

PERFORMANCE MEASURES AND ACCOUNTABILITY OF OVERSIGHT AGENCIES

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**Submission to the Parliament of NSW
Re Crime Inquiry
Ombudsman, Police Integrity Commission, Crime Commission**

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This submission is based on the assumption that there will be many suggestions for improvement. What this paper does is to recommend a balance between competing perspectives.

The forms in which corruption might be expressed are basically a conflict of interest or a subversion of the principle of transparency. Transparency International has the precept that corruption flourishes in secrecy, for which the antidote is transparency. This appears to be a universally acceptable principle. While it may not be the only one it is an essential (necessary but not sufficient).

Perspectives may be viewed from different viewpoints. Among them are the views of political values, community values, the practitioners, and criminals. In this it is clearly one of community values, particularly that of the condemnation of corruption. While we are mindful of the views of the various stakeholders it must be that the values of open-ness, honesty and the condemnation of corruption are paramount.

In considering the various approaches and techniques there are the considerations of the economics of the various strategies to be adopted: these are to be balanced by moral considerations. It may have been economical to put little boys up chimneys in Victorian London but that does not make it right. One might just as well argue that killing all prisoners is an economical method of crime containment.

Professor Sherman of the Institute of Criminology at Cambridge University has advocated that, within moral parameters, one should be totally mindful of the cost balance between various strategies. For example, the cost of unsolicited immigration is borne by the border protection agencies, by the police, and by prisons. An understanding of how the costs accorded to each department might well result in a reallocation of resources to bring about a balance.

Such considerations of balance between the economic and the moral arguments necessarily invest all such policy decisions.

In summary it is noted that whatever criteria are adopted one must first set out the basis of decision making. For example, transparency is an admirable principle and may only be breached for reasons of personal privacy, intellectual property, or national security. Another instance is that a conflict of interest is antithetical to non-corruption. Yet a third is that any behaviour that is not consistent with a code of conduct and a code of ethics should be deemed corrupt (being mindful of the need to establish such a breach).

From this it emerges that a code of ethics (the principles of values), and a code of conduct (how you actually behave) are essentials. To this end there needs to be such codes, and an accountable committee to exercise the code functions. Ideally such a committee would have the dual functions of constantly monitoring and updating the code when needed, and of hearing cases brought. In this

it is clear that the hearings and monitoring are complementary functions. The accountability function is an important one in that such a committee must report to a higher authority. It is by the separation of powers that justice is derived.

There is a caution to be entered here. The American company Enron had an admirable record of codes, reporting, etc – yet still became a byword for corruption. The missing item here was transparency, and oversight by independent bodies.

Among the administrators and practitioners there is a case to be made for limited tenure in certain positions. The notion of rotation to new positions may help prevent corruption becoming entrenched. While it is not a guarantee, it is a method of minimising such problems. One Victorian commission, for example, has that as a policy to prevent relationships developing too strongly.

In summary the view is held that transparency, clarity of principles, of codes, and of tenure are important. Of equal importance is that of having an oversight body to which subordinate bodies are responsible.

This submission is made on the basis of experience and expertise. It does not necessarily reflect the views of the College of Law or the University.

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