

TRANSCRIPT OF PODCAST

INTEGRITY SERIES

EPISODE #3 | OVERSIGHT AGENCIES

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14 October 2021

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Delivered in a partnership between IPAA ACT and the Australian Public Service Commission.

RINA BRUINSMA:

Hello, everyone. And welcome to the next session of our Integrity podcast series, 'Understanding Integrity'. This four part series is brought to you via a partnership between the Institute of Public Administration Australia and the Australian Public Service Commission. Hi, my name is Rina Bruinsma, and I'm the First Assistant Commissioner at the Australian Public Service Commission. Thank you very much for joining me.

I'd like to begin today's podcast by acknowledging the Traditional Custodians of the Land on which we are broadcasting from today, the Ngunnawal people. I wish to pay respects to their Elders past, present, and emerging and acknowledge the ongoing contribution they make to the life of this wonderful country and region.

Today, our topic is 'Integrity and Oversight Agencies'. We're going to expand some of the content from our earlier podcasts, introducing you to some of the agencies that play a role in supporting and overseeing integrity in the APS. We'll talk about how these fit together in the broader APS landscape.

I'm joined by an amazing panel who have a world of experience in public sector, leadership and integrity stewardship, I'll introduce to you now. So we've got Michael Manthorpe. He's the former Commonwealth Ombudsman and he's the Deputy President of the Institute of Public Administration Australia here in the ACT. Also, welcome to Graeme Head, the inaugural Commissioner of the National Disability Insurance Scheme, Quality and Safeguards Commission and former New South Wales Public Service Commissioner. And finally, Mr John Hoitink, the CEO of the ACT Integrity Commission. Michael, Graeme and John, thank you for sharing your time with us today. I really appreciate it. I might begin by asking each of you to give our listeners a quick bio. What is your experience in integrity agencies? So we might begin with Michael.

MICHAEL MANTHORPE:

Okay, well, thanks Rina and it's great to be with you today. Until my fairly recent retirement, I spent four and a bit years as the Commonwealth and ACT Ombudsman. So in that job, I led an office that took complaints - you don't have an ombudsman without complaints, complaints from the public about the administrative actions of almost all APS and ACT government agencies, as well as a host of other functions. We were as diverse as the Postal Industry Ombudsman, the Law Enforcement Ombudsman, the Defence Force Ombudsman. We had a role in relation to immigration, particularly around immigration detention issues, VET student loans, private health insurance, and so on it goes. And we took complaints about all those places, but we also tried where we could to resolve them. We also did undertake inspections, audits and other

activities in spaces where there aren't complaints, but where there is a public interest in oversight of administrative decision making.

So a good example of that was in relation to the use of covert and intrusive powers by law enforcement agencies, where the ombudsman's office does a great deal of work to ensure that those agencies abide by the law and provide assurance to the public and the parliament about that. I should also say that prior to that, I spent about 33 years around the Australian Public Service where I was operating with professional integrity matters of course, every day. So while today's podcast is about the various specialized agencies that seek to protect integrity, it's of course everyone's job in the public service to uphold high standards of professional integrity, but I'll leave it there.

RINA BRUINSMA: It looks, Michael, it looks like you bring a wealth of experience to this discussion. Graeme, I might now hand over to you.

GRAEME HEAD: Thanks, Rina. My role in integrity agencies was principally as the former and inaugural Public Service Commissioner in New South Wales. An agency that I established and led for about six and a half years. New South Wales had not had a Public Service Commissioner, separate statutory body, for about 25 years. When I set up the Public Service Commission, it was a commitment of the government to establish such a body. It performed many of the workforce development functions that are common to public service commissions around the country. It also had an important role as an integrity agency, both through its responsibilities for the ethical framework that is part of the New South Wales legislation and for conducting inquiries, responding to complaints, etcetera, about the conduct of public servants, where those complaints did not fall neatly into the responsibility of another body, such as the Office of the Ombudsman or one of the other integrity agencies.

And of course, much like Michael, I'm no longer in the public sector. I left the public sector at the end of June this year when I finished the NDIS Commissioner role. I'm now a partner at EY Port Jackson Partners. But for many decades, I was in leadership roles in the public sector. And like Michael, whether you're in an integrity agency or not, integrity of the public sector and its practices is a very important part of what all public sector leaders are involved in.

RINA BRUINSMA: Thanks Graeme. So we are going to get perspectives from you on Commonwealth, State and private sector. I look forward to hearing from you. Last but not least, John.

JOHN HOITINK: Yeah. Thanks Rina. Thanks very much for asking me to be part of this. My role within the integrity agencies, I commenced with the New South Wales Independent Commission in 2004 in an investigation capacity. I left that organization after 15 years as the Executive Director of investigations and the acting CEO. I moved from there to the newly formed CEO's position within the ACT Integrity Commission. Prior to that, I worked for the AFP for about 20 odd years and for ATO for about four years. So all up, I've got about 42 odd years in sort of law enforcement.

RINA BRUINSMA: Great. Thanks, John - also bringing a wealth of experience to the panel. I really appreciate and look forward to hearing from you. We might start off with a bit of a discussion about the APS landscape. So I'm probably not the only one among our listeners who might think that it sometimes can appear pretty complex. We've got several integrity and oversight agencies and they all play slightly different and sometimes similar roles. Michael, I'm interested in understanding more about who these key agencies are in what we might describe as an ecosystem.

MICHAEL MANTHORPE: Yeah. Sure, Rina. You're right. This is not always a landscape that is well understood. That's partly because there are quite a lot of agencies and most public servants have a little to do with some of them, but probably not much to do with others. But it is important, I think, to understand the landscape at least at some level. So obviously the big ones that people will think of are people like the Australian National Audit Office who come around and audit everybody's financial statements and undertake all sorts of performance audits every year. They are a notable integrity agency, just as there in our ACT world, there is an equivalent ACT Auditor General. The Ombudsman, well I talked about him. Him or her, whomever the next one might be. So I won't go on about that office any further, but then there are others, people like the Office of the Australian Information Commissioner, who is concerned with upholding privacy and FOI laws. Your agency, Rina, the Australian Public Service Commission has a role in ensuring the integrity of personnel matters much as Graeme's entity did in New South Wales.

Of course, within it sits the Merit Protection Agency with a particular specialized role in upholding the merit principle. The Australian Human Rights Commission is another one that has a different sort of role in some ways, a more external facing role in advancing notions of human rights in Australia. It also has a role in the APS, for example, in the immigration detention space.

Then there's the AFP, that investigates allegations of criminal or corrupt conduct of public servants. They're some of the ones that probably many people would think of straight off, but then there are a variety of other more specialized entities. Think the Independent Parliamentary Expenses Authority, which as the name suggests has a specialized role in keeping track of parliamentary expenses and the issues that sit there. There are oversight bodies for specific parts of the system. The inspector general of intelligence and security performs a role that is broadly analogous in the national security space to the role that the ombudsman plays in the sort of broader administrative space.

Similarly, there's an Inspector General of the Australian Defence Force. There's an Inspector General of Taxation and a Taxation Ombudsman. There's the Australian Commission for Law Enforcement Integrity that has a role in overseeing or investigating and taking action about corruption allegations in law enforcement. And on it goes. Then even in the ACT system, there are bodies like John's - the Integrity Commission here in the ACT. So there is quite an ecosystem of independent entities. In every jurisdiction, it's a slightly different combination of entities performing slightly different statutory functions. But it does public servants good to have some sense of what all these different entities do.

RINA BRUINSMA:

Thanks, Michael. So you mentioned that the States and Territories and other jurisdictions may have slightly differing arrangements. So, Graeme and John, given that you've both worked in Commonwealth and State public sectors, I'm wondering if you could share with us your impressions of how the integrity system compares between the sectors. So Graeme, I might start with you.

GRAEME HEAD:

Thanks. I think that generally the sort of characteristics of the system that Michael just outlined, are what you find in most states and territories, albeit with some specifically focused institutions in many states and territories that don't always directly mirror what exists in the Commonwealth. But if you're leading an integrity agency in a state or territory, just like Michael described, you will be part of a network of agencies across the sector that have a range of quite specific functions in respective of oversight. Again, some of those will be very familiar to public servants, the offices of the respective Auditors General in states and territories, the equivalents of statutory office holders with privacy and information functions related to freedom of information legislation, offices of ombudsman and other bodies, including anti-corruption bodies.

I think the strong similarity is that any one agency is part of a constellation of oversight agencies, each of which has a specific focus and powers that enable the agency to undertake the work that is the subject of that focus. And so while the form of it might be different jurisdiction to jurisdiction, the fact that you're part of a system of oversight is the same. And later on in the discussion, I'm sure we'll talk a bit about some of what's involved in being an effective part of that kind of network.

RINA BRUINSMA: Okay. Thanks. I like that reference to a constellation of oversight agencies. John, what can you share with us from your perspective about the way it might differ between jurisdictions?

JOHN HOITINK: I think what Graeme said sort of hit the nail on the head. Once you're part of the network of agencies that involve with integrity and oversight, it's not just what an Integrity Commission do. It's that partnership that you have with the Ombudsman, with the Public Service Commission, with the Human Rights Commission. It's all those other agencies which work together. The integrity agencies generally would focus on serious and systemic corrupt conduct. Whereas there's a lot of things that are reported to us that we would probably deal with, but people like the Ombudsman or the Auditor General may be better placed to look at those sort of things. Certainly that network of agencies is really quite important and having that sort of interaction between the agencies, recognizing what the different scope of each agency is and what we can actually be achieved. It's about working in partnership with those agencies.

RINA BRUINSMA: Thanks, John. That's so good and helpful. And thinking about the key players in this system, I'm curious about your impressions and the impressions of other members of the panel. Why the role of integrity and oversight agencies is so important. So I might start with you John, and then we'll map back through other panel members.

JOHN HOITINK: I think it's part of looking at ensuring that the public has transparency, accountability in our public service, whether that be state, territory or federal. So it's important about all those players that I mentioned before, then Graeme and Michael referred to as well, that is working together to make sure that the system that the public can rely on is one that is delivering value for the public. We all expect that our people who work within the public sector right up to the politician level, all work basically towards ensuring that the fabric of society is strong. And when corruption or oversight and integrity is not there, that's unfortunately when you get a lot more involvement, certainly of agencies like mine.

RINA BRUINSMA: Yes, this constant theme of trust in the public service has come up through our other recordings and series. Graeme, over to you. Why do you think it's so important to have this constellation of oversight agencies?

GRAEME HEAD: Well, I'd echo John's remarks. I would also say that one of the things that I think about in respect of these agencies whose work can sometimes be a little mysterious to people that don't have a lot of interaction, is that they're a critical enabler of trustworthiness. We talk a lot about building trust, but in fact, what any public sector agency is doing is really asking for the trust of the public, the trust of the government of the day, and the other key players. Integrity agencies perform a critical function in a sense, flushing out issues that may call into question the trustworthiness of an agency or its processes.

As John said, that is about value for money, but it's also about value for money for the community in terms of its resources, where there's an appropriate set of arrangements about ensuring the proper processes are in place around how that money is spent. But it's not all about resources either. There are issues that, for instance, Public Service Commissions deal with, which is around the general conduct of the public service. And that can have aspects that are related to sort of general workplace management issues. Each integrity agency, I think, is about contributing to that larger picture around trustworthiness while also focusing on some specific settings or processes or aspects of the sector that may be challenged in particular ways around those issues.

RINA BRUINSMA: Thanks, Graeme. Michael, from your perspective, why do you think it's important to have these agencies?

MICHAEL MANTHORPE: Yeah, I agree with everything that both John and Graeme have said, so I'll try and pick up a couple of other related points. One is that the agencies in various ways uphold the rights of citizens in their interactions with government. If you think of the agencies that are charged with administering freedom of information laws, or the privacy laws, there's no question that, from time to time, people want to get access to information about what's going on in the government. The parliaments of Australia have passed laws to give effect to that in various ways. It's important that someone is in there seeking to ensure those laws are upheld. Similarly, if I think about my former life in the ombudsman's office, people have a right to complain if they don't like a decision that is taken in relation to them or the manner in which they're being treated by a government agency. It is really important that they have somewhere to go, which is free and relatively easy to access to raise their concern.

Sometimes you can help those people. Sometimes you can't. But nevertheless, it's important to have those avenues for people's rights to be upheld and examined, and their concerns taken seriously. And then another angle to this, and again, it was true of the Ombudsman's office, but I'm also sure it's true with respect to a number of the other agencies, whether it's Integrity Commissions, Auditors General, and all the rest is each of the agencies have powers to go and look in places that the general member of the public can't and frankly never will.

An example of that, back in my introductory comments I mentioned the role the Ombudsman's office plays in the oversight of law enforcement agencies and their use of covert and intrusive powers. So in that space where governments, parliaments, legislators, and law enforcement agencies themselves are from time to time seeking greater powers to combat crime, to combat child sexual abuse and all sorts of other wrongs.

They accrete through the legislation more powers to do covert investigative work, and someone needs to be able to make sure that they're doing that in a way that is appropriate and lawful, and report on that so that the public and the parliament can make sense of what's going on. These are all important functions that go to the notion of, or contribute to the notion of trustworthiness as Graeme put it, and trusting institutions, trusting governments and bureaucracies and so on but a part of the whole story of checks and balances in the system.

RINA BRUINSMA:

Thanks, Michael. You've nicely encapsulated that at the end of the day, this is about the rights, interests, and wellbeing of the public. So it's integral to trust in the public sector, in the public service. Moving on... there's such a range of different agencies. I'm really interested into drilling down a little bit into how they fit together within the system. So, John, I might start with you, noting your experience with the anti-corruption agencies. Do you want to comment about how *do* these agencies actually operate together within the system?

JOHN HOITINK:

Well, obviously there's a legislation background which sits underneath and underpins how agencies work. I think it's also recognizing that we can't do it all. An integrity agency can't do it all. Instead, we could focus on the serious and systemic. For example, in my time, and certainly when Michael was still within Canberra as the Inspector of the Integrity Commission, there was a strong interaction between his office and the ACT Integrity Commission as to how we did our work. That comes back to what exactly what Michael said before about the checks and balances. So, even though integrity commissions operate in some respects overtly for how we actually obtain our information, the checks and balances for us are basically for the Inspector.

And that really applies to all of the other integrity agencies, Australia-wide. They all have an Inspector who looks after or overlooks how they actually do their business. So it's really understanding what the other agencies do, what resources they have to do that. And certainly the legislation which underpins it. There's also that capability to run joint matters with those agencies, because they may have particular powers or knowledge or skills that would not be possessed within the agency. It's really about that recognition and cooperation, recognizing that one agency can't do it all, and it needs that network, exactly as Graeme said before, of agencies to actually work towards ensuring that we have transparency and accountability within our public sector.

RINA BRUINSMA: Thanks, John. Graeme and Michael, interested in your views on this particular topic. So, how these agencies work together, cooperate, create, interconnect, I guess. Might start with you, Graeme.

GRAEME HEAD: Well, some of that I think depends on the particular jurisdiction and whether or not there are formal arrangements in place. I'm not sure whether this remains the case because I haven't checked the statute since I left the New south Wales public sector. But for instance, under the Public Interest Disclosures Legislation in New South Wales, there was a body called the Public Interest Disclosure Steering Committee, which actually brought the statutory office holders from a range of integrity agencies together in a formal structure to deliberate around things that really related to the system that each statutory office holder had a responsibility in around disclosures of misconduct or alleged misconduct. So you have some formal mechanisms, but also, I think as John pointed out, every statutory officeholder when they look at a particular situation and they look at their powers, sometimes something sits very neatly within your remit.

Sometimes it sits both within your remit and that of one or more other integrity agencies. I think that there is a good discipline that develops with people examining very carefully, their role in leading on something and then consulting as appropriate and as provided for in various bits of legislation with the other offices around - either a referral, if that's provided for and your assessment is your own agency is not the right place or an area where there might be some dual interest in an issue. I think in short, there are some formal mechanisms in place. There is also a discipline that I observed where the heads of integrity agencies were very carefully focused on making sure that they understood where their own part of a problem sat in respect of something that someone else may have a legitimate interest in.

RINA BRUINSMA: Thanks, Graeme. That's a nice segue into my next question. I'm kind of interested in how well the panel thinks the system is understood. You've got all these agencies - Michael, you mentioned quite a few right at the start, and I'm sure there's more, I'm sort of interested in how it all works in practice. So, Michael, drawing from your experience as the Commonwealth Ombudsman, do you think the system is very well understood by APS employees?

MICHAEL MANTHORPE: I think it is partially understood by APS employees. Then you've got to ask yourself how well is it understood by the public and the agencies in the constellation, as Graham described it. Whether that's at the Commonwealth level or State and Territory level, I know grapple with this question all the time. And particularly for those agencies that have some sort of public facing responsibility, you want to be able to steer people in the right direction. If you are not the right place to take a complaint or concern or an issue, whatever it might be, you need to be able to get them to the right spot. So one of the ways in which the system works in practice is that the agencies regularly referring matters to each other, to help either members of the public or people around the system to get to the right place, to get their matter looked at and dealt with as reasonably as, and fully as it can be.

I think there's still work to do, to ensure that the system is really well understood by the public, whether that's at the Commonwealth or the State level. Then in terms of how the agencies work with each other, there is, as I say, a regular kind of referral of matters from one to another. For example, someone might come to the Ombudsman's office with an allegation about corruption. That may well be something that gets referred from there to ACLEI or to the Integrity Commission or to somewhere else. The other thing to say about all this is, of course the systems are in constant change. Whilst most staff in line, public service agencies, might have a sort of reasonably simple or some sort of basic understanding of what this group of agencies do, in fact, the roles and responsibilities keep evolving and keep changing as governments or parliaments identify different pieces of activity that need independent oversight.

Recent examples, if we think about the ACT, well, a few years ago, there wasn't an ACT Integrity Commission. There is today. So then, that needs to be fitted in within the framework at some future point. And I'm not going to make any comment on the political debate here, but at some future point, there may well be a Commonwealth Integrity Commission. Then the other integrity agencies will need to work with that entity to figure out how to sensibly, practically, cooperatively, matters are referred to and from each other, and who oversees who, and how that all works. That sort of conversation is a sort of constant discussion that goes on amongst the agencies as is, although the agencies they're not policy departments, but they do have an interest in the administrative design of how the Public Interest Disclosure Act or changed institutional arrangements and the like, work. There is a role there to engage with each other and try to help make the system work as best as it possibly can in the interests of, well, everybody.

RINA BRUINSMA:

Thanks, Michael. It's sort of incumbent upon all of us to keep abreast of those changes in the system. Graeme, are you able to share with us your advice about how we can improve our understanding of, and our ability to navigate, the system?

GRAEME HEAD:

Well, that's a short question, but the answer could take quite a long time. Look, I think one of the things to remember is that not all of what public servants need to do in order to feel confident that they can report things, for instance, or respond appropriately to something they observe requires people to have a detailed understanding of every aspect of the system. You want to know as a public servant, that you are working in an organization that encourages people to speak up if they observe something that they think is wrong. You want people to know that there are resources available to help them understand what they've observed, how to assess that, and how to make a report to an appropriate person of something that's troubling them. I do think that it's extremely important, particularly as we bring many more people into the public sector, from the private or not-for-profit sector, that we acknowledge that not everybody will have a background of having spent a large part of their career in the public sector.

It's very important when we bring people in that we do really good onboarding about the special responsibilities that public servants have for the stewardship of public resources. And we need to support people to reason from first principles about how to assess that something may not be right and how to go and find information about what to do about it. I don't think we need to educate everybody in the detail of what every integrity agency does, because as an individual officer, you may not have very much contact with that system often, but we do need to support people to recognize the things that they need to be calling out and to understand how to get good support and information to act on those matters.

RINA BRUINSMA:

Thanks Graeme. John, in closing, I'm wondering if you would just like to share with us, do you see any emerging trends or risks that we should be aware of in relation to integrity in the system as a whole?

JOHN HOITINK:

I don't think there's any major... I think both Michael and Graeme sort of again hit the nail on the head and I thoroughly endorse what both of them said in relation to making sure that there is a system or processes in place where people can recognize what is wrong, what is good behavior, what is bad behavior in relation to the use of resources and corruption. It's just making sure we've got that in place. One of the things for all of the corruption commissions is an education facility. Corruption prevention and education forms a very strong legislative basis of, certainly within the ACT. We have a very active role at the moment, in actually making sure that we go out and do exactly those things that Graeme and Michael were alluding to, it's making sure that people are aware of, number one, there's places that they can report these things and may not be suitable for a corruption commission - it may go to the ombudsman, it may go to the public service commissioner. But making sure that people have got that support and that network and that knowledge that sits around the whole of the integrity system. And again, coming back to that whole network that we actually have, as far as the agencies themselves is concerned, it's really making sure that the agencies have the resources to actually deal with the matters when they come to the fore. Certainly I will say from an ACT perspective, it's been sort of a challenging role in getting the commission up and running certainly from scratch when there was nothing. As Michael said, there wasn't integrity commission two years ago. It's really being able to sort of reach out to people like Michael and Graeme and sort of the other integrity agencies and making sure it functions effectively. I think overall there's no particular emerging trends that would affect the integrity agencies, other than perhaps just a reinforcement of the education that's required across all agencies for how public servants, or people within the public sector can report matters that they see as being corrupt or maladministration.

RINA BRUINSMA:

Thanks, John. And thank you to all the panelists today. I think you've really helped me and the listeners. You've helped to demystify the system a little bit for us, so we understand it's a constellation and a broad understanding of what that is and it's constantly changing. What I'm reassured by though, is that you mentioned that we don't need to understand every minute deal. We just have to have that broad understanding. We need to know why the system's there and that it is there and what it does. So I hope for our listeners, this has given you some understanding of the system and how you can engage with it. Thank you to all our listeners. I hope you'll join us for the next session. This will be the final in the series, and it's called 'Getting Practical'. Thank you all and goodbye for now.

VOICEOVER:

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