



Australian Government
**Australian Commission for
Law Enforcement Integrity**

A “3D” view of anti-corruption agencies

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CHECK AGAINST DELIVERY

INTRODUCTION

I have been invited to speak today about whether there is an ideal anti-corruption agency model. The answer you might expect me to suggest is that my own agency—the Australian Commission for Law Enforcement Integrity (or ACLEI as it is known)—is the ideal model, but I’m sure that a parochial view doesn’t get us very far!

Of course, debate about agency models is disputed territory, with accountability and transparency proponents often wishing for more agencies with more powers and wider jurisdictions, while policy makers often prefer a more cautious approach requiring evidence of crisis.

The analysis I wish to offer has two component principles that should guide design not just of anti-corruption agencies, but of the integrity framework generally.

First, anti-corruption measures need to be matched adequately to corruption risk. Implicit is the idea that analyses of risk are realistic and kept up-to-date.

Secondly, in the policy sense, we need to know why we are here. That is to say, anti-corruption measures need to be oriented strategically to address specific threats, noting that these issues may change in scope and scale over time.

Let me set some context for these remarks.

SETTING THE CONTEXT

Around the world, the effects of corruption mean that many people are deprived of food, shelter, health, education, meaningful work, safety and justice. In the same way, the wealth of nations and regions can be stolen and a population deprived of economic opportunity, thereby perpetuating the cycle of disadvantage. As recently as a few months ago, the Arab Spring uprisings demonstrated an emphatic, grass-roots rejection of institutional corruption of this form and scale.¹ In passing, I note that their problem is our problem, since it appears that stolen national assets have been laundered and hidden around the world in real estate and financial instruments.

In Australia, as in many other places in the world, corruption generally takes on a different guise to the institutional corruption I have just described. We should be no less concerned to combat corruption here, since its effect on a local community matters to our own sense of safety, trust, confidence and identity, as well as to financial sustainability. In that context, the Australian model of distributed accountability—whereby State matters are dealt with locally—is not only constitutionally preferable, but functionally appropriate. For this reason, it is pleasing to note that every Australian State now has, or will shortly have, at least one specialised anti-corruption agency.

We should not forget that there is also a macro-economic dimension to assuring the integrity of Australia's—or any nation's—governments, public services, financial institutions and companies. Accordingly, in considering Australia's various anti-corruption models, we also need to keep in mind our reputation overseas as a safe and reliable country in which to invest, to visit, to study, and with which to trade.

It may be that corruption issues in Australia can be distinguished in type and scale from those in many other parts of the world, but our responses to the challenges we face are no less important to our own continuing prosperity and social well-being. For this reason, the question of integrity models and frameworks connects governments, one to another.

INTEGRITY MODELS

Anti-corruption measures of various descriptions are now recognised as part of the fundamental architecture of good government administration. It is an interesting fact, not well remembered, that among the first laws passed by the new Commonwealth Parliament following the federation of Australian States in 1901 was the *Secret Commissions Act 1905*²—an act to criminalise bribery of Commonwealth public officials (amongst other corrupt acts), and which granted coercive hearing powers to investigate serious matters.

¹ Mr Yuri Fedotov, Executive Director United Nations Office on Drugs and Crime, Opening Speech, 4th Session of the Conference of States Parties, United Nations Convention Against Corruption, Marrakech, 24 October 2011.

² Since repealed by Act 137 of 2000, *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*.

Much later, and borrowing examples from places like Hong Kong, various State jurisdictions took innovative steps to respond to particular systemic corruption risks then apparent—including, in the 1980s and 1990s, by establishing specialised anti-corruption agencies to stamp out corruption then entrenched in politics, parts of the public service and police. (Indeed, this conference is being presented and hosted by the successors of some of those specialised agencies.)

The ability to hold coercive information-gathering hearings defined these agencies in the public sphere. However, one of the great values, lesser appreciated, is to have created a dedicated and skilled resource to develop targeted methods for investigation and prevention in response to a difficult problem.

Accordingly, in many Australian jurisdictions, a stand-alone anti-corruption agency is now a significant part of the government policy response to an identified risk. Here in Western Australia, the Corruption and Crime Commission has a specialised anti-corruption role, and works alongside other government institutions—such as the Western Australia Police, the Ombudsman, the Auditor-General, the Public Sector Commissioner and the Information Commissioner—each doing their own part to ensure integrity prevails in public administration.

A similar multi-agency approach is taken at the Federal level, whereby ACLEI gives a focus to investigating possible corrupt conduct in high risk agencies, namely the Australian Crime Commission, the Australian Customs and Border Protection Service, and the Australian Federal Police. Meanwhile, other corruption risks are dealt with in an appropriate way by other agencies and policy measures.

As governments should, the Australian Government keeps its integrity system under review. For instance, in January this year, ACLEI was added to the integrity arrangements of the Customs and Border Protection Service, in recognition of law enforcement-related corruption risks that can arise in border control. Among broader initiatives, Australia's foreign bribery laws have also been strengthened, and whistleblower protection laws for the Australian Public Service are being updated.

Also, some significant review work has recently commenced, led by the Commonwealth Attorney-General's Department, to develop Australia's first National Anti-Corruption Plan. Amongst other objectives, the project will collect information about emerging corruption threats, and seek to ensure that Australia's various integrity arrangements are strong, connected and complementary.

Of course, the shape and size of a public sector anti-corruption framework is a matter for each jurisdiction to decide, to be informed (but not determined) by experience elsewhere. Design factors will include an assessment of corruption risk and the usual consideration of the cost, efficiency and effectiveness of one policy measure over another.

At this point, it is worth noting that there was a doctrinal phase in international development, only recently passed, which held that “the ultimate policy solution to corruption is to establish a specialised anti-corruption agency”.³ International experience since has shown up the flaws in this one-size-fits-all policy,⁴ since it is not necessarily the best solution in every situation. In addition, political rhetoric can set public expectations too high as to how much and how quickly an anti-corruption agency might achieve results—especially if an agency does not enjoy political support for its mission, or if the agency is not part of an integrated integrity framework. In such circumstances, any agency would fail.

A “3D VIEW”

With these issues of “success” and “failure” in mind, I would like to turn to offering some thoughts about the strategic purpose of public sector anti-corruption agencies.

The popular measure of the success of an anti-corruption agency is the number of “bad guys” that are caught. In my view, this approach (although valid in part) is too narrow in a changed threat environment, and ignores the pressing need to build institutional resistance to corruption.

More than ever before, the corruption challenges we face have international dimensions. Criminal intelligence tells us that the strong Australian dollar and high illicit commodity prices have brought to our shores new organised crime operators seeking to import border-controlled substances for great profit. Higher potential profit directly affects the amount a bribe payer will offer to a public official for information or assistance, and increases also the effort that will be put to infiltration and compromise tactics. The problem is not just at a federal level, since all levels of government play crucial roles in law enforcement, regulation and information security.

Accordingly, it is a critical time for the public sector. Not only is the temptation to corruption high and persuasively delivered, but new phenomena—such as, recreational drug use and social media—pose particular challenges and vulnerabilities in relation to corrupt compromise. When combined with high levels of autonomy and devolved access to sensitive information or discretionary power, these factors result in a higher public sector corruption risk.

For these reasons, I believe that anti-corruption efforts (and performance indicators) need to orient more towards what I call a 3D approach, in which Detection, Disruption and Deterrence are used as complementary strategies to build resistance to corruption in vulnerable areas of public administration. The goal is to keep our information appropriately secure and better protect decision-making from corrupt influence.

³ Luís de Sousa (2009) *Anti-Corruption Agencies: Between empowerment and irrelevance*. European University Institute Working Papers. Florence.

⁴ Richard Heeks (2011) *Understanding success and failure of anti-corruption initiatives*. U4 Brief, March 2011:2. CMI-U4 Anti-Corruption Resource Centre, Norway.

Under this approach, law enforcement and anti-corruption agencies across multiple jurisdictions would cooperate closely to share information that will enhance Detection efforts and inform a national picture of corruption risk and response. This approach will elevate corruption investigations from holding individuals to account, towards an enquiry about the methods, motives and links to others. I note that anti-corruption agencies are already moving in this direction.

As to Disruption, in the future, it may be desirable for information from technical surveillance—such as telephone interception and listening devices—as well as from physical surveillance, to be used to inform decisions about breaking up corrupt enterprises, rather than exclusively as evidence for possible prosecutions. Accordingly, as time goes on, the present thresholds for these powers and the uses to which they could be put may need to be thought about further in relation to corruption investigations and integrity testing methods. Other disruption strategies may include using employment measures (such as security screening, redeployment, sanction and dismissal) to intervene early when corruption risk and misconduct are both present. Asset recovery strategies, such as restraining unexplained wealth, also offer strategic intervention options.

As we know, culture and environment affect corruption risk, since they directly affect the risk of detection that is calculated by individuals contemplating corrupt activity. Accordingly, attention needs to be paid to the overall policy and accountability settings aimed at Deterrence, with the specific aim of making it harder for corrupt conduct to occur undetected. This approach will require a closer look at applying research to corruption so that we understand better where and how to intervene efficiently in different contexts. I note that many anti-corruption agencies already have an interest in this area and are producing excellent results.

In terms of performance measures, the 3D approach can be assessed in qualitative, as well as quantitative ways, including information exchanged, value added to intelligence, disruption interventions completed, and assessments of changes in risk arising from deterrence measures implemented. In these ways, our resistance to corruption will be improved in a systematic and comprehensive way.

CONCLUSION

In conclusion, let me say that as circumstances change around us, we need to be thinking broadly and innovatively about the cooperative strategies needed to rival the uncommon rewards that can be earned from corrupt conduct. From that starting point, rather than the “individual accountability” starting point, I expect we will be better placed to develop and evaluate anti-corruption agency models to face the challenges ahead.

Thank you for your attention.