



The Centre for Democratic Institutions

Study Tour to Australia

by

Mr Mariano Lopes Da Cruz

Inspector General, Transitional Administration, East Timor

30 April – 4 May 2001

Table of Contents

| | |
|--|-------------------------------------|
| Executive Summary | 3 |
| Introduction | 4 |
| <i>Part 1 - Canberra</i> | 4 |
| The Commonwealth Auditor-General | 4 |
| Commonwealth Ombudsman | 5 |
| Parliamentary Committees | 5 |
| Roundtable at the Australian National University | 6 |
| Roundtable with AusAID | 7 |
| <i>Part 2 - Sydney</i> | 8 |
| Introduction | 8 |
| Program | 8 |
| Preliminary Discussion | 8 |
| The Audit Office of NSW | 9 |
| Transparency International | 10 |
| NSW Parliamentary Public Accounts Committee | 11 |
| NSW Ombudsman's Office | 12 |
| NSW Independent Commission Against Corruption | 14 |
| Conclusion | 14 |
| Assessment of Objectives | 15 |
| Appendix 1: Program | 16 |
| Appendix 2: Study Tour Contacts | 17 |
| Appendix 3: Issues Relating to the Office of Inspector General | 19 |
| Appendix 4: Certification Report | Error! Bookmark not defined. |

EXECUTIVE SUMMARY

ITC contracted the Centre for Democratic Institutions to assist the process of building a strong Office of the Inspector General in the United Nations Transitional Authority in East Timor (UNTAET/ETTA) and beyond.

The objective of this Short Study Tour was to provide the Inspector-General with opportunities to establish links with Australian experts in accountability and transparency, learn about Australian approaches to inspection and investigation, and consider appropriate ways to deal with complaints and public interface in East Timor.

The visit of the Inspector General Mr Mariano Lopes Da Cruz was broken into two parts: one week in Canberra and one week in Sydney. During this time he met with an array of government and non-government practitioners in relevant areas including; the Commonwealth and NSW Auditors-General, the Commonwealth and NSW Ombudsman's Offices, Transparency International and the Independent Commission Against Corruption. Mr Lopes also held discussions with transparency/accountability/anti-corruptions specialists at the Australian National University, and with AusAID. Mr Lopes also met with parliamentarians and officials of the Federal and NSW Parliaments, concerned with parliamentary processes of accountability, in particular the public accounts committees.

Conclusions flowing from discussions between Mr Lopes and his interlocutors suggest:

- A view emerged that the Inspector General's financial auditing function could be separated from the inspection/ombudsman/anti-corruption functions.
- Follow-up training for other Office of the Inspector General staff will be important in establishing high standards for the work of the Office.
- A visit be made to a similar institution in a similar context, to learn from their responses to similar development related issues. The PNG Ombudsman's Office was the suggested institution.

The objectives of the project were met.

INTRODUCTION

The study tour of Mr Mariano Lopes Da Cruz was broken into two legs; the first in Canberra hosted by Mr Roland Rich, Director at CDI, and the second in Sydney hosted by Mr John Wood former Deputy Commonwealth Ombudsman.

PART 1 - CANBERRA

THE COMMONWEALTH AUDITOR-GENERAL

Monday 23 April

An initial discussion was held with Mr Rich on the objectives of the visit and the structure of the program before calling on the Auditor-General.

Mr Pat Barrett, Commonwealth Auditor-General, explained the functions of his office and the recent developments affecting audit functions. His office comprised about 300 people and had a budget of \$50m. He noted that his office audited both the government departments and the publicly owned corporations. The legislation they were working under had moved away from a description of process and now looked at outcomes and expectations, leaving the processes to be worked out in regulations and in Chief Officer instructions. Some of the critical issues faced by his office, privatisation, IT issues and outsourcing of government services, may not be as pressing in East Timor.

The discussion with Mr Lopes dealt primarily with the issue of the Auditor's relationship with the government and the parliament. Mr Barrett agreed that establishing the office under the constitution was an excellent safeguard though not many precedents existed for this. Independence from the government was a key aspect and in Australia the Auditor had a close relationship with the Public Accounts Committee of the Parliament. The Auditor-General was an officer of the Parliament and submitted reports to the parliament, his appointment was for a ten-year term and was not renewable and he could not be removed except for cause. The Public Accounts Committee had a de facto veto on the appointment of the position and was consulted on the annual budgetary appropriations, though at the end of the day, the government could reduce the budget of the office if the parliament accepted this in its budget.

There was also a discussion on international and regional associations of audit bodies in which Mr Barrett hoped to see East Timor participate upon independence.

Detailed case studies were discussed by Ms Ann Thurley who offered to be the future contact point for further cooperation - ann.thurley@anao.gov.au

COMMONWEALTH OMBUDSMAN

Tuesday 24 April

The discussion with Oliver Winder, Acting Commonwealth Ombudsman, and Paul Bluck, Director, Policy, was wide-ranging. Mr Winder explained the federal system in Australia to map out the responsibilities of the various ombudsman offices in Australia. The Commonwealth Ombudsman was available to deal with complaints concerning administration under Commonwealth Departments and agencies. The office also dealt with aspects of the defence forces and acted as the Ombudsman for the Australian Capital Territory administration.

The office dealt with about 20,000 complaints annually and tried to dispose of them by phone if possible. The main areas of complaint were welfare payments, tax issues and immigration matters. Each of these bodies had their internal mechanisms and often it was sufficient to direct complainants to these services. If the matter could not be settled by a few conversations on the phone, the office had a power to investigate complaints. It could write to the departments, order the production of documents and compel witnesses to appear. But perhaps its greatest power was the power to embarrass the government by publicising shortcomings in administration. It was this power that tended to make the work of the office effective.

There were in built protections for the independence of the Ombudsman's office and the Ombudsman could only be removed from office under the same terms as a judge may be removed, for cause and by decision of a joint sitting of both houses of parliament. As with other such institutions, however, the budget was dependent on the government and there had been times when the budget had not met expectations just as for other government bodies.

Mr Winder offered to be a point of contact for any future cooperation -
Oliver.Winder@comb.gov.au

PARLIAMENTARY COMMITTEES

Mr Lopes called on Dr Margot Kerley of the Joint Public Accounts and Audit Committee and Ms Helen Donaldson of the Senate Finance and Public Administration Committee separately in the afternoon of 24 April.

The Joint Committee (of both the House and the Senate) has a significant formal role in receiving and enquiring about Audit office reports. It has been in existence since 1913 and it tends to work in a collegiate fashion. For example, since 1951, there have only been three minority reports.

The Committee thus has a role as a further safety net looking at specific issues raised by the Auditor and occasionally initiating its own investigations on matters of public interest.

There was a growing concern within the committee that the accrual accounting methods being used by Commonwealth Departments was in fact less transparent than the previous methods. Committee members were finding it difficult to understand the budgeting process under accrual budgeting.

The Joint Committee reviews about 12-15 Audit office reports each year through public hearings.

The Senate Committee was a more political creature in that the government did not have a majority in the Senate and it was possible to act as a critic of government policies.

Margot Kerley can be contacted at jcpa@aph.gov.au

Helen Donaldson can be contacted at fpa.sen@aph.gov.au

ROUNDTABLE AT THE AUSTRALIAN NATIONAL UNIVERSITY

Thursday 26 April

In the morning Mr Lopes accompanied by Mr Barry Howarth of the ANU searched the Menzies library for relevant materials.

A brainstorming session was held in the afternoon attended by Prof Jim Fox, Director of the Research School of Pacific and Asian Studies, Prof Hal Hill, Dr Peter Larmour and Dr Ross McLeod.

The discussion focused on structural issues concerning accountability institutions and the various structures employed in Australia and countries of the region. Among the issues discussed were the problems of competition between various accountability bodies, duplication issues and cost savings in combining various roles. The issue of Leadership Codes was raised and a number of precedents from the Pacific Island Nations was discussed including the problem of who should oversee the Leadership Codes - the Ombudsman or a specialist body.

Discussion then turned to the role of the courts as the bedrock on which the other accountability institutions rested and the fact that prosecutions were usually conducted by official legal bodies and not by the accountability institutions themselves.

The need to maintain a link with civil society was seen as crucial and this highlighted the importance of the role of the Ombudsman as one of the main links to civil society.

There was also discussion on the need for a system of Declaration of Assets and an official body that would receive the declarations and have the power to verify them if necessary.

The discussion concluded with comments on the process of drafting the new constitution. There was a range of opinion. At one end there was a view that the Constitution should not be locked in concrete at an early stage and that the system needed to be given time to evolve to see what worked and what did not. At the other end was the view that one needed to strike while the iron was hot and that there was a mood among the people for strong accountability institutions in the post-KKN era and this should be built on. A middle position was the need for a relatively quick process of concluding a constitution but a means for constitutional amendment that was not too onerous.

There was further discussion on East Timor specific issues.

ROUNDTABLE WITH AUS AID

Friday 27 April

The round table with Mr Ross Muir of East Timor Section of AusAID and four of his colleagues together with Ms Nore Hoogstet of the Department of Foreign Affairs and Trade took the form of a briefing by Mr Lopes on recent developments in East Timor and a discussion of Australian development assistance priorities in East Timor in the UNTAET and forthcoming independence period.

Mr Lopes handed over copies of the policy recommendations he had made to the Administrator.

In the late morning Mr Lopes and Mr Rich attended South Africa's Freedom Day reception and Mr Lopes was able to speak in detail with Monsignor Francisco M Padilla, Counsellor of the Apostolic Nunciature in Canberra.

In the afternoon, Mr Lopes and Mr Rich held a wrap-up discussion on the basis of the attached paper entitled Menu of Issues prepared by Mr Rich (see Appendix 3).

Mr Lopes was provided with much documentation from all his interlocutors and CDI also provided a number of relevant materials.

PART 2 - SYDNEY

INTRODUCTION

As part of his study tour in Australia, Mr Mariano Lopes da Cruz had discussions with a number of NSW Government and Parliamentary institutions, and with Transparency International.

PROGRAM

The program for Sydney (see Appendix 1) organized and hosted by former Deputy Commonwealth Ombudsman John Wood, consisted of meetings with the NSW Audit Office, the Chair and Secretary of the NSW Parliamentary Public Accounts Committee, the Office of the NSW Ombudsman, the Independent Commission Against Corruption, and Transparency International.

PRELIMINARY DISCUSSION

John Wood discussed with Mr Lopes his expectations for this leg of the Study Tour, and a number of matters that he felt worthy of consideration, based on his own experience within Australia and from discussions with ombudsmen in other countries. These included:

- P** the desirability, or otherwise, of having a Leadership Code to be administered by the Inspector General;
- P** the importance of ensuring real independence of the Inspector General, and any other office holders, through the system of appointment;
- P** whether the statutory base for the Office should be provided by a Constitution and Parliamentary legislation;
- P** that the lines of reporting ensure accounting to the Executive, Parliament, and the citizenry;
- P** whether there are areas where the Inspector General should have a determinative power as well as a recommendatory one; and
- P** whether the Inspector General should prosecute offences, for example under a Leadership Code, or only recommend charges be laid by the prosecuting authority.

THE AUDIT OFFICE OF NSW

Monday 30 April

The Acting Auditor-General, Tony Whitfield, outlined the functions of the Office, its establishment under the Public Finance and Audit Act, and its methods of operation.

The Auditor-General is appointed by the Governor upon the recommendation of the Executive, and has a non-renewable term of 7 years. The Auditor is only removable by a resolution of a joint meeting of both Houses of the Parliament.

There are two kinds of audit; audits of financial statements, and special audits, i.e. performance audits. There are about 450 entities subject to audit, which do not include local government (local government is within the jurisdiction of the Auditor-General in all other states in Australia). The Office has 230 staff.

Tom Jambrich, Assistant Auditor-General, Performance Audit, spoke of his area. About 12 performance audits are conducted each year, and these involve looking at the efficiency, economy, and effectiveness of an agency. Such audits take approximately nine months consisting of 3 months planning (including establishing the criteria against which the audit's assessment will be made); 3 months conduct of the audit; and 3 months report writing (including any comment from the agency). All reports must include the agency's response. The subjects for such audits are chosen from matters identified by a number of processes:

- P** monitoring media comment;
 - P** assessing information from financial audits;
 - P** seeking information by writing to all members of Parliament; and
 - P** by looking at Budget Papers to identify programs in their early stage of implementation.
- In addition the Parliament can request the Auditor-General to look at a particular matter.

The Office can also receive complaints under the Protected Disclosures Act, known as 'Whistle blower' protection legislation (49 last year).

Discussions

During the session there were a number of questions about very practical issues relating to numbers of staff, administrative arrangements, as well as on the exercise of powers. Both Mr Whitfield and Mr Jambrich believed that in the East Timor context it would be preferable to have the Auditor-General's function separate from the other possible functions of the Inspector General such as corruption prevention outreach, leadership code administration and ombudsman complaints. This was because the tasks involved in audit are intrinsically different and require different skills. They suggested that in the first instance it would be important to recommend a framework for financial accountability. This would include guidelines for how money is allocated; how expenditure is recorded; and accounted for and reported; and how accounts are checked and audited.

TRANSPARENCY INTERNATIONAL

Tuesday 1 May

Peter Rooke, a Director of Transparency International Australia (TI-A) and a Board Member of Transparency International (TI), described the issues that TI deals with around the world and the necessity for solutions to fighting corruption to come from the civil society. They have also worked in recent years to encourage other bodies, such as the World Bank, IMF and AusAID to take corruption seriously. That they now increasingly do so is a contrast with a period not so long ago when those bodies may have said that this amounted to interfering in a country's politics.

TI considers that for success in a country it is crucial to have business on side.

He spoke of examples where TI had worked successfully with government agencies to further its aims. In Papua New Guinea they worked with the Education authority to develop education programs covering ethics, values, and corruption.

He spoke about TI's structure and organisation, with each national chapter being autonomous and electing an International Board supported by a secretariat based in Berlin. Every two years they provide a secretariat for the Global Anti-Corruption Conference.

Peter suggested that along with Jose Techerra head of the Investment Unit they could look at getting together people interested in forming a Chapter of TI in East Timor. TI-A could also help seek funding for participation in anti-corruption courses such as the ANU one run by Dr Peter Larmour. John Wood agreed he would ask Dr Larmour to send Mr Lopes information on future courses.

Dr Larmour mentioned that TI's Source Book on National Integrity Systems had been translated into Indonesian and 3000 copies printed in Jakarta, and that some could be sent to Dili.

John Wood also discussed the existence of the International Ombudsman Institute, and of the Australasian Pacific Ombudsman Conference, and gave Mr Lopes their contact details.

NSW PARLIAMENTARY PUBLIC ACCOUNTS COMMITTEE

Wednesday 2 May

Mr Lopes and Mr Wood met the Chairman of the Committee, Joseph Tripodi MP, and the Acting Committee Manager, David Monk. Mr Tripodi outlined the role and function of the Public Accounts Committee (PAC) and its importance as an accountability and scrutiny mechanism. Whilst discussing the close working relationship with the Audit Office, he emphasised the independence of that body. Under its legislation, the PAC conducts a 3 yearly review of the Audit Office, and also follows up recommendations of the Auditor-General in reports to the Parliament to ensure that the government responds to them.

In relation to East Timor, Mr Tripodi said that from his experience he felt that the highest priority should be placed on governing legislation to enshrine and protect the independence of the Inspector General. It is also crucial to be given substantial powers so that they can require the provision of information, can compel persons to appear and give information under oath, and can seize documents and other information. This is especially important when it is likely that the Inspector General is unlikely to be given sufficient resources.

He also spoke of the importance of the media in acting as a safeguard against the Executive Government diminishing the role or resources of such institutions. One of the other strengths of the PAC was its bipartisan nature.

He closed by offering any information or assistance that would be helpful.

Following the meeting Mr Lopes and Mr Wood attended a Media Conference by the Committee to release what they described as their 'landmark' report into the collapse of the NSW Grains Board. One aspect that was notable in this report was a criticism of aspects of the Audit Office's role in the matter.

NSW OMBUDSMAN'S OFFICE

Thursday 3 May

The Assistant Ombudsman, Greg Andrews introduced the program and the Deputy Ombudsman, Chris Wheeler, outlined the role of the organisation and the relationship between the Ombudsman and the other external review bodies such as the Independent Commission Against Corruption (ICAC), the Police Integrity Commission, and the Administrative Review Tribunal. He also explained the role of the Parliamentary Committee which oversees the Office. This Committee can veto the appointment of the Ombudsman, and does occasional inquiries on various matters. It is currently interested in the powers of the UK House of Commons Committee to call in the head of an agency to explain to the Committee and the attending Ombudsman, why they haven't implemented the Ombudsman's recommendations.

He discussed ombudsman issues such as corruption fighting versus complaint handling, and powers for complaint handling which include:

- ▮ Direct investigation;
- ▮ Oversight of investigation by agency;
 - Mandatory reporting; and
 - Selective reporting;
- ▮ Monitoring investigations by agency;
- ▮ Auditing investigations by agencies;
- ▮ Keeping systems under scrutiny;
- ▮ Alternative Dispute Resolution; and
- ▮ Informal resolution & preliminary inquiries.

He explained the findings that an Ombudsman can make, and the discretionary powers (especially NOT to investigate), and the importance of the 'own motion' powers. He then outlined reporting obligations.

There was discussion of some practical considerations such as being able to stipulate a period within which an agency which is subject to adverse comment must respond by making a submission; and the value of summarising a complaint and clearing this with the complainant before forwarding to an agency.

He summarised the general approach as being: Review, Resolve, Rectify.

Greg Andrews then spoke about the function of the Office:

- ▮ Investigating individual complaints;
- ▮ Monitoring and auditing – systems and compliance (e.g. police complaints, telecommunication interception, controlled operations, controversial new police powers [DNA testing, register of sex offenders] and special audits [mystery shopper]); and
- ▮ A review/appeal function e.g. FOI and Witness Protection.

He then went through the Ombudsman's specific powers under the Act and other Acts.

John Davies then outlined important issues in ensuring procedural fairness dealing with the hearing rule the bias rule and the no evidence rule. These include:

- ▶ Should all parties to a complaint be given an opportunity to respond to allegations in all circumstances?
- ▶ Whether or not decisions are required to be put in writing and to whom;
- ▶ The extent of reasons to be given for a decision;
- ▶ Review of decisions made – in what circumstances and by whom? and
- ▶ Reporting obligations and the hierarchy of reporting.

A matter of considerable interest is that of non-compliance reports to Parliament where the responsible Minister must address the House within 12 sitting days.

David Watson outlined the purposes and general provisions of the Freedom of Information Act and the Ombudsman's role in external review of decisions made by agencies under the Act.

During lunch the Ombudsman, Bruce Barbour, suggested that an issue for consideration if all accountability mechanisms are in one body, is that it would be easy to suppress them by an inappropriate appointment of its head.

He also offered any assistance that would be useful to the Inspector General and that he would be happy to look at training needs if needed.

Andrew O'Brien, the Youth Liaison Officer, and Joanne Scott of the Aboriginal Complaints Unit, then spoke of the various elements and priorities in their access and awareness program with a focus on youth and Aboriginal communities.

Vince Riordan, Police Team Manager, outlined the historical transition from reliance on Police Internal Affairs Units and Police Tribunal to resolve complaints and discipline to the current system of the Ombudsman monitoring and undertaking investigations, as well as monitoring complaints systems and performance.

Chris Wheeler explained the provisions of the Public Disclosures Act dealing with the protections available to Whistleblowers. Criminal sanctions apply to breaches by agencies, with a reversal of the onus of proof applying. The complainant only has to prove that they made a protected disclosure and that they suffered damage. However, the whistleblower can only go public if they have previously made a complaint to one of the nominated offices, i.e. Ombudsman, Auditor-General, ICAC, or the CEO of the agency.

In discussion it was agreed that it was crucial for these protections to apply to anyone, not simply public officials.

NSW INDEPENDENT COMMISSION AGAINST CORRUPTION

Friday 4 May

Commissioner Irene Moss enquired about the functions of the Inspector General, and asked in what way ICAC could assist. She said that unless you have the investigatory powers and resources, education and prevention will not work. Equally, systems need to be put in place to prevent corruption.

Andrew Patterson, Acting Director of Investigations, outlined the Commission's investigatory functions. They can put together criminal prosecution brief that is given to the Director of Public Prosecutions for consideration. They often start with a private hearing to clarify the matters at issues, and to test the relevance of witnesses. Because of their coercive powers and the inapplicability of the rules of evidence, information gained in hearings cannot be used against witnesses in a prosecution. Giving false evidence is an offence. They have the power to intercept telecommunications and to place listening devices.

Any person can make a complaint, and every head of an agency has an obligation to report any allegations of corruption to ICAC; they have an own motion power; and parliament can refer a matter (although it is up to the Commissioner to determine whether to investigate).

They undertake preliminary enquiries prior to the Commissioner approving formal investigation when powers can be used. They have jurisdiction over all public officials (except police officers - subject to the Police Integrity Commission) and can enter all public offices without warrant (except Parliament), and can apply for a search warrant to enter any other premises.

The same Parliamentary Committee that oversees the Ombudsman also oversees ICAC, and the Ombudsman has jurisdiction over them.

They need a range of backgrounds and skills, e.g. police. law, analysis, and education, and find a real synergy from having these mixed skills.

Grant Poulton, Director, Corruption Prevention, Education and Research, emphasised the importance of getting a professional person to work on communication and community relations matters. Identifying gatekeepers within the community (e.g. clergy, teachers, health workers, etc.) as spokespeople for the Inspector General and also as receipt points for information from the community would be a good strategy.

He then explained the various materials they produced and presented them to Mr Lopes.

CONCLUSION

All with whom discussions were held agreed that the functions and independence for an Inspector General should be embodied in the country's Constitution and spelt out in legislation. There was a general consensus that while they should avoid a proliferation of institutions, it was sensible for the Inspector-General's financial auditing function to be separate from the inspection/ombudsman/anti-corruption functions.

The Inspector General clearly needs continuing assistance. Training will be of the greatest importance, and this should cover complaint handling, corruption investigation techniques, and administrative investigation techniques. Australian institutions have offered assistance in this regard, and it would be better sooner than later. Because of the lack of English language skills within the Inspector General's office, such training should be done with an interpreter, rather than waiting for the staff to improve their English.

During the Transitional Administration phase, it is important that the Inspector General is given any necessary powers that he does not currently possess, and that his functions and powers are made widely known to both the public service and to the community.

It is critical to note that an institution such as the Inspector General is normally given only one chance by the public. If it fails because of insufficient resources or inadequate powers, it will be difficult to regain public confidence.

In order to gain an appreciation of other institutions with similar functions and challenges - or at least relevant experience - it is suggested that a visit to the Ombudsman Commission of Papua New Guinea would be very worthwhile. This body has the ombudsman function as well as the anti-corruption function in its role of administering the Leadership Code. Papua New Guinea also has faced many of the pressures that are likely to confront East Timor upon independence.

A position such as that of Inspector General can be a very lonely one, and it is further recommended that support be given to Mr Lopes as he develops his ideas for the post independence arrangements. I will contact the President of the International Ombudsman Institute (IOI) to see whether the Inspector General can be granted honorary membership. I will also arrange a subscription to the US Ombudsman Association's Email news list.

ASSESSMENT OF OBJECTIVES

This report demonstrates that the objectives of the project have been achieved. Mr Lopes has met and exchanged ideas with a wide range of Australian experts in the fields of accountability and transparency, both practitioners and academics. He has learnt of Australian approaches to issues of inspection and investigation and discussed at length with the various people he has met, appropriate ways to undertake his responsibilities in his role as Inspector General in East Timor.

APPENDIX 1: PROGRAM

Inspector General's Tour

23 April – 4 May 2001

| | | | |
|------------------|--|---|--|
| Monday | 9.30 - 10.30 Discussion of program with Roland Rich | 10.30 - 12.00 Meeting at Australian Audit Office - Mr Pat Barrett and staff | 12.30 - 14.00 Lunch with John Wood and Roland Rich |
| Tuesday | 9.30 - 11.00 Meeting with Commonwealth Ombudsman, Mr Oliver Winder and staff | 14.00 - 15.00 Meeting with Dr Margot Kerley, Joint Public Accounts and Audit Committee | 15.30 - 16.00 Meeting with Mr Helen Donaldson, Senate Finance and Public Administration |
| Wednesday | Anzac Day Public Holiday | | |
| Thursday | Research at ANU | 14.00 - 16.00 Roundtable discussion with ANU academics: Prof Jim Fox, Prof Ron Duncan, Prof Hal Hill Dr Peter Larmour, Dr Chris Manning, Dr Ross McLeod, Dr George Quinn | |
| Friday | 9.30 - 11.00 Roundtable discussion with AusAID and DFAT. Organisers: Frederick Vanden Vloodt (AusAID) and Michelle Chan (DFAT) | 11.30 - 12.30 South African Freedom Day Reception | 15.00 - 16.00 Wrap up discussion at CDI |
| Monday | 10.00 Briefing: John Wood at Savoy Hotel | 13.30 - 17.00 NSW Audit Office Level 11, 234 Sussex Street, Sydney | Acting Auditor-General Tony Whitfield Jan Briggs 9285.0108 |
| Tuesday | 10.30 Meeting with Peter Rooke, Transparency International, Savoy Hotel | Peter Rooke 9326 1737 | |
| Wednesday | 08.30 Daniel Yuen & Sarah Webb, ITC, Savoy Hotel, 4221 5696 | 10.00 Mr Joseph Tripodi MP, Chair, NSW Parliamentary Public Accounts Committee | David Monk, Secretary, PAC, 9230 2631 |
| Thursday | 10.00 - 15.00 NSW Ombudsman's Office | Bruce Barbour, Ombudsman | Greg Andrews, Assistant Ombudsman, 9286 1002 |
| Friday | 10.00 - 12.00 NSW Independent Commission Against Corruption | Irene Moss, Commissioner | Barbara Carmichael 9318 5823 |

APPENDIX 2: STUDY TOUR CONTACTS

| | | |
|---|--|--|
| Commonwealth Auditor-General www.anao.gov.au | Mr Pat Barrett, Commonwealth Auditor-General | Australian National Audit Office Centenary House 19 National Circuit Barton ACT 2600 AUSTRALIA Tel: +61 2 6203 7300 Fax: +61 2 6203 7777 |
| Commonwealth Ombudsman www.comb.gov.au/p2.html | Mr Oliver Winder, Acting Commonwealth Ombudsman | National Office & Australian Capital Territory Level 6, 1 Farrell Place Canberra City 2601 Tel: (02) 6276 0111 Fax: (02) 6249 7829 |
| Australian Parliament www.aph.gov.au/committee.htm | Dr Margot Kelly, Joint Public Accounts and Audit Committee Ms Helen Donaldson, Senate Finance and Public Administration Committee | jcpa@aph.gov.au fpa.sen@aph.gov.au |
| Australian National University www.anu.edu.au | Prof James Fox Prof Hal Hill Dr Peter Larmour Dr Ross McLeod | james.fox@anu.edu.au hal.hill@anu.edu.au peter.larmour@anu.edu.au ross.mcleod@anu.edu.au Canberra, ACT 0200, AUSTRALIA Phone: 61 2 6125 5111 |
| AusAID www.ausaid.gov.au www.dfat.gov.au | Mr Ross Muir, East Timor Section, AusAID Ms Nore Hoogstet, DFAT | 62 Northbourne Avenue Canberra ACT 2601 Australia R.G. Casey Building, John McEwen Crescent, Barton, ACT, 0221 Australia. Tel: 61 2 6261 1111 Fax: 61 2 6261 3111 |
| NSW Audit Office www.audit.nsw.gov.au | Tony Whitfield, Deputy Auditor-General | GPO Box 12, SYDNEY NSW 2001 Tel: 61-2-9285 0107 Fax: 61-2-9285 0188 Email: tony.whitfield@audit.nsw.gov.au |
| | Tom Jambrich, Assistant Auditor-General | Tel: 61-2-9285 0051 Fax: 61-2-9285 0060 Email: tom.jambrich@audit.nsw.gov.au |

| | | |
|---|---|--|
| <p>Transparency International Australia www.transparency.org.au International: www.transparency.de</p> | <p>Peter Rooke, Board Director</p> | <p>PO Box A2327 Sydney South, NSW 1235 Tel: 61-2-9326 1737 Fax: 61-2-9326 1737 Email: (personal): rookepb@yahoo.com Email: (office): tioz@transparency.org.au</p> |
| <p>Parliamentary Public Accounts Committee</p> | <p>Joseph Tripodi MP, Chairman; David Monk, Committee Manager</p> | <p>Public Accounts Committee, Parliament House, Macquarie Street, Sydney NSW 2000 Tel: 61-2-9230 2631 Fax: 61-2-9230 2831 Email: pac@parliament.nsw.gov.au</p> |
| <p>NSW Ombudsman's Office www.nswombudsman.nsw.gov.au</p> | <p>Bruce Barbour, Ombudsman; Greg Andrews, Assistant Ombudsman</p> | <p>Level 24, 580 George Street, Sydney NSW 2000 Tel: 61-2-9286 1000 Fax: 61-2-9283 2911 Email: GAndrews@nswombudsman.nsw.gov.au</p> |
| <p>NSW Independent Commission Against Corruption www.icac.nsw.gov.au</p> | <p>Irene Moss, Commissioner; Andrew Patterson, Chief Investigator; Grant Poulton, Director, Corruption Prevention and Education</p> | <p>GPO Box 500, Redfern, NSW 2001 Tel: 61-2-9318 5999 Fax: 61-2-9699 8067 Email: gpoulton@icac.nsw.gov.au</p> |
| <p>Baljurda Comprehensive Consulting Pty Ltd</p> | <p>John T D Wood Director</p> | <p>6 Macleay Street Turner ACT 2612 Tel: 61-2-6247 8435 Fax: 61-2-6257 0228 Email: baljurda@ozemail.com.au</p> |

APPENDIX 3: ISSUES RELATING TO THE OFFICE OF INSPECTOR GENERAL

Menu of Issues

Following are some of the issues that arose in the course of discussions during the visit.

Independence of the Inspector General

- P** Should the office be established in the Constitution rather than simply by legislation? A Constitutional basis would protect the office from an attempt to abolish it by the Executive.
- P** The appointment of the Inspector General should also be undertaken to ensure the independence of the office. This might require a mechanism whereby both the Executive and the Legislature had a veto over the appointment. It might also be necessary to involve civil society in some way, eg through a public nomination process or through public hearings.
- P** Dismissal of the Inspector General should be by a process similar to the dismissal of a judge and should be limited to reasons of illegal conduct, bankruptcy or incapacity.
- P** Should the Inspector General report to the Executive or to the Legislature? As most investigations will focus on the Executive or its agents, it makes sense to report to the Parliament. Reports would need to be public documents protected against private legal suits thus arguing for extending parliamentary privilege to these reports.
- P** What term of office would maximise the independence of the Inspector General? One option is a longer non-renewable term of office. Another is a shorter term but renewable once by the same process as the appointment process. Each option has its difficulty. The longer term keeps in place an honest but ineffective officer for a long time. The renewal issue may unduly influence the manner in which the officer conducts the affairs of the office. On balance it may be best to have a non-renewable term that is longer than the term of office of the President or the Legislature thus showing the Inspector General's difference from these offices.

Functions of the Inspector General

There is a range of official accountability functions that could come under the responsibility of the Inspector General. The decision must balance priorities with available resources. Institutions in industrialised countries may not be appropriate precedents given the cost required to establish and maintain several institutions of accountability at the various levels of government.

- P** Inspections of government administrative function either directly or through oversight of other forms of inspection processes - every government office should have responsibility for establishing systems to prevent corruption, the role of the Inspector General might be to oversee these systems.

- ▶ Financial audits of government offices either directly or through oversight of internal audit systems.
- ▶ Performance audits perhaps looking at basic human rights objectives such as universal primary education.
- ▶ Investigation of corruption allegations. This requires a clear understanding of the demarcation line between the investigating body and the legal system, eg would the Inspector General have the right to mount prosecutions or only to recommend prosecutions; could the Inspector-General mete out administrative penalties; would the Inspector General have the right to compel witnesses and to seize documents.
- ▶ Receive complaints from the public and perform an Ombudsman function. Because the Ombudsman often tries to resolve issues informally, there may be a view that he is part of the administrative system and not outside it.
- ▶ Administer the system of Declaration of Assets by public officials. This could entail simply maintaining a public register or it could require investigation of the accuracy of the Declarations.
- ▶ Administer the Leadership Code.
- ▶ Work with donors to ensure accountability and transparency of ODA funds.
- ▶ Conduct outreach programs to assist in educating against corruption in the public and within the administration.

Structure of the Office of Inspector General

Decisions on the structure and resources of the accountability mechanisms must be realistic. To simply draw up a wish list of functions and then entrust this to institutions without the capacity to function effectively will cause public scepticism, which could then impact negatively on the entire political system. The following are options that will need to take into account available resources.

- ▶ Narrow separation of functions establishing separate offices of Inspector General, Auditor, Ombudsman, Corruption Investigator etc. This is the model appropriate to larger countries. It can lead to some duplication as well as competition between accountability agencies.
- ▶ Broad separation of functions perhaps making a distinction between those offices dealing directly with the public (eg Ombudsman) and those offices having an independent investigative role.
- ▶ A single office of Inspector General supervising various Commissioners with responsibility for Audit, Ombudsman, Investigation, Outreach. This would have advantages of a single administrative support base, minimal institutional competition and a system of oversight of the various Commissioners. It would also be seen as a one-stop-shop by the public.