

A nose for the rottenness in the bulkhead

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Moira Rayner

Shock waves hit the lateral extremities of Australia on one August weekend. One was from Western Australia's Corruption and Crime Commission's announcement that it was prosecuting the Clerk of the Legislative Council on charges of stealing, drug possession and official corruption. It has stunned the looped legal, parliamentary and political establishments within which Laurence Marquet has wielded enormous influence for twenty-three years.

The other was the revelation that Victoria's Police Integrity office (OPI), notionally independent of the Police Commissioner and chaired by the state's Ombudsman, George Brouwer, had ignominiously failed. A 'clerk in the mailroom' had 'regrettably' sent confidential information about hundreds of strangers to a woman who had complained about a breach of her husband's privacy, with the letter dismissing her complaint as lacking substance.

The files exposed the quality of the investigation, which seemed somewhat inadequate. Its scope had been limited, by agreement with the Ombudsman's office and without telling the complainant, to a review of computer accesses to the husband's records over five months. This happened to exclude the month earlier, when someone had run off ten pages of data of her husband's computer records, which were sitting on the file. The 'dismissal' letter went out anyway.



The unfortunate head of the OPI, Ombudsman Brouwer, initially announced that his office would conduct an independent review of his office's lapse: then - perhaps induced by ridicule - outsourced it to the state's Privacy Commissioner. As a certain Spanish waiter would have said: Que?

Thanks to [Peter Nicholson](#) at *The Australian*

Victoria doesn't have a dedicated anti-corruption body. Premier Steve Bracks chose not to have one and Mr Brouwer, the new Ombudsman, has to do everything without tapping phones, because the Commonwealth Attorney General, Philip Ruddock, won't let him. But rather than getting stuck into George we should take from this debacle its lessons about the three-fold frailties of all integrity mechanisms.

Integrity and anti-corruption offices work through ordinary people who are naturally inclined to conserve energy, and 'efficiency' means cutting corners. Official watchdogs – however eminent, honest, smart and autonomous their embodiments – delegate responsibilities to staff and don't personally check how well each task is performed. Like any organisation they rely on 'systems', habits of mind, quality standards and internal checks. And as a matter of 'best practice,' all anti-corruption/integrity watchdogs refer to, and rely on the apparent thoroughness of, mechanisms for internal review conducted by those complained about: this is meant to 'build in' good standards of probity and accountability.

Anti-corruption agencies have a fourth and crucial weakness: the risk of cultural contamination. Over time, a 'watchdog' becomes familiar with those it guards and with whom it forms relationships, and may come to accommodate the values and practices of those it oversees.

The need to keep governments accountable is the problem of our times, when the executive has enormous power, and conventions about ministerial responsibility seem to have lost theirs. We can no longer trust in the traditional institutions of representative democracy - accessible, independent courts and open parliamentary debates. Parliament is run by political parties and clerks and, at best, open a tiny porthole into the engines of power.

We must not forget just how the elected, Bjelke-Petersen-dominated parliament 'protected' Queenslanders' public interests for all those years - and yet, how people wept at 'the great man's' funeral, earlier this year. Memories are short. Courts, lacking the backbone of constitutionally guaranteed civil rights and fundamental freedoms, are no bulwarks either: access to Freedom of Information (FOI) may be denied, the High Court recently said, on the certificate of the Minister that it is in the public interest to deny it.

The democratic promise of investigative journalism has evaporated, too. Few media owners make the necessarily open-ended commitment of resources for it, or are willing to risk the years of defamation litigation it tends to launch, Australia lacking 'free speech' guarantees of any kind, let alone constitutionally guaranteed ones. And even in the USA, where there are such constitutional guarantees, we have seen US journalists jailed for refusing to name sources. So we pin our hope on watchdogs.

The most destructive corruption comes from long-term, closed relationships and understandings. In policing, active law enforcement can be one seamless, sophisticated work ethic made out of two utterly philosophically opposed streams: 'fitting up' crims in the 'noble cause' of getting convictions, bending the rules about use of official data, stretching the truth, a little bit of lying, protecting mates, coercing recalcitrant colleagues, then 'acceptable' mimicking of criminal behaviour. No internal professional standards or ethics department could root out such an ethical culture. Nor can weeding out 'bad apples':

the barrel itself is tainted. Nor can ethics training in police school: recruits conform to the substantive culture when they graduate.

Internal surveillance, random drug and integrity tests and working on change from within will only be effective when it is more difficult to resist, than change. The most important work of integrity and anti-corruption bodies is not to investigate and prosecute misbehaving public officers, but to help change cultures that encourage corrupt activities, of which the assurance of detection is part. Corruption is rooted in too much confidence in the enjoyment of power; in on-going, exclusive personal relationships; in habits, self-interest and a sense of invulnerability. Even an anti-corruption body is susceptible to these characteristics of human nature, social and organisational behaviour.

Watchdogs will also fail, though they appeal to governments, who like to be seen to be doing something, after a scandal. We have packs of them now: ombudsmen, auditors, public service and human rights and privacy commissioners, public guardians and troops of special interest 'commissioners': health complaints, insurance, FOI, competition, essential services, energy and even child safety. Anti-corruption and police integrity bodies are now virtually an Australian standard, in which lies their mortal wound: their efficacy depends on not being 'standard' at all, in not being part of any establishment.

It seems, from the Victorian debacle, that we need accountability mechanisms to make sure that accountability mechanisms work, which is silly. It shows how little we've learned about managing conflicts of interest. Of course, government agencies must have their own internal integrity mechanisms, but they work best when they are regulated by an external agency with its own, distinct nose for the rottenness in the bulkhead.

Since any organisation creates its own culture, and all watchdogs become familiar and make accommodations with those they watch, every few years the watchdogs should be cleaned out, too. Their true usefulness are the qualities of outsider-ness – which only unusual individuals such as a (Victorian) Costigan, a (Queensland) Fitzgerald, a (NSW) Woods possess – and transience – cleaning out the sheds then moving out, leaving recommendations and organisational and management strategies that will work, but only for as long as memory lasts. Soon, it will have to be done again.

There are not many who are willing to pay the personal price of harrowing these fields: they should be prized. All good governance requires perpetual cultural renewal, if necessary, by fire.

About the author

Moira Rayner was a member of the (abolished) Anti-Corruption Commission in Western Australia from 2002-2004. These are her personal views.

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My teenage daughter has a rule of thumb about her behaviour. If she wouldn't want other people to know she has done something, she reasons, she shouldn't do it.

It's simple, but perhaps its a pity that more people in positions of power and authority don't also apply such a simple rule to their own behaviour.

Jane Caro

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