



Australian
Human Rights
Commission

National Anti-Corruption Commission Bill 2022

Australian Human Rights Commission

Submission to the Joint Select Committee on
National Anti-Corruption Commission Legislation

14 October 2022

ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

Contents

1	Introduction	3
2	Recommendations.....	4
3	Human rights and corruption	4
4	Jurisdiction	6
5	Independence	10
6	Referral mechanisms and protections	11
7	Protections for witnesses	12
8	Public hearings	14

1 Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to make this submission to the Joint Select Committee (the Joint Select Committee) on National Anti-Corruption Commission Legislation.
2. The Joint Select Committee has been established to inquire into and report on two bills:
 - a) National Anti-Corruption Commission Bill 2022 (NACC Bill)
 - b) National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022 (Consequential Bill).
3. The NACC Bill would establish an independent statutory agency, the National Anti-Corruption Commission (NACC), to investigate and report on serious or systemic corruption in the federal public sector, refer evidence of criminal conduct for prosecution, and undertake education and prevention activities regarding corruption.
4. The NACC Bill would establish the office of the Commissioner as the head of the NACC. The Commissioner would have significant powers to investigate corruption issues, conduct corruption inquiries and assemble evidence to support prosecutions. The Commissioner would be supported by three deputy Commissioners and a Chief Executive Officer.
5. The NACC Bill would be supported by the Consequential Bill, which amends various Acts to give effect to the NACC.
6. The Commission supports the establishment of the NACC and commends the Government's commitment to strengthening corruption prevention across the federal public sector.
7. Corruption at its worst can undermine democracy and the rule of law. Corruption threatens the integrity of government and undermines public trust in government. Corruption also can have an adverse impact on fundamental human rights.
8. The Commission supports many elements of the NACC Bill, particularly the scope of the NACC's jurisdiction, including its ability to launch own motion inquiries, the independence of the NACC, its ability to take referrals from members of the public, protections for whistleblowers, witnesses and people subject to adverse findings, and its ability to hold public hearings.

9. However, while the Commission accepts the need for the NACC's investigative powers, in its view, some of the warrants sought by the NACC should only be granted by eligible Judges.
10. The Commission also has concerns in relation to the decisions that relate to holding public hearings. The Commission considers that any unfair prejudice to a person's reputation, privacy, safety or wellbeing that would be likely to be caused if the hearing, or part of the hearing, were to be held in public should be a mandatory consideration for the Commissioner. The Commission also considers that clarification is needed in respect of the 'exceptional circumstances' that would justify a public hearing.

2 Recommendations

Recommendation 1

Clause 8(1)(e) should be amended or removed, as 'corruption of any kind' provides the Commissioner with significant discretion to expand its jurisdiction without parliamentary approval.

Recommendation 2

Applications by the NACC for warrants issued under the *Surveillance Devices Act 2004 (Cth)* or the *Telecommunications (Interception and Access) Act 1979 (Cth)* should be granted only by eligible Judges (and not nominated AAT members).

Recommendation 3

Clause 73(3)(c) should be a mandatory consideration for the Commissioner when deciding whether to hold a hearing, or part of a hearing, in public.

Recommendation 4

The Joint Select Committee seek clarification from the Government on the 'exceptional circumstances' that would justify the holding of a public hearing.

3 Human rights and corruption

11. Corruption has a 'grave and devastating' effect on the enjoyment of human rights.¹ Corruption inhibits the ability of governments to respect, protect and fulfil the human rights of all people.
12. In 2021, Australia scored 73/100 on Transparency International's corruption perceptions index, ranking Australia 18th among the 180 countries that were assessed.² The index scores countries based on the

perceived level of corruption in a country's public sector, as assessed by experts and business executives identified by Transparency International.

13. The Commission notes with concern that Australia's score has declined twelve points since 2012.³ In 2019, Transparency International Australia stated that, in Australia, 'trust and confidence in the integrity of Parliament, the public sector and the system of government, is at an all-time low'.⁴ At that time, Australia's score was 77 and rank was 12th, so has reached a new low since then.
14. On 31 October 2003, the United Nations (UN) adopted the UN Convention against Corruption (Convention).⁵ The then UN Secretary-General, Ban Ki-moon, noted that the Convention is the 'world's strongest legal instrument to build integrity and fight corruption'.⁶ The Convention embodies a human rights-based approach to fighting corruption. There are currently 187 countries party to the Convention.
15. Australia ratified the Convention in December 2005. The Convention is the most comprehensive international treaty aimed at combating corruption and covers five main areas:
 1. preventive measures
 2. criminalisation and law enforcement
 3. international cooperation
 4. asset recovery, and
 5. technical assistance and information exchange.
16. Article 36 of the Convention requires State Parties to establish entities or persons whose core focus is combating corruption through law enforcement. The article provides:

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

17. While the obligation in article 36 is mandatory, it is silent on the form that a specialised anti-corruption authority should take, leaving State Parties the discretion to create a body that best suits the domestic context.
18. The Technical Guide to the Convention notes, however, that an authority needs to have appropriate powers to be effective in investigating complex cases of alleged corruption:

That framework should afford specialized authorities specific contemporary powers on disclosure of documents or other pertinent information and evidence; access to financial reporting; restraint of assets and confiscation. To fulfil their role, specialized authorities would also require powers regarding access to financial and criminal intelligence, criminal investigation, prosecution and civil asset recovery.⁷

19. Other relevant articles of the Convention include articles 13 and 33.
20. Article 13 reflects the role of the public in combating corruption. Article 13.2 mandates State Parties to:

take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

21. Article 33 requires State Parties to consider incorporating measures to protect persons who report offences established in the Convention to competent authorities.
22. The Commission considers that establishing the NACC will support Australia in complying with its direct obligations under the Convention, as well as fulfilling the Convention's overarching aims.

4 Jurisdiction

23. The NACC Bill provides the Commissioner with a broad jurisdiction to investigate corruption issues that could involve serious or systemic corrupt conduct across the public sector.⁸
24. The Commissioner will be able to investigate a broad of individuals, including:

Commonwealth Ministers, parliamentarians, persons engaged under the *Members of Parliament (Staff) Act 1984*, the heads and employees of Commonwealth agencies, government contractors and their employees,

members of the Australian Defence Force, statutory office holders and appointees, officers and directors of Commonwealth companies, and people or bodies providing services, exercising powers or performing functions on behalf of the Commonwealth.⁹

25. The rule of law requires that the law is applied equally and fairly to both government and its citizens. Affording special protections, or applying a different regime, to individuals in positions of power and influence, such as Ministers, parliamentarians, heads of Commonwealth agencies, statutory office holders and appointees, risks undermining public trust in government and the NACC. The Commission, therefore, supports the broad and equal application of the Commissioner's investigative powers across the public sector.
26. A corruption issue is defined under clause 9 of the NACC Bill as an issue of whether a person has engaged, is engaging or will engage, in corrupt conduct.¹⁰ Clause 8 of the NACC Bill defines corrupt conduct as:
 - (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:
 - (i) the honest or impartial exercise of any public official's powers as a public official; or
 - (ii) the honest or impartial performance of any public official's functions or duties as a public official;
 - (b) any conduct of a public official that constitutes or involves a breach of public trust;
 - (c) any conduct of a public official that constitutes, involves or is engaged in for the purpose of abuse of the person's office as a public official;
 - (d) any conduct of a public official, or former public official, that constitutes or involves the misuse of information or documents acquired in the person's capacity as a public official;
 - (e) any conduct of a public official in that capacity that constitutes, involves or is engaged in for the purpose of corruption of any other kind.
27. The Commission supports the inclusion of both criminal and non-criminal conduct within the scope of the Commissioner's investigative powers. In the Commission's view, serious misconduct that may not constitute a criminal offence can nevertheless damage the integrity of, or public confidence in public administration. Moreover, this may allow the NACC to

investigate and provide early warning of behaviour that, if left unchecked, could result in criminal activity.

28. This also reflects what many Australian citizens consider to constitute corruption. In November 2020, Griffith University and Transparency International Australia released the report, *Australia's National Integrity System: The Blue Print for Action*.¹¹ The report recommends that a federal integrity commission have scope to investigate any conduct 'criminal or non-criminal – which undermines confidence in the integrity of decision making':

International experience shows a wide scope is central to the ability of anti-corruption agencies to adapt quickly to changing forms of corruption, integrity risk and public concern about abuse of entrusted power.

Transparency International's Global Corruption Barometer research shows that for Australian citizens, corruption does not only include criminal offences like theft and bribery. Rather, most citizens identify corruption as beginning with conflicts of interest, undue influence, favouritism, nepotism, cronyism and delayed forms of quid pro quo that easily go undetected or unsanctioned – if scrutiny is limited to cases that will support criminal charges and convictions beyond reasonable doubt.¹²

29. The Commission, however, does have concerns with the scope of clause 8(e), which includes 'corruption of any other kind'.
30. The Explanatory Memorandum acknowledges the 'broad framing' of this section, but argues it is limited, in part, to conduct that 'constitutes corruption' and provides an explanation of what constitutes corruption.
31. However, the Explanatory Memorandum further states that this limb is 'to provide the Commissioner with the flexibility to address emerging areas of corruption that may not currently be foreseen, and may not fall within any of the other more specific limbs of the definition'.¹³
32. Accordingly, clause 8(3) ultimately leaves the Commissioner with considerable discretion to decide what falls within the scope of 'corruption of any other kind'. The Commission considers that any expansion of the Commissioner's jurisdiction, particularly in response to emerging issues of corruption, should be a matter for Parliament. Alternatively, new specific limbs of corrupt conduct could be added to the jurisdiction of the NACC using disallowable instruments, with this function exercised by the Minister.

Recommendation 1

Clause 8(1)(e) should be amended or removed, as ‘corruption of any kind’ provides the Commissioner with significant discretion to expand its jurisdiction without parliamentary approval.

33. The NACC will have a ‘suite of investigative powers similar to those of a Royal Commission’.¹⁴ The Commission does not intend to comment on all those powers in this submission but recognises that the NACC requires appropriate investigative powers to enable it to fulfil its objectives, consistent with the UN Convention against Corruption.
34. The Commissioner will have the power to commence an investigation following a public complaint, agency referral, or on their own initiative. In particular, the Commission considers that the power of the Commissioner to commence investigations on their own initiative will help to ensure that the NACC operates as an effective, independent agency in combating corrupt conduct.
35. The investigative powers of the NACC will include the ability to apply for warrants under the *Surveillance Devices Act 2004* (Cth) (SD Act) and the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act) (together, the Acts), respectively for surveillance device and computer access warrants and interception warrants.
36. These Acts provide for the granting of warrants by an eligible Judge or nominated AAT member in particular circumstances upon the application of law enforcement officers of various law enforcement agencies, including the Australian Commission for Law Enforcement Integrity (ACLEI). Pursuant to the Consequential Bill, the ACLEI and these powers will be subsumed by the NACC.¹⁵
37. The Parliamentary Joint Committee on Human Rights has previously noted that it has not conducted a foundational human rights compatibility assessment in relation to the monitoring and surveillance powers in these Acts and the *Crimes Act 1914* (Cth), because they were all passed prior to the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).¹⁶ In this submission, the Commission does not intend to comment on whether the existing warrant system is consistent with human rights, but makes the following point.
38. While the Commission accepts that such warrants may be necessary for the NACC to investigate corruption, the Commission raises the following concern regarding the issuing of such warrants by nominated AAT members.

39. Given the NACC will be investigating corruption issues in the public sector, it may be more appropriate for warrants to be granted by eligible Judges, rather than an AAT member. Whilst the Commission recognises that a nominated AAT member grants these warrants in their personal capacity, they are otherwise a member of the executive branch of government. Accordingly, the Commission recommends that warrants for the NACC issued under these Acts should only be granted by eligible Judges (and not AAT members).

Recommendation 2

Applications by the NACC for warrants issued under the SD Act and TIA Act should be granted only by eligible Judges (and not nominated AAT members).

5 Independence

40. The Government has said that the NACC will operate independently of government and will not be subject to ministerial direction.¹⁷
41. The Commission agrees that '[i]t is crucial that the NACC operates, and is seen to operate, independently of Government by those within its jurisdiction, the Parliament and the Public'.¹⁸
42. The Commission supports the independence of the NACC and the following safeguards in the NACC Bill that seek to establish the independence of the NACC.
43. The Commissioner is afforded the discretion to decide how to deal with a corruption issue, including whether to commence an investigation, how to conduct the investigation, and whether to hold a hearing.¹⁹
44. The Commissioner, Deputy Commissioners and the Inspector will have security of tenure akin to a federal judge.²⁰ Their appointment may only be terminated by the Governor-General on grounds of misbehaviour or incapacity following an address requesting their removal from each House of the Parliament.²¹ The Commissioner will be appointed for a single term of up to five years and up to two terms of five years for the Deputy Commissioners.²²
45. Notwithstanding its independence, the NACC will be subject to oversight by an independent Inspector and a Parliamentary Joint Committee (Committee), to be established by the NACC Bill.

46. The Inspector's functions will include the investigation of corruption issues within the NACC and complaints about the conduct of the NACC or its staff.²³ The NACC Bill provides the Inspector with complete discretion in performing their functions or powers.²⁴
47. The Committee will oversee the work of the NACC, the Commissioner, and the Inspector. The functions of the Committee would include reviewing and approving the Government's nominated appointees for the offices of Commissioner, Deputy Commissioner and Inspector.²⁵
48. The Committee will consist of 6 members from each of the House Representatives and the Senate, respectively including 3 members from Government, 2 members from the Opposition, and 1 member from the Crossbench.²⁶ The Commission strongly supports the diverse composition of the Committee.
49. The Committee will be able to review and report to the Parliament on the sufficiency of the NACC's budget and staffing levels. The Government's intention is that this will act, in part, as an additional safeguard to hold future governments accountable.²⁷
50. However, the Commission notes that the budget of the NACC is ultimately a decision of the government of the day. Anti-corruption bodies are at risk of having their budgets cut, particularly following exposure of corruption in government.²⁸
51. The Commission must be appropriately resourced to achieve its objectives. The Commission commends the Government for committing \$262 million in funding over four years for the establishment and ongoing operation of the NACC.²⁹

6 Referral mechanisms and protections

52. Part 5 of the NACC Bill sets out the ways in which corruption issues can be referred for investigation. In Part 5, Division 1 relates to voluntary referrals, in which clause 32 provides that any person may refer a corruption issue or provide information about a corruption issue to the Commissioner. Division 2 relates to mandatory referrals from Commonwealth agencies and intelligence agencies.
53. The Commission supports the ability of the NCC to receive referrals from any member of the public.

54. Without an avenue for complaints to be referred to the NACC, public confidence in the NACC would likely be undermined. It would also limit the effectiveness of the NACC, as whistleblowers and public informants play an important role in exposing corruption at the state and territory level.
55. The Commission notes that members of the public, particularly whistleblowers, may have concerns in reporting corrupt conduct to the NACC, without appropriate protections to ensure confidentiality and protection from reprisals.
56. The Commission, therefore, supports the protections in the NACC Bill for persons who refer allegations or information raising corruption issues. These protections include criminal offences for taking, or threatening to take, reprisal action that causes detriment to whistleblowers who provide information to the NACC, and immunity from criminal, administrative and civil liability.³⁰ These protections are said to complement existing protections under the *Public Interest Disclosure Act 2013* (Cth) for public officials making disclosures.³¹

7 Protections for witnesses and people subject to adverse findings

57. Although it is important that the NACC operates as an effective anti-corruption body, there must be safeguards in place to protect the rights of people who give evidence to the NACC or who may be the subject of adverse findings by the NACC. In particular, this includes the right to a fair trial and hearing, the right to the presumption of innocence, and the prohibition on interference with privacy, and the right to reputation.³² The protection of these rights must be balanced against the NACC's objectives of exposing and preventing corruption.
58. It is important to recognise that there are significant safeguards and protections that either do not apply or are limited as a result of the NACC bill and Consequential Bill. The Explanatory Memorandum itself recognises that the measures in these Bills limit several key human rights, including the right to a fair trial, the right to the presumption of innocence, the privilege against self-incrimination and the prohibition on interference with privacy. The Commission considers it essential to ensure that any such limitations are reasonable, necessary, and proportionate.
59. While it is beyond the scope of this submission to address all these safeguards and rights in detail, the Commission broadly supports the following safeguards contained in the NCC Bill.

60. As noted in the Explanatory Memorandum, the NACC Bill seeks to ensure that the NACC operate with measures providing for procedural fairness for individuals who are to be the subject of a critical finding, opinion or recommendation. The Commission supports the right of individuals to be afforded an opportunity to respond to any adverse finding, opinion or recommendation before its inclusion in a report, or prior to its publication, as provided by the NACC Bill.³³
61. Further to the above, the Commission acknowledges that the Commissioner can make findings of fact, including findings of corrupt conduct in investigation reports, but cannot make determinations of criminal liability.³⁴
62. Additionally, there are safeguards established by the NACC Bill around the protection of sensitive information. Sensitive information is defined to include, amongst other things, information that would:
 - prejudice the fair trial of any person or the impartial adjudication of any matter
 - involve unreasonably disclosing a person's personal affairs
 - involve unreasonably disclosing confidential commercial information.³⁵
63. There are restrictions on the disclosure of sensitive information, including that such evidence must be given in private.³⁶ Where such information is heard in private, directions would be issued under clause 100 that the material must not be used or disclosed, or may only be used or disclosed in specified ways.³⁷
64. Importantly, the Consequential Bill provides that findings or the decisions of the Commissioner could be subject to judicial review.³⁸ The Commission considers that the availability of judicial review provides a significant safeguard for individuals affected by findings or decisions of the Commissioner.
65. While the availability of judicial review provides a significant safeguard, this does mean that any review is limited to errors of law. The absence of a merits review is particularly significant given that the NACC does not provide individuals with the full range of protections and safeguards that would be available to them if subjected to court proceedings.
66. The Commission strongly supports the right to legal representation for people giving evidence at a hearing provided by clause 66 of the NACC Bill.³⁹ This right is strengthened by clause 280, which provides for

regulations prescribing arrangements for financial assistance in relation to legal representative at a hearing, an application for judicial review, and any other matters arising in relation to the NACC Bill.⁴⁰

8 Public hearings

67. The NACC Bill provides that the default position is that hearings are held in private unless the Commissioner decides to hold the hearing, or part of the hearing, in public.⁴¹ In order for a hearing, or part of a hearing, to be public, the Commissioner must be satisfied that:
- a) exceptional circumstances justify holding the hearing, or the part of the hearing, in public; and
 - b) it is in the public interest to do so.⁴²
68. The Commission considers that the ability to hold public hearings in appropriate circumstances is a critical power that is necessary for a corruption body to be effective and to be seen to be effective. The benefits of public hearings (which, in turn, would allow for public reporting) may include:
- public exposure of allegations of corruption and misconduct
 - improving transparency and accountability of corruption investigations
 - encouraging witnesses to come forward
 - a deterrence effect.
69. At the same time, it is widely acknowledged that corruption hearings should generally take place in private and public hearings should be held 'sparingly and only where they are demanded by the public interest'.⁴³ The Commission's view is that it is essential that the Commissioner consider whether it is in public interest when deciding whether to hold a public hearing, as well as the impact on individuals directly affected by the public hearing.
70. Clause 73(3) of the NACC Bill outlines the various factors that the Commissioner *may* have regard to when deciding whether to hold a public hearing. This includes 'any unfair prejudice to a person's reputation, privacy, safety or wellbeing that would be likely to be caused if the hearing, or the part of the hearing, were to be held in public'.

71. As discussed in the previous section, there must be an appropriate balance between the objectives of NACC, and various rights, including the right to reputation and the prohibition on interference with privacy, and right to reputation.
72. The factors outlined in clause 73(3) are all are discretionary. This means that the Commissioner would not be required to take into consideration the impact a public hearing may have on a person's reputation, privacy, safety or wellbeing. The Commission considers that this should be a mandatory consideration for the Commissioner when deciding whether to hold a hearing, or part of a hearing, in public.

Recommendation 3

Clause 73(3)(c) should be a mandatory consideration for the Commissioner when deciding whether to hold a hearing, or part of a hearing, in public.

73. The threshold requirement of 'exceptional circumstances' is a matter that has received some public discussion.
74. The Attorney-General has justified this threshold, in part, by saying that public hearings 'raise questions about reputational harm, which are not faced when you hold private hearings'.⁴⁴
75. The Commission recognises that public hearings carry the risk of reputational damage to witnesses. Such risks may not necessarily be repaired by any subsequent findings of the NACC that an allegation of corruption is unfounded. Accordingly, it is right that public hearings only be used for appropriate matters.
76. However, there is some uncertainty around the threshold of 'exceptional circumstances'. This term is not defined in the NACC Bill.
77. The Commission acknowledges that clause 73(3) outlines relevant factors that may be considered by the Commissioner in deciding whether to hold a public hearing. As the Explanatory Memorandum states, these are some of the factors that may mean a public hearing is either more or less appropriate, or that otherwise go to the public interest.⁴⁵ However, they do not appear to assist in understanding what exceptional circumstances would justify a public hearing.
78. The decision under clause 73 is discretionary and made exclusively by the Commissioner. It will be based on their views of what constitute exceptional circumstances and where they justify holding a public hearing.

The decision does not require any further consultation, such as with the Deputy Commissioners.

79. It is currently unclear what would be required to satisfy this requirement. Given this uncertainty, a decision by the Commissioner to hold a public hearing may be subject to judicial review, resulting in additional delay and costs.
80. There is also a risk that if the requirement of exceptional circumstances is interpreted too narrowly it may result in public hearings being held too rarely. The Commission considers that it is important that the NACC is able to hold public hearings when necessary, as this will foster public support and confidence in this new institution and in government.
81. On the other hand, there is also a risk that if the requirement of exceptional circumstances is interpreted too broadly it may result in public hearings being held which subject an individual to significant reputational damage, without the full range of procedural safeguards that are available to them in a court.
82. As noted above at paragraph 57, there are many protections that do not apply or are limited by the NACC bill and Consequential Bill, including the right to a fair trial, the right to the presumption of innocence, and the privilege against self-incrimination. Such protections would ordinarily apply to any person prosecuted publicly in a criminal trial for criminal offences relating to corruption. Private hearings provide some balance against the impact on these rights and protection against the reputational risks arising from allegations of corruption.
83. Accordingly, there must be clearly understood requirements to justify a decision to hold a public hearing. The Commission recommends that the Joint Select Committee seek clarification from the Government on the 'exceptional circumstances' that would justify the holding of a public hearing.

Recommendation 4

The Joint Select Committee seek clarification from the Government on the 'exceptional circumstances' that would justify the holding of a public hearing.

-
- ¹ Christy Mbonu, *Progress Report Submitted by the Special Rapporteur*, UN Doc. E/CN.4/Sub.2/2005/18, (22 June 2005), [41], <<https://www2.ohchr.org/english/bodies/subcom/57/aevdoc.htm>>.
- ² 'Corruption Perceptions Index', *Transparency International* <<https://www.transparency.org/en/countries/australia>>.
- ³ 'Corruption Perceptions Index', *Transparency International* <<https://www.transparency.org/en/cpi/2019>>.
- ⁴ Transparency International Australia, Submission to the Attorney-General's Department, *Attorney-General's Department Commonwealth Integrity Commission Consultation*, (22 January 2019), 2, <<https://www.ag.gov.au/sites/default/files/2020-03/Transparency-international.pdf>>.
- ⁵ *United Nations Convention Against Corruption*, opened for signature 9 December 2003, UNTS 2349, (entered into force 14 December 2005).
- ⁶ Commonwealth Director of Public Prosecutions, Annual Report 2011–12, 4, <<http://www.cdpp.gov.au/Publications/Annual-Reports/CDPP-Annual-Report-2011-2012.pdf>>.
- ⁷ United Nations Office on Drug and Crime Vienna, *Technical Guide to the United Nations Convention Against Corruption*, (2009), 115, <https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf>.
- ⁸ Explanatory Memorandum, NACC Bill 3; NACC Bill, Clauses 9, 17.
- ⁹ Explanatory Memorandum, NACC Bill 4.
- ¹⁰ NACC Bill Clause 9.
- ¹¹ Transparency International Australia and Griffith University, 'Australia's National Integrity System: The Blueprint for Action', (November 2020), b-07, <https://transparency.org.au/wp-content/uploads/2020/11/NIS_FULL_REPORT_Web.pdf>.
- ¹² Transparency International Australia and Griffith University, 'Australia's National Integrity System: The Blueprint for Action', (November 2020), b-06, <https://transparency.org.au/wp-content/uploads/2020/11/NIS_FULL_REPORT_Web.pdf>.
- ¹³ Explanatory Memorandum, NACC Bill 75 at 2.47.
- ¹⁴ Australian Government Attorney-General's Department, '*National Anti-Corruption Commission Legislation*' <<https://www.ag.gov.au/integrity/anti-corruption/national-anti-corruption-commission-legislation>>.
- ¹⁵ Explanatory Memorandum, NACC Bill 8 at 11.
- ¹⁶ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, Report 11 of 2020, 24 September 2020, at [1.67].
- ¹⁷ Australian Government Attorney-General's Department, '*National Anti-Corruption Commission Legislation*' <<https://www.ag.gov.au/integrity/anti-corruption/national-anti-corruption-commission-legislation>>; The Hon Mark Dreyfus KC MP, '*National Anti-Corruption Commission Bill 2022*' (Speech, Parliament House, Canberra, 28 September 2022) <<https://ministers.ag.gov.au/media-centre/speeches/national-anti-corruption-commission-bill-2022-28-09-2022>>.
- ¹⁸ Explanatory Memorandum, NACC Bill 215, 10.2.
- ¹⁹ NACC Bill, Clauses 41-43; 56, 62-63, 73.
- ²⁰ The Hon Mark Dreyfus KC MP, '*National Anti-Corruption Commission Bill 2022*' (Speech, Parliament House, Canberra, 28 September 2022) <<https://ministers.ag.gov.au/media-centre/speeches/national-anti-corruption-commission-bill-2022-28-09-2022>>
- ²¹ NACC Bill, Clauses 193; 250; Explanatory Memorandum, NACC Bill 3.
- ²² NACC Bill, Clauses 241-242.
- ²³ Explanatory Memorandum, NACC Bill 4; NACC Bill, Clauses 182-184.
- ²⁴ NACC Bill, Clause 183.

- ²⁵ Explanatory Memorandum, NACC Bill 7; NACC Bill, Clause 177.
- ²⁶ NACC Bill, Clause 172.
- ²⁷ Explanatory Memorandum, NACC Bill 215, 10.7.
- ²⁸ For example, see concerns regarding financial independence of NSW ICAC: Michael McGowan, 'Icac's independence 'threatened' by NSW funding model', *The Guardian* (online, 20 October 2020) <<https://www.theguardian.com/australia-news/2020/oct/20/icacs-independence-threatened-under-nsw-funding-model>>.
- ²⁹ The Hon Mark Dreyfus KC MP, '*National Anti-Corruption Commission Bill 2022*' (Speech, Parliament House, Canberra, 28 September 2022) <<https://ministers.ag.gov.au/media-centre/speeches/national-anti-corruption-commission-bill-2022-28-09-2022>>
- ³⁰ Explanatory Memorandum, NACC Bill 4.
- ³¹ Explanatory Memorandum, NACC Bill 4.
- ³² *International Covenant on Civil and Political Rights*, Articles 14(1), 14(2), 17.
- ³³ NACC Bill, clauses 153, 157, 170, 166, 219, 223 and 221.
- ³⁴ Explanatory Memorandum, NACC Bill 5.
- ³⁵ NACC Bill, Clause 227.
- ³⁶ NACC Bill, Clause 74.
- ³⁷ Explanatory Memorandum, NACC Bill 37 at 198; NACC Bill, Clauses 74, 77.
- ³⁸ Consequential Bill, Part 2, Clause 2.
- ³⁹ NACC Bill, Clause 66.
- ⁴⁰ NACC Bill, Clause 280.
- ⁴¹ NACC Bill, Clause 73.
- ⁴² NACC Bill, Clause 73.
- ⁴³ National Integrity Committee, Submission to the Attorney-General's Department, *Attorney-General's Department Commonwealth Integrity Commission Consultation*, (2018), 2, <<https://www.ag.gov.au/sites/default/files/2020-05/National-integrity-committee-the-australia-institute.pdf>>; Australian Human Rights Commission, Submission to the Commonwealth Integrity Commission Consultation (12 February 2021), 11.
- ⁴⁴ Paul Karp, 'Labor faces crossbench backlash over integrity commission's private hearings', *The Guardian* (online, 27 September 2022) <<https://www.theguardian.com/australia-news/2022/sep/27/labors-national-anti-corruption-commission-to-hold-most-hearings-in-private>>.
- ⁴⁵ Explanatory Memorandum, NACC Bill 143 at 7.122.