



Law Council  
OF AUSTRALIA

# National integrity systems symposium

**Speech delivered by Morry Bailes, President, Law Council of Australia, at the National Integrity Systems Symposium in Canberra.**

**21 August 2018**

## Introduction

Good morning to all and thank you for the opportunity to speak today at this very important symposium on national integrity systems.

I acknowledge the traditional custodians of the land we meet on, and pay my respects to Elders past, present and future.

Other acknowledgments:

- The Hon. Tom Bathurst AC;
- Chris Moraitis PSM;
- Professor AJ Brown;
- My fellow panellist speakers, professor John McMillian AO and Serena Lillywhite; and
- Former president of the Law Council of Australia who is in attendance today, Ms Fiona McLeod SC.

Thank you to Transparency International Australia, and Griffith University's Centre for Governance and Public Policy for hosting this event, and to all who are contributing to the national integrity systems assessment.

This work is essential as we strive to reset the parameters of transparency and accountability in Australia's institutions of power, and ensure our systems are robust enough to protect the rule of law.

In the view of the Law Council, the need to reassess and strengthen our systems of integrity and anti-corruption in this country are overdue.

And we are broadly supportive of the establishment of a national integrity commission, overseen by an independent chief commissioner appointed by a minister on the advice of the governor-general for a fixed, full-time, non-renewable five-year term, or alternatively overseen by suitably experienced senior counsel.

This has been a matter of growing concern over the last 10 or 15 years.

Australia ratified the international convention on anti-corruption, the United Nations Convention Against Corruption (UNCAC), in 2005, requiring us to develop policies in relation to anti-corruption.

During the 2010 election, the then labor government promised the establishment of a national parliamentary integrity commissioner – an intention that never eventuated, and indeed within two years, the government came to the view that 'there is no convincing case for the establishment of a single overarching integrity commission'.

But the Law Council has been consistent in its submissions to a number of inquiries, and senate standing committees that comprehensive action is required, both in response to domestic concerns and legal obligations, but also our international obligations, and in light of worrying developments across the world, where democratic institutions and legal frameworks have been under increasing fire, as we all know.

This morning I want to outline the position of the Law Council on the need to strengthen our federal integrity systems.

But first I want to speak of the role of the Law Council and the context of the necessity of defending the rule of law that is so fundamental to the proper function of our liberal democracy.

## The Law Council of Australia – a trusted advisor to government, a fierce advocate for the rule of law

For more than 80 years, the Law Council has been the peak body representing the legal profession; a leading light and a strong and trusted advocate for the rights and laws that maintain our democracy.

It was with a deep sense of responsibility that I assumed the position of president of the Law Council of Australia earlier this year.

I was the product of a state school education and had no thought of doing law. We had no lawyers in the family, but my elder brother – a Phd in history after studying at Kings College, London – suggested that I think of studying law as a way to address my love – and his – of history and language. So, I took his advice.

What started for me as a job and then a business has become much more. I have a strong commitment to the legal profession and the courts, and to the other democratic institutions that frame and enshrine our way of life.

Law is the lifeblood of business, and independent courts and accountable, transparent institutions – like the parliament, like banks, educational institutions, and law enforcement agencies for example – underpin our democracy and economic and social well-being.

The rule of law must be there for all of us in equal measure. And to ensure this, we must be confident that the whole system of administrative power has integrity, adheres to the rule of law, is accountable for its decisions, and serves the people first and foremost.

Corruption of those institutions threatens our democracy, it erodes public trust in those institutions and positions of power, and ultimately undermines the stability and prosperity of our nation.

And it is undeniable that we find ourselves lately in unexpected territory – territory I could hardly have anticipated when I was a young lawyer starting out.

We find ourselves having to work to defend and protect rights previously taken for granted.

In the words of the Chief Justice of New South Wales, the Hon. Tom Bathurst AC:

*“Many small encroachments, taken individually, arguably have little effect. Taken cumulatively over time and across state, territory and commonwealth jurisdictions they can be the death by a thousand cuts of significant aspects of our rights and freedoms.”*

In the international context, corruption is a serious global phenomenon, that undermines democratic institutions, jeopardises economic development and threatens the stability and security of governments.

Rules and norms established after the Second World War – frameworks of right, human rights and international cooperation and peace – are being challenged by forces and agents of disruption.

Trump, Duterte in the Philippines, the rise of the right across Europe, Brexit, North Korea – a familiar list, familiar rhetoric, familiar dogged populism that capitalises on the vulnerability of ordinary citizens, and the impact of seismic geopolitical and economic shifts, conflict, recession, dispossession.

We have also to factor in the impact of disruptive technologies – more connected as we are, yet more tribalised, more information but less filtered, far less easy to discern the quality of information, especially if one does not have the tools to analyse this.

Public trust in the systems that have governed us has rapidly eroded, including in our political systems and our politicians. The sense that democratic process can be corrupted even at the highest levels in state-on-state interference and disruption (think Russia and the us) put us on some fragile ground.

All of these elements combine to make the work of transparency international, and the commitment of likeminded countries to the UNAC so imperative.

And this makes it more important, more incumbent on us all who are in a position to advocate for strengthening the integrity of our systems here in Australia to be active, strident and resolute.

The Law Council of Australia has recently completed one of the most exhaustive surveys of the state of justice in our country in many years – one of the largest pieces of work undertaken by the Law Council. The Justice Project final report will be launched on Thursday.

Throughout this project, it has become apparent that many amongst us do not have access to justice, and the impacts of this are far-reaching and sometimes devastating.

The under-resourcing of our legal aid sector, and the system in general means many people simply cannot access legal advice and representation when they need it – and the Law Council has determined a number of systemic solutions that we hope to progress with government in coming months.

But it is not simply the individual and community impacts of this state of affairs, but how it undermines the principles and values that underpin who we are as a nation, our standing in the world.

Our longstanding reputation as a fair, open-hearted and prosperous country with a strong legal system has distracted us from the uncomfortable truth that growing numbers of people unable to access justice who are excluded from that system and thus from equality before the law.

It is the same impact if we do not have a robust integrity framework around the functioning of our institutions of power – corruption is another mechanism that denies Australians equality before the law. If our institutions lack integrity, and the decisions they make and the money they control are not for the common good but for the benefit of a few – then we are all diminished.

In this way, I see restoring, maintaining and enhancing the integrity systems in our country as a fundamental part of pursuing justice and equality before the law for all Australians.

We need to know that we are governed by just processes, overseen by fair minded and accountable people in power, people who serve, people and processes that can be scrutinised and held to account.

It is in this vain, as part of the Law Council's duty to protect and uphold the rule of law and be an advocate of justice – that we have been active and insistent in our view that action is required, particularly in light of the competing disruptive forces that continue to impact on our institutions across the world.

## The Law Council's position on a federal national integrity commission

In March of this year, Law Council Directors resolved to support in-principle the establishment of a national integrity commission, to address corruption at the federal level, though the Law Council has not resolved how it should be established.

As we know and read from Griffith University's options paper, each state and territory jurisdiction has its own variation on public sector integrity commissions.

But measures in place to address corruption at the federal level are piecemeal and have notable limitations.

For example:

- The Australian Commission for Law Enforcement Integrity is the only federal body – but only has powers to investigate the Australian Criminal Intelligence Commission (ACIC), the Australian Customs and Border Protection Service and the Australian Federal Police (AFP).
- The Commonwealth Ombudsman has significant investigatory powers – but cannot investigate ministers and parliamentarians – even though when it was established in 1976 it was through concern that parliament's accountability processes were becoming increasingly deficient. Notable that that was the concern more than 40 years ago, and there has been little movement since then to seriously address this in a holistic way.

One underlying concern is that an opaque, and fragmented system means the public at large is very unfamiliar with how they ever might resolve concerns about corruption – they do not know where to go, or when, nor how to seek a response to injustices they have seen or experienced, what evidence to gather, and who will back them if they raise concerns.

Australia has become an increasingly hostile environment for whistle-blowers from all sectors and on all matters – from health to industry to security to environmental issues, and every issue in between.

For example, ongoing redefining and tightening of the regulations around the code of conduct that governs public servants – particularly over the last two or three years – means a very grey area for government workers who want to reveal corruption at a government level.

In 2012, the Attorney-General released a discussion paper on the commonwealth framework to prevent corruption. It noted: 'robust democratic institutions play an important part in promoting a fair and transparent society and combating corruption'. This included:

- A free media;
- Civil society including integrity agencies, academia and non-government organisations; and
- Royal commissions to inquire into issues including 'systemic corruption'.

It is notable that all of these institutions have been under fire in one way or another since that time.

The Law Council's in-principle support for a national integrity commission is born from the fundamental principle that it is an important mechanism in protecting the rule of law by ensuring that no person is above the law.

The rule of law is the foundation of a civilised society, and the protection of fundamental rights and freedoms for all members of the community.

And the executive should be subject to the law and any action undertaken by the executive should be authorised by the law.

The federal anti-corruption body should be an independent statutory agency charged with:

- Investigating and preventing misconduct and corruption in all commonwealth agencies and among federal public officials, federal parliamentarians and their staff;
- In exercising its functions, the agency is, as far as practicable, to direct its attention to serious corrupt conduct and systemic corrupt conduct;
- The agency shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns;
- Obtaining evidence to support investigations of misconduct or corruption; and
- Providing independent advice to ministers and parliamentarians in relation to conduct, ethics and matters of propriety.

The rationale for the proposed principles underpinning the design of a federal anti-corruption body includes the need for transparency and accountability, and the need to continuously improve the integrity of the public sector, federal parliamentarians and their staff, and to reduce the incidence of corruption within these sectors, as well as the provision of a comprehensive and robust framework which closes the gaps in the integrity and anti-corruption system already in place.

It is very important that all legal aspects are considered if the commission were to be established.

Some of these include appropriate judicial and parliamentary oversight, safeguards on the use of investigative and coercive powers, resourcing and independence, rules around gathering evidence, the appointment of the chief commissioner, and non-compliance offences and penalties.

As the national integrity systems assessment progresses, I am sure that we will have the comprehensive evidence we need to ensure the right decision is made in the right way, but it is eminently clear that failure to act would be a dereliction of duty to the public, and to the future functioning of our institutions.

## Conclusion

Retired Victorian appeals court judge, Stephen Charles QC – who is with us today – is among a group of experienced and well-respected legal minds who are campaigning for a national ICAC with broad-ranging royal commission type powers to investigate corruption within the spheres of politics and the public service.

They say the public mood has shifted and there's now increasing support for a national ICAC and the issue of foreign interference sharpens the argument in favour of such a body.

I note that the options paper demonstrates that 'support for a new anti-corruption agency is strong. Support is slightly higher among women (70%) than men (65%), citizens of Victoria (73%) and NSW (69%), and those below the age of 65 (60%) but is otherwise spread across the community including all education levels'. Importantly, 'respondents who have ever worked in federal government expressed the highest strong support for a new agency (54%) and were the least likely to assess the task of fighting corruption as currently being handled well at the federal level'.

There is certainly increasing public appetite for this issue to be solidly and comprehensively addressed. The Law Council agrees.

In the current climate, where many rights previously taken for granted are under threat, where shifts in geopolitics internationally and at home, see greater concentrations of power, less transparency in the name of security, a general distrust among people of the institutions of democracy that sustain our way of life, and a devolution of the capacity of the justice system to serve all people equally – a robust national integrity system is absolutely imperative.

I congratulate Griffith University on their work on the project, and I look forward to working with you all, as does the law council on the whole – to pursue this matter, and to bring our weight and argument to bear to ensure progress is made, and quickly.

After many years of discussion on this matter, it is time to act.

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