

## Chapter 4

# New Tricks for Old Dogs: The Limits of Judicial Review of Integrity Bodies

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It is a great honour and privilege to be invited to deliver the fourth annual James Spigelman oration. My immediate predecessor as Chief Justice and I were in the same set of chambers for many years and we became close colleagues and good friends. Notwithstanding, I approached this lecture with some trepidation. Jim was and indeed is a great lawyer and one of his particular areas of expertise was administrative law. I claim neither of those attributes and I know Jim's good nature will make him tolerant of any error I commit in delivery of this paper. I have been inspired in my choice of topic today by an address Jim Spigelman gave at the 2004 National Lecture Series for the Australian Institute of Administrative Law.<sup>1</sup> In a speech that has inspired countless academic papers,<sup>2</sup> spurred heated debate<sup>3</sup> and granted its theme to a later administrative law conference,<sup>4</sup> he proposed recognition of 'integrity' as 'a useful way to conceptualise a universal governmental function'.<sup>5</sup> While he located this function within each of the existing branches of government, the popularity of the concept is no doubt attributable to the rise of independent institutions that explicitly embody this

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1 JJ Spigelman, 'The Integrity Branch of Government' (Speech delivered at the 2004 National Lecture Series for the Australian Institute of Administrative Law, Sydney, 29 April 2004). An edited version of the speech is published in: JJ Spigelman, 'The Integrity Branch of Government' (2004) 78 *Australian Law Journal* 724.

2 See, eg, A Stuhmcke and A Tran, 'The Commonwealth Ombudsman: An Integrity Branch of Government?' (2007) 32(4) *Alternative Law Journal* 233; J Kinross, 'The Transmission of the Public Value of Transparency through External Review' (2012) 71 *AIAL Forum* 10; D Solomon, 'The Integrity Branch – Parliament's Failure or Opportunity?' (2013) 28(2) *Australasian Parliamentary Review* 36; L Grenfell, 'An Australian Spectrum of Political Rights Scrutiny: 'Continuing to Lead by Example?' (2015) 26 *Public Law Review* 19; see also the papers in (2012) 70 *AIAL Forum*.

3 See, eg, W Martin AC, 'Forewarned and Four-armed: Administrative Law Values and the Fourth Arm of Government' (2014) 88 *Australian Law Journal* 106 and C Wheeler, 'Response to the 2013 Whitmore Lecture by the Hon Wayne Martin AC, Chief Justice of Western Australia' (2014) 88 *Australian Law Journal* 740.

4 The Australian Institute of Administrative Law Forum No 70, October 2012.

5 Spigelman, above n 1, at 725.

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