

29 May 2015

Committee Secretary
Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
PO Box 6100
Parliament House
Canberra ACT 2600

By email: aclei.committee@aph.gov.au

Dear Committee Secretary,

INQUIRY INTO THE JURISDICTION OF ACLEI

The Law Council welcomes the opportunity to provide the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (the Committee) with this submission as part of its inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity (ACLEI).

The terms of reference for the inquiry include considering the adequacy of ACLEI's current jurisdiction; the desirability and feasibility of extending ACLEI's jurisdiction to include certain Commonwealth Departments; and any other relevant matters.

ACLEI's jurisdiction falls within the Commonwealth's integrity framework. This submission focuses on the suggestion that the Committee consider whether this framework could be improved with the establishment of a national anti-corruption agency to make the investigation of corruption at the federal level more effective.

The Law Council has previously noted, in the context of the National Integrity Commissioner Bill 2010, that initial Parliamentary consideration of the arguments for and against a federal anti-corruption agency would be a useful exercise.¹

Such a recommendation would accord with a previous recommendation of the Committee in 2011 that a review of the Commonwealth integrity system be conducted, particularly examining the merits of establishing a Commonwealth integrity commission with anti-corruption oversight of all Commonwealth public sector agencies and taking into account the need to retain the expertise of ACLEI in the area of law enforcement.² The Committee

¹ Law Council of Australia, [Submission to the Australian Greens on the National Integrity Bill 2010](#), 4 February 2011, p. 12. The Law Council has raised this issue in depth in a number of past submissions, namely: its 2011 letter to the [Attorney General's Department on the United Nations Convention Against Corruption](#) and its two submissions to the Senate on the [National Integrity Commissioner Bill 2012](#) and the [National Integrity Commissioner Bill 2010](#).

² Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, [Final report into the Operation of the Law Enforcement Integrity Commissioner Act 2006](#), July 2011, p. 50, Recommendation 10.

also noted, at that time, that it would be prepared to revisit the issue of a broader Commonwealth integrity commission in a future inquiry.³

The Standing Committee on Social Policy and Legal Affairs has also recommended that prior to the establishment of a federal anti-corruption body, such as a national integrity commission, a Parliamentary Joint Select Committee should investigate the feasibility and cost of establishing such a body, taking into account the threshold issue of desirability of such a commission.⁴

The process to develop a national anti-corruption action plan was commenced by the former Australian Government. The ongoing process to develop a comprehensive national anti-corruption plan was noted by the Implementation Review Group of the United Nations Conference of State Parties to the *United Nations Convention against Corruption* (UNCAC) in its review of Australia's implementation of the UNCAC.⁵ However, this plan does not appear to have been completed or canvass the option of a national anti-corruption agency.

The former Government's response to this Committee's recommendation in 2011 noted that 'on the available evidence there is no convincing case for the establishment of a single overarching integrity commission'.⁶

Nonetheless, an inquiry into this issue would display the Australian Government's seriousness in addressing any corruption at the federal level through robust consideration of potential measures for preventing, detecting and investigating such crime.

This is particularly pertinent given that the Australian Crime Commission (ACC) in its *Organised Crime in Australia 2015 Report* (the ACC report) has identified corruption by public officials as a 'key enabler' for organised crime.⁷ The ACC estimates that serious and organised crime costs approximately \$15 billion every year.⁸

The ACC report observes, citing Transparency International, that corruption can occur at junior levels, 'through infiltration of managerial, senior spheres, to influencing heads of law enforcement agencies and finally ending in the capture of state policies and structures'.⁹ The ACC report also indicates that 'anti-corruption agencies have noted a concern that, as the sophistication of organised crime increases, corrupt conduct is likely to become less susceptible to discovery than was previously the case'.¹⁰

³ Ibid, p. 43.

⁴ House of Representatives Standing Committee on Social Policy and Legal Affairs, *Advisory Report on the National Integrity Commissioner Bill 2012*, September 2012, Recommendation 2.

⁵ Conference of the State Parties to the UNCAC Implementation Review Group, Review of implementation of the United Nations Convention against Corruption: Australia, Vienna, 18-22 June 2012, CAC/COSP/IRG/I/2/1.

⁶ [Australian Government Response](#) to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity Final Report, Inquiry into the Operation of the Law Enforcement Integrity Commissioner act 2006, February 2012, p. 8.

⁷ Australian Crime Commission, [Organised Crime in Australia](#), 2015, p. 11.

⁸ Law, Crime and Community Safety Council, [National Organised Crime Response Plan 2015-2018](#), p. 2.

⁹ Australian Crime Commission [Organised Crime in Australia](#), 2015, p. 28.

¹⁰ Ibid, p. 29.

Corruption can also jeopardise sustainable development and undermine the public's trust in the government, the legitimacy of institutions of government, democracy and the rule of law.¹¹

An issue therefore arises as to whether the current approach of addressing corruption by requiring all Government agencies to maintain plans for preventing and reporting corruption is sufficient to prevent and investigate possible targets of corruption. While Australia is generally regarded as one of the least corrupt countries in the world, the ACC report notes Australia's recent decline in Transparency International's Corruption Perceptions Index ranking from the seventh least corrupt country in 2012 to the eleventh least corrupt in 2014.¹² The ACC suggests that this may be as a result of a failure to deal with major corruption incidents transparently and also a deterioration of public sector standards.¹³

The recently established Fraud and Anti-Corruption Centre (the FAC Centre) within the Australian Federal Police is a welcome development in seeking a more coordinated approach to corruption across some Commonwealth agencies. However, not all Commonwealth agencies are 'participating agencies' in the FAC Centre. The capability of the FAC Centre to prevent, detect and investigate corruption at the most senior levels of public office and at the Ministerial and Parliamentary levels is also unclear.

The Committee may wish to consider the following factors in determining whether the investigation of federal corruption and Australia's integrity framework can be more effective through the establishment of a federal anti-corruption agency:

- gaps in existing investigative Commonwealth anti-corruption oversight, particularly at the Ministerial, Parliamentary levels and in capturing all federal government agencies;
- public sector and federal Ministerial and Parliamentary risk profiles;
- consequences of corruption at all levels of the federal government;
- potential for systemic issues addressing corruption to not be identified across diverse multi-agency activities and at all levels of government in the absence of a single anti-corruption agency; and
- consistency of approach in addressing corruption with State jurisdictions that have implemented anti-corruption commissions.

The Law Council's constituent body, the Law Institute of Victoria (LIV) supported the establishment of Victoria's Independent Broad-based Anti-corruption Commission (IBAC) which was established by the *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) (IBAC Act) and became fully operational in 2013. IBAC has the power to identify, expose and investigate serious corrupt conduct across the Victorian public sector, with additional powers regarding the receiving and investigation of complaints of police personnel misconduct (s 15 IBAC Act). However, the LIV has repeatedly raised concerns that its powers are too limited including:

- the narrow scope of offences contained with the definition of 'corrupt conduct' (in ss 3 and 4 IBAC Act) which limit the ability of IBAC to investigate complaints;

¹¹ *United Nations Convention Against Corruption*, General Assembly resolution 58/4 of 31 October 2003. The *United Nations Convention against Corruption* was signed by Australia on 9 December 2003 and ratified by Parliament on 7 December 2005.

¹² Australian Crime Commission, [Organised Crime in Australia](#), 2015, p. 29.

¹³ *Ibid.*

- the lack of legislative guidance surrounding the additional criteria of 'serious' corrupt conduct (s 60(2));
- the lack of clarity surrounding which body can investigate and report on non-serious corruption;
- the lack of coercive powers available to IBAC when conducting new 'preliminary investigations' under the Bill; and
- the fact that protected disclosures made about members of parliament might not be referred to IBAC.¹⁴

These concerns highlight the need to ensure that the powers of any federal anti-corruption agency are adequate and appropriate to ensure the effective investigation of corruption at the Commonwealth level.

Should the Committee be minded to not examine the issue of a federal anti-corruption agency in its current inquiry into ACLEI's jurisdiction, the Law Council suggests the Committee recommend a further Parliamentary inquiry, or an Australian Government inquiry in consultation with key stakeholders, into whether a federal anti-corruption body is needed.

Thank you for the opportunity to provide these observations.

Please contact Dr Natasha Molt, Senior Policy Lawyer on 02 6246 3754 or natasha.molt@lawcouncil.asn.au should you require further information.

Yours sincerely,



MARTYN HAGAN
SECRETARY-GENERAL

¹⁴ Law Institute of Victoria, [Submission to the Victorian Attorney-General on the Integrity Legislation Amendment Bill 2014](#), 13 October 2014.