

25 November 2020

Mr Michael Tidball
Chief Executive Officer
Law Council of Australia
19 Torrens Street
BRADDON ACT 2612

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

Dear Mr Tidball

REVISED PRINCIPLES FOR A FEDERAL JUDICIAL COMMISSION

Thank you for the memorandum dated 27 October 2020 regarding the above.

Further to the Law Society's comments in letter dated 27 August 2020, we make the following comments on the revised principles underpinning the establishment of a Federal Judicial Commission (**Revised Principles**).

1. The Law Society continues to support the creation (by statute) of a Federal Judicial Commission (**FJC**).
2. The Revised Principles maintain that an FJC should be "separate to any Commonwealth Integrity Commission" (**CIC**). The Law Society fully supports the creation of a CIC and considers that practically an FJC could be a subset of a CIC, with the ability to draw upon the CIC's resources if required. The two bodies could be separately enshrined in statute and could, for example, enter into a memorandum of understanding to share resources if and when there is a matter for the FJC to investigate.
3. The Law Society of Western Australia is of the view that investigations of federal judicial officers would be infrequent, as there are a relatively small number of federal judicial officers.
4. The Law Society supports the proposition that the FCJ can investigate former judicial officers in relation to their time serving in that capacity.
5. The Law Society supports capturing Registrars in the scope of the FCJ and further supports the proposition that, to the extent they are not covered by a CIC, commissioners, presidents and members of federal tribunals should come under the jurisdiction of the FCJ.
6. Notwithstanding the sentencing assistance function of the Judicial Commission of New South Wales, the Law Society maintains its view that sentencing assistance would detract from the core business of the FCJ as a complaint handling and oversight body. The Law Society is not aware of any grievous inconsistencies between sentences handed down by Federal Courts in criminal matters, and the Commonwealth

Department of Public Prosecutions already produces a useful guide on sentencing federal offenders.¹

7. The Law Society supports part 4 of the Revised Principles, particularly matters affecting 'public confidence in the administration of justice' as within the remit of the FCJ. The FCJ should have the ability to investigate ex curial and private actions of judicial officers if they undermine public confidence in the judiciary, as the private actions of one former judicial officer put into sharp focus this year.²

Thank you for the opportunity to comment on this matter. If you have any queries please contact Mary Woodford, General Manager Advocacy on (08) 9324 8646 or mwoodford@lawsocietywa.asn.au

Yours sincerely

A handwritten signature in black ink, consisting of the letters 'DL' with a horizontal line underneath and a period to the right.

David Price
Chief Executive Officer

¹ Commonwealth Director of Public Prosecutions, [Sentencing of Federal Offenders in Australia: a guide for practitioners](#)

² See: <https://www.smh.com.au/national/high-court-inquiry-finds-former-justice-dyson-heydon-sexually-harassed-associates-20200622-p5550w.html>