



National Anti-Corruption Commission

# Introduction to the National Anti-Corruption Commission

This document reflects content in the [eLearning module, Introduction to the National Anti-Corruption Commission](#)



## 1. Introduction

Corruption has no place in the Australian Commonwealth public service. When our integrity falters, our ability to serve the public diminishes.

The National Anti-Corruption Commission (the Commission) enhances integrity in the Commonwealth public sector by deterring, detecting and preventing corrupt conduct involving Commonwealth public officials. It does this through education, monitoring, investigation, reporting and referral.

The Commission commenced on 1 July 2023.

## 2. Purpose and outcomes



This module will help you become familiar with the main functions of the Commission, who and what kinds of corruption come under its jurisdiction, and what is required of those with reporting obligations under the [National Anti-Corruption Commission Act 2022](#) (the NACC Act).

On completion of this module, you should understand:

- the main functions of the Commission
- corrupt conduct and what the Commission can investigate
- who must make referrals to the Commission
- investigative options & possible outcomes

## 3. Main functions



The Commission investigates allegations of serious or systemic corruption within the Commonwealth public sector.

The Commission is led by a Commissioner and three Deputy Commissioners, with support from a Chief Executive Officer.

To ensure the Commission uses its powers appropriately and complies with the law, the Commission is also overseen by a Parliamentary Joint Committee and an independent Inspector.

## **How the Commission prevents corruption**

In addition to investigating corruption, the Commission helps prevent corruption. It does this by:

- raising awareness through training
- identifying risks and vulnerabilities
- producing corruption prevention and education products
- making recommendations to prevent corruption

## 4. What is corrupt conduct and what can the Commission investigate?



### **What can the Commission investigate?**

To investigate a corruption issue, the conduct in question must:

- involve (or could involve) a public official, and
- be (or could be) corrupt conduct under the NACC Act, and
- likely be serious or systemic.

## Who is a public official?

Most people who work for, exercise the powers of, or perform functions for the Australian Government or the Australian Parliament are likely to be considered public officials under the NACC Act. This includes:

- parliamentarians
- staff members and secondees of Commonwealth agencies
- consultants and contracted service providers

## What is corrupt conduct?

A person engages in corrupt conduct under the NACC Act if one or more of the following apply:

- a) They are a public official and they breach public trust.

Certain powers are granted to public officials 'on trust' for the Australian public. That means the power must be exercised for the purposes for which the power was granted and not for some other, improper purpose, which may constitute a breach of public trust. A public official can breach public trust even if they do not gain any advantage for themselves or someone else, and even if it results in a benefit to the public (if it is found that they did not exercise their power for a proper purpose).

**Example 1:** an officer is responsible for processing claims for reimbursement under a government rebate scheme.

They used confidential client details from legitimate rebate applications to create fake claims and then make the rebate payments into their own bank accounts.

**Example 2:** a core responsibility for a decision maker in an official procurement process is to achieve value for money for the Commonwealth.

A procurement panel Chairperson awarded a tender to their neighbour as a favour to help them out.

b) They are a public official and they abuse their office as a public official. A public official abuses their office if they use their office for an improper purpose.

**Example:** An official tells an applicant that the official will look favourably on the application if the applicant makes a payment to a third party such as a club, association, company or charity.

c) They are a public official or former public official and they misuse information they have access to in their capacity as a public official. Corrupt conduct in this category could include the unauthorised access, disclosure or modification of official information.

**Examples:**

- A public official accesses a former partner's personal information to find out where they live.
- A border security official discloses sensitive information about their work practices to an organised crime syndicate. to make it easier for them to import illegal cargo into Australia without being detected.
- A former public official who worked in a regulator discloses commercially sensitive information to provide regulated entities a financial advantage.

- A public official with decision-making powers dishonestly modifies official information to influence an approval process.
- A recently resigned ministerial adviser discloses market-sensitive and classified information they learned on the job to a company they are trying to get a new job with.

They do something that could cause a public official to behave dishonestly or in a biased way when they perform their official duties. In this context, a public official might act *dishonestly* if they lie or attempt to deceive someone, or *biased* if they show an inappropriate preference towards or against an individual or group.

**Any** person can engage in this type of corrupt conduct, even if they are not a public official and even if the public official doesn't go on to engage in corrupt conduct.

**Examples:**

- attempting or making plans to bribe or blackmail a public official
- pressuring a public official to share inside information about how to bypass certain checks
- pressuring a public official who is the chair of a recruitment panel to promote someone other than on merit.

**What is serious corruption?**

Regardless of whether the conduct could constitute corruption, the Commission can only investigate it if the conduct is also likely to be serious or systemic.

Conduct is serious if it is significant or worrying, not slight or negligible, but it does not have to be 'severe' or 'grave'. Whether or not something involves serious corrupt conduct might depend on a range of factors, for example:

- Could the conduct constitute a criminal offence and if so, how serious is that offence? What is the maximum penalty?
- If it caused (or would have caused) a financial gain or loss, how much money was (or would have been) gained or lost?
- If it caused another benefit or detriment, how significant was the benefit or detriment?
- With respect to the misuse of information, how sensitive is the information? And what is the potential harm if it was (or would have been) disclosed improperly, or otherwise mishandled?
- If a person tried to cause a public official to act dishonestly or in a biased way, how significant was (or would have been) the impact?

### **What is systemic corruption?**

Corrupt conduct is systemic if it:

- is other than an isolated occurrence
- forms part of a pattern of conduct, or
- affects a system or organisation as a whole, such as a process undertaken by an agency, or an agency or the public service.

Corrupt conduct does not need to be coordinated for it to be deemed systemic.

## 5. Who must make referrals to the Commission?



### Referral types

Anyone can make a **voluntary referral** to the Commission if they believe they have information that relates to the actual or potential corruption of a Commonwealth public official.

However, agency heads and authorised officers (PID officers) under the [Public Interest Disclosure Act 2013](#) have mandatory obligations under the NACC Act, to refer corruption issues to the Commission for potential investigation. These are called **mandatory referrals**.

Where the mandatory referral obligation is engaged in an intelligence agency, such as ASIO or ASIS, the agency head or PID officer can choose whether to refer corruption issues to the Inspector-General of Intelligence and Security (IGIS) or to the Commission.

### Who are agency heads?

The NACC Act sets out the following individuals as agency heads for the purposes of mandatory referrals:

- members and senators of the Australian Parliament, including ministers
- accountable authorities of departments of state, and parliamentary departments
- accountable authorities of other Commonwealth entities prescribed under the *Public Governance, Performance and Accountability Act 2013*



- the Chief Executive Officer (or other head as prescribed by regulation) of bodies corporate established under Commonwealth legislation, and of Commonwealth companies and their subsidiaries
- the Chief Executive and Principal Registrar of the Federal Courts and High Court

### **Mandatory referrals**

When an agency head or PID officer refers the issue to the Commission, they must explain why they suspect the corruption issue could involve conduct that is serious or systemic. They must also provide the Commission with all the information or documents in their possession or control that relate to the issue.

Referring a corruption issue to the Commission does not prevent an agency from taking other action, such as conducting an internal investigation, unless the Commission directs it to stop.

Agency heads and PID officers who become aware of a corruption issue they suspect could be serious or systemic from the commencement of the Act on 1 July and before 29 July 2023 must refer it to the Commission **as soon as reasonably practicable after 29 July 2023**.

Agency heads and PID officers who become aware of a corruption issue they suspect could be serious or systemic after 29 July 2023 must refer it to the Commission as **soon as reasonably practicable after they become aware of it**.

## Protections for whistleblowers, witnesses and other persons affected

Whistleblowing is an extremely valuable means of preventing and detecting corruption. A number of protections are in place for whistleblowers, witnesses and other persons affected. These include:

- protections for persons making a disclosure under the NACC Act and the PID Act, and offences for taking reprisals
- protections for journalists and their sources
- the ability for the Commissioner to make public statements to clarify the status of those appearing as witnesses, and to make findings that a person has not engaged in corruption
- limitations on investigating a matter already dealt with by another integrity agency
- procedural fairness for persons subject to potential adverse findings, and availability of judicial review

## 6. Investigative options and potential outcomes



### What happens when the Commission receives a referral?

If the referral raises a corruption issue under the NACC Act, the Commission may deal with it in one or more of the following ways:

- commence a preliminary investigation
- investigate the issue alone or in partnership with the relevant Commonwealth or state or territory government entity

- Refer the issue to the Commonwealth agency to which the corruption issue relates, for them to investigate (if satisfied that the agency has the appropriate capabilities to investigate)
- refer the issue to another Commonwealth agency or a state or territory government entity for consideration
- take no action. **The Commission is not required to consider or act in response to every referral it receives.**

### **After an investigation: the Commissioner's reports**

On completing a corruption investigation, the Commissioner must detail the opinions, findings and recommendations in a report. A report cannot be finalised until those who are subject to critical findings have had an opportunity to respond.

Reports may be made public where the Commissioner thinks it is in the public interest to do so. The report must include:

- whether the Commissioner found corrupt conduct in the investigation
- the evidence for their opinions and findings
- recommendations, if relevant (such as how an agency should respond to the findings).

### **Findings**

The Commissioner's findings are findings of fact, which means that if the Commissioner makes a finding that a public official engaged in corrupt conduct, the corruption is no longer an allegation, but has been found to have occurred. Possible findings include:

- whether a person engaged or did not engage in corrupt conduct
- the category of corrupt conduct
- whether the corrupt conduct was serious and/or systemic.

Though the Commission can investigate corrupt conduct that could also constitute criminal activity, they cannot make a finding that anyone is guilty of an offence (only a court can). If evidence of a crime has been found during an investigation, the Commission may refer the matter to a prosecuting authority, like the Commonwealth Director of Public Prosecutions (CDPP). The CDPP will then decide whether to lay charges.

## **Recommendations**

The Commission can make any recommendation considered appropriate in their report, provided they state the reasons for making them.

Recommendations may include instructions for the agency head to respond to the investigation findings, for example, to address the corrupt practices found, or improve any policies, procedures or practices that enabled the corruption to occur.

If the Commission's investigation report recommends an agency head take a particular action, they must implement the recommendation within the specified timeframe.



## 7. Conclusion

### Summary

Thank you for taking the time to learn more about the National Anti-Corruption Commission and what it means for you or your agency.

You should now understand:

- the main functions of the Commission
- corrupt conduct and what the Commission can investigate
- who must make referrals to the Commission
- investigative options & possible outcomes

### Learn more

For more information, please visit [the Commission's website](#).