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## NACC on its way

The Law Council of Australia is pleased Australia will soon have a National Anti-Corruption Commission (NACC) following the passage of legislation to establish this new body.

“We have never hesitated to express our support for establishment of a national anti-corruption commission,” Law Council of Australia President, Mr Tass Liveris said.

“The Law Council has been keen to ensure the NACC has every opportunity to succeed and we believe that means getting the fundamentals right. For this reason, we have engaged with the Government and the NACC Legislation Committee in order to address legislative shortcomings we believe exist.

“We welcome many important features of the Bills passed today which reflect long-held Law Council positions. These include broad jurisdiction to investigate serious or systemic conduct; oversight by a Parliamentary Joint Committee and independent Inspector; and the NACC operating independently of government and with procedural fairness.

“The broad referral pathways to the NACC for suspected corruption issues and an emphasis on the NACC’s preventative and educative functions are also welcome.

“A number of amendments made to the Bills in the past two weeks have addressed some of the concerns raised by the Law Council, such as requiring surveillance and interception warrants to be issued by eligible judges of federal superior courts, and the introduction of a proactive audit function for the Inspector.”

In their final form, the Bills also no longer contain the catch-all provision relating to ‘corruption of any other kind’ in the definition of ‘corrupt conduct’ at paragraph 8(1)(e); and people will be advised of the outcomes of NACC investigations if their conduct is investigated, regardless of the findings, unless it is not reasonably practicable, or to do so would be against the public interest.

“A key area for the Law Council that remains outstanding includes the abrogation of the privilege against self-incrimination. This is a fundamental legal protection which is inherent to the right to a fair trial,” Mr Liveris said.

“We also remain concerned about the abrogation of client legal privilege when a person is giving an answer or information, or producing a document or thing, under a notice to produce or at a hearing. The Law Council takes the view that that the abrogation of such a fundamental right remains unjustified and requires further thought.

“A further critical issue is the Bill’s approach to post-charge coercive powers and information sharing. Post-charge questioning creates an overwhelming risk that a person who is compulsorily questioned as to the circumstances of an alleged offence, is very likely to prejudice their own criminal defence.

“These are all issues on which the Law Council hopes to continue engaging with Parliament into the future.

“However, we are pleased NACC is a significant step closer and look forward to regular reviews of the Commission and its underpinning legislation to monitor and improve its operation moving forward.”

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