

Monday, 2 November 2020

Law Council President, Pauline Wright's, response to draft Commonwealth Integrity Commission legislation

"The Law Council of Australia has long been advocating for the establishment of a Commonwealth Integrity Commission and is pleased that the government has finally released the Exposure Draft legislation.

The Exposure Draft largely follows the model proposed by the government in 2018, and creates a centralised, specialist centre for the investigation of corruption in the public sector by forming two separate divisions – one to oversee law enforcement bodies and the other to oversee the public sector more broadly. Two Deputy Commissioners (one for each of the proposed divisions) would be established under the proposal, alongside the lead Integrity Commissioner.

Under the proposed model, conduct that will be deemed to be corrupt will differ depending on whether it is engaged in by members of law enforcement agencies or members of public sector agencies. The Law Council has previously argued and will continue to argue that the same conduct that is deemed corrupt in one context should be deemed corrupt in the other. There should be an alignment of powers between the divisions and the same broad definition of 'corrupt conduct' should apply.

The Law Council supports the exclusion in the Exposure Draft of federal judges from the operation of the proposed CIC and believes that there should be a separate Federal Judicial Commission established to investigate complaints of corrupt conduct by members of the federal judiciary, consistently with maintaining the separation of powers and the independence of the judiciary. The Law Council looks forward to working with the government on this proposal.

Further scrutiny of the Exposure Draft will be needed to gauge the extent to which the staff of federal judicial officers and other staff who perform functions of the Courts (such as Court Registrars) fall within the draft legislation, and how any such proposal will be consistent with the doctrine of separation of powers.

The Exposure Draft proposes that hearings relating to public sector corruption issues are to be held in private, while there is the potential for public hearings relating to law enforcement corruption issues. The Law Council considers that while hearings should generally be conducted in private, some discretion over whether to conduct hearings in public if it is in the public interest to do so or where a closed hearing would be unfair to the person subject of the investigation.

The proposed model provides the Integrity Commission with substantial investigatory and coercive powers. The Law Council will be closely scrutinising the adequacy of safeguards in the Exposure Draft to prevent the arbitrary use of such powers, particularly as they relate to well-established principles such as the privilege against self-incrimination and the importance of maintaining the integrity of client legal privilege.

The Law Council looks forward to engaging with the consultation process, and is pleased that the government is allowing three months for stakeholders to provide initial comments (until February 2021), given the comprehensive scrutiny and participation from interested parties required for an effective Commission to be established."

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