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Careful consideration of NACC legislation needed

The Law Council of Australia strongly supports the establishment of a National Anti-Corruption Commission, having advocated for such a body for many years, but believes a number of specific aspects of its proposed operation require careful consideration.

Speaking at a public hearing yesterday afternoon of the Joint Select Committee on National Anti-Corruption Commission (NACC) Legislation, the Law Council welcomed the introduction of legislation to establish a national integrity commission as a positive step.

“We commend the Commission’s remit to investigate serious or systemic corrupt conduct across the Commonwealth public sector and its preventive and educative functions,” Law Council of Australia President, Mr Tass Liveris said.

“However, while we agree the Commission should be able to investigate corrupt conduct that has occurred or is currently occurring, we don’t believe this should be extended to investigating and potentially penalising individuals for conduct they might engage in at a future date.”

The Law Council recommends that some of the key definitions in the legislation should be clarified and that the Commissioner may only conduct a corruption investigation if they hold a “reasonable suspicion” that the issue involves corrupt conduct that is serious or systemic.

“One of our most serious concerns with the legislation in its current form is its capacity to abrogate well-established common law rights including legal professional privilege and the privilege against self-incrimination,” Mr Liveris said.

“Linked to this is our opposition to individuals who have been charged or about to be charged in a criminal matter being required to answer questions or provide information for a NACC investigation. This places a person’s right to a fair trial at risk.

“Once a charge has been laid in respect of a matter before the NACC, then the NACC investigation should cease and the investigation should be handed over to the prosecuting authorities. Preserving the distinction between the investigative nature of the NACC and the criminal justice process is critical.

“Whistleblowers will also be a vital tool in the identification of possible corruption. The Law Council notes the provision in the legislation for whistleblowing protections, but supports further reforms being made in this area.”

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