GILSHENAN & LUTON
LEGAL PRACTICE



Powers of the National Anti-Corruption Commission

Author: Claire McGee
Email: cmcgee@gnl.com.au
Phone: 0450 630 612
Date: Monday July 3, 2023

The National Anti-Corruption Commission (NACC) is an independent Australian Commonwealth agency that will detect, investigate, and report on serious or systemic corrupt conduct in the Commonwealth public sector. The NACC will also educate the public service, and the public, about corruption risks and prevention. The NACC commenced on 1 July 2023.

The NACC will be independent of government. This means the government will not be able to tell the NACC what to investigate (or what not to investigate) or how to do its job. The NACC will be able to investigate alleged corruption and report on what it finds.

The NACC - led by Commissioner Paul Brereton - will investigate allegations of "serious and systemic" corruption relating to the public service, ministers/pollies and their staff, and those working with the Commonwealth.

Investigation powers of the NACC

The NACC Commissioner has broad powers to investigate corruption issues. These include general investigatory powers, additional powers in relation to Commonwealth agencies, and powers to hold private hearings and, in exceptional circumstances, public hearings.

Under the *National Anti-Corruption Commission Act 2022* (NACC Act), the NACC may require any person to give information, a document, or item to the NACC by issuing a ‘Notice to Produce’, issue a summons requiring any person to appear and give evidence at a hearing, and apply for search warrants to search places, vehicles, and people.

Who can be investigated by the NACC?

To investigate corruption, the Commissioner of the NACC must have information raising the possibility that a person:

- has done or could do something that involves, or could involve, a public official;
- is or could be corrupt conduct under the NACC Act; and
- could be serious or systemic corrupt conduct.

Public officials under the NACC Act include Members and senators of the Commonwealth Parliament including ministers and their staff, employees and contractors of Commonwealth agencies and Commonwealth companies, and holders of Commonwealth statutory offices.

Who can make a referral to the NACC?

Any person, including members of the public and public officials, can voluntarily refer a corruption issue or provide information about a corruption issue to the NACC. Some people must refer certain matters to the NACC, and these are called “mandatory referrals”. All other referrals are voluntary.

Mandatory referrals are obligations under the NACC Act for certain people to refer corruption issues to the NACC for potential investigation. These obligations are separate from the ability to make voluntary referrals under the NACC Act.

Heads of Commonwealth agencies must refer corruption issues to the NACC, where the agency head suspects the corrupt conduct could be serious or systemic. The heads of intelligence agencies can make a mandatory referral either directly to the NACC or to the Inspector-General of Intelligence and Security (IGIS).

What is the difference between the NACC and the Crime and Corruption Commission?

One of the main differences between the NACC and the Crime and Corruption Commission (CCC) is their jurisdiction. The NACC operates at the Commonwealth level, while the CCC operates at the state level in Queensland. Another difference is their powers and procedures, for example, whether they allow for public hearings.

Get help from a professional misconduct lawyer

If you are referred to the NACC or called to give evidence before a public hearing, it is critical that you seek advice from a lawyer experienced in such investigations as soon as possible. Early gathering of evidence and preparation of your case is crucial in maximising the success of any defence and compliance with legal obligations.

Contacting Gilshenan &Luton Criminal Defence Lawyers

07 3361 0222 (24/7)

gnl@gnl.com.au

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