



Australian Government

National Anti-Corruption Commission

# Effective Anti-corruption efforts: Best practice principles for Anti-Corruption Commissions

**The Hon PLG Brereton AM RFD SC**  
**National Anti-Corruption Commissioner**  
**22 September 2023**

[www.nacc.gov.au](http://www.nacc.gov.au)

## NACC Mission

To enhance integrity in the Commonwealth public sector,

- by **detering, detecting** and **preventing** corrupt conduct involving Commonwealth public officials,
- through **education, monitoring, investigation, reporting** and **referral**.

# Referrals from anyone

- Commissions should be able to consider referrals from anyone.
- This includes public sector employees, heads of government agencies or departments, holders of public office, and members of the public.
- This ensures that the Commission can consider suspected corrupt conduct reported by whistle-blowers.

# Own motion investigations

- Commissions should be able to commence 'own motion' investigations.
- This enables a Commission to initiate investigations into suspicions of corrupt conduct detected by the Commission, rather than limiting its investigation powers to matters that someone has referred to it.

# Mandatory referrals by agency heads

- Heads of government departments and agencies are under a mandatory reporting obligation to refer suspected cases of corruption in their agency to the Commission.

# Coercive information-gathering powers

- The ability to compel the production of information and documents, and to conduct hearings, to obtain evidence, including the powers to summons witnesses, and to take evidence subject to penalty for perjury.
- This includes the abrogation of the privilege against self-incrimination, balanced with corresponding 'use immunity' provisions, so that evidence so obtained cannot be used against the witness in a criminal prosecution, so as to preserve the requirement for the prosecution to prove its case and not compel the accused to assist it.
- Anti-Corruption Commissions should be able to conduct hearings in public or private. Relevant considerations include reputation, privacy, confidentiality, risk of compromising a fair trial in potential criminal proceedings, and the public interest.

# Protections for whistle-blowers

- A person who refers information or gives evidence to the Commission cannot be subjected to any criminal, civil, administrative or disciplinary liability, and no contractual right or remedy can be enforced against them, for doing so.
- Taking a reprisal against a person for giving information of evidence to the Commission is a criminal offence punishable by imprisonment.

## Referrals to prosecuting agencies

- Anti-Corruption Commissions are investigatory, not prosecutorial agencies.
- They should be authorised to refer briefs of evidence collected as a result of their investigations directly to a prosecuting authority, for assessment for prosecution action.



# Power to make recommendations

- An important function of an Anti-Corruption Commission to make recommendations to government and heads of agencies, with a view to improving the integrity framework and anticorruption controls, and preventing the recurrence of corrupt conduct.

# Power to make public reports and statements

- Public reports on investigations expose corruption, provide transparency and assurance to the public and public sector that corruption allegations are appropriately dealt with, and serve as a deterrent.
- Public statements can also clear the air and exonerate individuals of unsubstantiated allegations of corruption.
- Commissions should provide procedural fairness to persons about whom an adverse finding might potentially be made and published.
- In deciding whether to make a public report or statement, Commissions should balance the public interest in publishing the information, against any potential prejudicial consequences – including jeopardising a fair trial.

# Corruption prevention and education

- As well as an investigation function, Anti-Corruption Commissions have a corruption prevention and education function, in order to prevent corruption from occurring in the first place, or to avoid recurrences, by identifying vulnerabilities and mitigations.
- This may include education, audit and monitoring, research, advice and support.

## A sufficient and predictable budget

- An Anti-Corruption Commission's capacity to perform its functions is constrained by its budget. Its efficacy can be undermined by budgetary restrictions. An Anti-Corruption Commission's budget must be sufficient to perform its functions.
- The prospect of a potential reduction or restriction in budget can threaten an Anti-Corruption Commission's perceived, or actual, independence. The budget should be quarantined, so far as possible, from the political process.

# Transparent, merit-based, secure appointments

- The appointment process for commissioners impacts on the community's perceptions of an Anti-Corruption Commission's independence.
- Appointments should be made on the basis of merit, following an open and transparent appointment process.
- Commissioners should be appointed for a fixed term and not removeable except for proven incapacity or misbehaviour.

# Appropriate oversight

- The exceptional powers available to Anti-Corruption Commissions create a requirement for oversight, to ensure transparency and accountability.
- Appropriate oversight mechanisms include
  - an independent inspectorate, and
  - parliamentary oversight through a dedicated parliamentary committee

# Integrity in governance

- Integrity is fundamental to ensuring that:
  - Decisions are made in the public interest, uninfluenced by private interest;
  - Resources are applied for the benefit of people for whom intended, not eroded or diverted
- Anti-Corruption Commissions are instruments for enhancing integrity. But they cannot achieve this objective alone. it requires the support of other institutions and individuals.

# A culture for integrity

- We must embed in our institutions, from the top down and at every level, a culture in which all embrace;
  - encouraging the giving of honest if unwelcome advice and reports;
  - making decisions and giving advice honestly and impartially, on the evidence and the merits, in the public interest and without regard to personal interest;
  - reporting honestly, without embellishment or omission; and
  - accepting responsibility, including for the inevitable mistakes.





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