

National Anti-Corruption Commission Bill 2022 28 September 2022

Updated 22 November 2022

Background

Attorney-General Mark Dreyfus and the Albanese Labor Government introduced the National Anti-Corruption Commission Bill 2022 in Parliament this morning.

The establishment of a National Anti-Corruption Commission is an election commitment Labor had pledged to legislate by the end of 2022.

The Albanese Labor Government has committed \$262 million over four years to fund the Commission.

The National Anti-Corruption Commission (NACC)

The NACC will have a broad suite of powers to investigate public sector corruption, including alleged conduct committed in the past.

It will operate independently of government and will comprise of a NACC Commissioner, up to three Deputy Commissioners, a Chief Executive Officer, and an Inspector.

The appointment of the Commissioner, Deputy Commissioners and Inspector will be subject to approval by a Parliamentary Joint Committee. The Commissioner will be appointed for a single non-renewable fixed 5-year term.

Investigations

- The NACC will be able to investigate public officials and those who seek to corrupt public officials. This includes the power to investigate ministers, parliamentarians and their staff, statutory office holders, employees and contractors of government agencies, contracted service providers and third parties.
- The NACC will have broad jurisdiction to investigate serious or systemic public sector corruption, including criminal and non-criminal conduct and conduct that occurred before it was established.
- Any person will be able to refer issues to the NACC. The NACC will also be able to initiate its own investigations into suspected corruption.

- The NACC will provide protections for journalists and whistleblowers who disclose instances of corruption.
- The NACC's investigative powers will be similar to those of a Royal Commission, including the power to:
 - enter Commonwealth premises and require Commonwealth information without a warrant;
 - compel production of documents and things and search premises;
 - conduct private hearings and, if it is in the public interest and exceptional circumstances justify doing so, public hearings; and
 - intercept telecommunications and use surveillance devices.
- The Commissioner will have discretion to hold a hearing in public if satisfied it will be in the public interest and exceptional circumstances justify doing so.

Reporting and Findings

- The Commissioner will be able to make recommendations and findings of fact, including a finding of corrupt conduct or a recommendation of disciplinary action.
- The Commissioner will not be able to make determinations of criminal guilt or liability.
- The Commissioner will be required to prepare a report on a completed investigation and provide it to the Attorney-General.
- Where the Commissioner has held a public hearing in an investigation, reports will be required to be tabled in Parliament.
- The Commissioner will be able to publish reports where it is in the public interest to do so.
- The Commissioner will be able to refer evidence of an offence to the Commonwealth Director of Public Prosecutions for further consideration.

Independence and Oversight

- The NACC will operate independently of government.
- The Commissioner and Inspector will have discretion over how they perform their duties and will not be subject to ministerial direction; including when and how to commence an investigation.
- The NACC will be overseen by a Parliamentary Joint Committee and the Inspector.
- The Parliamentary Joint Committee will oversee the performance of the NACC, including its budget and finances. It will also approve the appointment of the Commissioner, Deputy Commissioners, and the Inspector.
- The Inspector will investigate corruption within the NACC, and deal with complaints about the conduct of the NACC or its staff.

Tuesday 22 November 2022 - Amendments Tabled by the Government

After consideration of the recommendations made by the Joint Select Committee on the National Anti-Corruption Commission and the Parliamentary Joint Committee on Human Rights, the Government has tabled amendments to the Bill designed to:

- broaden safeguards for the protection of journalists in relation to search warrants and extend protections for their sources;
- improve safeguards for the wellbeing of persons who may require assistance to comply with the summons or notice to produce and expressly permit people to disclose information to a medical professional;
- require the Commissioner to advise a person whose conduct has been investigated of the outcome of the investigation;
- amend the definition of corrupt conduct and clarify that the Commissioner may deal with a corruption issue on their own initiative;
- require surveillance and interception warrants to be issued by eligible judges of federal superior courts;
- enhance the power of the National Anti-Corruption Commission Inspector regarding witness summons and arrest warrants;
- narrow the grounds for bringing contempt proceedings; and
- amending the requirement that all evidence which discloses legal advice be given in private.
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The Bill and its explanatory memorandum can be accessed [here](#).

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