

Tuesday, 12 February 2019

CIC vital but must uphold separation of powers

Constitutional conflict could occur if a Federal Judicial Commission to investigate alleged judicial misconduct is not separated from the Federal Government's proposed Commonwealth Integrity Commission (CIC), the Law Council of Australia has stated today.

In its [submission to government regarding the proposed CIC](#), the Law Council reiterated its support for a national integrity commission but reinforced the need to protect and uphold the rights of individuals subject to the powers of the CIC. The submission also highlighted the Law Council's position that judicial officers should be subject to a separate oversight body to maintain the separation of powers and the effective oversight of the CIC by federal judicial officers.

"Establishing a federal statutory commission to address the issue of corruption within the government's law enforcement and public sector agencies - with appropriate safeguards for the protection of the rights of individuals - is a welcome and positive step," said Law Council President, Arthur Moses SC.

"Corruption has a corrosive effect on society, undermines public confidence in government and is contrary to principles of democracy and the rule of law. It also has a detrimental impact on the economy because of the potential to distort market forces.

"However, subjecting the judiciary to the CIC's review could be open to constitutional challenge as this potentially infringes the separation of powers established in Constitution, which vests judicial power in the judiciary alone. This could place the CIC legislation in jeopardy as the laws may be ruled invalid. This would in turn threaten investigations into corruption and the lawfulness of actions by the CIC. It is important that the Federal Parliament gets this legislation right from the beginning.

"Australia's separation of powers is in and of itself a critical safeguard against corruption. Maintaining the separation between judicial and executive power is important and must not be undermined. Judicial officers are appointed to serve the public - it is right that Federal judicial officers be accountable to the public by a transparent and independent body that can investigate and determine complaints of misconduct or incapacity to perform the important role of a judge. However, we have to get the mechanism for doing this right."

The Law Council's submission also calls for a comprehensive whistleblower regime, including establishing a Whistleblower Protection Commissioner to provide protections for those reporting corruption.

"A statutory framework for whistleblower protection would promote the exposure of corrupt conduct, which can be difficult to detect. It would also provide an avenue for members of the public and public servants to obtain independent and anonymous advice about issues relating to disclosure and reporting of suspected corruption," Mr Moses said.

Other recommendations in the Law Council's submission include:

- Broadening the definition of corrupt conduct that can be investigated by the CIC;
- Aligning the powers and thresholds applicable to both divisions or combining them; and
- The consideration of an independent tribunal to determine claims made in relation to legal professional privilege, as well as the protection afforded to privileged material.

Mr Moses said the Law Council looked forward to working with the Federal Government and Parliament in the development and implementation of the CIC.

Patrick Pantano
P 02 6246 3715
E Patrick.Pantano@lawcouncil.asn.au

Anne-Louise Brown
P 0406 987 050
E Anne-Louise.Brown@lawcouncil.asn.au

The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.