonable. The data suggest that assumptions in 2004, that Victoria had allowed the capacity of its core integrity frameworks to stagnate compared to other jurisdictions, were broadly correct. However the data also showed that this was also true of the federal

government, and most importantly, that in both cases, the further injection of resources that came with new police anti-corruption strategies did comparatively little to change the overall picture. This analysis helps demonstrate that while nations and governments can sometimes *appear* to have all the necessary institutions and processes in place, their actual capacity to pursue integrity may be very different. It also demonstrates that by attempting a more objective view of the way in which institutions have evolved, integrity system assessment can help gauge the extent of the 'hollowness' in particular integrity pillars.

This second finding also exposed the most significant flaws in the federal approach. Having criticised the Victorian government for failing (at least initially) to create a new independent agency, the federal government's own position was not substantially improved even once it did so. Indeed its creation of a new anti-corruption body restricted only to law enforcement, and resourced only weakly, was more typical of an attempt to create an *appearance* of action, than a coherent contribution to strengthening of the federal integrity system. The 'silver bullet' solution of creating a new agency did little to meet the demonstrated need for reform across the larger system.

These events provide a salient reminder that the creation of 'core' integrity agencies of this kind should not be pursued as if representing a total solution to corruption risks, either as an act of political symbolism or as a surrogate for the other, more systemic reforms that might be needed. The unresolved debate over the creation of an effective anti-corruption commission at Australia's federal level highlights that even industrialised countries with well-entrenched democratic institutions can battle to find the right mix of integrity institutions.

The second part of the paper suggested five major issues of institutional design that need to be satisfied in the development of the federal integrity system, arising from this situation. In line with the views of the Senate Legal and Constitutional Legislation Committee, the first major issue is the now almost inevitable need for the expansion or replacement of the most recently created federal agency into a general integrity or anti-corruption commission capable of operating across the entire public sector. However, it is important that this occur in a way which takes account of the lessons learned, and strengthens the integrity system as whole. The remaining four key issues provide guidance to that end.

As a concession to the criticisms of the Senate Legal and Constitutional Committee in 2006, the Australian government allowed at least one useful amendment to the *Law Enforcement Integrity Commissioner Act 2006* – under section 223A, that legislation must be reviewed either by a parliamentary committee or independently, after three years of operation. The test will be whether this review is taken as an opportunity to address the original concerns of the committee, and of the many observers of the federal government's reforms, that a more comprehensive and visionary approach was not only possible, but necessary.

Corruption issues, by their nature, attract political attention and excite public passion. The issues of institutional reform on which public integrity really depends are, by comparison, extremely dry, complex, and burdensome. Once created, the important roles played by integrity institutions are easily forgotten until the next scandal, when pressure for a new or different institution arises again. It requires a long view of history to see how integrity systems are built, maintained and renewed – or alternatively, built and quietly eroded. Australia's federal integrity system continues to experience a period when the trend could go in either direction.

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