



# TI Australia News

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## Cobus de Swardt, Managing Director of TI at the Secretariat in Berlin, recently visited Australia.

During this time, he participated in a workshop on integrity agencies in Canberra, addressed successful meetings of members in both Sydney and Melbourne, and spoke to TI Australia corporate members as well as conferring with Board members. TI Australia has received much positive feedback from these meetings.



We acknowledge with thanks the excellent contribution of TIA Regional Committees in these cities, in particular Kimberley Whale and Carola Jonas in Sydney, and Holly Lindsay and Jacinta Spottiswood in Melbourne. A short video of one of the presentations is available on the front page of the TI Australia website - [www.transparency.org.au](http://www.transparency.org.au)

## Jose UGAZ - Speech to 16th IACC in Putrajaya, Malaysia - September 2015

Excerpts:

'...There are many more activists around the world and many are here present in this conference. Let me pay tribute to you, for your courage, for your honesty, for your integrity.

Change can and does happen. Why are we so passionate about the change we want to see?

We share many values. We want to see an end to poverty, we want all children to be able to go to school. We want people to have access to healthcare and live in decent homes.

That is why we are here and why we fight corruption. Because the price of corruption is paid for by all of us, but especially by the poorest in our countries. The private jet that is paid for by the school that is not built. The luxury house that is paid for by those who cannot get the medicine they need. The yacht paid for by the homeless.

How do we change that? There is much we know, and much you will debate this week.

*(Cont'd at top of page 4)*

## UK Serious Fraud Office Builds Momentum

The Director of the UK SFO, David Green QC, recently referred to some significant success as his track record on enforcement builds:

- A 13 year jail sentence imposed on a dealer in a hedge fund.
- A guilty plea for the first time by 'a senior banker in a British bank' in current Libor manipulation proceedings. Eleven other defendants await their trial in the case.
- The first convictions under the UK Bribery Act arising from a scheme in Cambodia.
- Currently 32 defendants, individual and corporate, charged and awaiting trial in 8 cases 'the SFO's current caseload includes investigations into Barclays, RR, GSK, Tesco, G4S and Serco'.
- Expectation is that at least two Deferred Prosecution Agreements will be concluded this year and be submitted for court approval under the modern UK legislative framework.
- Announced intent to push for tougher attribution rules for corporate liability under the Bribery Act.

..the Director also foreshadows an important review of the UK Bribery Act later this year

In his report the Director also foreshadows an important review of the UK Bribery Act later this year. Issues to be addressed include the 'symbiotic relationship' between grand corruption and fraud, and the ongoing need to apply resources to smaller scale offences.

Finally, David Green emphasised the heavy technical forensic load of the complex cases the SFO undertakes, noting '...the sheer quantity of data is vast; obstacles, technical or legal, that must be overcome'. This leads necessarily to delays in prosecution and mounting costs.

*Highlights from the speech to the 33<sup>rd</sup> Cambridge Economic Crime Symposium.*

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## Welcome to keynote speaker

Reflections on Corruption Conference, Sydney - August 2015 - John Eades, President, Law Society NSW

'...As lawyers we must sometimes step back from a reaction to corruption in the abstract and think more about a positive reinforcement of ethics. We can't do much about a concept, but we surely can be vigilant in our personal and professional conduct, because corruption may be the result, but a lack of ethics is typically the cause.

Corruption may be happening somewhere else, but our ethics are standards we carry with us always. In this regard, lawyers are often cast in the role of gatekeeper. If the lawyer says it's okay – it must be okay. Lawyers in all walks of professional life find themselves acting as the final check and balance on many schemes and plans.

...Amazingly, the lawyer will generally be very much listened-to – a simple shake of the head from the solicitor is often enough to put any client's ill-conceived scenario back into the scrap heap.

And what does this gatekeeper fall back on? Some experience is useful and a technical grasp of the rules and regulations is certainly a bonus. But the gatekeeper role is one that relies to a large extent on ethics and ethical judgement. That's why the Law Society devotes so many resources to ethics units, ethics committees, ethics guidelines and ethics guidance.

It shouldn't escape us that the devotion of these resources is aimed at the individual. Because the profession knows that the easiest thing in the world is make ethical decisions when everyone is behaving with integrity – but it's when one person stands against a tide of evil that he or she needs clear guidance and the ethical strength of a profession standing behind them.

Let's not pretend that ethics is a simple thing....'

## Gleeson Panel Report on Recommended Legislative Amendments to the ICAC Act NSW 2015

Following the Cunneen decision in the High Court severely limiting the jurisdiction of the ICAC, the Government in NSW moved swiftly to validate prior actions of the ICAC and to commission a Panel headed by retired High Court Chief, Justice Murray Gleeson QC, to report on the need for legislation.

The Panel Report, issued on 31 July 2015, contains an impressive analysis of the Act with a series of policy recommendations. Primarily the Panel focused on the possible need for an amendment to clarify the extent to which the ICAC should be able to investigate and make findings in respect of the conduct of private individuals, not simply public officials.

The Panel accepted the legal reasoning in the Cunneen case and its conclusion to be valid. But as a policy matter it took the issue further. In what it described as a 'fresh approach', it identified five particular areas in which the ICAC should retain jurisdiction to deal with private individuals, on the policy basis of the importance of preventing impairment in the confidence of public administration and its credibility.

These areas are:

- collusive tendering;
- fraud in or in relation to applications for licences, permits or clearances under statutes designed to protect health and safety or designed to facilitate the management and commercial exploitation of resources;
- dishonestly obtaining or assisting or benefiting from the payment or application of public funds or the disposition of public assets for private advantage;
- defrauding the revenue; and
- fraudulently obtaining or retaining employment as a public official.

Government in NSW moved swiftly to validate prior actions of the ICAC

To clarify, the Panel indicated that the expression 'could impair public confidence' to be a reference to the tendency of the conduct arising from its nature or the circumstance in which it occurs rather than any factual prediction of its likely consequences. As an example, 'an offer of a bribe can be treated as corrupt even though rejected out of hand'.

The Panel makes the point that the definition of corruption in the Act already means that a private person can be found to engage in conduct either connected to corrupt conduct or liable to allow, encourage or cause corrupt conduct. Hence an investigation by the ICAC can validly proceed, even though no finding of corrupt conduct can be or is being made against someone involved in the investigation.

The policy justification precludes ICAC investigations or findings of a limited impact, and also preserves the jurisdiction which ICAC had assumed without displacing the role of the other crime fighting agencies in the State.

In Chapter 4 of the Panel Report there is an interesting discussion as to the width of the term 'corrupt conduct', as used by the Panel. It is probably broader than that adopted as a definition by Transparency International.

The report also recommends that the Government allow an appeal against findings (as opposed to investigations) of the ICAC on the basis that the corruption involved is not, when viewed objectively, 'serious corrupt conduct'. That term is not defined.

The report acknowledges the severe damage that a finding of 'corrupt conduct' can have on reputations of those involved but does not recommend a right of appeal from those finding on the merits.

As a second matter, the Panel also considered that the ICAC should retain clear jurisdiction over electoral funding and lobbying wrongdoing, rather than leaving such matters to the Electoral Commission. Even though these matters should not be tied to the general concept of corrupt conduct, the greater operational experience and resources of the ICAC should prevail to allow effective inquiries. *(Cont'd on page 4)*

## Jose UGAZ - Speech to 16th IACC (cont'd from page 1)

...No-one can be in Malaysia and not be aware of the corruption allegations of recent months and how damaging they are to the country. There is a corruption crisis here.

As a global anti-corruption movement it is our role to ask questions, to challenge those who abuse their power, to champion those who cannot speak and to engage with those who sincerely wish to change.

Let us recall those two words – honesty and integrity.

What does that mean for Malaysia?

The government has taken measures and initiatives to tackle corruption. We will surely hear that from the minister. We want to see more progress but that cannot happen while there are unanswered questions about the \$700m that made its way into the Prime Minister's personal bank account.

In recent weeks we have seen the Attorney-General who was critical of the government suddenly replaced, the 1MDB taskforce suspended, investigators at the Anti-Corruption Commission arrested or transferred, and newspapers suspended for reporting on the matter.

These are not the actions of a government that is fighting corruption.

We may well hear promises of reform. That is not what is needed at this time. And promises alone will not restore confidence and trust. There are two questions that need to be answered: Who paid the money and why? Where did it go? One man could answer those questions. If that does not happen then only a fully independent investigation, free from political interference, can uncover the truth. Until that happens, no claim from the government on anti-corruption will be credible.

I stand here today with you and say this is what the people want from government – honesty and integrity.

Our movement does not stand alone. We have a common cause with all who speak up against those that would seek to enrich themselves at the expense of the people.'

TI Australia AGM 2015  
Tuesday 24 November in Sydney

## Gleeson Panel Report

(cont'd from page 3)

Finally, the Panel considers the vexed lack of prosecutions flowing from findings in the ICAC of corrupt conduct and the delays after such findings, but does not recommend any legislative changes except that the ICAC should be given express power to commence criminal proceedings arising from its investigations, including if necessary, any prosecutions for breach of the common law offence of abuse of Public Office.

The NSW Government has moved rapidly to implement these recommendations. To achieve that, a Bill has already been introduced.

*Michael Ahrens, Chief Executive, TI Australia*

## *Support and Thanks*

TI Australia is a voluntary organisation. We are pleased to acknowledge support from many sources including: Allens Linklaters; Anglican Board of Mission - Australia; ANZ Banking Group; Ashurst; Austrade; Australia China Business Council; Baker & McKenzie; Beam Global (Australia) Pty Ltd; BHP Billiton; Chevron; CIMIC; Control Risks; Corruption Prevention Network (CPN); Deloitte; Echo Entertainment Group; Ernst & Young; EFIC; FTI Consulting; Global Compact Network Australia; Holding Redlich; HSBC Bank Australia; Jackson PR; Justice & International Mission Unit - UCA; King & Wood Mallesons; KordaMentha; KPMG; McGrath Nicol; MMG; Norton Rose Fulbright Australia; Orica; PricewaterhouseCoopers; Readify; SUEZ Environment; Standards Australia; Telstra Corporation; UNDP; Woodside; World Vision Australia; Worley Parsons.

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