



National Anti-Corruption Commission Bill 2022

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

ACTU Submission D No. 34 of 2022

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Contents

Introduction.....	1
The NACC Bill.....	3
The NACC	4
The NAC Commissioner.....	5
Conclusion.....	5

Introduction

About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. It has played the leading role in advocating for, and winning the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews.

The ACTU is Australia's sole peak body of trade unions, consisting of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates who together have over 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

National Anti-Corruption Commission Legislation

The ACTU makes this submission to the Joint Select Committee on National Anti-Corruption Commission Legislation which is currently inquiring into and reporting on:

- The National Anti-Corruption Commission Bill 2022 (**NACC Bill**); and
- The National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022 (**NACC Consequential Bill**);

Measures to enhance integrity and to identify and address corruption are critical to the effective functioning of government. Trust is at the heart of our system of representative government. As the OECD notes:¹

¹ OECD, *Trust In Government – Integrity and Fairness* (Website, Accessed on 12 October 2022) <<https://www.oecd.org/gov/trust-integrity-and-fairness.htm>>

Integrity is a crucial determinant of trust. Evidence suggests a link between trust in politicians, both from the business community and citizens, and the perception of corruption.

Integrity policies, aimed at preventing corruption and fostering high standards of behaviour, help to reinforce the credibility and legitimacy of those involved in policy decision making, safeguarding the public interest and restoring confidence in the policy making process.

The World Bank has estimated that corruption globally costs \$2.6 trillion (USD), or 5% of global GDP.² Public corruption hampers public trust, economic growth and effective political decision making.³ It affects the process of government, faith in that process and consequently the authority with which decisions are made.⁴ But corruption in government doesn't just damage democracy itself, it also leads to poor social outcomes. There is a correlation between corruption in government and failures to observe human rights – the relationship being a vicious cycle in which corruption weakens a government's ability to respect, protect and fulfil human rights, leading to their abuse and overall democratic decline which then further enables greater levels of corruption.⁵ Extreme examples of widespread corruption can be a serious impediment to national development and contribute to poverty and inequality.⁶

² In Marcio Salles Melo Lima and Dursun Delen, Predicting and explaining corruption across countries: A machine learning, 2020, *Government Information Quarterly* 37, 1

³ Grimes in Marcio Salles Melo Lima and Dursun Delen, Predicting and explaining corruption across countries: A machine learning (2020) *Government Information Quarterly* 37, 2

⁴ Gabrielle Appleby and Grant Hoole, Integrity of Purpose: A Legal Process Approach to Designing a Federal Anti-Corruption Commission (2017) *Adelaide Law Review* 38, 397-440, 401-402

⁵ Jon Vrushi and Roberto Martínez B. Kukutschka (2022) *CPI 2021: Corruption, Human Rights and Democracy*, <<https://www.transparency.org/en/news/cpi-2021-corruption-human-rights-democracy>>

⁶ Dhiyathad Prateepornarong, Fighting Corruption While Having Hands Tied: A Case Study of Thailand's Public Sector Anti-Corruption Commission (2021) *Journal of Asian and African Studies* 56(2), 320–334, 320

Critical to the success of anti-corruption initiatives is the existence of a strong political will in favour of doing so.⁷ Federal parliamentarians and some sections of the business community have long resisted the establishment of a national anti-corruption commission.⁸ It is a brave Government that creates laws to hold itself accountable. We commend this Government for acting on its promise to do so.

Workers need a government that will govern in their public interests, they rely on public services that are delivered with integrity and, they need a system that has accountability at its core.

The ACTU supports measures that address corruption, enhance accountability and help to build public confidence. We welcome the introduction of National Anti-Corruption Commission legislation and urge the Joint Select Committee to recommend its passage.

The NACC Bill

The NACC Bill (*inter alia*)

- Creates the National Anti-Corruption Commission (**NACC**)
- Establishes the role of National Anti-Corruption Commissioner (**NAC Commissioner**) and up to 3 Deputy Commissioners
- Confers various functions upon the NAC Commissioner, including those relating to the detection and investigation of public corruption.

The NACC Bill defines “corrupt conduct” as certain types of conduct by or in relation to a public official. A broad range of conduct by public officials is brought within the scope of the NACC Bill, such as breach of trust, abuse of office, misuse of information or corruption more generally. Importantly, conduct by third parties who adversely affect or could adversely affect the honesty or impartiality of public official in exercising their powers or carrying out their functions or duties is

⁷ Nurul Huda Sakib, One size does not fit all: an analysis of the corruption preventative approach of the Anti-Corruption Commission (ACC) in Bangladesh, (2017) *Asian Journal of Political Science* 27(2), 211-234, 221

⁸ Marie dela Rama and Michael Lester, Anti-corruption commissions: lessons for the Asia-Pacific region from a proposed Australian federal anti-corruption watchdog (2019) *Asia Pacific Business Review* 24(4), 571-599, 587

also capable of scrutiny. A clear example given in the explanatory memorandum is of offering a payment to a public official conditional on a power being exercised in a particular way.

The types of conduct captured by the NACC Bill's definition of corrupt conduct affect good government and consequently public confidence.

The NACC

Similar bodies to the NACC have been part of the political landscape at the state level for many years and even decades. However, whilst ACLEI regulates Commonwealth law enforcement agencies, similar investigative oversight has not been extended to other areas of the Commonwealth public sphere.

There are many reasons which support the creation of the NACC and establishing the role of NACC Commissioner:

- Public corruption diverts public resources away from the public good;
- Public corruption damages public confidence;
- Instances of public corruption can be nuanced and difficult to detect – addressing it requires a tailored approach by a dedicated specialist body;
- The existence of oversight can itself drive integrity.

Creation of a public anti-corruption bodies such as the NACC is fundamental to preventing and addressing the opportunities for corruption and 'minimiz[ing] the risks of politicization exercised in favour of vested interests, and elites within existing power structures and the status quo, whilst giving hope to those, from civil society especially, who demand accessibility, transparency, accountability and change to corrupt practices.'⁹

Ensuring that an anti-corruption body has adequate resources to employ suitably qualified staff is vital to its being able to effectively investigate public corruption.¹⁰ The ACTU has previously made

⁹ Marie dela Rama aand Michael Lester, Anti-corruption commissions: lessons for the Asia-Pacific region from a proposed Australian federal anti-corruption watchdog (2019) *Asia Pacific Business Review* 24(4), 571–599, 572

¹⁰ Dhiyathad Prateepornnarong, Fighting Corruption While Having Hands Tied: A Case Study of Thailand's Public Sector Anti-Corruption Commission (2021) *Journal of Asian and African Studies* 56(2), 320–334, 329

submissions as to the importance of ensuring that a national anti-corruption body is adequately resourced and, whilst this does not directly bear on the passage of the NACC Bill, we repeat that submission now.

The NAC Commissioner

The Bill establishes the NAC Commissioner and confers on them the powers necessary to investigate public corruption. This will include conduct occurring prior to the existence of the NACC. The Commissioner's powers are broad ranging and include a suite of investigative tools. The Commissioner may also hold hearings and require witnesses to give evidence.

The Commissioner's investigative powers will be complemented by an ability to proactively inquire into corruption risks and preventative measures in relation to Commonwealth agencies.

Conclusion

For the reasons above, the ACTU welcomes the introduction of legislation that would create a National Anti-Corruption Commission.

Australia ranks 18th in the world - with a score of 73 (where 0 is "highly corrupt" and 100 is "very clean") - in Transparency International's Corruption Perception Index.¹¹ This is well behind world leaders Finland, Denmark and our neighbours New Zealand who each receive a score of 88.¹² This suggests that Australia has room to improve in terms of how it identifies and responds to public corruption.

The creation of the NACC is not a "silver bullet" in the fight against public corruption, but it is an important and indispensable part of that fight.¹³ For the sake of accountability and public

¹¹ Transparency International, 2021, Corruption Perceptions Index <<https://www.transparency.org/en/cpi/2021>>

¹² Ibid.

¹³ Dhiyathad Prateppornnarong, Fighting Corruption While Having Hands Tied: A Case Study of Thailand's Public Sector Anti-Corruption Commission (2021) *Journal of Asian and African Studies* 56(2), 320-334, 331

confidence, there needs to be a body whose sole focus is the identification and investigation of public corruption. We are of the view that the NACC would be such a body.

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