
Parliamentary Joint Committee on the National Anti-Corruption Commission

Examination of the National Anti-Corruption Commission
Annual Report 2023-24

March 2025

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Chapter 1

Introduction

Functions of the committee

- 1.1 The functions of the Parliamentary Joint Committee on the National Anti-Corruption Commission (the committee) are set out in section 177 of the *National Anti-Corruption Commission Act 2022* (NACC Act). The committee has a duty to examine each annual report prepared by the Commissioner of the National Anti-Corruption Commission (the Commissioner) under section 271 and by the Inspector of the National Anti-Corruption Commission (the Inspector) under section 198 and report to Parliament on any matter appearing in, or arising out of, each annual report.¹
- 1.2 The committee also has a function to review the budget and finances of the National Anti-Corruption Commission (the Commission, the NACC) and report to Parliament on the following matters:
 - whether the NACC has sufficient finances and resources to effectively perform its functions;
 - whether the NACC's budget should be increased to ensure that it will have sufficient finances and resources to effectively perform its functions;
 - any other matters arising out of the review that the committee considers relevant.²
- 1.3 The review and associated public hearing is also an opportunity to undertake more general functions under section 177:
 - to monitor and review the performance by the Commissioner and the Inspector of their functions.³
 - to examine trends and changes in corruption among those who are subject to this Act and report to Parliament on any change that the committee thinks desirable to the following:
 - the functions or powers of the Commissioner;
 - the procedures followed by the Commissioner;
 - the NACC's staffing or structure; and
 - the staffing arrangements for the Inspector.⁴

¹ See subparagraph 177(1)(d)(ii) and (iv) of the *National Anti-Corruption Commission Act 2022* (NACC Act).

² See paragraph 177(1)(g) of the NACC Act.

³ See paragraph 177 (1)(b) of the NACC Act.

⁴ See paragraph 177 (1)(e) of the NACC Act.

1.4 Section 177 of the Act also provides that the committee is not authorised to undertake certain functions, including to:

- reconsider a decision or recommendation made by the Commissioner in relation to a corruption issue, a NACC corruption issue or a complaint made in relation to the conduct or activities of the NACC or a staff member of the NACC.⁵

Examination of the annual report

1.5 This report examines the National Anti-Corruption Commission's first annual report for 2023–24. In order to examine the report, the committee held a public hearing on 22 November 2024 in Canberra. Witnesses who appeared before the committee are listed in Appendix 1. The committee examined the annual report, budget and finances as well as canvassing a range of contemporary issues in accordance with the committee's functions.

Key background

Presentation of the annual report

1.6 The Commission's 2023–24 annual report was tabled in the House of Representatives on 5 November 2024 and tabled in the Senate on 18 November 2024.⁶ The letter of transmittal indicates that the report was presented to the Attorney-General, the Hon Mark Dreyfus KC, MP on 25 October 2024.⁷

Portfolio arrangements

1.7 Established by the NACC Act, the Commission is an independent statutory agency under the Attorney-General's portfolio and commenced operations on 1 July 2023.

Role and purpose

1.8 The Commission's mission is 'to enhance integrity in the Commonwealth public sector by deterring, detecting and preventing corrupt conduct involving public officials through education, monitoring, investigation, reporting and referral'.⁸

1.9 The Commission has two main lines of operation to achieve this mission:

- deterring corrupt conduct through detection, investigation and exposure;
and

⁵ See subsection 177(3) of the NACC Act.

⁶ House of Representatives, *Votes and Proceedings*, No. 15, 5 November 2024, p. 1977; and *Journals of the Senate*, No. 13, 18 November 2024, p. 4239.

⁷ NACC, *Annual Report 2023–24*, p. [i].

⁸ NACC, *Annual Report 2023–24*, p. 2.

- preventing corrupt conduct through education and engagement.⁹

Acknowledgements

1.10 The committee acknowledges the cooperation and assistance of the Commissioner and other senior officials who aided the committee in its examination.

Structure of this report

1.11 This report contains two chapters:

- this chapter provides key details about the examination and background about the Commission's role and purpose; and
- Chapter 2 examines key issues relating to the Commission's performance in the reporting period and provides the committee's view.

⁹ NACC, *Annual Report 2023–24*, p. vii; NACC, *Corporate plan 2024-28*, p.10.

Chapter 2

Key issues

2.1 The inaugural annual report of the National Anti-Corruption Commission (the Commission) provides an overview of the first year of operation, including performance and information about workforce, jurisdiction, establishment activities and core areas of work. The National Anti-Corruption Commissioner, the Hon. Paul Brereton AM RFD SC, told the committee at the public hearing:

This week the commission is 73 weeks old...We've established from the ground up a brand-new federal integrity commission...Initially, our operational efforts were focused on receiving and assessing reports of corruption. Increasingly, as these referrals have been triaged and assessed, our main effort has shifted to the conduct of investigations.¹

2.2 This chapter examines key performance information, including financial performance, establishing the workforce, corruption prevention and education work and planning for future public inquiry work. The chapter includes discussion of considerations around public hearings, the Robodebt Royal Commission referrals and concludes by providing the committee's view.

Performance information

2.3 The 2023–24 and 2024–25 Portfolio Budget Statements (PBS) both provide one outcome and one program for the Commission:

Outcome 1: Independent assurance to the Australian community that corrupt conduct involving Commonwealth public officials is prevented, detected, investigated and responded to appropriately.

Program 1.1: Detect and investigate serious or systemic corrupt conduct involving Commonwealth public officials; assist Australian Government entities to manage corruption risks through corruption prevention education and information.²

Key performance indicators

2.4 The 2023–24 PBS and 2023–27 Corporate Plan contain two key performance indicators (KPIs) but do not contain targets – the 2023–24 results are to establish a baseline for 2024–25.³

¹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 1.

² Commonwealth of Australia, *Attorney-General's Portfolio Budget Statements 2023-24; Budget Related paper No 1.2*, pp. 2998-300; Commonwealth of Australia, *Attorney-General's Portfolio Budget Statements 2024–25: Budget Related Paper 1.2*, pp. 282–284.

³ NACC, *Annual Report 2023–24*, p. 22.

KPI 1.1 – Average time for assessment of referrals

- 2.5 The Commission received 3,190 referrals during the reporting period. Assessment of 2,690 referrals was finalised in the reporting period in an average of 89 days.⁴
- 2.6 There were also 32 Australian Commission for Law Enforcement Integrity (ACLEI)⁵ referrals pending an assessment decision at transition time that were inherited by the Commission. All ACLEI inherited referrals were dealt with as transitioned matters. Assessment of 28 of the 32 transitioned referrals was finalised in the reporting period, with an average assessment of 125 days.⁶

KPI 1.2 – Average duration of finalised investigations

- 2.7 The Commission commenced 26 corruption investigations during 2023–24, including seven joint investigations. No investigations under the NACC Act were finalised in the reporting period. There were 22 ACLEI investigations at various stages on hand at transition time that were inherited by the Commission, including five transitioned and 16 *Law Enforcement Integrity Commissioner Act (2006)* (LEIC Act) investigations. No transitioned matters were finalised. One LEIC Act matter was finalised on 16 January 2024. As only one investigation was finalised, an average is not available.⁷

Future key performance indicators

- 2.8 Under the 2024–25 PBS, there will be three KPIs for 2024–25:
- percentage of referrals assessed within 90 days of receipt. Target 80 percent.
 - percentage of investigations finalised within two years. Target 60 per cent.
 - number of corruption prevention and education products and engagements. Target: 100.⁸

Key performance data for 2023-24

- 2.9 The annual report contains detailed data about the Commission’s activities in 2023–24.⁹ It also explains terminology and counting methodology, which accounts for why some data might not appear to match.¹⁰ Key points include:

⁴ NACC, *Annual Report 2023–24*, p. 22.

⁵ On 1 July 2023, ACLEI was subsumed into the National Anti-Corruption Commission.

⁶ NACC, *Annual Report 2023–24*, p. 22.

⁷ NACC, *Annual Report 2023–24*, p. 22.

⁸ Commonwealth of Australia, *Attorney-General’s Portfolio Budget Statements 2024–25: Budget Related Paper No 1.2*, p. 284. Also see NACC, *Corporate Plan 2024–28*, pp. 22–23.

⁹ NACC, *Annual Report 2023–24*, pp. 25–33.

¹⁰ NACC, *Annual Report 2023–24*, pp. 15–20.

- **Referrals:** The Commission received 3,190 referrals during 2023–24, the vast bulk of which were voluntary reports from the public (3, 009).¹¹
- **Corruption issues:** the Commission dealt with 266 corruption issues during 2023–24 as follows:
 - 24 Commission investigations (under section 41(1)(a) of the NACC Act);
 - 8 joint investigations (s41(1)(b));
 - 12 referred to agency for investigation (s41(1)(c));
 - 1 referred to agency for consideration (s41(1)(d)); and
 - 221 no further action (s41(6)).¹²
- **Investigations:**
 - the Commission has commenced 19 investigations plus seven joint investigations to make a total of 26 corruption investigations.
 - no investigations commenced under the NACC Act were completed in 2023–24.
 - one joint investigation under the NACC Act resulted in court proceedings being commenced in the reporting period. The matter involves one defendant and was before the courts at 30 June 2024.
 - the Commission is preparing the final investigation report for one matter without having referred the matter to the Commonwealth Director of Public Prosecutions (CDPP).¹³
- **ACLEI inherited matters:**
 - There were 22 ACLEI investigations at various stages that were inherited by the Commission. Of the seven still active investigations, five transitioned to NACC Act investigations and two remained active investigations under the LEIC Act. The other 15 inherited investigations (which were with the CDPP, before the court, or had reporting underway) continued under the LEIC Act.
 - Of the ACLEI inherited investigations referred to the CDPP by the Commission or ACLEI during 2023–24:
 - two investigations concluded prosecutions and three defendants were convicted. One of these investigations has other ongoing proceedings.
 - two investigations referred have resulted in institution of prosecutions. As at 20 June 2024, five investigations had active prosecutions, involving seven defendants, before the courts.

¹¹ NACC, *Annual Report 2023–24*, p. 25.

¹² NACC, *Annual Report 2023–24*, p. 26. Note that one of the joint investigations was originally a NACC investigation, and one of the agency investigations was reconsidered to become a NACC investigation after 30 June 2024.

¹³ NACC, *Annual Report 2023–24*, pp. 26–27.

- the CDPP decided that no prosecution should be commenced in one investigation.
- two investigations referred remained under review by the CDPP at the conclusion of the reporting period.¹⁴

Current operational activity

2.10 The Commissioner provided an update on the current state of operational activities at the public hearing. Reporting that the Commission has received over 4,200 referrals since it commenced operation, the Commissioner advised that about 85 per cent were excluded at triage stage as they did not include a Commonwealth public official or do not raise a corruption issue.¹⁵ Currently the Commission is conducting:

- 35 preliminary investigations; another 17 preliminary investigations have been concluded and two of these transitioned to full investigations; and
- 29 corruption investigations, six jointly with other agencies.¹⁶

2.11 In addition:

- 16 matters have been referred to other agencies for investigation or consideration;
- 39 search warrants were obtained;
- 19 telecommunication intercept warrants were obtained;
- 13 surveillance device warrants were obtained;
- one controlled operation authority was approved;
- 16 directions were issued to agency heads to produce documents or information under s 57 of the NACC Act;
- 157 notices to produce were issued under s 58 of the NACC Act;
- private hearings have been conducted on seven investigations, involving 26 witnesses;
- operations have been conducted in every state and territory except South Australia; and
- convictions have been obtained in six matters that transitioned from ACLEI.¹⁷

2.12 The Commissioner explained that:

¹⁴ NACC, *Annual Report 2023–24*, pp. 27–28.

¹⁵ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 1.

¹⁶ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, pp. 1–2.

¹⁷ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 2.

In about 90 per cent of the cases that passed triage, we decided to take no further action, typically because there were insufficient prospects of finding corrupt conduct, the matter was already being adequately investigated by another agency or a corruption investigation would not add value in the public interest.¹⁸

2.13 When asked about demonstrating outcomes, Mr Brereton responded that this will be through the investigations being conducted and subsequent reports which are published. However, he noted that ‘corruption investigations take time and it will take time for some of the investigations we’re conducting to produce results and show the value of the work we are doing’:

I would say that we are conducting 29 full investigations at the moment, and I've already referred to the preliminary investigations. Some of those are complex and difficult. If people want to see results in terms of outcomes of investigations from the commission, it will take time for them to produce results.¹⁹

2.14 The Commissioner added:

I think there's something also to be said, and that is that I think integrity is on the Commonwealth agenda—on the lips of departmental secretaries, on the agenda of every second meeting around Canberra at the moment—and I think we have a lot to do with that. I think our promotion of the cause and our engagement activities have had a great deal to do with elevating the importance of anti-corruption and integrity issues and the attention it is getting and the attention that officials all around the country are playing to. I think that's already a very significant outcome.²⁰

Workforce

2.15 A key element of performance is the Commission’s workforce. At the public hearing, the Commissioner reported to the committee that the Commission has grown from 149 staff at commencement to approximately 230 staff currently.²¹ The budgeted Average Staffing Level (ASL) is 266 employees.²² The annual report indicated that there has been a consistently high level of interest in seeking employment with the Commission. The Commission’s recruitment

¹⁸ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 2.

¹⁹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 12.

²⁰ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, pp. 12–13.

²¹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 1.

²² NACC, *Annual Report 2023–24*, p. 62.

team oversaw 113 staff commencements, with more than 3,600 job applications received.²³

2.16 Mr Philip Reed, Chief Executive Officer, added that:

...16 months in, we're still growing and maturing as an organisation. We have not hit our ASL level as yet—not in its first year. Because of the nature of recruitment activities, we may not hit it in the second year. They take time. Specialist skills are at times hard to find.²⁴

2.17 The Commissioner's foreword of the Corporate Plan 2024–28 notes:

Moving into our second year, we will continue to grow our workforce, to provide additional critical and niche capabilities, and to increase efficiency in handling the high volume of work in both our lines of operation.²⁵

2.18 Recognising the newness of the Commission and specialist skills required for some positions, workforce capability has been recognised in the Corporate Plan 2024–28 as an enterprise risk.²⁶

Financial performance

2.19 For the 2023–24 financial year, the Commission recorded a surplus of \$0.5 million, including depreciation and amortisation. As at 30 June 2024, the Commission reported that it is in a sound financial position with financial assets of \$44.4 million, which is in excess of total liabilities of \$28.9 million. Total income for 2023–24 was \$57.8 million and total operating expenditure was \$57.4 million.²⁷

2.20 The current budget for the Commission is outlined in the Commission's Chapter of the 2024–25 Attorney-General's Portfolio Budget Statements. In 2024–25, the Commission will receive \$65.551 million in 'Revenue from Government'. The employee component for 2024–25 is \$39.927 million.²⁸

2.21 In responding to committee questions about resourcing, the Commissioner stated that currently the Commission has sufficient resources to carry out its work. Mr Brereton elaborated:

At this stage, we have not quite reached capacity in terms of our investigatory resources but we are very close to it. We allocate to an investigation the resources that we think are necessary to conduct that investigation. Typically there will be a director of operations leading it, or a

²³ NACC, *Annual Report 2023–24*, p. 36.

²⁴ Mr Philip Reed, Chief Executive Officer, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 7.

²⁵ NACC, *Corporate Plan 2024–28*, p. 4.

²⁶ NACC, *Corporate Plan 2024–28*, p. 20.

²⁷ NACC, *Annual Report 2023–24*, pp. 78–79.

²⁸ NACC, *Portfolio Budget Statements 2024–25*, p. 286.

team leader, and a case officer with principal responsibility for it. Often they will have a lawyer supporting it, a digital forensic analyst and others. It varies from investigation to investigation as to what the resources required for any individual investigation are. Some of our larger investigations at the moment occupy pretty much the whole effort of an investigatory team. Some of the others have one person working on them. If you're asking me whether I need more people to work on what we've got at the moment, the answer is: no, we've got enough to do what we're doing at present.²⁹

2.22 On the issue of resources, Mr Reed added:

We were half a million dollars underspent in the last financial year. We are tracking underspent at the moment, so it's not a money issue. It's about people and their ability to do the job.³⁰

2.23 There is a further discussion of resources in the context of the Robodebt referrals below.

Corruption prevention and education work

2.24 In the first year of operation, the Commission 'delivered 125 presentations and engagements to parliamentarians, Commonwealth agencies, professional associations and civil society'.³¹ Since 1 July 2024 a further 64 have been delivered.³²

2.25 The Commission also administered the first Commonwealth integrity survey in August and September 2024 and around 60,000 public officials responded. Mr Brereton explained that the results will be used to:

... assess corruption risks in the Commonwealth public sector, to identify potential corruption vulnerabilities and to inform corruption prevention and education initiatives.³³

2.26 The Commissioner recognised there is more work to be done to educate the public on the Commission's role and the legislation:

How the commission explains its processes and investigative choices is important, but the commission is an anticorruption commission concerned with serious and systemic corruption in the Commonwealth public sector. We're not a complaints-handling agency, an employment or discrimination

²⁹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 6.

³⁰ Mr Philip Reed, Chief Executive Officer, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 7.

³¹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 2.

³² The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 2.

³³ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 2.

dispute resolution service, or an administrative decisions review authority. Making a referral to us is not like making a referral to the Ombudsman or an application to the Administrative Review Tribunal. We don't adjudicate on individual complaints. Referrals to us aren't individual initiating processes on which a referrer is entitled to an adjudication but a source of information that, with other information, can help us to identify and decide what we should investigate and where we should focus in the public interest to have the optimal impact in deterring and preventing corrupt conduct...³⁴

Future public inquiry work

2.27 The committee asked the Commissioner whether consideration has been given to commencing a public inquiry.³⁵ Mr Brereton responded that there 'are a number of potential subjects for public inquiries under consideration' but 'we have considered it important to deal with the bow wave of referrals and manage them before we turn our minds to a generic public inquiry'.³⁶ Recurrent themes which have been identified and may be appropriate for public inquiry were discussed:

One involves corruption risks and vulnerabilities associated with the National Disability Insurance Scheme. Another involves corruption risks and vulnerabilities associated with the employment of contractors, particularly contractors in labour hire firms that may then be engaged in effectively hiring their own contractors and expanding the influence that they have in the relevant agency. The third is corruption risks associated with grant schemes.³⁷

2.28 Deputy Commissioner of the National Anti-Corruption Commission, Ms Nicole Rose, added that eventually the Commission will be able to bring the findings from investigations out through public inquiries by being able to 'use our real examples and recent investigations to show where the risks and vulnerabilities are'.³⁸

Consideration of public hearings

2.29 In relation to holding public hearings, the Commissioner informed the committee:

³⁴ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 3.

³⁵ See Part 9 of the NACC Act.

³⁶ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 13.

³⁷ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 13.

³⁸ Ms Nicole Rose, Deputy Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 13.

Of course, we work within the legislation we've been given, which requires that, ordinarily, our proceedings be conducted in private. That is chiefly to avoid the risk of unfair and premature damage to reputations that can be caused when unproven allegations of corruption are publicised. In accordance with the legislation, we will conduct public hearings where the circumstances and the public interest justify an exception to the general rule.³⁹

- 2.30 The committee examined what is taken into account when considering whether to hold a public hearing. The Commissioner explained that each time he issues a summons he considers whether there are exceptional circumstances that would warrant a public hearing saying:

It is really hard to lay down in advance what is going to be exceptional and what takes something out of the general rule. I've said from day 1 that we'll know exceptional circumstances when we see them. But you can't lay down in advance 'this will be' and 'this won't be'.⁴⁰

- 2.31 Mr Brereton outlined two of the considerations: 'a high level of confidence that corrupt conduct will be established' and 'the prominence of the person of interest and their position'.⁴¹

- 2.32 The Commissioner informed the committee that to date no investigations have met the threshold of exceptional circumstances but there 'are a couple of investigations on foot at the moment that could potentially get there'.⁴² Mr Brereton spoke about other considerations such as witness welfare⁴³ and also highlighted:

Unlike a criminal or civil court, we can compel witnesses to incriminate themselves, and it is a large step to do that in public where the usual protections don't apply. Many witnesses, particularly whistleblowers and people in that category, are more comfortable and give more helpful accounts if they can do so in private rather than in public. In addition, investigations rarely benefit from publicity. Publicity has the potential to compromise the efficacy and fairness of investigations. That limits investigatory pathways, particularly the use of covert powers. It alerts persons of interest, enabling the distraction and distortion of evidence.

³⁹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 3.

⁴⁰ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 19.

⁴¹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 19.

⁴² The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 19.

⁴³ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 19.

That's why investigatory agencies generally don't talk about their operations, and in that respect we're no different.⁴⁴

2.33 When asked whether it would be helpful for the legislation to be more explicit around the considerations, the Commissioner replied:

I honestly don't think that legislation that specifies a whole list of factors to be taken into account really helps. Sometimes listing factors tends to confine the decision-making rather than making it more open to a wide range of discretionary considerations.⁴⁵

Robodebt Royal Commission referrals

2.34 The committee explored the Commission's decision not to pursue the Robodebt Royal Commission referrals from a number of perspectives, including the expectations around the referral and the considerations in making the decision, particularly resourcing and the public interest.

Purpose and expectations

2.35 Mr Brereton explained the Commission's position in relation to receiving referrals:

The royal commission referred it to us for consideration like the royal commission referred matters to the police for consideration and like all royal commission's typically refer matters to prosecuting other authorities for their consideration. It doesn't involve an expectation that the referred body will necessarily do something. We commonly refer information we receive to other agencies—to police forces and the like—and say, 'We've received this information; it may be of interest to you.' But that does not involve an expectation that they will do something. I agree there may be a perception that, because the royal commission referred it to us, therefore we should do something, but a royal commission referral to us is no different to any other referral to us. It is then for us to consider whether we're going to add value in the public interest by doing something.⁴⁶

2.36 Later in the hearing, the Commissioner added:

My assessment is that, like most royal commissions, the commissioner would have wished to provide to other agencies that might have an interest information if it was going to be of interest to the receiving agency to act on. But there is nothing in the referral to indicate that a view had been reached

⁴⁴ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 3. The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 19.

⁴⁵ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 19.

⁴⁶ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 8.

that there was corrupt conduct for us to look at. There was a referral of information for us to consider.⁴⁷

- 2.37 Responding to whether the Royal Commissioner, Catherine Holmes AC SC, had made the referral due to concerns that there was corruption, Mr Brereton replied:

I think that is, with great respect, highly speculative. The mere fact that you have referred something doesn't mean that you have a concern that there is corruption. I am just trying to think back to the material, but I don't think that's a fair conclusion, no.⁴⁸

- 2.38 However, the Inspector of the National Anti-Corruption Commission (the Inspector) highlighted to the committee that in correspondence to the Attorney-General on 24 April 2023, the Royal Commissioner sought a short extension for provision of the report in order to be able to refer individuals to the National Anti-Corruption Commission under section 6(p) of the *Royal Commissions Act (1902)*.⁴⁹ The Royal Commissioner explained this was in anticipation should she 'reach the view their conduct may meet the definition of "corrupt conduct" under the *National Anti-Corruption Commission Act [2022]*'.⁵⁰

- 2.39 When asked whether he was confident there would not be a finding of corrupt conduct in relation to one of the referred persons, Mr Brereton replied 'absolutely no':

I won't go as far as saying 'quite possible', but the legal advice that we obtained from our lawyers was to the effect that, if proved, the conduct could fall within the definition of 'corrupt conduct' and we proceeded on the basis that a corruption issue arose but that, for all the reasons given in Deputy Commissioner Rose's reasons, it was not appropriate for us to take further action in relation to that corruption issue in accordance with section 41(6) of the act. So, no, I am absolutely not going to say by any means that I or anyone else was confident that there was no prospect of making a finding of corrupt conduct. That was never the basis on which the matter was addressed.⁵¹

⁴⁷ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 15.

⁴⁸ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 15.

⁴⁹ Royal Commission into the Robodebt Scheme, final report, 2023, p. lxvii. See also, Inspector of the National Anti-Corruption Commission complaint investigation, *NACC's decision not to investigate referrals from the Royal Commission into the Robodebt Scheme*, October 2024, p. 4.

⁵⁰ Royal Commission into the Robodebt Scheme, final report, 2023, p. lxvii. See also, Inspector of the National Anti-Corruption Commission complaint investigation, *NACC's decision not to investigate referrals from the Royal Commission into the Robodebt Scheme*, October 2024, p. 4.

⁵¹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 16.

2.40 The Inspector, Ms Gail Furness SC, later pointed out to the committee that:

... there was a question as to the legal advice that was provided by the commission's internal lawyers. I think the commissioner, without any record in front of him to refer to, indicated that the advice could constitute corrupt conduct; the advice was that it would constitute corrupt conduct. I refer you to Mr Robertson's report at paragraph 56, where he quotes from that legal advice.⁵²

Considerations

2.41 On 16 April 2024, Deputy Commissioner Rose, as the delegate of the Commissioner signed a record stating that she decided to take no action with respect to the referred persons.⁵³ This record included a number of considerations and the committee explored reasoning around the considerations of resourcing and the public interest.

Resourcing

2.42 The committee discussed with the Commission the effect of resourcing on the decision not to pursue the Robodebt Royal Commission referrals. Deputy Commissioner Rose confirmed that resourcing was a consideration but not the primary one:

You'll see in the inspector's report, on page 12, that there is a list of 13 aspects in my decision. Resourcing certainly was one of them, but it was not even in the top three. The top three include the fact that there was a risk of inconsistent outcomes. We were quite concerned, as the commissioner said. ...At that stage, we were really looking at the definition of 'corruption' and what 'serious and systemic' and therefore what we would actually take on and what we wouldn't. We had serious concerns in the legal advice raised that we might not be able to reach the threshold of corruption on the information that we had. We were quite concerned that we would commit a great deal of time and resources and raise the hope of victims and their families that there would be a process with an outcome that we may not reach. That was one of the most important considerations.⁵⁴

2.43 Commissioner Brereton also explained this aspect of the Commission's consideration:

If we investigated robodebt, that would likely be a large investigation that would use and require the dedication of a significant part of our resources. That's evident enough from the work the royal commission had already done and the amount of resources it required of the royal commission. Every time we open an investigation, there is a resource consideration: Is this

⁵² Ms Gail Furness SC, Inspector of the National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 23.

⁵³ *Inspector's Report into the National Anti-Corruption Commission's referrals from the Royal Commission into the Robodebt Scheme*, 30 October 2024, pp. 11–12.

⁵⁴ Ms Nicole Rose, Deputy Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, pp. 6–7.

something we should be looking at in priority to something else? In particular, is this something that we should be looking at if it has already been looked at elsewhere or is being looked at elsewhere? Should we focus on that, or should we focus our efforts on something that hasn't been and isn't otherwise being examined? On resource implications: How do we use our resources? Do we focus on new things, or do we focus on things that have already been investigated? That's essentially what it was. If we investigated robodebt, there would be other things we would not be able to investigate.⁵⁵

- 2.44 Deputy Commissioner Rose was also asked whether consideration had been given to approaching the committee specifically in relation to making sure there were sufficient resources, and she responded:

At the time, no, that wasn't something that I had considered, but the commissioner and CEO may add to that. It's certainly something we may now need to consider if the eminent person does believe that this should be investigated and that we have to find investigators to undertake that. I suspect—but, as I say, that's not my area; that's the commissioner and CEO—that we may come back before the committee to discuss resourcing then.⁵⁶

Public interest

- 2.45 Another consideration was whether a corruption investigation would add value in the public interest and that this is particularly relevant where there are or have been other investigations into the same matter. In its media release, the Commission reported that it had 'decided not to commence a corruption investigation as it would not add value in the public interest'.⁵⁷

- 2.46 The Commission indicated that:

There is not value in duplicating work that has been or is being done by others, in this case with the investigatory powers of the Royal Commission, and the remedial powers of the APSC.⁵⁸

- 2.47 The committee explored the Commission's understanding of the public interest. The Commissioner responded that the public interest 'is in exposing corrupt conduct that has not otherwise been exposed'.⁵⁹ Mr Brereton elaborated further:

⁵⁵ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 6.

⁵⁶ Ms Nicole Rose, Deputy Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 7.

⁵⁷ National Anti-Corruption Commission decides not to pursue Robodebt Royal Commission referrals but focus on ensuring lessons learnt, *Media Release*, 6 June 2024.

⁵⁸ National Anti-Corruption Commission decides not to pursue Robodebt Royal Commission referrals but focus on ensuring lessons learnt, *Media Release*, 6 June 2024.

⁵⁹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 14.

I think that [our work] is best done in cases in which we are exposing and exploring conduct that has not otherwise been exposed and explored. I agree that we have an important role in explaining what is corrupt conduct and what isn't. I think we have been doing that fairly extensively in our corruption prevention and engagement work, and we are also exploring the boundaries of it in some of the investigations that are underway into matters that have not otherwise been investigated. The public interest lies in exposing corrupt conduct, but if you are exposing conduct that has already been exposed that's where I don't think you're adding much value. We have never said that there is no value in it, but, when you look at balancing all the considerations, the value in simply adding a stamp of 'corrupt conduct' to the conduct that had been found by the Robodebt royal commission did not advance the public interest or would not advance the public interest. That was our thinking—or my thinking, anyway.⁶⁰

2.48 The Commissioner emphasised that the Commission:

couldn't grant a remedy and therefore we would not be doing something that could result in benefit to the victims of Robodebt. We couldn't grant them a remedy.

...The decision was to explain that we could not do what a criminal court does, we could not do what a civil court does and we could not do what a disciplinary tribunal does and, for those reasons, amongst others, we were not going to add value.⁶¹

2.49 The committee will continue to monitor the NACC's interpretation of its purpose under the Act.

Findings of the Inspector, NACC response and processes underway

2.50 After receiving over 1,000 complaints specific to the NACC's decision not to investigate referrals from the Royal Commission into the Robodebt Scheme,⁶² on 13 June 2024, the Inspector of the National Anti-Corruption Commission decided to inquire into the decision.⁶³ After receiving documents and submissions from the NACC, on 26 September 2024, the Inspector provided an update that she was conducting an investigation under section 184(1)(e) of the

⁶⁰ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 15.

⁶¹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 14.

⁶² Ms Gail Furness SC, Inspector of the National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 22.

⁶³ Inspector of the National Anti-Corruption Commission to inquire into the decision not to investigate referrals from the Royal Commission into the Robodebt Scheme, *Media Release*, 13 June 2024.

NACC Act.⁶⁴ On 30 October 2024 the Inspector published her report.⁶⁵ The Inspector's report recommended that:

In light of the findings and opinions expressed in the Robertson report, which I accept, I recommend that the Commissioner delegate the function under s 41(5) of the NACC Act, this is, to reconsider whether and how to deal with a corruption issue, namely the referrals from the Royal Commission into the Robodebt Scheme, to an appropriate person.⁶⁶

2.51 On the same day, the Commission reported that it 'has decided to have an independent eminent person reconsider its decision not to investigate the Robodebt Royal Commission referrals'.⁶⁷

2.52 In relation to the findings of the Inspector, the Commissioner informed the committee that:

We accept that the ultimate conclusion in the Robertson report is open and it is in the public interest that we should accept it and have the original decision independently reconsidered, and that's what we're doing.⁶⁸

2.53 The Commissioner explained to the committee why he remained involved to the degree he did:

[T]he robodebt royal commission [referrals] were received in the first week of our existence, while we were just establishing our processes, policies and procedures for our work generally. The referrals involved several legal and policy questions for the first time, including the scope of our jurisdiction and the meaning of 'corrupt conduct' in the act. They would also have very significant resource implications for the commission. These were matters for which I as commissioner had ultimate responsibility. I considered it would have been irresponsible and negligent for me, as a leader of the organisation, to abandon any involvement in them, provide no guidance, walk away or say it was not my problem and leave everyone else to their own devices. In those circumstances, having regard to the nature of the conflict, that the decision was to be made was not a quasi-judicial decision as to whether someone had engaged in corrupt conduct but a preliminary decision as to whether an investigation should be opened.

Having regard also to the status of the delegate, Deputy Commissioner Rose—with a significant history of independent decision-making, who was

⁶⁴ Update on the Inspector's inquiry into the National Anti-Corruption Commission's decision not to investigate the referrals from the Robodebt Royal Commission, *Media Release*, 26 September 2024.

⁶⁵ *Inspector's Report into the National Anti-Corruption Commission's referrals from the Royal Commission into the Robodebt Scheme*, 30 October 2024.

⁶⁶ *Inspector's Report into the National Anti-Corruption Commission's referrals from the Royal Commission into the Robodebt Scheme*, 30 October 2024.

⁶⁷ Public Statement: NACC to reconsider decision not to investigate Robodebt referrals, *Media Release*, 30 October 2024.

⁶⁸ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 4.

given no direction as to how to exercise her delegated power and whose appointment as a statutory officer could not be affected by me—I considered an appropriate balance could be achieved by delegating decision-making responsibility to her and by excusing myself from the meeting when it came to making the decision so it could be made freely, and all, if they wished, could speak freely in my absence.⁶⁹

2.54 The Commissioner took the committee through his involvement highlighting that:

- none of his involvements were related specifically to referred person 1, they related to the referrals as a whole;
- he was present at the 19 October 2023 meeting for the discussion until it came time for the decision to be made and then he left the meeting;
- as far as the legal advice, as the senior lawyer in the commission, he was involved in framing the question for legal advice; and
- along with others, he was involved in settling the minutes of the 19 October 2023 meeting at which he had been present.⁷⁰

2.55 Mr Brereton noted the finding of the Inspector that the steps taken to manage the perceived conflict of interest were ‘insufficient to avoid the decision being affected by apprehended bias – that is, the possibility that a reasonable observer could think that the decision was possibly not impartial on account of my involvement in some parts of the process’.⁷¹

2.56 The Hon Alan Roberston SC was engaged by the NACC Inspector to also review the material and prepare a report on his findings. His report, the findings and opinions of which were accepted by the NACC Inspector, found that:

The Commissioner’s involvement in the decision-making under section 41 was comprehensive, before, during and after the 19 October 2023 meeting at which the substantive decision was made.

The views the Commissioner expressed at the meeting on 19 October 2023 were not limited to policy questions concerning the referrals generally as the policy questions had a strong factual element specific to, amongst others, [Referred person 1]. The discussion was framed by the issues raised by the Commissioner. The Commissioner settled the minutes of the 19 October 2023 meeting.

...

I have found that the steps taken by the Commissioner to manage his conflict of interest, that conduct, arose from a mistake of law, as natural justice

⁶⁹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 5.

⁷⁰ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 16.

⁷¹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, pp. 4 and 8.

required the Commissioner not to participate in the decision-making with respect to [Referred Person 1]. The Commissioner's conduct, if engaged in by the NACC, would have been agency maladministration as defined in section 184(3), being conduct that is not unlawful but arose from a mistake of law. As I have said, the mistake of law was as to what the law required to be the action taken in consequence of the Commissioner disclosing his interest. On this analysis, there has been "officer misconduct" as defined in section 184(3) of the NACC Act.⁷²

- 2.57 The Commissioner summarised that while he did not personally agree with the finding of the Hon Alan Roberston SC as to whether the circumstances give rise to reasonable apprehension of bias:

I accept that my judgement in that respect has been found to be mistaken through the prism of the law relating to apprehended bias, but at the time I had to strike a balance between my responsibility as a leader and, on the other hand, avoiding the perception that my prior professional relationship could affect the decision. Having accepted that I got the balance wrong, we're now setting about putting that right through having the decision independently reconsidered.⁷³

Appointment process

- 2.58 At the time of the public hearing, the Commissioner told the committee that the process to find the independent eminent person was well advanced.⁷⁴
- 2.59 Names were sourced from a list of persons engaged for complex work by the Australian Government Solicitor (AGS). A number of people on the list were approached by the AGS to see if they were available and willing to undertake the work. Once those people were identified they were discussed by the Commissioner and Deputy Commissioners.⁷⁵
- 2.60 It was explained to the committee that the Chief Executive Officer would appoint the selected person as a temporary staff member and then the Commissioner would make the delegation under section 276 of the NACC Act. While only the Commissioner can make the delegation under section 276, he

⁷² Report to the Inspector of the National Anti-Corruption Commission on the decision by the National Anti-Corruption Commissioner to take no action on the referrals from the Royal Commission into the Robodebt Scheme Royal Commissioner, Report by the Hon Alan Robertson SC, p. 28.

⁷³ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, pp. 5 and 12.

⁷⁴ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 11.

⁷⁵ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 11.

stressed to the committee that he is consulting with all the Deputy Commissioners.⁷⁶

2.61 It was emphasised to the committee by Mr Brereton that:

I have no interest in the eminent person agreeing or disagreeing with our original determination. The only interest I have is that an independent person review the material and make an honest, independent decision.⁷⁷

2.62 When asked about this process, the Inspector of the National Anti-Corruption Commission, Ms Gail Furness SC, responded that the process outlined by the Commissioner accords with her understanding:

As I understand it, someone appropriate will be appointed. That person will then, independently of the commission – other than receiving the material – come to their own view and express it.

...

...as to the process, I can understand the point of view that those engaged in the first lot of decision-making not be involved in choosing the person; that's an available position. Practically, for me, that person will inevitably be of such standing that I would expect that person to deliberately not engage with any one of the first decision-makers.⁷⁸

2.63 When asked about any amendments that could be made to assist this process, the Commissioner mentioned the relevant New South Wales Act 'which enables the appointment of an additional assistant commissioner for a specific purpose'.⁷⁹ Mr Reed added:

The provisions of section 6 and 6A of the New South Wales Independent Commission Against Corruption Act specifically includes references to where there are conflicts of interest. That was why it's been used by that institution over time as a way of avoiding having to undertake investigations where there may be a conflict of interest. It's well worth looking at.⁸⁰

2.64 On 13 December 2024, the National Anti-Corruption Commission announced its appointment of Mr Geoffrey Nettle AC KC to 'independently assess the referrals

⁷⁶ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 11.

⁷⁷ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 11.

⁷⁸ Ms Gail Furness, SC Inspector, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 27.

⁷⁹ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 18.

⁸⁰ Mr Philip Reed, Chief Executive Officer, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 18.

and decide whether, and if so how, the Commission should deal with any corruption issues arising from the referrals'.⁸¹

- 2.65 On 18 February 2025, the Commission announced that as a result of the decision made by the independent reconsideration delegate, Mr Geoffry Nettle AC KC, the Commission will investigate the six referrals it received from the Royal Commission into the Robodebt Scheme.⁸²

Media release

- 2.66 Another aspect of the Commissioner's involvement was the media release of 6 June 2024 when the Commission advised they would not investigate the Robodebt referrals. Mr Brereton advised:

So far as the media release was involved, yes, I was absolutely involved in setting the terms of a media release which would reflect on my commission and in circumstances where the decision had already been made. So that's irrelevant to the question of apprehended bias because the decision had already been made by the time the media release came to be prepared. And, as for the suggestion that we let, or that I let, referred person 1 or anyone else edit the media release, it is a matter of our practice that, before we make a public statement about a matter, the people who will be affected by that are provided with a copy of it and an opportunity to comment on it. Deputy Commissioner Rose wrote to each of the referred persons, informed them of the decision and of the proposed media release and invited their comments, as a matter of ordinary common fairness.⁸³

- 2.67 When asked about whether it was known that the public servants referred had left the public service at the time of the media release, Mr Brereton responded:

I do not believe that I knew that all of them had left, although I certainly knew that most of them had. I did not, at the time of approving that release, turn my mind to that factor.⁸⁴

- 2.68 The Commissioner explained the mistake made in the media release in relation to referring to the remedial powers of the APSC:

The point that we were seeking to make was that we didn't have the disciplinary powers that the APSC had, we didn't have the remedial powers that a civil court had and we didn't have the punitive powers that a criminal court had. Generally, the APSC can impose sanctions. Unfortunately, in stating that in the context of this case, that gave the impression that it could

⁸¹ National Anti-Corruption Commission, 'Independent delegate appointed to reconsider Robodebt referrals', *Media Release*, 13 December 2024.

⁸² National Anti-Corruption Commission, 'National Anti-Corruption Commission to investigate Robodebt referrals', *Media Release*, 18 February 2025.

⁸³ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 16.

⁸⁴ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 21.

apply sanctions in the present case, when it couldn't, because by then all the public servants had left the APS. It was not my intention to convey that impression, but I accept that that was the effect. As we said in our submissions to the inspector, that was unintentional, and we are sorry for it.⁸⁵

Changed processes

2.69 The work undertaken by the Inspector to review the Robodebt decision has already resulted in changes to Commission processes, including amending conflict of interest procedures so that the option of a person who has declared a perceived conflict of interest not being the ultimate decision-maker but otherwise participating in the process is removed.⁸⁶

2.70 The committee will continue to closely monitor this issue.

Conclusion and committee view

Establishment

2.71 At the outset the committee recognises the considerable work that has gone into the establishment of the National Anti-Corruption Commission. This is a new agency which opened its doors on 1 July 2023 to an anticipated flood of referrals. The preparation for this was significant to ensure that there was a functioning agency with systems and staff capable of assessing referrals from day one. The committee acknowledges that alongside this operational work, the administrative work of developing policies, procedures and processes for a new agency was undertaken, as well as finding offices and recruiting staff. These achievements show the dedication of the workforce to improve integrity by establishing an anti-corruption agency with broad based jurisdiction over the commonwealth public sector.

2.72 The committee agrees with the Commissioner that the number of initial and continuing referrals show a healthy level of confidence in the Commission and its work and the committee also acknowledges that the Commission, having only been in operation for 18 months, is undertaking complex work that will take time to show results.

Public reporting

2.73 The committee recognises the amount of public reporting the Commission has undertaken with weekly updates on its activity levels and other information about the general nature of investigations. The committee is pleased this is a

⁸⁵ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 20.

⁸⁶ The Hon. Paul Brereton, Commissioner, National Anti-Corruption Commission, *Official Hansard*, 22 November 2024, p. 4. See also, The Hon. Paul Brereton AM RFD SC, National Public Sector Governance Forum 2024, *Speech Transcript*, 15 November 2024.

significant improvement on the initial level of transparency. While some have expressed the wish to see more information, the committee accepts that investigations can take a significant period of time (sometimes years) and during this time the publication of information could jeopardise the investigation. The committee understands that the outcomes of referrals and investigations will be reported in due course when in the public interest to do so. The committee notes that where a referral or investigation is already in the public domain the Commission has made appropriate comment. Nevertheless, the committee encourages the Commission to continue to consider how it can improve updates for the public on its work.

Performance information

2.74 The inaugural annual report provides useful information which will be developed and expanded in coming years. It is appropriate for a new agency to take some time to establish meaningful key performance indicators. The committee supports the inclusion of case studies when available as appropriate.

Prevention and education

2.75 The committee notes the important corruption prevention and education work undertaken by the Commission, including presentations and outreach and the development of educational resources for the website. This work assists public officials to understand their responsibilities to prevent and report corruption.

2.76 The committee also supports the information being provided in the annual report, on the website and in relevant speeches to explain the work of the Commission. About 85–90 per cent of referrals of suspected corrupt conduct were excluded at triage because they did not concern a Commonwealth public official or did not raise a corruption issue within the definition of the Act. This high percentage demonstrates that there is a clear need to provide ongoing education on the role and scope of the Commission and this was recognised by the Commission.

Budget and finances

2.77 One of the committee's functions is to review the budget and finances of the Commission. On the basis of the information available to it, the committee has no concerns about the current resourcing of the Commission. The committee will continue to monitor the budget through briefings and public hearings noting that it is also open to the Commission to bring any issues of concern regarding this or other matters to the committee.

Robodebt referrals

2.78 The committee has been monitoring the processes undertaken in relation to the Robodebt Royal Commission referrals. The committee notes the initial decision by the Commission not to pursue the Robodebt Royal Commission referrals and the subsequent investigation by the Inspector of the National Anti-Corruption

Commission. The Committee also notes the comprehensive and considered report by the Inspector of the NACC which recommended that the Commissioner delegate reconsideration of the referrals to an appropriate person.

- 2.79 The committee was pleased to hear advice from the Inspector that the Commission cooperated with her investigation, providing documents and submissions.
- 2.80 One of the committee's functions is to monitor and review the performance by the Commissioner of his functions. The committee therefore sought more detail in relation to the Commission's initial decision in order to better understand the processes and the considerations taken into account in reaching that decision.
- 2.81 The committee was left with some reservations over the processes and considerations in relation to the decision. It notes the finalisation of the reconsideration process by Mr Geoffrey Nettle AC KC. On 18 February 2025 the Commission announced that it will investigate the six referrals it received from the Royal Commission into the Robodebt Scheme. The committee will take a cautious approach and not provide any substantive comment while the investigation is underway.
- 2.82 However, the committee does wish to note that to date the processes in the Act in relation to this issue appear to have worked well. The Inspector's investigation has already provided the opportunity to review and change NACC processes such as the management of conflicts of interest and the Commission has provided further guidance on managing conflicts of interest.⁸⁷
- 2.83 The committee notes the suggestion made by the Commission to consider relevant sections of the New South Wales *Independent Commission Against Corruption Act 1988* which includes references to conflicts of interest and allows for the appointment of Assistant Commissioners. This may form part of the committee's further consideration.
- 2.84 As outlined in the annual report of the NACC Inspector, the committee notes that the Commission has been responsive to other issues raised by the Inspector, such as people experiencing difficulties making a referral or receiving information which again shows the NACC Act processes working as intended.
- 2.85 The committee thanks the Commissioner, Deputy Commissioners, Chief Executive Officer, senior and other officials for their engagement with and assistance to the committee to date and commends the Commission for its work over the last 16 months. The committee will continue to monitor the

⁸⁷ The Hon Paul Brereton AM RFD SC, address to the National Public Sector Governance Forum 2024, *Speech Transcript*, 15 November 2024.

performance of the Commissioner and Commission in accordance with its functions under the NACC Act.

Senator Karen Grogan
Chair

Appendix 1

Public hearings and witnesses

Friday 22 November 2024

Senate Committee Room 2S1

Parliament House

Canberra

National Anti-Corruption Commission

- The Hon Paul Brereton AM RFD SC, Commissioner
- Ms Nicole Rose PSM, Deputy Commissioner
- Ms Kylie Kilgour, Deputy Commissioner
- Dr Ben Gauntlett, Deputy Commissioner (via videoconference)
- Mr Philip Reed, Chief Executive Officer
- Mr George-Philip de Wet, General Manager Enabling Services

Appendix 2

Additional information

Answers to questions on notice

- 1** National Anti-Corruption Commission - Answers to written questions on notice, 28 January 2025 (received 12 February 2025)
- 2** National Anti-Corruption Commission - Answers to written questions on notice, 31 January 2025 (received 19 February 2025)
- 3** National Anti-Corruption Commission – Answer to spoken question on notice, 22 November 2024 (received 30 January 2025)

Media releases

- 1** Public hearing on 22 November 2024 to examine 2023-24 annual reports of the NACC and the Inspector