



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref:GUcm1112501

15 April 2016

Mr Michael Brett Young
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: natasha.molt@lawcouncil.asn.au

Dear Mr Brett Young,

Establishment of a National Integrity Commission

Thank you for the opportunity to provide comments to inform the Law Council's submission to the Select Committee on the Establishment of a National Integrity Commission.

Independent Commission Against Corruption

The Independent Commission Against Corruption (ICAC) was established in 1988. In summary, the ICAC's principal functions are:

- investigating and exposing corrupt conduct in the NSW public sector
- preventing corruption through advice and assistance, and
- educating the NSW community and public sector about corruption and its effects.

In May 2015, the NSW Government established an Independent Panel to conduct a review of the jurisdiction of the ICAC, in light of the High Court decision in *Independent Commission Against Corruption v Cunneen [2015] HCA 14*. A copy of the Law Society's submission to the Independent Panel is enclosed.

National Integrity Commission

The Law Society notes that the Law Council, in its submission to the Australian Greens on the National Integrity Commissioner Bill 2010, states "...there are persuasive arguments that a federal anti-corruption body is needed to ensure transparency and accountability in the conduct of its officials". The Law Society agrees that this proposal has merit.

The Australian Commission for Law Enforcement Integrity was established in 2006 to investigate law enforcement-related corruption issues. The agencies subject to the Integrity Commissioner's jurisdiction include:

- the Australian Border Force
- the Australian Crime Commission
- the Australian Federal Police
- the CrimTrac Agency, and
- the Department of Immigration and Border Protection.

In addition, the Public Service Commissioner oversees the conduct of the Australian Public Service, and monitors compliance with the APS Values and Code of Conduct, which includes anti-corruption measures.

In our view, these existing bodies do not provide a sufficiently comprehensive framework for investigating and exposing corrupt conduct at a federal level. In the event that a federal anti-corruption agency is established, consideration would need to be given to a number of key issues.

1. Jurisdiction

The ICAC can investigate the following NSW public sector organisations:

- government departments and statutory authorities
- public schools, colleges and universities
- public hospitals and area health services
- local councils
- NSW Parliament, including politicians, and
- NSW judiciary (magistrates and judges).

In 2015, the ICAC's jurisdiction was expanded to include allegations of breaches of certain electoral and lobbying laws.

The Law Society considers that it would be appropriate for the jurisdiction of any federal anti-corruption agency to be similar in scope to the ICAC, including both politicians and public servants across all areas of the public sector.

2. Public hearings

The ICAC must consider various factors in determining whether or not it is in the public interest to conduct a public inquiry, including:

- the benefit of exposing corrupt conduct to the public, and making it aware of it
- the seriousness of the allegation or complaint being investigated
- any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry), and
- whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.

The Law Society notes the importance of procedural fairness in the conduct of investigations, and public inquiries; and the need to be mindful of the impact that public hearings can have on the reputations of those called to give evidence, or about whom evidence is given.

3. Coercive powers

The ICAC has extraordinary powers that override a number of fundamental rights and principles, such as the privilege against self-incrimination and the right to silence. It is important to place reasonable limits on the circumstances in which such powers may be exercised to protect the community against unwarranted intrusions on their civil liberties.

4. Penalty provisions

Generally, the ICAC's powers include making findings of corrupt conduct against people investigated, and making recommendations about appropriate action. For example, the ICAC could recommend that consideration be given to the taking of disciplinary or dismissal

action, or that the advice of the Director of Public Prosecutions be sought on the prosecution of persons for criminal offences.

The Law Society notes that very few ICAC findings of corruption have led to criminal convictions. In the event that a federal anti-corruption agency is established, consideration could be given to including a power to impose civil penalties or a 'statutory corruption in office' offence.

5. Oversight

It is important that there is appropriate oversight of decisions made by a federal anti-corruption body, if established.

In NSW, the Parliamentary Committee on the Independent Commission Against Corruption reviews the ICAC's performance, examines the ICAC's annual and other reports, and reports to Parliament on matters relating to its functions. The Committee does not have the power to investigate particular conduct, or to reconsider the ICAC's decisions, findings or recommendations about particular complaints or investigations.

There is no merits review of an ICAC finding. However, judicial review is available to anyone denied procedural fairness.

6. Education

As mentioned above, part of the ICAC's role is to educate the NSW community and public sector about corruption and its effects. The Law Society considers this a very important function, which would need to be adopted at a federal level and funded appropriately.

Please do not hesitate to contact Chelly Milliken, Principal Policy Advisor, on 02 9926 0218 or chelly.milliken@lawsociety.com.au if you would like to discuss this further.

Yours sincerely,



Gary Ulman
President



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref:JEgc

23 July 2015

The Hon. Murray Gleeson AC
Chair
Independent Panel – Review of the Jurisdiction
of the Independent Commission Against Corruption
GPO Box 5341
Sydney NSW 2001

Dear Mr Gleeson,

Review of the Jurisdiction of the Independent Commission Against Corruption

Thank you for the opportunity to provide a submission to the Independent Panel review of the jurisdiction of the Independent Commission Against Corruption ("ICAC").

The Law Society of New South Wales strongly supports the rule of law as the foundation of civilised society, and the protection of fundamental rights and freedoms for all members of the community. Any intrusion on fundamental rights must reflect an appropriate balance between the public interest objectives to be achieved, and the broader interests of the community in being protected from unwarranted intrusions on their civil liberties.

The Law Society notes that ICAC is an independent body established to (among other things) investigate, expose and prevent corruption involving or affecting public authorities and public officials. The Law Society recognises the importance of ICAC in protecting the rule of law, in particular by ensuring that no person is above the law.

The Law Society does not express a view as to the appropriate scope of ICAC's jurisdiction to investigate corrupt conduct. However, there are sound policy reasons for placing appropriate limits on ICAC's jurisdiction, including:

- ICAC was not established to investigate crime generally, and it is not necessary or appropriate that it duplicate the functions of the NSW Police Force in relation to offences that are generally unrelated to corruption in public administration; and
- ICAC has extraordinary powers that override a number of fundamental rights and principles, such as the privilege against self-incrimination and the right to silence. It is important to place reasonable limits on the circumstances in which such powers may be exercised to protect the community against unwarranted intrusions on their civil liberties.

Finally, the Law Society notes the importance of procedural fairness in the conduct of investigations, and public inquiries; and the need to be mindful of the impact that public hearings can have on the reputations of those called to give evidence, or about whom evidence is given.

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Law Council
OF AUSTRALIA
CONSTITUENT BODY

Thank you for giving the Law Society of New South Wales the opportunity to comment on this issue. The Law Society would welcome an opportunity to engage in any further consultations on this issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John F Eades". The signature is written in a cursive style with a large, sweeping initial "J" that loops back under the rest of the name.

John F Eades
President