

**CONSTITUTIONAL CENTRE
LECTURE SERIES 2013**

The Fourth Arm of Government

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Serving Parliament – Serving Western Australians

Outline of presentation

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- **The growth of integrity agencies**
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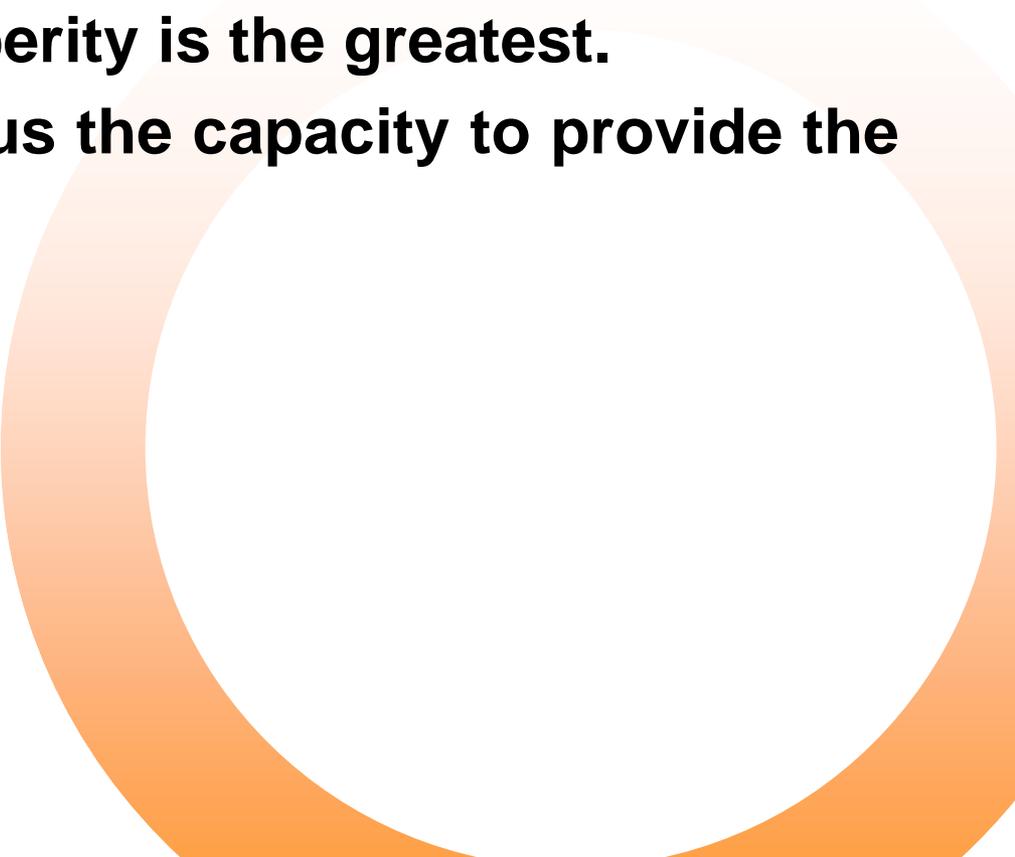
The importance of integrity

- **Integrity has clear intrinsic value. It also has, in my view, clear practical consequences.**
- **In its most recent 2012 Prosperity Index, the Legatum Institute assessed 142 countries in terms of a series of measures.**
- **Australia finished fourth and only a marginal amount separated us from Norway, Denmark and Sweden.**

The importance of integrity

- **What becomes quickly apparent about those countries at the top of the Index is that they are countries that have fundamental adherence to the rule of law, a significant absence of institutionalised corruption and high levels of integrity in governance. The exact opposite correlation is observed at the bottom of the Index.**

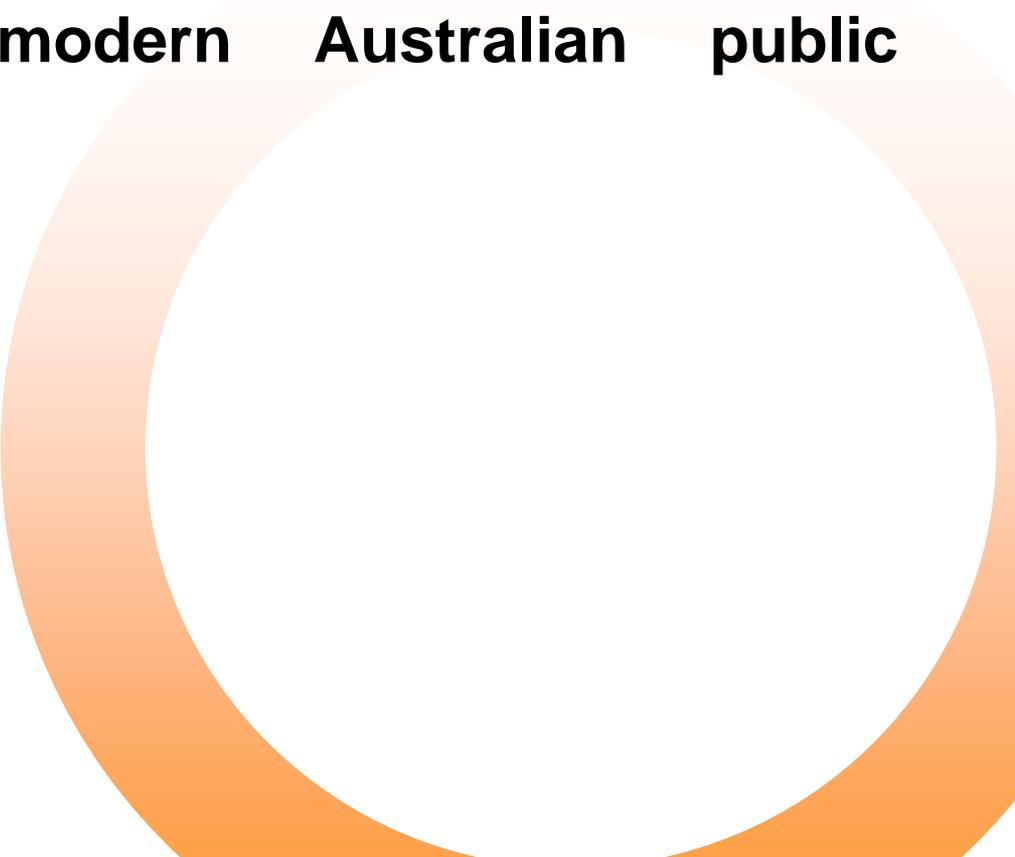
The importance of integrity

- **History has decisively demonstrated that societies that enshrine integrity in their public institutions are the ones that are the most stable and successful. They are the societies where prosperity is the greatest.**
 - **Greater prosperity gives us the capacity to provide the best societal outcomes.**
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The growth of integrity agencies

- **Using Western Australia as an example, over the last few decades, we have created a wide range of integrity agencies including the Public Sector Commission, Corruption and Crime Commission, offices of the Inspector of Custodial Services and Information Commissioner.**
- **Further, existing agencies have increased their functions. Using the Ombudsman as an example, in addition to our traditional function to investigate complaints, we now review certain child deaths and family and domestic violence fatalities and undertake inspections and other integrity agency functions.**

The growth of integrity agencies

- **In my view, integrity agencies now play an important role in ensuring the very high levels of integrity and effectiveness, and concomitant public confidence, that are a hallmark of modern Australian public administration.**
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The importance of integrity coordination

- Integrity coordination is vital – it minimises the risks of ineffective duplication and enhances the work done by integrity agencies in strengthening the integrity of our public services.
- The Western Australian Integrity Coordinating Group (the ICG) is an informal collaboration of the Corruption and Crime Commissioner, Public Sector Commissioner, Auditor General, Ombudsman and Information Commissioner.
- The ICG is seen as a good practice model both in Australia and internationally.

The rule of law and integrity agencies

- **The rule of law is a complex notion, but, in the words of the great Austrian economist, Friedrich Hayek:**
 - **[it] means that government ... is bound by fixed rules and announced beforehand – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge.**
- **Integrity agencies are not essential to the rule of law – for example, we would readily accept that America strongly respects the rule of law but the institution of the Ombudsman is not a significant feature of the American governance landscape.**

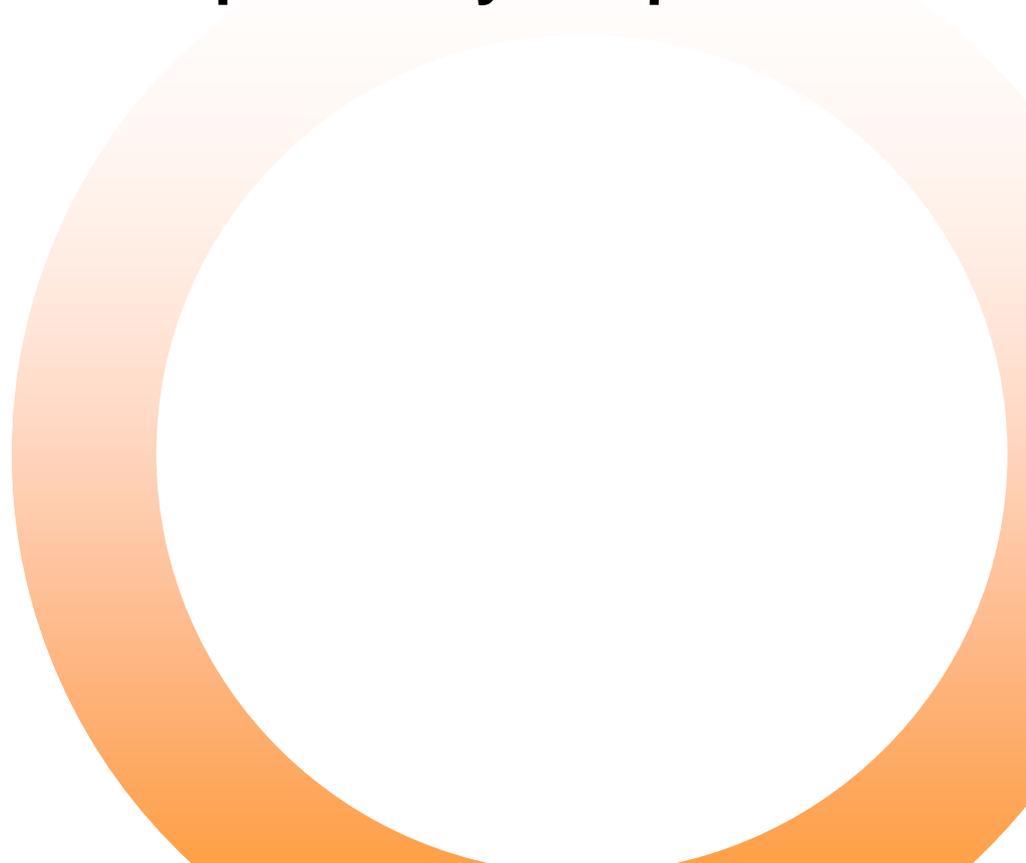
The rule of law and integrity agencies

- **Nonetheless, where integrity agencies do exist, they have become, in my view, a strong protector and promoter of the rule of law.**



Integrity agencies and Parliament

- **Professor Ackerman has observed of the integrity branch, “the broader its jurisdiction, the more it can disrupt the operations of the politically responsible authorities”.**



Integrity agencies and Parliament

- **The Ombudsman, for example, is an officer of the Parliament, independent of the government of the day, who undertakes investigations about the administration of the laws of the Parliament.**
- **The Ombudsman is, however, an unelected official and subordinate to Parliament. The Ombudsman must show extreme care not to become a de-facto rule-maker, nor question the laws of the Parliament (beyond any powers provided in the Ombudsman's legislation).**

Who guards the guardians?

- **A necessary corollary of keeping others to account is a preparedness for oneself to be kept to account, or as Professor Ackerman, describes it “once we have created our constitutional watchdogs, we must take steps to keep them under control”.**

Who guards the guardians?

- **Edward Gibbon famously observed that the decline and fall of the Roman Empire was the natural and inevitable effect of “immoderate greatness”. Accountability agencies have great power - power that must be exercised with the utmost humility and with appropriate moderation, scrutiny and accountability.**

Who guards the guardians?

- **There are, critically, a range of accountability mechanisms in place, including processes for appointment and removal of integrity officers, fixed terms of appointment for integrity officers, a wide range of codes of conduct, guidelines and policies with a regulatory effect on the operation of integrity agencies, parliamentary oversight, scrutiny by other accountability agencies such as Ombudsmen, Auditors General or anti-corruption commissions and media accountability.**

A fourth arm of government?

- For a range of reasons, including the importance of integrity in government, the significant growth in integrity agencies and whether these agencies are a comfortable fit within the executive branch, some commentators have introduced the concept of a fourth (integrity) arm or branch of government.
- As you know, we have three branches of government – legislative, judicial and executive.
- According to Professor Bruce Ackerman, “the mere fact that the integrity branch is not one of the traditional holy trinity should not be enough to deprive it of its place in the modern separation of powers”.

A fourth arm of government?

- **Should we recognise a fourth arm of government? Our separation of powers contained within three arms of government has served us very well.**
- **We are, after all, one of the most successful, stable and prosperous countries in the world – our system of government is fundamental to this success.**
- **For this reason, I think we should show great care and contemplation before departing from a system that has served us so well.**
- **Nonetheless, the concept does provide us a useful opportunity to consider how integrity agencies contribute to our system of government.**

Closing thoughts

- **Integrity agencies have grown in scale and scope – they now play an important role in ensuring the very high levels of integrity that are a hallmark of our public administration.**
- **Coordination between integrity agencies is sensible and beneficial.**
- **Integrity agencies are not essential to the rule of law, but where they exist, they have become an important promoter and protector of the rule of law.**

Closing thoughts

- Integrity agencies have significant power and for that reason, must be accountable. This is, in part, about striking a careful balance – between, on one hand, the independence and confidentiality that is integral to the work of these agencies and, on the other, the need for accountability and transparency.
- I think in Western Australia we have the balance right – but we must never be complacent and we should continue to debate and consider these matters – in our universities, in our public institutions and opportunities like this evening.

Closing thoughts

- **Whether or not you accept that the case is made out for a fourth arm of government (I do not), the debate that is occurring about the fourth arm of government will, I think, enliven further thinking about the proper role of integrity agencies.**
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