



Law Council
OF AUSTRALIA

Office of the President

7 May 2020

Senator Paul Scarr
Chair
Joint Committee on the Australian Commission for Law Enforcement Integrity
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: aclei.committee@aph.gov.au

Dear Chair

Inquiry into the integrity of Australia's border arrangements

1. The Law Council of Australia (**Law Council**) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (**the Committee**) regarding its inquiry into the integrity of Australia's border arrangements (**the Inquiry**). The Law Council notes the Inquiry was initially commenced on 5 March 2015, re-referred at the beginning of the 45th Parliament, and re-referred again on 16 October 2019.
2. The Law Council does not intend to make submissions about specific integrity risks in Australia's seaport and airport border operations. Rather, the Law Council wishes to highlight the utility of an effective Commonwealth Integrity Commission (**CIC**) to manage corruption risks wherever they may arise, including in Australia's border operations. To assist the Committee's consideration of this interconnected matter, the Law Council's submission provides some background information about the need for a CIC and the appropriate scope of its functions, which would include jurisdiction over Commonwealth agencies operating at Australia's territorial borders.
3. As the Committee will be aware, the Australian Government announced its intention to establish a CIC on 13 December 2018. The need for such a body is well-recognised. Corruption in Government agencies has particularly far-reaching consequences for the Australian community, both economically and as a threat to the rule of law and foundations of our democracy. Moreover, there is significant scope for corruption to occur in the context of border integrity – for example, the potential for bribery to take place in relation to the issuing of licenses and access grants to Australia's seaports and airports, as well as decisions to investigate potentially corrupt behaviour taking place in connection with such operations.
4. Despite this, and as the Attorney-General's Department (**AGD**) noted in its Consultation Paper on the proposed establishment of a CIC, '[t]here is no single central body at the

Commonwealth level with ultimate responsibility for the prevention, detection and investigation of corruption issues across the public sector'.¹

5. The Law Council has set out the need for a CIC in its submission responding to the AGD Consultation Paper (**CIC Submission**) (**Attachment A**). In this submission, the Law Council commented on some of the key points raised in the Consultation Paper and noted:
 - the Law Council's strong support for the establishment of a national integrity commission, recognising that corruption has many corrosive effects on society; and
 - that overall, it was clear the proposed model sought to further address Australia's obligations as signatory of the United Nations Convention against Corruption to develop policies in relation to anticorruption.²
6. If established with the powers contemplated by the Law Council, the CIC would be responsible for addressing law enforcement integrity and would incorporate the existing structure and powers of the current Australian Commission for Law Enforcement Integrity (**ACLEI**), as established under the Law Enforcement Integrity Commissioner Act 2006.³ This means its jurisdiction would cover the Australian Federal Police, and the Department of Home Affairs (including the operationally independent body, the Australian Border Force), amongst other agencies which fall under the ACLEI's jurisdiction.⁴ As these agencies all have roles relevant to law enforcement and/or security in relation to airports and seaports, the Law Council's comments in the attached submission are relevant to the current Terms of Reference and are provided to the Committee to the extent they are applicable.
7. The Law Council has previously noted that it is unclear whether security agencies will be captured within the CIC's jurisdiction as it has currently been proposed, and has outlines the considerations required in that regard.⁵ The Law Council has also recommended that consideration be given to a broader definition of the corrupt conduct that can be investigated by the new CIC, which should include conduct amounting to a criminal offence under the *Criminal Code Act 1995* (Cth) and other serious cases of maladministration and serious misconduct that impairs/undermines, or that could impair/undermine, public confidence in public administration.⁶
8. The Law Council understood from comments made by the Attorney-General in January 2020 that draft legislation for the establishment of the CIC would be released in early 2020.⁷ Whilst the Law Council appreciates that compliance with this timeframe was likely affected by the ongoing response to the COVID-19 pandemic, it considers that the consultation process for the creation of the CIC should proceed as a matter of priority. The Government's exercise of extraordinary powers during the pandemic only highlights the need for such a body.

¹ Attorney-General's Department, *A Commonwealth Integrity Commission – proposed reforms* (December 2018) <<https://www.ag.gov.au/Consultations/Pages/commonwealth-integrity-commission.aspx>> 2.

² Law Council of Australia, *Commonwealth Integrity Commission: Proposed Reforms* (31 January 2019) <<https://www.lawcouncil.asn.au/docs/1bc1e79a-552e-e911-93fc-005056be13b5/3575%20-%20Commonwealth%20Integrity%20Commission.pdf>> 5.

³ *Ibid* 7.

⁴ *Ibid* 5-6; see definition of 'law enforcement agency': LEIC Act, s 5.

⁵ *Ibid* 7-8.

⁶ *Ibid* 12.

⁷ Amy Remeikis, 'Christian Porter admits Coalition missed own deadline on integrity commission legislation' (17 January 2020) *The Guardian* <<https://www.theguardian.com/australia-news/2020/jan/17/christian-porter-admits-coalition-missed-own-deadline-on-integrity-commission-legislation>>.

Should you require any further information or wish to discuss, please contact the Law Council's Director of Policy, Dr Natasha Molt

Yours sincerely

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President