National Anti-Corruption Commission Act 2022

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Authorised Version C2026C00231 registered 19/06/2026

About this compilation

This compilation

This is a compilation of the *National Anti-Corruption Commission Act 2022* that shows the text of the law as amended and in force on 4 June 2026 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary 1

1 Short title....1
2 Commencement....1
3 Objects of this Act....2
4 Simplified outline of this Act....2
5 Application of this Act....4
6 Crown to be bound....4
7 Definitions....4

Part 2—Key concepts used in this Act 15

Division 1—Corrupt conduct and corruption issues 15

8 Meaning of *corrupt conduct*....15
9 Meaning of *corruption issue*....17

Division 2—Public officials 18

10 Meaning of *public official*....18

Division 3—Commonwealth agencies and the heads of those agencies 19

11 Commonwealth agencies and the heads of those agencies....19

Division 4—Staff members of Commonwealth agencies 22

12 Meaning of *staff member*—Commonwealth agencies....22
13 Meaning of *contracted service provider* for a *Commonwealth contract*....26
14 Meaning of *statutory office holder*....27

Division 5—Commonwealth integrity agencies 29

15 Meaning of *Commonwealth integrity agency*....29

Part 3—The National Anti-Corruption Commission 31

Division 1—The Commissioner 31

16 The Commissioner....31
17 Functions of the Commissioner....31

Division 2—The Deputy Commissioners 33

18 The Deputy Commissioners....33
19 Functions of a Deputy Commissioner....33

Division 3—The National Anti-Corruption Commission 34

20 Establishment of the National Anti-Corruption Commission....34

Authorised Version C2026C00231 registered 19/06/2026

21 Constitution of the NACC 34
22 Functions of the NACC 34

Part 4—Protections for disclosers under this Act 35

Division 1—Meaning of NACC disclosure 35
23 Meaning of *NACC disclosure* 35

Division 2—Protection of persons from liability 36
24 Protection of persons from liability 36
25 Liability for false or misleading statements unaffected 36
26 Person's liability for own conduct not affected 36
27 Claims for protection 37
28 Protection has effect despite other Commonwealth laws 38

Division 3—Protection from reprisals 39
29 What constitutes taking a reprisal 39
30 Offences—reprisals in relation to NACC disclosures 40

Division 4—Protection for journalists' informants 42
31 Protection for journalists' informants 42

Part 5—Referring corruption issues 44

Division 1—Voluntary referrals 44
32 Any person may refer corruption issue 44

Division 2—Mandatory referrals 45
33 Mandatory referral—Commonwealth agencies other than intelligence agencies 45
34 Mandatory referral—intelligence agencies 45
35 Mandatory referral—Public Interest Disclosure Act disclosures 46
36 Mandatory referral—secrecy protection provisions 47
37 Mandatory referral—exceptions 47
38 Mandatory referral—timing and information requirements 47

Division 3—Other matters relating to referrals 49
39 Effect of referral on continued actions 49

Part 6—Dealing with corruption issues 50

Division 1—Dealing with corruption issues 50
40 Commissioner may deal with corruption issues 50
41 How Commissioner deals with corruption issues 50
42 Preliminary investigations by Commissioner 51

Authorised Version C2026C00231 registered 19/06/2026

43 Commissioner's directions about further action....52
44 Action that can be taken without permission....53
45 Previous investigations by Commonwealth integrity agencies....54
46 Matters dealt with by Independent Parliamentary Expenses Authority....55
47 Matters dealt with by Electoral Commissioner....56
48 Public statements about corruption issues....57

Division 2—Investigations conducted by Commonwealth agencies 58
49 Application....58
50 Commissioner may oversee investigation....58
51 Commissioner may give directions....58
52 Commissioner may require reports....58
53 Commissioner's comments and recommendations....59
54 Follow-up action on completion report....59

Part 7—Investigating corruption issues 62

Division 1—General 62
55 Application of Part....62
56 Conduct of corruption investigations generally....62

Division 2—Requiring information, documents and things 63

Subdivision A—Directions to agency heads 63
57 Directions to agency heads....63

Subdivision B—Notices to produce 63
58 Notices to produce....63
59 Period for complying....64
60 Offence—failure to comply with notice to produce....65
61 Offence—producing false or misleading information or documents....66

Division 3—Hearings 67

Subdivision A—Commissioner may hold hearings 67
62 Commissioner may hold hearings....67
63 Commissioner may summon persons....67
64 Summons must set out matters for questioning....69
65 Commissioner may require information, documents and things....69
66 Legal representation....69
67 Record of hearings....70

Authorised Version C2026C00231 registered 19/06/2026

68 Offence—failure to attend hearing 70
69 Offence—failure to give information, or produce documents or things 70
70 Offence—destroying documents or things 71
71 Offence—giving false or misleading evidence, information or documents 71
72 Offences—obstructing or hindering hearings, threatening persons present 72
Subdivision B—Private and public hearings 72
73 Private and public hearings 72
74 Evidence that must be given in private 73
75 Presence of others at private hearings 74
76 Request to give evidence in private 75
77 Investigation material from private hearings 75
Subdivision C—Evidence and procedure 76
78 Evidence on oath or by affirmation 76
79 Commissioner may take evidence outside Australia 76
80 Examination and cross-examination of witnesses 77
81 Offence—failure to take an oath, make an affirmation or answer a question 77
Subdivision D—Contempt of the NACC 78
82 Contempt of the NACC 78
83 Application for court to deal with contempt 79
84 Conduct of contempt proceedings 79
85 Person in contempt may be detained 80
86 Commissioner may withdraw contempt application 81
87 Double jeopardy 81
Subdivision E—Travel documents and arrest of witnesses 82
88 Applying for orders to deliver travel documents 82
89 Orders to deliver travel documents 83
90 Application for warrant to arrest witness 84
91 Warrant for arrest 85
92 Powers of judge in relation to person arrested 85
Subdivision F—Miscellaneous 86
93 Allowances for travelling and other expenses 86
94 Protection of Commissioner and legal practitioners assisting 86

Authorised Version C2026C00231 registered 19/06/2026

Division 4—Use and disclosure of certain information and material 87

Subdivision A—Non-disclosure notations 87

95 Non-disclosure notations 87
96 When non-disclosure notations must or may be included 87
97 Cancelling non-disclosure notations 89
98 Offence—failure to comply with non-disclosure notations 89

Subdivision B—Use and disclosure of investigation material 91

99 Meaning of investigation material 91
100 Directions about use or disclosure of investigation material 92
101 Offence—use or disclosure of investigation material 93
102 Disclosure to IGIS officials and Ombudsman officials 94
103 Making investigation material available to courts 94
104 Obtaining derivative material 95
105 Disclosing investigation and derivative material to prosecutors of the witness 96
106 Court's powers to order disclosure and to ensure a fair trial 97
107 Certain material may always be disclosed to prosecutors of the witness 98
108 Use of material by prosecutors 99
109 Making material available to proceeds of crime authorities 99

Division 5—Retention and return of documents and things 101

110 Commissioner may retain documents and things 101
111 When documents and things must be returned 102
112 Magistrate may permit documents and things to be retained, forfeited etc. 102

Division 6—Privileges and protections 105

113 Self-incrimination 105
114 Public interest grounds 106
115 Material sought from legal practitioners 107
116 Other protections 108

Division 7—Search powers 109

Subdivision A—Search powers 109

117 Entering certain places without a search warrant 109
118 Receipts for documents and things seized without warrant 111
119 Search warrants, and stopping and searching conveyances 111
120 Use and return of documents and things 111

Authorised Version C2026C00231 registered 19/06/2026

Subdivision B—Modification of Crimes Act search powers 112
121 Application of Subdivision 112
122 Subsection 3C(1)—definition of *evidential material* 113
123 Divisions 2, 3 and 5 of Part IAA—references to constable and Commissioner 113
124 Subsections 3E(1) and (2)—when search warrants can be issued 113
125 Subsection 3E(4)—previous warrants 115
126 Provisions of sections 3E, 3F, 3FA, 3L and 3LAA 115
127 Subparagraph 3LA(2)(b)(i)—accessing computer systems....117
128 Provisions of section 3T 117
Division 8—Interaction with criminal procedure and confiscation proceedings 118
Subdivision A—Key concepts 118
129 Meaning of *pre-charge* 118
130 Meaning of *post-charge* 118
131 Meaning of *relevant offence* 119
132 Meaning of *imminent* and *protected suspect* 119
133 Meaning of *derivative material* 120
134 Meaning of *pre-confiscation application* 120
135 Meaning of *post-confiscation application* 121
136 Meaning of *confiscation proceeding* 121
137 Meaning of *relevant confiscation proceeding* 122
138 Meaning of *proceeds of crime authority* 122
139 When a charge or confiscation proceeding is *resolved* 122
Subdivision B—Commissioner's powers—limited operation provisions 123
140 Limited operation—Commissioner's power to issue notices to produce 123
141 Limited operation—Commissioner's power to hold hearings....124
142 Limited operation—Commissioner's power to summon person 125
143 Limited operation—obtaining derivative material 126
144 Limited operation—disclosing investigation material to prosecutors of the witness 127
145 Limited operation—disclosing derivative material to prosecutors of the witness 127
146 Limited operation—material that may always be disclosed to prosecutors of the witness 128

Authorised Version C2026C00231 registered 19/06/2026

147 Limited operation—disclosing material to proceeds of crime authorities....128
Subdivision C—Witness' fair trial—limited operation 129
148 Limited operation—witness' fair trial....129
Part 8—Reporting on corruption investigations 130
149 Report on corruption investigation....130
150 Effect of findings or opinions about corrupt conduct....132
151 Excluding certain information from investigation report....132
152 Protected information report....132
153 Opportunity to respond must be given before including certain information in investigation report....133
154 Commissioner to give copies of reports to certain persons....134
155 Tabling of investigation report in Parliament....136
156 Publishing investigation report in whole or part....136
157 Opportunity to respond must be given before publishing an investigation report containing critical opinions etc.....136
158 Advising person who referred corruption issue of outcome of the investigation....137
159 Advising person whose conduct is investigated of outcome of the investigation....138
160 Follow-up action on investigation report....140
Part 9—Public inquiries 142
161 Commissioner may conduct public inquiries....142
162 Commissioner may invite submissions....142
163 Commissioner's powers....142
164 Reporting on public inquiries....143
165 Protected information report....143
166 Opportunity to respond must be given before including certain information in inquiry report....144
167 Commissioner to give copies of reports to certain persons....144
168 Tabling of inquiry report in Parliament....146
169 Publishing inquiry report in whole or part....146
170 Opportunity to respond must be given before publishing an inquiry report containing critical opinions etc.....146
171 Follow-up action on inquiry report....147

Authorised Version C2026C00231 registered 19/06/2026

Part 10—Oversight of the National Anti-Corruption Commission 150

Division 1—Parliamentary Joint Committee on the National Anti-Corruption Commission 150

172 Parliamentary Joint Committee on the National Anti-Corruption Commission 150
173 Chair of the Committee....150
174 Eligibility for appointment as a Committee member....151
175 Terms of office of Committee members....151
176 Powers and proceedings of the Committee....152
177 Functions of the Committee....152
178 Committee may approve or reject recommendation for appointment 155
179 Staff of the Committee must be cleared for security purposes 156
180 Protection of information and documents....156
181 Committee's access to certain information....156

Division 2—The Inspector of the National Anti-Corruption Commission 157

Subdivision A—Functions and powers of the Inspector 157

182 The Inspector 157
183 Independence 157
184 Functions of the Inspector....157

Subdivision B—Appointment of the Inspector 159

185 Appointment of the Inspector 159
186 Acting appointments....160
187 Remuneration....161
188 Leave of absence....161
189 Other paid work 161
190 Disclosure of interests to the Minister 161
191 Other terms and conditions....162
192 Resignation 162
193 Termination of appointment 162

Subdivision C—Persons assisting the Inspector 163

194 Persons assisting the Inspector 163
195 Meaning of *person assisting* the Inspector 164

Authorised Version C2026C00231 registered 19/06/2026

Subdivision D—Immunities of Inspector and persons assisting 164
196 Immunity from civil proceedings for the Inspector and persons assisting 164
197 Immunities from certain State and Territory laws 164
Subdivision E—Annual report by Inspector 165
198 Annual report 165
199 Exclusion of certain information from annual report 165
200 Effect of findings or opinions about corrupt conduct 165
Division 3—NACC corruption issues 166
Subdivision A—Meaning of NACC corruption issue 166
201 Meaning of *NACC corruption issue* 166
Subdivision B—Referring NACC corruption issues 166
202 Any person may refer NACC corruption issue 166
203 Mandatory referral—Commissioner 167
204 Mandatory referral—Public Interest Disclosure Act disclosures 167
205 Mandatory referral—secrecy provisions 167
206 Mandatory referral—exceptions 167
207 Mandatory referral—timing and information requirements 168
208 Effect of referral on continued actions 168
Subdivision C—Dealing with NACC corruption issues 169
209 Inspector may deal with NACC corruption issues 169
210 How Inspector deals with NACC corruption issues 169
211 Other matters related to dealing with NACC corruption issues 170
Division 4—Investigating and reporting by Inspector 172
Subdivision A—Investigations by Inspector 172
212 Application of Division 172
213 Conduct of investigations generally 172
214 Inspector's powers to investigate 172
214A Inspector's powers to conduct audits 174
Subdivision B—Reporting on NACC corruption investigations and NACC complaint investigations 175
215 Report on NACC corruption investigation or NACC complaint investigation 175
216 Effect of findings or opinions about corrupt conduct 177
217 Excluding certain information from NACC investigation report 177

Authorised Version C2026C00231 registered 19/06/2026

218 Protected information report 178
219 Opportunity to respond must be given before including certain information in NACC investigation report 178
220 Inspector to give copies of reports to certain persons 179
221 Tabling of NACC investigation report in Parliament 181
222 Publishing NACC investigation report in whole or in part 182
223 Opportunity to respond must be given before publishing a NACC investigation report containing critical opinions etc. 182
224 Advising person who referred NACC corruption issue or made complaint of outcome 183
225 Advising person whose conduct is investigated of outcome of the investigation 184
226 Follow-up action on NACC investigation report 185

Part 11—Confidentiality, consultation and information sharing 188

Division 1—Confidentiality requirements 188
227 Key concepts 188
228 Confidentiality requirements for entrusted persons 190
229 Authorisations to record or disclose information 191
230 Disclosure by authorised discloser in public interest 193
231 Opportunity to respond must be given before disclosure of critical opinions, findings and recommendations 195
232 Entrusted persons generally not compellable in proceedings 196
233 Confidentiality requirements for persons who receive information about investigations and inquiries 197

Division 2—Protected information reports 199
234 Public disclosure of protected information reports prohibited 199

Division 3—National security and related matters 200

Subdivision A—Attorney-General's certificates about release of information 200
235 Attorney-General's certificate in relation to particular information 200
236 Attorney-General's certificate in relation to international relations 203

Subdivision B—Arrangements relating to intelligence agencies and the IGIS 205
237 Person investigating or inquiring must consult—security matters 205
238 Consultation before requiring information, documents or things from IGIS officials 206

Authorised Version C2026C00231 registered 19/06/2026

239 Arrangements for dealing with intelligence information....206
Subdivision C—Arrangements relating to foreign nationals 208
240 Person investigating or inquiring must consult—foreign nationals....208
Part 12—Administrative provisions for the National Anti-Corruption Commission 210
Division 1—Appointment of the NACC Commissioners 210
241 Appointment of the Commissioner....210
242 Appointment of the Deputy Commissioners....211
243 Acting appointments....212
244 Remuneration....213
245 Leave of absence....213
246 Other paid work....214
247 Disclosure of interests....214
248 Other terms and conditions....214
249 Resignation....214
250 Termination of appointment....214
Division 2—The CEO, staff etc. and authorised officers 216
Subdivision A—Appointment and functions of the CEO 216
251 The Chief Executive Officer....216
252 Functions of CEO....216
253 Commissioner may give directions to CEO....216
254 Appointment of CEO....217
255 Acting appointments....217
256 Remuneration....218
257 Leave of absence....218
258 Other paid work....218
259 Other terms and conditions....218
260 Resignation....219
261 Termination of appointment....219
Subdivision B—Staff and consultants etc. 220
262 Staff....220
263 Consultants....220
264 Persons assisting the NACC....220
265 Counsel assisting the NACC or a NACC Commissioner....221
266 Meaning of *staff member* of the NACC....221

Authorised Version C2026C00231 registered 19/06/2026

Subdivision C—Authorised officers 222
267 Appointment of authorised officers 222
268 Identity cards....222
Division 3—Immunities of staff members of the NACC 225
269 Immunity from civil proceedings for staff members of the NACC and persons assisting....225
270 Immunities from certain State and Territory laws 225
Division 4—Annual report by Commissioner 226
271 Annual report 226
272 Exclusion of certain information from annual report 227
273 Effect of findings or opinions about corrupt conduct 228
Part 13—Miscellaneous 229
Division 1—Parliamentary privilege and other protections 229
274 Effect of Act on parliamentary privileges and immunities....229
275 Protections relating to non-judicial functions and powers....229
Division 2—Delegations and review 230
276 Delegation by the Commissioner....230
276A Delegation by the Inspector 231
277 Delegation by heads of Commonwealth agencies 232
278 Review of operation of Act....233
Division 3—Instruments under the Act 235
279 Guidelines 235
280 Regulations 235
Endnotes 237
Endnote 1—About the endnotes 237
Endnote 2—Abbreviation key 239
Endnote 3—Legislation history 240
Endnote 4—Amendment history 243

Authorised Version C2026C00231 registered 19/06/2026

An Act to provide for the establishment of the National Anti-Corruption Commission, and for related purposes

Part 1—Preliminary

1 Short title

This Act is the *National Anti-Corruption Commission Act 2022*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. Part 1 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 December 2022
2. Parts 2 to 9	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 July 2023 (F2023N00078)
3. Part 10, Division 1	The day after this Act receives the Royal Assent.	13 December 2022

Authorised Version C2026C00231 registered 19/06/2026

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
4. Part 10, Divisions 2 to 4	At the same time as the provisions covered by table item 2.	1 July 2023
5. Parts 11 to 13	At the same time as the provisions covered by table item 2.	1 July 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Objects of this Act

The objects of this Act include the following:

(a) to facilitate:
  (i) the detection of corrupt conduct; and
  (ii) the timely investigation of corruption issues that could involve corrupt conduct that is serious or systemic;

(b) to enable, after investigation of a corruption issue, the referral of persons for criminal prosecution, civil proceedings or disciplinary action;

(c) to prevent corrupt conduct;

(d) to educate and provide information about corruption and the detrimental effects of corruption on public administration and the Australian community.

4 Simplified outline of this Act

This Act provides for the appointment of the National Anti-Corruption Commissioner, and establishes the National Anti-Corruption Commission.

Authorised Version C2026C00231 registered 19/06/2026

The Commissioner is able to investigate corruption issues that could involve corrupt conduct that is serious or systemic.

A corruption issue is an issue of whether a person has engaged, is engaging or will engage in corrupt conduct.

Corrupt conduct is defined in section 8, and can only be:

(a) conduct by a public official; or

(b) conduct that adversely affects, or that could adversely affect, the honest or impartial exercise or performance of a public official's powers, functions or duties.

Part 4 provides special protections for persons who refer corruption issues, or provide other information, under this Act.

Parts 5 to 7 set out processes for referring, dealing with and investigating corruption issues.

Requirements for reporting on corruption investigations are found in Part 8.

The Commissioner can also:

(a) conduct broader public inquiries into corruption risks and prevention measures within Commonwealth agencies; and

(b) provide education and information in relation to corrupt conduct and preventing that conduct.

The work of the Commission is overseen by the Parliamentary Joint Committee on the National Anti-Corruption Commission.

The Inspector of the National Anti-Corruption Commission assists with this oversight, in particular with corruption issues and complaints relating to the Commission.

Authorised Version C2026C00231 registered 19/06/2026

5 Application of this Act

This Act applies both within and outside Australia and extends to the external Territories.

6 Crown to be bound

(1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

(2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

7 Definitions

In this Act:

accountable authority has the same meaning as in the PGPA Act.

ACIC means the agency known as the Australian Criminal Intelligence Commission established by the *Australian Crime Commission Act 2002*.

AFP means the Australian Federal Police.

AFP Commissioner means the Commissioner of Police (within the meaning of the *Australian Federal Police Act 1979*).

agency head: see subsection 11(1).

annual report: see subsections 198(1) and 271(1).

Australia, when used in a geographical sense, includes the external Territories.

Australian Geospatial-Intelligence Organisation means that part of the Defence Department known as the Australian Geospatial-Intelligence Organisation.

Authorised Version C2026C00231 registered 19/06/2026

Australian travel document has the same meaning as in the *Australian Passports Act 2005*.

authorised discloser: see subsection 227(1).

authorised officer means:

(a) the Commissioner; or

(b) a Deputy Commissioner; or

(c) a person appointed under section 267 (appointment of authorised officers).

CEO means the Chief Executive Officer of the National Anti-Corruption Commission.

Note: See section 251.

civil penalty proceeding means a proceeding for a civil penalty in relation to a contravention of a law of the Commonwealth or of a State or Territory.

Commissioner means the National Anti-Corruption Commissioner.

Note: See section 16.

Committee means the Parliamentary Joint Committee on the National Anti-Corruption Commission for the time being constituted under Division 1 of Part 10.

Commonwealth agency: see section 11.

Commonwealth company has the same meaning as in the PGPA Act.

Commonwealth contract: see subsection 13(2).

Commonwealth entity has the same meaning as in the PGPA Act.

Commonwealth integrity agency: see section 15.

completion report: see paragraph 52(b).

confiscation proceeding: see section 136.

Authorised Version C2026C00231 registered 19/06/2026

constable means:

(a) a member or special member of the AFP; or

(b) a member of the police force or police service of a State or Territory.

container includes:

(a) a trailer or other like receptacle, whether with or without wheels, that is used for the movement of goods from one place to another; and

(b) any baggage; and

(c) any other thing that is or could be used for the carriage of goods, whether or not designed for that purpose.

contract includes any arrangement, agreement, deed or understanding.

contracted service provider: see section 13.

contravenes:

(a) for a certificate issued under section 235—see subsection 235(9); and

(b) for an international relations certificate—see subsection 236(8).

conveyance includes an aircraft, vehicle or vessel.

corporate Commonwealth entity has the same meaning as in the PGPA Act.

corrupt conduct: see section 8.

corruption investigation: see subsection 41(2).

corruption issue: see section 9.

criminal proceeding means a prosecution for an offence against a law of the Commonwealth or of a State or Territory.

Defence Department means the Department administered by the Minister administering Part III of the *Defence Act 1903*.

Authorised Version C2026C00231 registered 19/06/2026

Defence Intelligence Organisation means that part of the Defence Department known as the Defence Intelligence Organisation.

Deputy Commissioner means a National Anti-Corruption Deputy Commissioner.

Note: See section 18.

derivative material: see section 133.

detriment: see subsection 29(2).

direction to produce: see subsection 57(3).

entrusted person: see subsection 227(2).

exempt secrecy provision means any of the following secrecy provisions:

(a) Part 11 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
(b) section 34 of the *Inspector-General of Intelligence and Security Act 1986*;
(c) a secrecy provision under the *My Health Records Act 2012*;
(d) a secrecy provision in Part VIIIA of the *Privacy Act 1988*;
(e) sections 45 and 45B of the *Surveillance Devices Act 2004*;
(f) a secrecy provision that is a provision of a taxation law within the meaning of the *Taxation Administration Act 1953*;
(g) sections 63 and 133 of the *Telecommunications (Interception and Access) Act 1979*;
(h) a secrecy provision that is expressed by another law of the Commonwealth to have effect despite this Act;
(i) anything done under a provision referred to in paragraphs (a) to (h).

Federal Court means the Federal Court of Australia.

finance law has the same meaning as in the PGPA Act.

Foreign Affairs Department: see subsection 240(3).

Authorised Version C2026C00231 registered 19/06/2026

head:

(a) of a Commonwealth agency—see subsection 11(1); and

(b) of a State or Territory government entity—means the person holding, or performing the duties of, the principal office in respect of the entity.

hearing means a hearing held under this Act.

IGIS means the Inspector-General of Intelligence and Security.

IGIS official means:

(a) the IGIS; or

(b) any other person covered by subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986*.

imminent: for when a charge for an offence, or a confiscation proceeding, is ***imminent***, see subsections 132(1) and (2).

inquiry report: see subsection 164(1).

Inspector means the Inspector of the National Anti-Corruption Commission.

Note: See section 182.

Inspector-General of Aged Care means the Inspector-General of Aged Care referred to in section 9 of the *Inspector-General of Aged Care Act 2023*.

Inspector-General of Animal Welfare and Live Animal Exports means the Inspector-General of Animal Welfare and Live Animal Exports referred to in section 9 of the *Inspector-General of Animal Welfare and Live Animal Exports Act 2019*.

Inspector-General of Biosecurity means the Inspector-General of Biosecurity appointed under section 566A of the *Biosecurity Act 2015*.

Inspector-General of the Australian Defence Force means the Inspector-General of the Australian Defence Force referred to in section 110B of the *Defence Act 1903*.

Authorised Version C2026C00231 registered 19/06/2026

Inspector-General of Water Compliance means the Inspector-General of Water Compliance referred to in section 215B of the *Water Act 2007*.

intelligence agency means:

(a) the Australian Geospatial-Intelligence Organisation; or
(b) the Australian Secret Intelligence Service; or
(c) the Australian Security Intelligence Organisation; or
(d) the Australian Signals Directorate; or
(e) the Defence Intelligence Organisation; or
(f) the Office of National Intelligence; or
(g) ACIC.

intelligence information: see subsection 239(6).

international relations has the meaning given by section 10 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

international relations certificate: see subsection 236(2).

investigation material: see section 99.

investigation report: see subsection 149(1).

law enforcement agency means:

(a) the AFP; or
(b) a police force or police service of a State or Territory; or
(c) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of a State or Territory.

law of the Commonwealth includes a law in force in an external Territory or the Jervis Bay Territory, so far as the law is so in force because of an Act providing for the acceptance, administration or government of that Territory.

legal aid officer: see subsection 98(5).

Authorised Version C2026C00231 registered 19/06/2026

legal practitioner means a barrister, a solicitor, a barrister and solicitor or a legal practitioner of the High Court or of the Supreme Court of a State or Territory.

magistrate: see subsection 112(5).

medical practitioner means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

NACC means the National Anti-Corruption Commission.

Note: See section 20.

NACC Act process means:

(a) a corruption investigation; or
(b) a NACC complaint investigation; or
(c) a NACC corruption investigation; or
(d) a public inquiry.

NACC Commissioner means:

(a) the Commissioner; or
(b) a Deputy Commissioner.

NACC complaint investigation: see subsection 212(2).

NACC corruption investigation: see subsection 210(2).

NACC corruption issue: see section 201.

NACC disclosure: see section 23.

NACC investigation report: see subsection 215(1).

non-disclosure notation: see subsection 95(1).

notice to produce: see subsection 58(3).

occupier: see subsection 268(6).

official matter: see subsection 95(5).

Authorised Version C2026C00231 registered 19/06/2026

official of a registered industrial organisation means a person who holds an office (within the meaning of the *Fair Work Act 2009*) in an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

parliamentarian means:

(a) a senator; or

(b) a member of the House of Representatives; or

(c) a Minister of State (whether or not a senator or member of the House of Representatives); or

(d) a person who is taken to be the President of the Senate under the *Parliamentary Presiding Officers Act 1965* and who is not a senator or member of the House of Representatives; or

(e) a person who is taken to be the Speaker of the House of Representatives under the *Parliamentary Presiding Officers Act 1965* and who is not a senator or member of the House of Representatives; or

(f) a person to whom remuneration is payable under section 49 of the *Parliamentary Business Resources Act 2017*.

parliamentary office means the office of a parliamentarian.

Note: A parliamentarian is not a staff member of the parliamentary office (see paragraph 12(5)(c)).

permanent resident of Australia: see subsection 240(4).

person assisting the Inspector: see section 195.

PGPA Act means the *Public Governance, Performance and Accountability Act 2013*.

post-charge: see section 130.

post-confiscation application: see section 135.

pre-charge: see section 129.

Authorised Version C2026C00231 registered 19/06/2026

pre-confiscation application: see section 134.

premises includes a place, a conveyance or a container.

private hearing summons: see subsection 95(4).

proceeds of crime authority: see section 138.

prosecuting authority: see subsection 105(6).

prosecutor: see subsection 105(5).

protected information report: see sections 152, 165 and 218.

protected suspect: see subsection 132(3).

psychologist means a person registered or licensed as a psychologist under a law of a State or Territory that provides for the registration or licensing of psychologists.

public inquiry means a public inquiry conducted under Part 9.

public official: see section 10.

relevant confiscation proceeding: see section 137.

relevant offence*:* see section 131.

resolved: for when a charge for an offence, or a confiscation proceeding, is ***resolved***, see section 139.

secrecy provision means:

(a) a provision of a law of the Commonwealth that purports to prohibit; or

(b) anything done, under a provision of a law of the Commonwealth, to prohibit;

any of the following:

(c) the use of information, or a document or thing;

(d) dealing with information, or a document or thing;

(e) making a record of information, or a copy of a document or thing;

Authorised Version C2026C00231 registered 19/06/2026

(f) the disclosure or publication of information;
(g) the production of, or the publication of the contents of, a document;
(h) the production of a thing;
(i) access to information, a document or a thing;

regardless of whether the provision of the law of the Commonwealth:

(j) commenced before the commencement of this definition; or
(k) is expressed to apply despite any other law.

section 235 certified information means:

(a) information that is about a matter specified in a certificate in force under section 235; or
(b) information contained in a document specified in a certificate in force under section 235.

security matter: see subsection 237(4).

sensitive information: see subsection 227(3).

serious offence*:* see subsection 112(6).

staff member:

(a) of a Commonwealth agency—see section 12;
(b) of the NACC—see section 266.

State or Territory government entity means:

(a) a Department of a State or Territory; or
(b) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory.

statutory office holder: see section 14.

subsidiary has the same meaning as in the PGPA Act.

summons means a summons issued under section 63.

superior court judge: see subsection 90(3).

Authorised Version C2026C00231 registered 19/06/2026

takes a reprisal: see section 29.

travel document: see subsection 88(2).

witness:

(a) means a person who:

(i) is required to comply with a notice to produce; or

(ii) is summoned to attend a hearing; or

(iii) gives evidence at a hearing; and

(b) in relation to investigation material, has the meaning given by subsection 99(4); and

(c) in relation to derivative material, has the meaning given by subsection 99(5).

Authorised Version C2026C00231 registered 19/06/2026

Part 2—Key concepts used in this Act

Division 1—Corrupt conduct and corruption issues

8 Meaning of *corrupt conduct*

(1) Each of the following is ***corrupt conduct***:

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:

(i) the honest or impartial exercise of any public official's powers as a public official; or

(ii) the honest or impartial performance of any public official's functions or duties as a public official;

(b) any conduct of a public official that constitutes or involves a breach of public trust;

(c) any conduct of a public official that constitutes, involves or is engaged in for the purpose of abuse of the person's office as a public official;

(d) any conduct of a public official, or former public official, that constitutes or involves the misuse of information or documents acquired in the person's capacity as a public official.

(2) However, paragraph (1)(a) does not apply in relation to conduct of the following:

(a) the Governor-General;

(b) a Deputy Governor-General;

(c) a Justice of the High Court or a judge of a court created by the Parliament;

(d) a judge of a court of a State or Territory;

(e) a member of a Royal Commission;

(f) the Inspector, or a person assisting the Inspector.

Authorised Version C2026C00231 registered 19/06/2026

(3) To avoid doubt, paragraph (1)(a) covers a public official's own conduct, if it has, or could have, the specified adverse effects in relation to the public official's powers, functions or duties.

Conduct before commencement

(4) Conduct may be ***corrupt conduct*** even though it occurred before the commencement of this section.

(5) Conduct involving a public official may be ***corrupt conduct*** even though the person was no longer a public official when this section commenced.

Judicial powers, functions and duties

(6) ***Corrupt conduct*** does not include conduct engaged in by a staff member of the High Court or of a court created by the Parliament to exercise a power, or perform a function or duty, of a judicial nature.

(7) Conduct is not ***corrupt conduct*** under paragraph (1)(a) to the extent that it affects the exercise of a power, or the performance of a function or duty, of a judicial nature by a public official who is a staff member of the High Court or of a court created by the Parliament.

Note: A Justice of the High Court or a judge of a court created by the Parliament is not a staff member of a Commonwealth agency: see paragraph 12(5)(d).

Conduct need not be for personal benefit

(8) Conduct involving a public official may be ***corrupt conduct*** even if the conduct is not for the person's personal benefit.

Conduct alone or with others

(9) A person may engage in ***corrupt conduct*** alone, or with the agreement or participation of other persons (whether or not those other persons are public officials).

Authorised Version C2026C00231 registered 19/06/2026

Conduct amounting to conspiracy or attempt

(10) Conduct comprising conspiracy or an attempt to commit or engage in conduct covered by subsection (1) is itself ***corrupt conduct***.

Conducting parliamentary business using public resources

(11) To avoid doubt, the use by a parliamentarian, or a staff member of a Commonwealth agency, of public resources to conduct parliamentary business in accordance with the following does not constitute ***corrupt conduct***:

(a) the *Parliamentary Business Resources Act 2017*;

(b) the *Members of Parliament (Staff) Act 1984*.

(12) Terms used in subsection (11) that are defined in the *Parliamentary Business Resources Act 2017* have the same meaning in that subsection as they do in that Act.

Political activities

(13) To avoid doubt, conduct engaged in as part of a political activity does not constitute ***corrupt conduct*** if the conduct does not involve or affect either of the following:

(a) the exercise of a power, or the performance of a function or duty, by a public official;

(b) the use of public resources (within the meaning of the PGPA Act).

9 Meaning of *corruption issue*

(1) A ***corruption issue*** is an issue of whether a person:

(a) has engaged in corrupt conduct; or

(b) is engaging in corrupt conduct; or

(c) will engage in corrupt conduct.

(2) A NACC corruption issue is not a ***corruption issue***.

Note: See section 201 for the definition of a ***NACC corruption issue***.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—Public officials

10 Meaning of *public official*

(1) Each of the following is a ***public official***:

(a) a parliamentarian;

(b) a staff member of a Commonwealth agency;

(c) a staff member of the NACC.

(2) A person who is acting for and on behalf of, or as a deputy or delegate of, any person or body set out in subsection (1) is also a ***public official***.

Authorised Version C2026C00231 registered 19/06/2026

Division 3—Commonwealth agencies and the heads of those agencies

11 Commonwealth agencies and the heads of those agencies

(1) A body or office specified in column 1 of an item in the following table is a ***Commonwealth agency***, and the ***head*** (or ***agency head***) of that agency is the person specified in column 2 of that item.

Commonwealth agencies and the heads of those agencies

Item	Column 1 Commonwealth agency	Column 2 Head of Commonwealth agency
1	A parliamentary office	The parliamentarian
2	A Commonwealth entity	Whichever of the following applies: (a) if the accountable authority of the entity is a single person—that person; (b) if the accountable authority of the entity is a governing body or other group of persons: (i) the chief executive officer (however described) of the entity (unless subparagraph (ii) applies); or (ii) if the regulations prescribe another person as the head of the entity—that other person
3	A Commonwealth company	Whichever of the following applies: (a) the chief executive officer (however described) of the company (unless paragraph (b) applies); (b) if the regulations prescribe another person as the head of the company—that other person

Authorised Version C2026C00231 registered 19/06/2026

Commonwealth agencies and the heads of those agencies		
Item	**Column 1** **Commonwealth agency**	**Column 2** **Head of Commonwealth agency**
4	A subsidiary of: (a) a Commonwealth company; or (b) a corporate Commonwealth entity	Whichever of the following applies: (a) the chief executive officer (however described) of the subsidiary (unless paragraph (b) applies); (b) if the regulations prescribe another person as the head of the subsidiary—that other person
5	The High Court	The Chief Executive and Principal Registrar of the High Court
6	The Australian Geospatial-Intelligence Organisation	The Director of the Australian Geospatial-Intelligence Organisation
7	The Defence Intelligence Organisation	The Director of the Defence Intelligence Organisation
7A	The Inspector-General of Animal Welfare and Live Animal Exports	The Inspector-General of Animal Welfare and Live Animal Exports
8	The Inspector-General of the Australian Defence Force	The Inspector-General of the Australian Defence Force
9	The Inspector-General of Biosecurity	The Inspector-General of Biosecurity
11	The Inspector-General of Water Compliance	The Inspector-General of Water Compliance
12	A body prescribed by the regulations for the purposes of this item that is established for a public purpose by, or under, a law of the Commonwealth (other than a general law allowing incorporation as a company or body corporate)	The person prescribed by the regulations for the purposes of this item

Authorised Version C2026C00231 registered 19/06/2026

(2) To avoid doubt, each of the following is taken to be a Commonwealth agency in its own right, and not part of a Department:

(a) the Australian Geospatial-Intelligence Organisation;

(b) the Defence Intelligence Organisation;

(ba) the Inspector-General of Animal Welfare and Live Animal Exports;

(c) the Inspector-General of the Australian Defence Force;

(d) the Inspector-General of Biosecurity;

(f) the Inspector-General of Water Compliance.

(3) Despite subsection (1), the NACC is not a ***Commonwealth agency***.

Authorised Version C2026C00231 registered 19/06/2026

Division 4—Staff members of Commonwealth agencies

12 Meaning of s*taff member*—Commonwealth agencies

(1) The following are ***staff members*** of a Commonwealth agency:

(a) in the case of a parliamentary office—an individual who is employed by the parliamentarian under the *Members of Parliament (Staff) Act 1984*;

(b) in the case of an agency other than a parliamentary office—the head of the agency;

(c) if the agency is a Commonwealth entity—an official (within the meaning of the PGPA Act) of the entity;

(d) in any case—an individual who is employed by, or engaged in assisting:

(i) the agency; or

(ii) a staff member of the agency on behalf of the agency or the Commonwealth;

(e) a director or officer of the following:

(i) a Commonwealth company;

(ii) a subsidiary of a corporate Commonwealth entity or a Commonwealth company;

(f) if the agency is responsible for administering a Commonwealth contract—an individual who is either of the following:

(i) a contracted service provider for the contract;

(ii) both an officer or employee of a contracted service provider for the contract and someone who provides goods or services for the purposes (whether direct or indirect) of the contract;

(g) in any case—a secondee to the agency.

(2) However, if a Commonwealth agency is covered by an item of the following table then the ***staff members*** of the agency are the persons mentioned in paragraphs (1)(b), (f) and (g) and the persons mentioned in column 2 of that item.

Authorised Version C2026C00231 registered 19/06/2026

Staff members for certain Commonwealth agencies		
Item	**Column 1** **Agency**	**Column 2** **Staff members**
1	The High Court	An individual who is appointed or engaged as an officer or employee of the High Court under section 26 of the *High Court of Australia Act 1979*
2	Either of the following: (a) the Australian Geospatial-Intelligence Organisation; (b) the Defence Intelligence Organisation	An individual who is employed in the agency or a member of the Australian Defence Force who is engaged in the agency
2A	The Inspector-General of Animal Welfare and Live Animal Exports	An individual acting under the authority of the Inspector-General of Animal Welfare and Live Animal Exports
3	The Inspector-General of Biosecurity	An individual engaged under the *Public Service Act 1999* who is assisting the Inspector-General of Biosecurity
5	The Inspector-General of Water Compliance	An individual engaged under the *Public Service Act 1999* who is assisting the Inspector-General of Water Compliance
6	The Inspector-General of the Australian Defence Force	A member of the staff of the Inspector-General of the Australian Defence Force
7	The Administrative Review Tribunal	Each of the following: (a) a non-judicial member (within the meaning of the *Administrative Review Tribunal Act 2024*); (b) a staff member (within the meaning of that Act)

Authorised Version C2026C00231 registered 19/06/2026

(3) An individual who:

(a) is covered by column 1 of an item of the following table; and

(b) is not a staff member of a Commonwealth agency under subsection (1) or (2);

is a ***staff member*** of the agency identified under column 2 of that item.

Staff members of Commonwealth agencies—rules for certain statutory office holders and other individuals

Item	Column 1 Individual	Column 2 Agency
1	An individual who is a statutory office holder	Whichever of the following applies: (a) if the purposes of a Commonwealth entity for the purposes of the finance law include assisting the office holder, or a body (whether incorporated or not) of which the office holder is a member or forms a part—the Commonwealth entity (subject to paragraph (b)); (b) if the primary function of the office holder is to assist a Commonwealth agency, or another staff member of such an agency, in the performance of the agency's or the other staff member's functions—that agency; (c) the Department administered by the Minister responsible for administering the provision of the law by or under which the office is established (subject to paragraphs (a) and (b))
2	An individual (other than an official of a registered industrial	Whichever of the following applies:

Authorised Version C2026C00231 registered 19/06/2026

Staff members of Commonwealth agencies—rules for certain statutory office holders and other individuals

Item	Column 1 Individual	Column 2 Agency
	organisation) who exercises powers, or performs functions, conferred on the individual by or under a provision of a law of the Commonwealth, other than by or under: (a) a general law allowing incorporation as a company or body corporate; or (b) the *Australian Capital Territory (Self-Government) Act 1988*; or (c) the *Northern Territory (Self-Government) Act 1978*; or (d) a provision of a law prescribed by the regulations for the purposes of this paragraph	(a) if the power is exercised, or the function is performed, for the purpose of assisting a Commonwealth agency, or another staff member of such an agency, in the performance of the agency's or other staff member's functions—that agency; (b) the Department administered by the Minister responsible for administering the provision of the law (subject to paragraph (a))
3	An individual who is a director, officer, employee or contractor of a body corporate that exercises powers, or performs functions, conferred on the body corporate by or under a provision of a law of the Commonwealth, other than by or under: (a) a general law allowing incorporation as a company or body corporate; or (b) the *Australian Capital Territory (Self-Government) Act 1988*; or (c) the *Northern Territory (Self-Government) Act 1978*; or (d) a provision of a law prescribed by the regulations for the purposes of this paragraph	Whichever of the following applies: (a) if the power is exercised, or the function is performed, for the purpose of assisting a Commonwealth agency, or another staff member of such an agency, in the performance of the agency's or other staff member's functions—that agency; (b) the Department administered by the Minister responsible for administering the provision of the law (subject to paragraph (a))

Authorised Version C2026C00231 registered 19/06/2026

Staff members of Commonwealth agencies—rules for certain statutory office holders and other individuals		
Item	**Column 1** **Individual**	**Column 2** **Agency**
4	An individual who holds an appointment under section 67 of the Constitution	The Department administered by the Prime Minister

Providing for individuals to be staff members of a different agency

(4) The regulations may provide that an individual who would otherwise be a staff member of a particular Commonwealth agency under subsection (1), (2) or (3) is a staff member of a different Commonwealth agency.

Certain individuals are not staff members

(5) Despite anything else in this section, none of the following is a ***staff member*** of a Commonwealth agency:
- (a) the Governor-General;
- (b) a Deputy Governor-General;
- (c) a parliamentarian;
- (d) a Justice of the High Court or a judge of a court created by the Parliament;
- (e) a judge of a court of a State or Territory;
- (f) a member of a Royal Commission;
- (g) a staff member of the NACC;
- (h) the Inspector, or a person assisting the Inspector.

13 Meaning of *contracted service provider* for a *Commonwealth contract*

(1) A ***contracted service provider*** for a Commonwealth contract is:
- (a) a person (other than the Commonwealth or a Commonwealth agency) who:
  - (i) is a party to the Commonwealth contract; and

Authorised Version C2026C00231 registered 19/06/2026

(ii) is responsible for the provision of goods or services (or both) under the Commonwealth contract; or

(b) a person who:

(i) is a party to a contract (the ***subcontract***) with a person who is a contracted service provider for the Commonwealth contract under paragraph (a) (or under a previous application of this paragraph); and

(ii) is responsible under the subcontract for the provision of goods or services (or both) for the purposes (whether direct or indirect) of the Commonwealth contract.

(2) A ***Commonwealth contract*** is a contract:

(a) to which the Commonwealth or a Commonwealth agency is a party; and

(b) under which goods or services (or both) are to be, or were to be, provided:

(i) to the Commonwealth or the Commonwealth agency, as relevant; or

(ii) in connection with the activities of the Commonwealth or the Commonwealth agency, as relevant.

Note: ***Contract*** is defined in section 7 to include any arrangement, agreement, deed or understanding.

(3) Despite subsection (1), the following are not ***contracted service providers*** for a Commonwealth contract:

(a) a State or Territory government entity;

(b) the government of a foreign country, or of a part of a foreign country;

(c) a person in a class prescribed by the regulations for the purposes of this paragraph.

14 Meaning of *statutory office holder*

(1) A ***statutory office holder*** is an individual (other than an official of a registered industrial organisation) who holds an office or appointment under a law of the Commonwealth, other than under:

Authorised Version C2026C00231 registered 19/06/2026

(a) a general law allowing incorporation as a company or body corporate; or
(b) the *Australian Capital Territory (Self-Government) Act 1988*; or
(c) the *Northern Territory (Self-Government) Act 1978*; or
(d) a provision of a law prescribed by the regulations for the purposes of this paragraph.

(2) Despite paragraph (1)(a), the following offices and appointments are ***statutory office holders***:
(a) the office of Registrar, or Deputy Registrar, of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
(b) the office of a member of a committee convened under Part 2 of Schedule 2 to the *Corporations Act 2001*;
(c) any other office or appointment prescribed by the regulations for the purposes of this paragraph.

Authorised Version C2026C00231 registered 19/06/2026

Division 5—Commonwealth integrity agencies

15 Meaning of *Commonwealth integrity agency*

Each of the following office holders, together with their staff (if any), is a ***Commonwealth integrity agency***:

(a) the Commonwealth Ombudsman, a Deputy Commonwealth Ombudsman, the Defence Force Ombudsman, the Postal Industry Ombudsman, the Overseas Students Ombudsman, the Private Health Insurance Ombudsman, the VET Student Loans Ombudsman and the National Student Ombudsman;

(b) the Australian Public Service Commissioner;

(c) the Merit Protection Commissioner;

(d) the Auditor-General;

(e) the AFP Commissioner;

(f) the Parliamentary Service Commissioner;

(g) the Parliamentary Service Merit Protection Commissioner;

(h) the Australian Information Commissioner;

(i) the CEO of the ACC (within the meaning of the *Australian Crime Commission Act 2002*);

(j) the IGIS;

(k) the Inspector-General of Taxation;

(l) the Chief Executive Officer of the Tertiary Education Quality and Standards Agency;

(la) the Inspector-General of Animal Welfare and Live Animal Exports;

(m) the Inspector-General of Biosecurity;

(o) the Inspector-General of Water Compliance;

(p) the Inspector-General of the Australian Defence Force;

(pa) the Inspector-General of Aged Care;

(pb) a Commissioner of the Independent Parliamentary Standards Commission;

(q) any other statutory office holder that:

Authorised Version C2026C00231 registered 19/06/2026

(i) has functions that include investigating, or inquiring into, action taken by public officials; and

(ii) is prescribed by the regulations for the purposes of this subparagraph.

Authorised Version C2026C00231 registered 19/06/2026

Part 3—The National Anti-Corruption Commission

Division 1—The Commissioner

16 The Commissioner

There is to be a National Anti-Corruption Commissioner.

Note: For provisions in relation to the Commissioner's appointment, see Division 1 of Part 12.

17 Functions of the Commissioner

The Commissioner has the following functions:

(a) to detect corrupt conduct;

(b) to conduct preliminary investigations into corruption issues or possible corruption issues;

(c) to conduct corruption investigations into corruption issues that could involve corrupt conduct that is serious or systemic;

(d) to report on corruption investigations and public inquiries;

(e) to refer corruption issues to Commonwealth agencies and State or Territory government entities;

(f) to oversee investigations into corruption issues conducted by Commonwealth agencies;

(g) to conduct public inquiries into:

(i) the risk of corrupt conduct occurring; and

(ii) measures directed at dealing with that risk and preventing that conduct;

(h) to provide education and information in relation to corrupt conduct and preventing that conduct;

(i) to collect, correlate, analyse and disseminate general information and intelligence about corrupt conduct;

(j) to report, and make recommendations, to the Minister concerning the need for, or desirability of, legislative or

Authorised Version C2026C00231 registered 19/06/2026

administrative reform in relation to any matters dealt with by this Act;

(k) to provide relevant information and documents to the Committee;

(l) to receive public interest disclosures (within the meaning of the *Public Interest Disclosure Act 2013*) and to deal with those disclosures;

(m) any other functions conferred on the Commissioner by this Act or another Act;

(n) to do anything incidental or conducive to the performance of any of the above functions.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—The Deputy Commissioners

18 The Deputy Commissioners

There are to be up to 3 National Anti-Corruption Deputy Commissioners.

Note: For provisions in relation to a Deputy Commissioner's appointment, see Division 1 of Part 12.

19 Functions of a Deputy Commissioner

(1) The functions of a Deputy Commissioner are:
  (a) to assist the Commissioner in performing the Commissioner's functions; and
  (b) any other function conferred on a Deputy Commissioner by this Act or another Act.

(2) In performing those functions, a Deputy Commissioner must comply with any directions of the Commissioner.

(3) A direction under subsection (2) is not a legislative instrument.

Authorised Version C2026C00231 registered 19/06/2026

Division 3—The National Anti-Corruption Commission

20 Establishment of the National Anti-Corruption Commission

(1) The National Anti-Corruption Commission (the ***NACC***) is established by this section.

(2) For the purposes of the finance law:
  (a) the NACC is a listed entity; and
  (b) the CEO is the accountable authority of the NACC; and
  (c) the staff members of the NACC (as defined in section 266) are officials of the NACC; and
  (d) the purposes of the NACC include:
    (i) the functions of the Commissioner referred to in section 17; and
    (ii) the functions of a Deputy Commissioner referred to in section 19; and
    (iii) the functions of the NACC referred to in section 22; and
    (iv) the functions of the CEO referred to in section 252.

21 Constitution of the NACC

The NACC consists of:
  (a) the Commissioner; and
  (b) any Deputy Commissioners; and
  (c) the CEO; and
  (d) the staff referred to in section 262.

22 Functions of the NACC

The NACC has the following functions:
  (a) to assist the Commissioner in performing the Commissioner's functions;
  (b) to assist any Deputy Commissioner in performing the Deputy Commissioner's functions.

Authorised Version C2026C00231 registered 19/06/2026

Part 4—Protections for disclosers under this Act

Division 1—Meaning of NACC disclosure

23 Meaning of *NACC disclosure*

A person makes a ***NACC disclosure*** if:

(a) the person refers, or provides other information about, a corruption issue to the Commissioner or the IGIS under Part 5; or

(b) the person refers, or provides other information about, a NACC corruption issue to the Inspector under section 202 or 203; or

(c) the person gives evidence or information, or produces a document or a thing, under this Act to a NACC Commissioner, the IGIS or the Inspector in relation to any of the following:

(i) a corruption issue;

(ii) a NACC Act process;

(iii) a NACC corruption issue;

(iv) a complaint made in relation to the conduct or activities of the NACC or a staff member of the NACC.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—Protection of persons from liability

24 Protection of persons from liability

(1) If a person makes a NACC disclosure:

(a) the person is not subject to any civil, criminal or administrative liability (including disciplinary action) for the NACC disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the NACC disclosure.

(2) Without limiting subsection (1):

(a) the person has absolute privilege in proceedings for defamation in respect of the NACC disclosure; and

(b) a contract to which the person is a party must not be terminated on the basis that the NACC disclosure constitutes a breach of the contract.

25 Liability for false or misleading statements unaffected

(1) Section 24 does not apply to civil, criminal or administrative liability (including disciplinary action) for knowingly making a statement that is false or misleading.

(2) Without limiting subsection (1), section 24 does not apply to liability for an offence against section 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code*.

26 Person's liability for own conduct not affected

To avoid doubt, whether the person's disclosure of their own conduct is a NACC disclosure does not affect the person's liability for the conduct.

Authorised Version C2026C00231 registered 19/06/2026

27 Claims for protection

(1) If, in civil or criminal proceedings (the ***primary proceedings***) instituted against a person in a court, the person makes a claim (relevant to the proceedings) that, because of section 24, the person is not subject to any civil, criminal or administrative liability for making a particular NACC disclosure:

(a) the person bears the onus of adducing or pointing to evidence that suggests a reasonable possibility that the claim is made out; and

(b) if the person discharges that onus—the party instituting the primary proceedings against the person bears the onus of proving that the claim is not made out; and

(c) the court must deal with the claim in separate proceedings; and

(d) the court must adjourn the primary proceedings until the claim has been dealt with; and

(e) none of the following:

(i) any admission made by the person in the separate proceedings;

(ii) any information given by the person in the separate proceedings;

(iii) any other evidence adduced by the person in the separate proceedings;

is admissible in evidence against the person except in proceedings in respect of the falsity of the admission, information or evidence; and

(f) if the person or another person gives evidence in the separate proceedings in support of the claim—giving that evidence does not amount to a waiver of privilege for the purposes of the primary proceedings or any other proceedings.

(2) To avoid doubt, a right under section 126K of the *Evidence Act 1995* not to be compelled to give evidence is a privilege for the purposes of paragraph (1)(f) of this section.

Authorised Version C2026C00231 registered 19/06/2026

28 Protection has effect despite other Commonwealth laws

Section 24 has effect despite any other provision of a law of the Commonwealth, unless:

(a) the provision is enacted after the commencement of this section; and

(b) the provision is expressed to have effect despite this Part or that section.

Authorised Version C2026C00231 registered 19/06/2026

Division 3—Protection from reprisals

29 What constitutes taking a reprisal

(1) A person (the ***first person***) ***takes a reprisal*** against another person (the ***second person***) if:

(a) the first person engages in conduct that:

(i) results in detriment to the second person; or

(ii) consists of, or results in, a threat to cause detriment to the second person; and

(b) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:

(i) has made a NACC disclosure; or

(ii) may have made a NACC disclosure; or

(iii) proposes to make a NACC disclosure; or

(iv) could make a NACC disclosure; and

(c) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

(2) ***Detriment*** includes (without limitation) any of the following:

(a) dismissal of an employee;

(b) injury of an employee in their employment;

(c) alteration of an employee's position to their disadvantage;

(d) discrimination between an employee and other employees of the same employer;

(e) harassment or intimidation of a person;

(f) harm or injury to a person, including psychological harm;

(g) damage to a person's property;

(h) damage to a person's reputation;

(i) damage to a person's business or financial position;

(j) any other damage to a person.

Authorised Version C2026C00231 registered 19/06/2026

(3) Despite subsection (1), a person does not ***take a reprisal*** against another person to the extent that the person takes administrative action that is reasonable to protect the other person from detriment.

30 Offences—reprisals in relation to NACC disclosures

Taking a reprisal—by causing detriment

(1) A person (the ***first person***) commits an offence in relation to another person (the ***second person***) if:

(a) the first person engages in conduct; and

(b) engaging in the conduct results in detriment to the second person; and

(c) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:

(i) has made a NACC disclosure; or

(ii) may have made a NACC disclosure; or

(iii) proposes to make a NACC disclosure; or

(iv) could make a NACC disclosure; and

(d) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 2 years.

Taking a reprisal—by a threat to cause detriment

(2) A person (the ***first person***) commits an offence in relation to another person (the ***second person***) if:

(a) the first person engages in conduct; and

(b) engaging in the conduct consists of, or results in, a threat to cause detriment to the second person; and

(c) the first person is reckless as to whether the second person fears that the threat would be carried out; and

(d) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:

(i) has made a NACC disclosure; or

(ii) may have made a NACC disclosure; or

Authorised Version C2026C00231 registered 19/06/2026

(iii) proposes to make a NACC disclosure; or
(iv) could make a NACC disclosure; and

(e) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 2 years.

(3) Subsection (2) applies whether or not the threat mentioned in paragraph (2)(b) is:
(a) express or implied; or
(b) conditional or unconditional.

Exception—reasonable administrative action

(4) Subsections (1) and (2) do not apply if the conduct engaged in by the first person is administrative action that is reasonable to protect the second person from detriment.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

No requirement to prove matters related to a NACC disclosure

(5) In a prosecution for an offence against this section, it is not necessary to prove that any person:
(a) has made a NACC disclosure; or
(b) may have made a NACC disclosure; or
(c) proposes to make a NACC disclosure; or
(d) could make a NACC disclosure.

Note 1: The offences against subsections (1) and (2) relate to whether the first person has taken a reprisal (within the meaning of section 29) against the second person.

Note 2: The offence against subsection (1) relates to a reprisal that consists of causing detriment to another person. The offence against subsection (2) relates to a reprisal that involves a threat to cause detriment to another person.

Note 3: For actions that constitute a ***detriment***, see subsection 29(2).

Note 4: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness (see subsection 5.4(4) of the *Criminal Code*).

Authorised Version C2026C00231 registered 19/06/2026

Division 4—Protection for journalists' informants

31 Protection for journalists' informants

Application

(1) This section applies if:

(a) a person (the ***informant***) gives information, whether directly or indirectly:

(i) to another person who works in a professional capacity as a journalist; and

(ii) the information is given in the normal course of the journalist's work as a journalist; and

(b) the journalist reasonably believes that the informant has provided the information on the express or implied understanding that the informant's identity would not be disclosed.

Protection of informant's identity

(2) None of the following is required to do anything under this Act that would disclose the identity of the informant or enable that identity to be ascertained:

(a) the journalist;

(b) the journalist's employer;

(c) a person assisting the journalist who is employed or engaged by the journalist's employer;

(d) a person assisting the journalist in the person's professional capacity.

(3) If the journalist is a staff member of a Commonwealth agency, the reference in subsection (2) to the journalist's employer is taken to include a reference to the head of the agency.

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Search powers exception

(4) However, this section does not prevent an authorised officer from doing anything the authorised officer would otherwise be able to do in exercising powers under Part IAA of the *Crimes Act 1914* for the purposes of this Act (see section 119 (search warrants, and stopping and searching conveyances)).

Note: A public interest test applies to the issue of search warrants involving journalists: see the modifications made by section 124 to the applied search powers of the *Crimes Act 1914*.

Authorised Version C2026C00231 registered 19/06/2026

Part 5—Referring corruption issues

Division 1—Voluntary referrals

32 Any person may refer corruption issue

(1) Any person may refer a corruption issue or provide other information about a corruption issue to the Commissioner.

(2) The Commissioner may request the referral or information to be:
  (a) given in a particular way; or
  (b) accompanied or supported by further information.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—Mandatory referrals

33 Mandatory referral—Commonwealth agencies other than intelligence agencies

(1) An agency head who becomes aware of a corruption issue must refer the issue to the Commissioner if:

(a) the issue concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member; and

(b) the agency head suspects that the issue could involve corrupt conduct that is serious or systemic.

(2) The agency head must state in the referral the reasons why the agency head suspects that the issue could involve corrupt conduct that is serious or systemic.

(3) Subsection (1) does not apply in relation to an intelligence agency.

34 Mandatory referral—intelligence agencies

(1) The head of an intelligence agency who becomes aware of a corruption issue must refer the issue to the IGIS or the Commissioner if:

(a) the issue concerns the conduct of a person who is, or was, a staff member of the intelligence agency while that person is, or was, a staff member; and

(b) the head suspects that the issue could involve corrupt conduct that is serious or systemic.

(2) The head must state in the referral the reasons why the head suspects that the issue could involve corrupt conduct that is serious or systemic.

(3) If the head refers the issue to the Commissioner, the head must, as soon as reasonably practicable, notify the IGIS.

Authorised Version C2026C00231 registered 19/06/2026

(4) If the head refers the issue to the IGIS, and the IGIS is satisfied that the issue is likely to involve corrupt conduct that is serious or systemic, the IGIS must refer the issue to the Commissioner.

35 Mandatory referral—Public Interest Disclosure Act disclosures

(1) This section applies if a staff member of a Commonwealth agency (the ***PID officer***), in the course of performing or exercising functions or powers under Division 1 or 2 of Part 3 of the *Public Interest Disclosure Act 2013* (including as a delegate), becomes aware of a corruption issue that:

(a) concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member; and

(b) the PID officer suspects could involve corrupt conduct that is serious or systemic.

(2) The PID officer must refer the corruption issue to:

(a) in the case of a Commonwealth agency other than an intelligence agency—the Commissioner; or

(b) in the case of an intelligence agency—the IGIS or the Commissioner.

Corruption issues that relate to intelligence agencies

(3) If the PID officer refers a corruption issue that relates to an intelligence agency to the Commissioner, the PID officer must, as soon as reasonably practicable, notify the IGIS.

(4) If the PID officer refers a corruption issue that relates to an intelligence agency to the IGIS, and the IGIS is satisfied that the issue is likely to involve corrupt conduct that is serious or systemic, the IGIS must refer the issue to the Commissioner.

Notification to discloser

(5) If the PID officer became aware of the corruption issue as a result of an internal disclosure made under the *Public Interest Disclosure Act 2013*, the PID officer must, as soon as reasonably practicable,

Authorised Version C2026C00231 registered 19/06/2026

notify the discloser of the PID officer's referral of the issue under this section.

36 Mandatory referral—secrecy protection provisions

The obligation to refer a corruption issue under this Division applies despite any secrecy provision (other than an exempt secrecy provision).

37 Mandatory referral—exceptions

(1) A person is not required to refer a corruption issue under this Division if:

(a) the person believes on reasonable grounds that the Commissioner or the IGIS, as relevant, is already aware of the issue; or

(b) a determination made by the Commissioner provides that referral is not required because of the kind of corruption issue involved or the circumstances in which it arises.

(2) The Commissioner may, in writing, determine corruption issues and circumstances for the purposes of paragraph (1)(b).

(3) A determination under subsection (2) is not a legislative instrument.

38 Mandatory referral—timing and information requirements

Timing requirements

(1) A person who is required to refer a corruption issue under this Division must do so as soon as reasonably practicable after becoming aware of the issue or within such later time as is allowed by the Commissioner.

Information requirements

(2) A person who is required to refer a corruption issue under this Division must include with the referral all information relevant to

Authorised Version C2026C00231 registered 19/06/2026

the issue that is in the person's possession or control at the time the referral is made.

(3) If the person subsequently becomes aware of any further information that is relevant to the issue, the person must give the further information to the recipient of the referral as soon as reasonably practicable.

Exceptions to information requirements

(4) A person is not required to provide information under this section if:

(a) the person has reasonable grounds to believe that the recipient of the referral is already aware of the information; or

(b) the recipient of the referral has advised the person that the provision of information about the corruption issue is not required.

Note: This section has effect subject to section 236 (Attorney-General's certificate in relation to international relations).

Authorised Version C2026C00231 registered 19/06/2026

Division 3—Other matters relating to referrals

39 Effect of referral on continued actions

The referral of a corruption issue under this Part does not:

(a) subject to any direction to stop taking action given by the Commissioner under subsection 43(1), prevent a Commonwealth agency or the IGIS from continuing to take any action in relation to conduct that is the subject of the issue; or

(b) affect the obligations of the agency or the IGIS in relation to that conduct under any other law.

Authorised Version C2026C00231 registered 19/06/2026

Part 6—Dealing with corruption issues

Division 1—Dealing with corruption issues

40 Commissioner may deal with corruption issues

(1) The Commissioner may deal with a corruption issue that:
  (a) is referred to the Commissioner; or
  (b) the Commissioner becomes aware of in any other way.

(2) To avoid doubt, the Commissioner may deal with a corruption issue on the Commissioner's own initiative.

41 How Commissioner deals with corruption issues

(1) The Commissioner may deal with a corruption issue in any one or more of the following ways:
  (a) by investigating the corruption issue;
  (b) by investigating the corruption issue jointly with a Commonwealth agency or a State or Territory government entity;
  (c) by referring, for investigation, the corruption issue to a Commonwealth agency to which the corruption issue relates (if the Commissioner is satisfied that the agency has appropriate capabilities to investigate the issue);
  (d) by referring, for consideration, the corruption issue to a Commonwealth agency or a State or Territory government entity.

(2) An investigation mentioned in paragraph (1)(a) or (b) is a ***corruption investigation***.

Authorised Version C2026C00231 registered 19/06/2026

Corruption investigation threshold—serious or systemic corrupt conduct

(3) The Commissioner may conduct, or continue to conduct, a corruption investigation only if the Commissioner is of the opinion that the issue could involve corrupt conduct that is serious or systemic.

General matters

(4) Corruption issues may be investigated together.

(5) The Commissioner may, at any time, reconsider whether or how to deal with a corruption issue.

Commissioner may decide to take no action

(6) The Commissioner may decide to take no action in relation to a corruption issue.

Commissioner under no duty to consider whether to deal with corruption issue

(7) The Commissioner does not have a duty to consider whether to deal with a corruption issue under this section, whether the Commissioner is requested to do so by the person who referred the issue or by any other person, or in any other circumstances.

42 Preliminary investigations by Commissioner

Application

(1) This section applies if the Commissioner considers it necessary or desirable to conduct a preliminary investigation for any of the following purposes:

(a) to confirm the existence or nature of a corruption issue (including whether a corruption issue could involve corrupt conduct that is serious or systemic);

Authorised Version C2026C00231 registered 19/06/2026

(b) to assist the Commissioner to decide whether or how to deal with a corruption issue.

Exercise of certain Part 7 powers for preliminary investigations

(2) The Commissioner may exercise the following Part 7 powers as if the preliminary investigation mentioned in subsection (1) were a corruption investigation:
   (a) the power, under subsection 57(2), to direct the head of a Commonwealth agency to give information, or a document or a thing, to the Commissioner;
   (b) the power, under subsection 58(2) as modified by subsection (3) of this section, to serve a notice to produce on a person requiring the person to give information, or a document or thing, to a specified staff member of the NACC.

(3) The modifications are as follows:
   (a) the Commissioner may not issue a post-charge or a post-confiscation notice to produce under this section; and
   (b) subsection 58(6) does not apply to a notice to produce given under this section.

(4) To avoid doubt, the other provisions of this Act continue to apply in relation to the exercise of powers under subsections 57(2) and 58(2) for the purpose of conducting a preliminary investigation under this section.

Commissioner may have regard to other material

(5) This section does not limit the information, documents or things to which the Commissioner may have regard in making a decision about whether or how to deal with a corruption issue.

43 Commissioner's directions about further action

Directions to stop action

(1) The Commissioner may direct an agency head to stop the agency taking specified action in relation to a corruption issue that

Authorised Version C2026C00231 registered 19/06/2026

concerns the agency, unless the action is permitted by the Commissioner.

(2) However, the direction may be given only if:
  (a) the Commissioner has consulted with the agency head about giving the direction; and
  (b) the direction is required to ensure the effectiveness of any action the Commissioner has taken, or might take, under this Act in relation to the corruption issue, or any other corruption issue.

(3) The direction must be revoked if it is no longer so required.

Permission to take other action

(4) If the agency head requests the Commissioner to permit the taking of particular action, the Commissioner must:
  (a) as soon as practicable after the request is made, decide whether to permit the taking of the action; and
  (b) if the Commissioner refuses to permit the taking of the action—give the agency head written reasons for the refusal.

(5) However, the Commissioner need not give the reasons for a refusal if doing so would be likely to prejudice:
  (a) any action the Commissioner has taken, or might take, under this Act in relation to the corruption issue, or any other corruption issue; or
  (b) any action taken by any person as a result of a NACC Act process.

(6) A direction under subsection (1):
  (a) is not a legislative instrument; and
  (b) has effect despite any other law of the Commonwealth.

44 Action that can be taken without permission

(1) Despite any direction given by the Commissioner under subsection 43(1), the following action may be taken:

Authorised Version C2026C00231 registered 19/06/2026

(a) action to prevent or lessen an imminent risk to the safety of a person, or to protect a person's life;
(b) action that is in the interests of the security, defence or international relations of Australia;
(c) action to prevent loss to the Commonwealth of an amount, greater than the amount (if any) prescribed by the regulations, which could not be recovered;
(d) other action for which it would be unreasonable in the circumstances to await any necessary permission.

(2) If action is taken relying on subsection (1), the agency head must:
(a) as soon as practicable, but no later than 48 hours after the action is taken, provide details of the action to the Commissioner; and
(b) take reasonable steps to:
(i) ensure that the action does not prejudice the investigation of a corruption issue or any other NACC Act process; and
(ii) preserve evidence that is, or could be, relevant for the purposes of conducting a NACC Act process.

45 Previous investigations by Commonwealth integrity agencies

Application

(1) This section applies if the Commissioner is aware that a Commonwealth integrity agency has previously concluded an investigation into a matter regarding the conduct of a public official.

Corruption investigation threshold—public interest

(2) The Commissioner may commence a corruption investigation into a corruption issue involving the conduct only if the Commissioner is satisfied that it is in the public interest to do so.

(3) The Commissioner may have regard to the following matters in making the decision:

Authorised Version C2026C00231 registered 19/06/2026

(a) the significance of the corruption issue;
(b) the details of the investigation undertaken by the Commonwealth integrity agency (to the extent that those details are known by, or made available to, the Commissioner and the Commissioner considers them relevant);
(c) any conclusions or findings (however described) of the integrity agency in relation to the corruption issue;
(d) whether the Commissioner has any new evidence in relation to the corruption issue that:
(i) was not available to the integrity agency; and
(ii) would not have been obtainable by the exercise of reasonable diligence by that agency;
(e) any unfairness to a person that may arise as a result of the Commissioner conducting a further investigation into the corruption issue;
(f) the need to ensure that the corruption issue is fully investigated.

(4) Subsection (3) does not limit the matters to which the Commissioner may have regard in making the decision.

46 Matters dealt with by Independent Parliamentary Expenses Authority

Application

(1) This section applies if conduct of a parliamentarian or a staff member of a parliamentary office has been, is or could be the subject of either of the following by the Independent Parliamentary Expenses Authority:
(a) an audit, or a review for the purpose of preparing a report, under the *Independent Parliamentary Expenses Authority Act 2017* into the use, by the parliamentarian or the staff member, of work resources or travel resources;
(b) a ruling, under subsection 37(1) of the *Parliamentary Business Resources Act 2017*, concerning conduct by the

Authorised Version C2026C00231 registered 19/06/2026

parliamentarian or the staff member in relation to travel, expenses or allowances.

Restriction on corruption investigation by Commissioner

(2) The Commissioner must not commence a corruption investigation into a corruption issue involving the conduct unless:
  (a) the Independent Parliamentary Expenses Authority:
    (i) refers the issue to the Commissioner; and
    (ii) states that the Authority considers that the issue could involve corrupt conduct that is serious or systemic; and
  (b) the Commissioner is of the opinion that the issue could involve corrupt conduct that is serious or systemic.

47 Matters dealt with by Electoral Commissioner

Application

(1) This section applies if conduct of a person has been, is or could be the subject of an investigation by the Electoral Commissioner under, or into compliance with, the *Commonwealth Electoral Act 1918*.

Restriction on corruption investigation by Commissioner

(2) The Commissioner must not commence a corruption investigation into a corruption issue involving the conduct unless:
  (a) the Electoral Commissioner:
    (i) refers the issue to the Commissioner; and
    (ii) states that the Electoral Commissioner considers that the issue could involve corrupt conduct that is serious or systemic; and
  (b) the Commissioner is of the opinion that the issue could involve corrupt conduct that is serious or systemic.

Authorised Version C2026C00231 registered 19/06/2026

Exception—officers and staff members of the Electoral Commission

(3) This section does not apply in relation to conduct of an officer (within the meaning of the *Commonwealth Electoral Act 1918*), or a member of the staff of the Commission (within the meaning of that Act).

48 Public statements about corruption issues

(1) The Commissioner may make a public statement about a corruption issue at any time (whether or not the Commissioner deals with the issue).

(2) Without limiting subsection (1), the Commissioner may make a public statement if the Commissioner is satisfied that it is appropriate and practicable to do so to avoid damage to a person's reputation.

(3) Subsection (1) is subject to subsections 230(4) to (6) and section 231 as if a public statement under this section were a disclosure under section 230.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—Investigations conducted by Commonwealth agencies

49 Application

This Division applies if the Commissioner deals with a corruption issue by referring it to a Commonwealth agency for investigation under paragraph 41(1)(c).

50 Commissioner may oversee investigation

(1) The Commissioner may oversee the investigation.

(2) If the Commissioner decides to oversee the investigation, the Commissioner must notify the agency head.

51 Commissioner may give directions

(1) The Commissioner may give the agency directions about the planning and conduct of the investigation.

(2) The directions may be given to the agency's nominated contact for the investigation.

(3) The agency head must ensure that the agency follows the Commissioner's directions.

52 Commissioner may require reports

The Commissioner may require the agency head to provide either or both of the following:

(a) progress reports on the investigation from time to time;

(b) a report (the ***completion report***) on the completion of the investigation.

Authorised Version C2026C00231 registered 19/06/2026

53 Commissioner's comments and recommendations

(1) If the Commissioner requires an agency head to provide a completion report, the Commissioner may do either or both of the following:

(a) comment on the report;

(b) provide additional recommendations in relation to the report.

Opportunity to respond must be given before including certain information in completion reports

(2) Before making a comment on, or a recommendation in relation to, a completion report that is critical (either expressly or impliedly) of a Commonwealth agency, a State or Territory government entity or any other person, the Commissioner must give the head of the agency, the head of the entity or the other person concerned:

(a) a statement setting out the comment or recommendation; and

(b) a reasonable opportunity to respond to the comment or recommendation.

(3) The response may be given by:

(a) the head of the Commonwealth agency or of the State or Territory government entity concerned, or a person authorised by the head; or

(b) in relation to any other person concerned—the other person concerned, or, with approval, a person representing the other person.

54 Follow-up action on completion report

(1) If the Commissioner requires an agency head to provide a completion report, the Commissioner may request the head to give the Commissioner, within a specified time, details of any action that the head has taken, or proposes to take, with respect to:

(a) a recommendation included in the report; or

(b) a recommendation made by the Commissioner in relation to the report.

Authorised Version C2026C00231 registered 19/06/2026

(2) The agency head must comply with the request.

(3) If the Commissioner is not satisfied with the response of the agency head to the request, the Commissioner may refer to the person mentioned in subsection (4):
  (a) the recommendation; and
  (b) if the recommendation is made by the Commissioner—the reasons for the recommendation; and
  (c) the response of the head of the agency to the recommendation; and
  (d) the Commissioner's reasons for not being satisfied with that response.

(4) For the purposes of subsection (3), the person is:
  (a) if the Commonwealth agency is a parliamentary office:
    (i) for a parliamentarian who is a senator—the President of the Senate; or
    (ii) for a parliamentarian who is a member of the House of Representatives—the Speaker of the House of Representatives; or
  (b) if the Commonwealth agency is a Department of the Parliament established under the *Parliamentary Service Act 1999*:
    (i) for the Department of the Senate—the President of the Senate; or
    (ii) for the Department of the House of Representatives—the Speaker of the House of Representatives; or
    (iii) otherwise—both the President of the Senate and the Speaker of the House of Representatives; or
  (c) if the Commonwealth agency is established or continued in existence by an Act and paragraph (b) does not apply—the Minister administering that Act; or
  (d) if the Commonwealth agency is a Commonwealth entity and neither paragraph (b) nor (c) applies—the Minister having general responsibility for the activities of the entity.

Authorised Version C2026C00231 registered 19/06/2026

(5) If the Commissioner refers material to a person under subsection (3), the Commissioner may also send a copy of that material to:
  (a) the President of the Senate for presentation to the Senate; and
  (b) the Speaker of the House of Representatives for presentation to the House of Representatives.

(6) The Commissioner must exclude the following from the copy of the material sent under subsection (5):
  (a) section 235 certified information;
  (b) information that the Commissioner is satisfied is sensitive information.

(7) Before sending a copy of material under subsection (5), the Commissioner must consult with the head of each Commonwealth agency or State or Territory government entity to which the material relates about whether the material contains sensitive information.

Authorised Version C2026C00231 registered 19/06/2026

Part 7—Investigating corruption issues

Division 1—General

55 Application of Part

This Part applies:

(a) to the Commissioner's investigation of a corruption issue that could, in the Commissioner's opinion, involve corrupt conduct that is serious or systemic; and

(b) whether the investigation is conducted:

(i) by the Commissioner only; or

(ii) jointly by the Commissioner and a Commonwealth agency or a State or Territory government entity.

56 Conduct of corruption investigations generally

The Commissioner may investigate the corruption issue in such manner as the Commissioner thinks fit.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—Requiring information, documents and things

Subdivision A—Directions to agency heads

57 Directions to agency heads

(1) This section applies if the Commissioner has reasonable grounds to suspect that a Commonwealth agency has information, or a document or thing, relevant to a corruption investigation.

(2) The Commissioner may, by writing, direct the head of the Commonwealth agency to give the information, document or thing to a specified staff member of the NACC.

(3) The direction is a ***direction to produce***.

(4) The agency head must comply with the request as soon as practicable.

Subdivision B—Notices to produce

58 Notices to produce

(1) This section applies if the Commissioner has reasonable grounds to suspect that a person has information, or a document or thing, relevant to a corruption investigation.

(2) The Commissioner may, by notice in writing, require the person to give the information, document or thing to a specified staff member of the NACC.

Note: Disclosing the existence of a notice, or any information about it, may be prohibited: see Subdivision A of Division 4 (use and disclosure of certain information and material).

(3) The notice is a ***notice to produce***.

(4) If the notice is a post-charge or a post-confiscation application notice, the Commissioner must also have reasonable grounds to

Authorised Version C2026C00231 registered 19/06/2026

suspect that the information, documents or things are necessary for the purposes of the investigation even though:

(a) the person has been charged or the confiscation proceeding has commenced; or

(b) that charge or proceeding is imminent.

(5) The notice:

(a) must:

(i) be served on the person; and

(ii) be signed by the Commissioner; and

(iii) specify the period within which, and the manner in which, the person must comply with the notice; and

(b) may require information be given in writing.

(6) The matters in relation to which the Commissioner may require the person to give the information, document or thing include:

(a) the subject matter of any charge, or imminent charge, against the person; and

(b) the subject matter of any confiscation proceeding, or imminent confiscation proceeding, against the person.

(7) The Commissioner may serve the notice without holding a hearing.

59 Period for complying

(1) The period specified for complying with a notice to produce must end at least 14 days after the notice is served, unless the Commissioner considers that allowing a 14-day period would significantly prejudice a corruption investigation.

(2) If a shorter period is specified, the Commissioner must record, in writing:

(a) the name of the investigation; and

(b) why a 14-day period would significantly prejudice the investigation.

Authorised Version C2026C00231 registered 19/06/2026

Extending the period

(3) The person on whom the notice is served may apply to the Commissioner, in writing, to extend the period for complying with the notice.

(4) The application must be made before the period specified in the notice expires, or as soon as possible after that.

(5) The Commissioner may extend the period whether or not an application has been made.

Record of compliance

(6) If the person gives the information, document or thing, as required by the notice, the Commissioner must:
  (a) keep a written record of that fact; and
  (b) give a copy of the record to the person on request.

60 Offence—failure to comply with notice to produce

(1) A person commits an offence if:
  (a) the person is served with a notice to produce; and
  (b) the person fails to comply with the notice:
    (i) unless subparagraph (ii) applies—within the period specified in the notice; or
    (ii) if the Commissioner extends the period—within that period as extended.

Note: For protection for journalists' informants, see section 31, for international relations certificates, see section 236, and for other privileges and protections, see Division 6 of this Part.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if it is not reasonably practicable for the person to comply with the notice within the required period.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2026C00231 registered 19/06/2026

61 Offence—producing false or misleading information or documents

(1) A person commits an offence if:

(a) the person is served with a notice to produce; and

(b) the person gives information or a document as required by the notice; and

(c) the person does so knowing that the information or document:

(i) is false or misleading; or

(ii) omits any matter or thing without which the information or document is misleading.

Penalty: Imprisonment for 5 years.

(2) Subsection (1) does not apply if the information or document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2026C00231 registered 19/06/2026

Division 3—Hearings

Subdivision A—Commissioner may hold hearings

62 Commissioner may hold hearings

(1) The Commissioner may hold a hearing for the purposes of a corruption investigation.

(2) Subject to this Division, a hearing may be conducted in such manner as the Commissioner thinks fit.

Information relating to intelligence agencies

(3) If the Commissioner considers that a person appearing at a hearing may disclose intelligence information relating to an intelligence agency, the Commissioner must conduct the hearing in a manner consistent with any arrangement in force between the Commissioner and the head of the agency.

63 Commissioner may summon persons

(1) If the Commissioner has reasonable grounds to suspect that a person has evidence relevant to a corruption investigation, the Commissioner may summon the person:

(a) to attend a hearing at a time and place specified in the summons to give evidence; and

(b) to attend from day to day unless excused, or released from further attendance, by the Commissioner.

Note: Disclosing the existence of a private hearing summons, or any information about it, may be prohibited: see Subdivision A of Division 4 (use and disclosure of certain information and material).

(2) If the Commissioner has reasonable grounds to suspect that a person has particular information, or a particular document or thing, relevant to the corruption investigation, the summons may also require the person to:

Authorised Version C2026C00231 registered 19/06/2026

(a) give the Commissioner the information at the hearing; or
(b) produce the document or thing at the hearing.

(3) If the summons is a post-charge or a post-confiscation application summons, the Commissioner must also have reasonable grounds to suspect that the evidence, information, document or thing is necessary for the purposes of the investigation even though:
(a) the person has been charged or the confiscation proceeding has commenced; or
(b) that charge or proceeding is imminent.

(4) The summons must:
(a) be in writing and signed by the Commissioner; and
(b) be served on the person required to attend the hearing.

(5) The Commissioner must record in writing the reasons for the summons. The record must be made at or before the time the summons is issued.

(6) The matters in relation to which the Commissioner may summon a person to give evidence or information, or produce a document or thing, at a hearing include:
(a) the subject matter of any charge, or imminent charge, against the person; and
(b) the subject matter of any confiscation proceeding, or imminent confiscation proceeding, against the person.

(7) The Commissioner may vary the time or place specified in a summons. This subsection does not limit subsection 33(3) of the *Acts Interpretation Act 1901*.

(8) The Commissioner must give to the Inspector, within 3 business days after the summons is issued:
(a) a copy of the summons; and
(b) a copy of the record made under subsection (5).

(9) A summons is not invalid merely because the Commissioner does not comply with subsection (8).

Authorised Version C2026C00231 registered 19/06/2026

64 Summons must set out matters for questioning

(1) A summons requiring a person to give evidence must set out, so far as is reasonably practicable, the general nature of the matters in relation to which the Commissioner intends to question the person.

(2) However, subsection (1):

(a) does not apply if the Commissioner is satisfied that complying with that subsection is likely to prejudice:

(i) the corruption investigation to which the hearing relates or any other NACC Act process; or

(ii) any action taken as a result of a NACC Act process; and

(b) does not prevent the Commissioner from questioning the person in relation to any aspect of any corruption investigation.

65 Commissioner may require information, documents and things

(1) The Commissioner may require a witness at a hearing to give information, or produce a document or thing, to the Commissioner.

(2) Subsection (1) applies whether or not the information, document or thing was specified in the summons for the person to attend the hearing.

66 Legal representation

(1) A person giving evidence at a hearing may be represented by a legal practitioner.

(2) A person who is not giving evidence may be represented at a hearing by a legal practitioner if:

(a) special circumstances exist; and

(b) the Commissioner consents to the person being so represented.

(3) To avoid doubt, this section has effect subject to section 75 (presence of others at private hearings).

Authorised Version C2026C00231 registered 19/06/2026

67 Record of hearings

(1) The Commissioner must cause a record of a hearing to be made.

(2) The record must include, in relation to each witness who gives evidence at a public hearing, any statements made by the Commissioner under subsection 73(5) in relation to the witness.

(3) Unless the Commissioner directs otherwise, the record must include the following:
  (a) any document produced to the Commissioner at the hearing;
  (b) a description of any thing (other than a document) produced to the Commissioner at the hearing.

68 Offence—failure to attend hearing

A person commits an offence if:
  (a) the person is served with a summons to attend a hearing; and
  (b) the person:
    (i) fails to attend as required by the summons; or
    (ii) fails to appear and report from day to day; and
  (c) the person has not been excused or released from further attendance by the Commissioner.

Penalty: Imprisonment for 2 years.

69 Offence—failure to give information, or produce documents or things

(1) A person commits an offence if:
  (a) the person is required to give information, or produce a document or thing, at a hearing; and
  (b) the person fails to give the information, or produce the document or thing.

Note: For protection for journalists' informants, see section 31, for international relations certificates, see section 236, and for other privileges and protections, see Division 6 of this Part.

Authorised Version C2026C00231 registered 19/06/2026

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if it is not reasonably practicable for the person to give the information, or produce the document or thing.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

70 Offence—destroying documents or things

A person commits an offence if:

(a) the person acts or omits to act; and

(b) the act or omission results in a document or thing being:

(i) concealed, mutilated or destroyed; or

(ii) rendered incapable of identification; or

(iii) in the case of a document, rendered illegible or indecipherable; and

(c) the document or thing is, or is likely to be, required by the Commissioner under a notice to produce or at a hearing.

Penalty: Imprisonment for 5 years.

71 Offence—giving false or misleading evidence, information or documents

(1) A person commits an offence if:

(a) the person gives evidence or information, or produces a document, at a hearing; and

(b) the person does so knowing that the evidence, information or document:

(i) is false or misleading; or

(ii) omits any matter or thing without which the evidence, information or document is misleading.

Penalty: Imprisonment for 5 years.

(2) Subsection (1) does not apply if the evidence, information or document is not false or misleading in a material particular.

Authorised Version C2026C00231 registered 19/06/2026

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

72 Offences—obstructing or hindering hearings, threatening persons present

(1) A person commits an offence if:
  (a) the person engages in conduct; and
  (b) the conduct obstructs or hinders a staff member of the NACC in the performance or exercise of the staff member's functions, powers or duties in connection with a hearing.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if the person disrupts a hearing.

Penalty: Imprisonment for 2 years.

(3) A person commits an offence if the person threatens any person present at a hearing.

Penalty: Imprisonment for 5 years.

Subdivision B—Private and public hearings

73 Private and public hearings

Hearings to be held generally in private

(1) A hearing must be held in private, unless the Commissioner decides to hold the hearing, or part of the hearing, in public.

When hearing may be held in public

(2) The Commissioner may decide to hold a hearing, or part of a hearing, in public if the Commissioner is satisfied that:
  (a) exceptional circumstances justify holding the hearing, or the part of the hearing, in public; and
  (b) it is in the public interest to do so.

Authorised Version C2026C00231 registered 19/06/2026

(3) In deciding whether to hold a hearing, or part of a hearing, in public, the Commissioner may have regard to the following:
  (a) the extent to which the corruption issue could involve corrupt conduct that is serious or systemic;
  (b) whether certain evidence is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence;
  (c) any unfair prejudice to a person's reputation, privacy, safety or wellbeing that would be likely to be caused if the hearing, or the part of the hearing, were to be held in public;
  (d) whether a person giving evidence has a particular vulnerability, including that they are under the direct instruction or control of another person in a relative position of power;
  (e) the benefits of exposing corrupt conduct to the public, and making the public aware of corrupt conduct.

(4) Subsection (3) does not limit the matters to which the Commissioner may have regard.

Public hearings—Commissioner's statements about witnesses

(5) Before a witness gives evidence in public at a hearing, the Commissioner may, if the Commissioner thinks it appropriate, make a statement about one or more of the following:
  (a) whether the witness appears voluntarily or in response to a summons to attend the hearing;
  (b) whether or not conduct of the witness is the subject of the corruption investigation.

74 Evidence that must be given in private

Evidence must be given in private if giving the evidence would:
  (a) breach a secrecy provision; or
  (b) disclose any of the following:
    (i) legal advice that is protected against disclosure by legal professional privilege;

Authorised Version C2026C00231 registered 19/06/2026

(ii) a communication that is protected against disclosure by legal professional privilege;
(iii) information that the Commissioner is satisfied is sensitive information;
(iv) section 235 certified information;
(v) intelligence information.

75 Presence of others at private hearings

Legal practitioner representing witness

(1) A legal practitioner representing a person is entitled to be present when the person is giving evidence at a hearing in private.

Presence of others

(2) The Commissioner may determine that other persons may be present.

Witness to be informed if others are present

(3) If the Commissioner determines that a person (other than a staff member of the NACC) is to be present while a witness is giving evidence at the hearing, the Commissioner must:
(a) inform the witness that the person is to be present; and
(b) give the witness an opportunity to comment on the person's presence.

(4) If the Commissioner has determined that another person may be present, the person is entitled to be there even if:
(a) the Commissioner fails to inform the witness of the person's presence; or
(b) the witness comments adversely on the person's presence.

Offence—person present without authority

(5) A person commits an offence if:

Authorised Version C2026C00231 registered 19/06/2026

(a) the person attends a hearing while evidence is being given in private at the hearing; and
(b) the person is not:
(i) the person giving evidence; or
(ii) the legal practitioner representing the person giving evidence; or
(iii) a staff member of the NACC; or
(iv) a person the Commissioner has determined may be present while the person is giving evidence.

Penalty: Imprisonment for 2 years.

76 Request to give evidence in private

(1) A witness may:
(a) request to give particular evidence in private; and
(b) make submissions to the Commissioner as to why the evidence should be given in private.

(2) A request under this section to give evidence in private does not limit the Commissioner's powers under section 73 (private and public hearings).

77 Investigation material from private hearings

If all or part of a hearing is held in private, the Commissioner must give a direction under section 100 (directions about use or disclosure of investigation material) if the Commissioner is satisfied that the failure to give such a direction:
(a) might prejudice a person's safety; or
(b) would reasonably be expected to prejudice a witness' fair trial, if the witness has been charged with a relevant offence or such a charge is imminent; or
(c) might lead to the publication of section 235 certified information; or
(d) might lead to the publication of sensitive information.

Authorised Version C2026C00231 registered 19/06/2026

Subdivision C—Evidence and procedure

78 Evidence on oath or by affirmation

(1) At a hearing, the Commissioner may:

(a) require a witness to either take an oath or make an affirmation; and

(b) administer an oath or affirmation to the witness.

Note 1: The hearing is a ***judicial proceeding*** for the purposes of Part III of the *Crimes Act 1914*, which creates various offences in relation to such proceedings.

Note 2: Failure to take an oath or make an affirmation is an offence: see section 81.

(2) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.

(3) The Commissioner may allow a person attending a hearing who has taken an oath, or made an affirmation, to give evidence by tendering a written statement and verifying it by oath or affirmation.

79 Commissioner may take evidence outside Australia

(1) If arrangements have been made between Australia and another country in relation to the taking of evidence in that country by the Commissioner for a hearing under this Division, the evidence may be given in that country:

(a) on oath or affirmation; or

(b) under an obligation to tell the truth imposed, whether expressly or by implication, by or under a law of the other country; or

(c) under such caution or admonition as would be accepted, by courts in the other country, for the purposes of giving testimony in proceedings before those courts.

Authorised Version C2026C00231 registered 19/06/2026

(2) The oath, affirmation, obligation, caution or admonition must be administered in accordance with those arrangements and the laws of that other country.

(3) The Commissioner may use any evidence so taken for the purpose of performing any function, or exercising any power, under this Act.

80 Examination and cross-examination of witnesses

At a hearing, the following persons may, so far as the Commissioner thinks appropriate, examine or cross-examine any witness on any matter that the Commissioner considers relevant:

(a) counsel assisting the Commissioner;

(b) a person summoned, or otherwise authorised, to appear before the Commissioner at the hearing;

(c) any legal practitioner representing a person at the hearing.

81 Offence—failure to take an oath, make an affirmation or answer a question

A person commits an offence if:

(a) the person is served with a summons to attend a hearing; and

(b) the person:

(i) fails to take an oath or make an affirmation at the hearing when required to do so (see section 78); or

(ii) fails to answer a question at the hearing that the Commissioner requires the person to answer.

Note: For protection for journalists' informants, see section 31, for international relations certificates, see section 236, and for other privileges and protections, see Division 6 of this Part.

Penalty: Imprisonment for 2 years.

Authorised Version C2026C00231 registered 19/06/2026

Subdivision D—Contempt of the NACC

82 Contempt of the NACC

A person is in contempt of the NACC if the person:

(a) when served with a summons to attend a hearing:
  (i) fails to attend as required by the summons; or
  (ii) fails to appear and report from day to day unless excused or released from further attendance by the Commissioner; or
  (iii) refuses or fails to take an oath or make an affirmation at the hearing; or
  (iv) refuses or fails to answer a question at the hearing that the Commissioner requires the person to answer; or
  (v) refuses or fails to give information, or produce a document or thing, as required at a hearing; or

(b) is a legal practitioner who refuses, at a hearing, to give the Commissioner the name and address of a person in accordance with section 115 (material sought from legal practitioners); or

(c) gives evidence or information, or produces a document, at a hearing that the person knows is false or misleading in a material particular; or

(d) insults, disturbs or uses insulting language towards a NACC Commissioner who is holding a hearing in the performance or exercise of the NACC Commissioner's functions or powers when the person knows that the NACC Commissioner:
  (i) holds a position as a NACC Commissioner; and
  (ii) is conducting such a hearing; or

(f) obstructs or hinders a staff member of the NACC in the performance or exercise of the staff member's functions, powers or duties in connection with a hearing; or

(g) disrupts a hearing; or

(h) threatens a person present at a hearing.

Authorised Version C2026C00231 registered 19/06/2026

Note: For protection for journalists' informants, see section 31, for international relations certificates, see section 236, and for other privileges and protections, see Division 6 of this Part.

83 Application for court to deal with contempt

(1) The Commissioner may apply to either of the following for a person to be dealt with for contempt of the NACC:
  (a) the Federal Court;
  (b) the Supreme Court of the State or Territory in which the contempt occurs.

(2) Before making the application, the Commissioner must inform the person that the Commissioner proposes to make the application.

(3) The application must be accompanied by a certificate that states:
  (a) the grounds for making the application; and
  (b) evidence in support of the application.

(4) A copy of the certificate must be given to the person before, or at the same time as, the application is made.

84 Conduct of contempt proceedings

(1) If the Commissioner makes an application to a court to deal with a person for contempt of the NACC, proceedings are to be instituted, carried on, heard and determined in accordance with the laws (including any rules of court) that apply in relation to the punishment of a contempt of the court.

(2) In those proceedings, the certificate that sets out the grounds for making the application and evidence in support of the application is prima facie evidence of the matters specified in the certificate.

(3) The court must:
  (a) consider the matters specified in the certificate; and
  (b) hear or receive any evidence or statements by or in support of the application; and

Authorised Version C2026C00231 registered 19/06/2026

(c) hear or receive any evidence or statements by or in support of the person.

(4) If the court finds that the person was in contempt of the NACC, the court may deal with the person as if the acts or omissions involved constituted a contempt of the court.

(5) For the purposes of determining whether a person is in contempt of the NACC, Chapter 2 of the *Criminal Code* applies as if:

(a) being in contempt of the NACC were an offence; and

(b) references to a person being criminally responsible for an offence were references to a person being responsible for being in contempt of the NACC.

85 Person in contempt may be detained

(1) If, during a hearing, the Commissioner proposes to make an application for a person to be dealt with for contempt of the NACC, the Commissioner may direct a constable or an authorised officer to detain the person for the purpose of bringing the person before the court for the hearing of the application.

(2) If the person is so detained:

(a) the Commissioner must, as soon as practicable, apply for the person to be dealt with by the court; and

(b) the person must, subject to subsection (3), be brought before the court as soon as practicable.

(3) The court may:

(a) direct that the person be released from detention on condition that the person will appear before the court in relation to the application; or

(b) order that the person continue to be detained until the application is determined.

(4) The court may also impose any other condition on release, including the following:

(a) that the person surrenders the following documents:

Authorised Version C2026C00231 registered 19/06/2026

(i) any Australian travel document that has been issued to the person;

(ii) any passport or other travel document that has been issued to the person by or on behalf of the government of a foreign country;

(b) that the person give an undertaking as to the person's living arrangements;

(c) that the person report as required to a law enforcement agency.

(5) The court may at any time vary or revoke a condition imposed under subsection (4).

86 Commissioner may withdraw contempt application

(1) The Commissioner may, at any time, withdraw an application for a court to deal with a person for contempt of the NACC.

(2) The person must be released immediately if:

(a) the person is in detention in relation to the contempt; and

(b) the Commissioner withdraws the application.

87 Double jeopardy

(1) A person is not liable to be prosecuted for an offence in respect of an act or omission if:

(a) an application is made to the Federal Court or a Supreme Court under subsection 83(1) in respect of the act or omission; and

(b) the person is dealt with by the court under that section in respect of the act or omission.

(2) If a person is prosecuted for an offence in respect of an act or omission referred to in section 82 without an application being made to the Federal Court or a Supreme Court under subsection 83(1) in respect of the act or omission, an application must not be made under subsection 83(1) in respect of the act or omission.

Authorised Version C2026C00231 registered 19/06/2026

Note: For double jeopardy generally, see section 4C of the *Crimes Act 1914*.

Subdivision E—Travel documents and arrest of witnesses

88 Applying for orders to deliver travel documents

(1) The Commissioner may apply to a Judge of the Federal Court for an order that a person deliver a travel document to the Commissioner if:

(a) either of the following apply:

(i) a summons has been issued requiring the person to attend a hearing (whether or not the summons has been served);

(ii) the person has appeared at a hearing to give evidence or to produce documents or things; and

(b) there are reasonable grounds to believe that the person may be able:

(i) to give evidence, or further evidence, that is relevant to the corruption investigation concerned; or

(ii) to produce documents or things, or further documents or things, that are relevant to the investigation concerned; and

(c) there are reasonable grounds to suspect that the person has a travel document and intends to leave Australia.

(2) Each of the following is a ***travel document***:

(a) an Australian travel document that has been issued to the person;

(b) a passport or other travel document that has been issued to the person by or on behalf of the government of a foreign country.

(3) The Commissioner must give the Judge information on oath, or by affirmation, in support of the grounds for the application.

Authorised Version C2026C00231 registered 19/06/2026

89 Orders to deliver travel documents

Court order for witness to appear before the Court

(1) If a Judge of the Federal Court, sitting in Chambers, is satisfied, on the evidence, that the requirements of paragraphs 88(1)(a), (b) and (c) are met, the Judge may make an order:

(a) requiring the person to appear before the Federal Court on a date, and at a time and place, specified in the order; and

(b) requesting the person to show cause why the person should not be ordered to deliver the travel document to the Commissioner.

Court order that witness deliver travel document to Commissioner

(2) If a person appears before the Federal Court as required by an order made under subsection (1), the Court may, if it thinks fit, make an order:

(a) requiring the person to deliver to the Commissioner a travel document that is in the person's possession, custody or control; and

(b) authorising the Commissioner to retain the travel document until the end of the period (not exceeding 1 month) that is specified in the order.

Extension of period that Commissioner may retain travel document

(3) The Federal Court may, upon application by the Commissioner, extend for a further period (of not more than 1 month in each case), the period for which the Commissioner is authorised to retain a travel document. However, the total period for which the Commissioner is authorised to retain the travel document must not exceed 3 months.

Revocation of court order

(4) If the Federal Court makes an order authorising the Commissioner to retain a travel document issued to a person, the person may apply to the Federal Court for the order to be revoked.

Authorised Version C2026C00231 registered 19/06/2026

(5) If the Federal Court revokes the order, the Commissioner must return the travel document to the person immediately.

Jurisdiction of the Federal Court

(6) The Federal Court has jurisdiction with respect to matters arising under this section.

90 Application for warrant to arrest witness

(1) An authorised officer may apply to a superior court judge for a warrant to arrest a person if:

(a) both of the following apply:

(i) the person has been ordered to deliver a travel document to the Commissioner (whether or not the person has complied with the order);

(ii) the authorised officer has reasonable grounds to believe that the person is likely to leave Australia for the purpose of avoiding giving evidence at a hearing; or

(b) the person is to be served with a summons under section 63 and the authorised officer has reasonable grounds to believe that the person:

(i) has absconded or is likely to abscond; or

(ii) is otherwise attempting, or likely to attempt, to evade service of the summons; or

(c) the authorised officer has reasonable grounds to believe that the person has committed an offence under section 68 (failure to attend hearing), or is likely to do so.

(2) An authorised officer must give the judge information on oath, or by affirmation, in support of the grounds for the application.

(3) A ***superior court judge*** is:

(a) a Judge of the Federal Court; or

(b) a Judge of the Supreme Court of a State or Territory.

Authorised Version C2026C00231 registered 19/06/2026

91 Warrant for arrest

(1) If a superior court judge, sitting in Chambers, is satisfied, on the evidence, that there are reasonable grounds for believing that paragraph 90(1)(a), (b) or (c) is met, the judge may issue a warrant authorising the arrest of the person.

(2) For the purposes of executing the warrant, an authorised officer who is not a constable has the same powers and duties as a constable has in arresting a person for an offence under Divisions 4 and 5 of Part IAA of the *Crimes Act 1914*.

(3) To avoid doubt, the authorised officer executing the warrant need not be the authorised officer who applied for the warrant.

(4) The Commissioner must give to the Inspector, within 3 business days after the warrant is issued:
  (a) a copy of the warrant; and
  (b) a copy of the application for the warrant; and
  (c) if the information given under subsection 90(2) is given in writing—a copy of the document recording that information.

(5) A warrant is not invalid merely because the Commissioner does not comply with subsection (4).

92 Powers of judge in relation to person arrested

(1) A person arrested under a warrant issued under section 91 must be brought, as soon as practicable, before a superior court judge.

(2) The judge may:
  (a) grant the person bail:
    (i) on such security as the judge thinks fit; and
    (ii) on such conditions as the judge thinks are necessary to ensure that the person appears as a witness at a hearing before the Commissioner; or
  (b) order that the person continue to be detained for the purpose of ensuring that the person appears as a witness at a hearing before the Commissioner; or

Authorised Version C2026C00231 registered 19/06/2026

(c) order that the person be released.

(3) A person who is detained under paragraph (2)(b) must be brought before a superior court judge:

(a) within 14 days after the person was brought, or last brought, before such a judge; or

(b) within such shorter or longer time as a superior court judge fixed on the person's last previous appearance before such a judge;

and the judge may exercise any of the powers under subsection (2).

Subdivision F—Miscellaneous

93 Allowances for travelling and other expenses

A witness appearing at a hearing is entitled to be paid by the Commonwealth any allowances for travelling and other expenses that are prescribed by the regulations.

94 Protection of Commissioner and legal practitioners assisting

(1) The Commissioner has, in exercising the power to hold a hearing, the same protection and immunity as a Justice of the High Court.

(2) A legal practitioner assisting the Commissioner, or representing a person, at a hearing has the same protection and immunity as a barrister appearing for a party in proceedings in the High Court.

(3) To avoid doubt, this section does not limit the powers of the Inspector, or the powers of the Ombudsman under the *Ombudsman Act 1976*, to investigate issues of administrative practice in relation to a hearing that has been held under this Act.

Authorised Version C2026C00231 registered 19/06/2026

Division 4—Use and disclosure of certain information and material

Subdivision A—Non-disclosure notations

95 Non-disclosure notations

(1) A ***non-disclosure notation*** is a requirement included in a notice to produce or a private hearing summons that prohibits disclosure of information about the notice or summons, or any official matter connected with the notice or summons.

(2) The notation may permit disclosure of information in specified circumstances.

Information about rights and obligations

(3) The notation must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 98 (failure to comply with non-disclosure notations).

*Meanings of **private hearing summons** and **official matter***

(4) A ***private hearing summons*** is a summons to attend a hearing all or part of which is to be held in private.

(5) An ***official matter*** is any of the following (whether past, present or contingent):
  (a) a corruption investigation;
  (b) any other NACC Act process;
  (c) court proceedings.

96 When non-disclosure notations must or may be included

(1) The Commissioner must include a non-disclosure notation in a notice to produce or a private hearing summons if the

Authorised Version C2026C00231 registered 19/06/2026

Commissioner is satisfied that not doing so would reasonably be expected to prejudice:

(a) a person's safety or reputation; or

(b) a person's fair trial, if the person has been charged with an offence or such a charge is imminent; or

(c) a NACC Act process; or

(d) any action taken as a result of a NACC Act process.

(2) The Commissioner may include a non-disclosure notation in a notice to produce or a private hearing summons if the Commissioner is satisfied that:

(a) not doing so might prejudice:

(i) a person's safety or reputation; or

(ii) a person's fair trial, if the person has been charged with an offence or such a charge is imminent; or

(iii) a NACC Act process; or

(iv) any action taken as a result of a NACC Act process; or

(b) not doing so might otherwise be contrary to the public interest.

(3) The Commissioner must not include a non-disclosure notation in any other case.

Vulnerable persons and persons with disabilities

(4) If the Commissioner is aware that a non-disclosure notation will apply to a person who has a disability or vulnerability that could affect the person's ability to comply with the notice or summons concerned, the Commissioner must consider including permission in the notation for the disclosure of information to enable the person to obtain assistance in:

(a) complying with the notice or summons; or

(b) otherwise engaging with the processes of the NACC.

Authorised Version C2026C00231 registered 19/06/2026

97 Cancelling non-disclosure notations

(1) The Commissioner may cancel a non-disclosure notation in a notice to produce or a private hearing summons if the reason for the notation no longer exists.

(2) If the Commissioner cancels the notation:
  (a) the Commissioner must advise the person on whom the notice or summons was served in writing; and
  (b) the cancellation takes effect when the person is so advised.

(3) Unless it is cancelled earlier, the Commissioner must consider cancelling the notation as follows:
  (a) 5 years after the notice or summons is served;
  (b) after every following 2 years.

Disclosure under the Privacy Act 1988

(4) A credit reporting body (within the meaning of the *Privacy Act 1988*) must not make a note under subsection 20E(5) of that Act about the disclosure of credit reporting information until any non-disclosure notation prohibiting the disclosure of that information is cancelled.

98 Offence—failure to comply with non-disclosure notations

(1) A person commits an offence if:
  (a) a notice to produce or a private hearing summons includes a non-disclosure notation; and
  (b) the person discloses information about the notice or summons, or any official matter connected with the notice or summons; and
  (c) the notation has not been cancelled.

Penalty: Imprisonment for 5 years.

(2) Strict liability applies to paragraph (1)(c).

(3) Subsection (1) does not apply if the disclosure is made:

Authorised Version C2026C00231 registered 19/06/2026

(a) in the circumstances, if any, permitted by the notation; or

(b) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the notice or summons; or

(c) to a legal aid officer for the purpose of seeking assistance in relation to:

(i) the notice or summons; or

(ii) any other matter arising under, or in relation to, this Act; or

(ca) to a medical practitioner or psychologist for the purpose of obtaining medical or psychiatric care, treatment or counselling (including psychological counselling); or

(d) by a body corporate to an officer or agent of the body corporate, or by an officer or agent of a body corporate to another officer or agent of the body corporate, for the purpose of ensuring compliance with the notice or summons; or

(e) by a legal practitioner for the purpose of:

(i) obtaining the agreement of a person as mentioned in subsection 115(3) to the legal practitioner disclosing advice or a communication; or

(ii) giving legal advice to, or making representations on behalf of, the person on whom the notice or summons was served; or

(f) after the information has already been lawfully published.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

(4) A reference in this section to disclosing information (the ***primary information***) includes a reference to disclosing other information from which a person could reasonably be expected to infer the primary information.

Meaning of ***legal aid officer***

(5) A ***legal aid officer*** is:

Authorised Version C2026C00231 registered 19/06/2026

(a) a member or member of staff of an authority established by or under a law of a State or Territory for purposes that include providing legal assistance; or
(b) a person in a class of persons prescribed by the regulations.

Subdivision B—Use and disclosure of investigation material

99 Meaning of investigation material

(1) ***Investigation material*** is any of the following:
(a) particular information given, or a document or thing produced, by a person as required by a notice to produce;
(b) particular information or evidence given by a person at a hearing;
(c) a document or thing produced by a person at a hearing;
(d) particular information, or a document or thing, given to a person during a hearing;
(e) the identity, or particular information that may reveal the identity, of a person who has given evidence at a hearing;
(f) the identity, or particular information that may reveal the identity, of a person about whom allegations have been made at a hearing;
(g) the fact that a particular person has given or may be about to give evidence at a hearing;
(h) the identity, or particular information that may reveal the identity, of a person of interest to a corruption investigation, if the identity or information was revealed at a hearing;
(i) the fact that a hearing has been, or may be, held in private.

(2) ***Investigation material*** includes copies, contents or descriptions of that material.

(3) To avoid doubt, information, a document or a thing is not ***investigation material*** to the extent that it is obtained otherwise than:
(a) as required by a notice to produce; or
(b) at a hearing.

Authorised Version C2026C00231 registered 19/06/2026

(4) The ***witness***, in relation to investigation material covered by paragraph (1)(a), (b), (c), (d), (e), (f), (g) or (h), is the person mentioned in that paragraph.

(5) The ***witness***, in relation to derivative material, means the person who is the witness in relation to the investigation material from which the derivative material was obtained.

100 Directions about use or disclosure of investigation material

(1) The Commissioner may direct that investigation material:
  (a) must not be used or disclosed; or
  (b) may only be used by, or disclosed to, specified persons in specified ways or on specified conditions.

Note: For when the Commissioner must give such a direction, see section 77 (investigation material from private hearings).

(2) The Commissioner may, in writing, vary or revoke the direction.

(3) However, the direction must not be varied or revoked if the Commissioner is satisfied that the variation or revocation:
  (a) might prejudice a person's safety; or
  (b) would reasonably be expected to prejudice the witness' fair trial, if the witness has been charged with a relevant offence or such a charge is imminent; or
  (c) might lead to the publication of section 235 certified information; or
  (d) might lead to the publication of sensitive information.

Vulnerable persons and persons with disabilities

(4) If the Commissioner is aware that the direction will apply to a person who has a disability or vulnerability that could affect the person's ability to comply with the direction, the Commissioner must consider directing that investigation material may be disclosed to enable the person to obtain assistance in:
  (a) complying with the direction; or
  (b) otherwise engaging with the processes of the NACC.

Authorised Version C2026C00231 registered 19/06/2026

101 Offence—use or disclosure of investigation material

(1) A person commits an offence if:

(a) the person uses or discloses investigation material (whether or not the person is the first to do so); and

(b) the use or disclosure contravenes a direction under section 100; and

(c) the use or disclosure is not authorised by or under this Act.

Penalty: Imprisonment for 2 years.

(2) Strict liability applies to paragraph (1)(c).

(2A) Subsection (1) does not apply in relation to the disclosure of investigation material by the witness:

(a) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the corruption investigation to which the investigation material relates; or

(b) to a legal aid officer for the purpose of seeking assistance in relation to the investigation; or

(c) to a medical practitioner or psychologist for the purpose of obtaining medical or psychiatric care, treatment or counselling (including psychological counselling).

Note: A defendant bears an evidential burden in relation to the matters in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

(2B) Subsection (1) does not apply to the use or disclosure of investigation material by a legal practitioner for the purpose of:

(a) obtaining the agreement of a person as mentioned in subsection 115(3) to the legal practitioner disclosing advice or a communication; or

(b) giving legal advice to, or making representations on behalf of, the witness.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2B): see subsection 13.3(3) of the *Criminal Code*.

(3) Subsection (1) has effect despite section 32AC of the *Inspector-General of Intelligence and Security Act 1986*.

Authorised Version C2026C00231 registered 19/06/2026

102 Disclosure to IGIS officials and Ombudsman officials

(1) A direction given by the Commissioner under section 100 does not prevent:

(a) a person from disclosing investigation material to an IGIS official; or

(b) an IGIS official using investigation material, for the purpose of the IGIS official performing a function, or exercising a power, as an IGIS official; or

(c) a person from disclosing investigation material to a staff member of the Office of the Commonwealth Ombudsman; or

(d) a staff member of the Office of the Commonwealth Ombudsman using investigation material for the purposes of that office.

(2) However, the Commissioner may direct that use or disclosure of investigation material is not authorised by this section if the Commissioner is satisfied that using or disclosing the material would be reasonably likely to prejudice the performance or exercise of functions or powers of the Commissioner.

(3) The Commissioner must consult the IGIS or the Ombudsman, as the case requires, as soon as practicable after giving the direction.

(4) A direction given under subsection (2):

(a) has effect accordingly; and

(b) to avoid doubt, may be included in a direction under section 100 (directions about use or disclosure of investigation material).

103 Making investigation material available to courts

(1) This section applies if:

(a) a person has been charged with an offence before a federal court or a court of a State or Territory; and

(b) the court considers it desirable, in the interests of justice, that the investigation material be made available to the person or to a legal practitioner representing the person.

Authorised Version C2026C00231 registered 19/06/2026

(2) The court may give the Commissioner a certificate to that effect.

(3) If the court does so, the Commissioner must make the investigation material available to the court.

(4) If, after examining the investigation material, the court is satisfied that the interests of justice so require, the court may make the material available to any of the following:
  (a) the person or a legal practitioner representing the person;
  (b) if the person is not the witness in relation to the material—the prosecutor of the person.

104 Obtaining derivative material

(1) An entity mentioned in subsection (3), that may lawfully use or disclose investigation material, may lawfully use or disclose the material for the purpose of obtaining derivative material.

(2) Subsection (1):
  (a) has effect subject to:
    (i) any direction given under section 100 (directions about use or disclosure of investigation material), including as affected by subsection 106(1) (court orders); and
    (ii) subsection 105(4) (special rule for certain post-charge disclosure); and
  (b) does not, by implication, limit the use or disclosure of the investigation material for any other purpose.

(3) The entities are as follows:
  (a) a staff member of the NACC;
  (b) a person or body investigating whether the witness committed an offence against a law of the Commonwealth or of a State or Territory;
  (c) a prosecutor of the witness;
  (d) a prosecuting authority;
  (e) a proceeds of crime authority;
  (f) the Inspector;

Authorised Version C2026C00231 registered 19/06/2026

(g) a person assisting the Inspector;
(h) any other person or body lawfully in possession of the investigation material.

105 Disclosing investigation and derivative material to prosecutors of the witness

Investigation material

(1) A person or body, that may lawfully disclose investigation material, may lawfully disclose the material to a prosecutor of the witness.

(2) Subsection (1) has effect subject to section 100 (directions about use or disclosure of investigation material), unless subsection (4) applies.

Derivative material

(3) A person or body, that may lawfully disclose derivative material, may lawfully disclose the material to a prosecutor of the witness.

Special rule for certain post-charge disclosure

(4) However, if the disclosure is one of the following, it may only be disclosed under a court order made under subsection 106(1):
(a) a post-charge disclosure of investigation material;
(b) a post-charge disclosure of derivative material that is obtained from post-charge investigation material.

*Meaning of **prosecutor** and **prosecuting authority***

(5) A ***prosecutor*** of a witness is an individual:
(a) who is a prosecuting authority or is employed or engaged by a prosecuting authority; and
(b) who:

Authorised Version C2026C00231 registered 19/06/2026

(i) makes, or is involved in the making of, a decision whether to prosecute the witness for a relevant offence; or

(ii) is one of the individuals engaging in such a prosecution of the witness.

(6) A ***prosecuting authority*** is an individual, or authority, authorised by or under a law of the Commonwealth or of a State or Territory to prosecute an offence.

106 Court's powers to order disclosure and to ensure a fair trial

Court may order that material may be disclosed

(1) A court may, on application or on its own initiative, order that investigation material or derivative material may be disclosed to prosecutors of the witness if the court is satisfied that the disclosure is required:

(a) in the interests of justice; and

(b) despite any direction given under section 100.

The order may specify the prosecutors (by any means), and the uses to which they may put the material.

(2) Subsection (1) applies to the following courts:

(a) if the witness has been charged with a relevant offence before a federal court or a court of a State or Territory—that court;

(b) otherwise—a federal court (other than the Federal Circuit and Family Court of Australia (Division 1)) or a court of a State or Territory.

Court's powers to ensure the witness' fair trial

(3) This Subdivision does not, by implication, restrict a court's power to make any orders necessary to ensure that the witness' fair trial is not prejudiced by the possession or use of investigation material or derivative material by a prosecutor of the witness.

(4) However, a person's trial for:

Authorised Version C2026C00231 registered 19/06/2026

(a) an offence against a law of the Commonwealth or of a Territory; or

(b) an offence against a law of a State that has a federal aspect (within the meaning of the *Crimes Act 1914*);

is not unfair merely because the person has been a witness. This applies whether the person became a witness:

(c) before being charged with the offence and before such a charge was imminent; or

(d) after being charged with the offence or after such a charge was imminent.

107 Certain material may always be disclosed to prosecutors of the witness

(1) A person or body, that may lawfully disclose investigation material of a kind covered by paragraph 99(1)(d), (e), (f), (g) or (h), may lawfully disclose the investigation material, or derivative material obtained from the investigation material, to a prosecutor of the witness.

(2) A person or body, that may lawfully disclose investigation material or derivative material, may lawfully disclose the material to a prosecutor of the witness if the witness is suspected of, or has been charged with:

(a) an offence against this Part, other than an offence against subsection 75(5) (person present at a private hearing without authority); or

(b) an offence against any of the following that relates to a notice to produce or a hearing:

(i) section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents);

(ii) section 144.1 or 145.1 of the *Criminal Code* (about forgery); or

(c) an offence against section 149.1 of the *Criminal Code* (about obstruction of Commonwealth public officials) that relates to this Act.

Authorised Version C2026C00231 registered 19/06/2026

(3) Subsections (1) and (2) have effect subject to any direction given under section 100, including as affected by subsection 106(1).

108 Use of material by prosecutors

(1) If a prosecutor of the witness lawfully possesses investigation material or derivative material, the prosecutor may use that material for purposes that include:

(a) making a decision whether to prosecute the witness; and

(b) prosecuting the witness.

This use of the investigation material is subject to:

(c) section 113 (self-incrimination); and

(d) any direction given under section 100 (directions about use or disclosure of investigation material).

(2) If material is lawfully in the possession of a prosecutor of the witness, the fact that the material is investigation material or derivative material does not prevent it from being admissible in evidence against the witness in a criminal proceeding.

Note: The material may be inadmissible for other reasons (for example, because of subsection 113(2)).

(3) This Subdivision does not, by implication, restrict the use of investigation material or derivative material by, or the disclosure of that material to:

(a) a prosecuting authority who is not a prosecutor of the witness; or

(b) an individual employed or engaged by such a prosecuting authority.

(4) This section has effect subject to any law of the Commonwealth, a State or a Territory.

109 Making material available to proceeds of crime authorities

(1) A person or body, that may lawfully disclose investigation material or derivative material, may lawfully disclose the material to a proceeds of crime authority.

Authorised Version C2026C00231 registered 19/06/2026

(2) Subsection (1) has effect subject to any direction given under section 100 (directions about use or disclosure of investigation material).

(3) If material is lawfully in the possession of a proceeds of crime authority, the fact that the material is investigation material or derivative material does not prevent it from being admissible in evidence against the witness in a confiscation proceeding.

Note: The material may be inadmissible for other reasons (for example, because of subsection 113(2)).

(4) Subsections (3) and 113(3) (self-incrimination) do not, by implication, restrict a court's power to make any orders necessary to prevent prejudice to the proper administration of justice.

Authorised Version C2026C00231 registered 19/06/2026

Division 5—Retention and return of documents and things

110 Commissioner may retain documents and things

(1) This section applies if a document or thing is produced to the Commissioner under this Act.

(2) The Commissioner:

(a) may make copies of the document or thing, or take extracts from the document; and

(b) may retain possession of the document or thing for such period as is necessary for the purposes of:

(i) a corruption investigation or any other NACC Act process; or

(ii) any action taken as a result of a NACC Act process.

(3) While the Commissioner retains the document or thing, the Commissioner must allow a person who would otherwise be entitled to inspect the document or view the thing:

(a) to do so at all reasonable times; and

(b) to copy the document or thing.

(4) Subsection (3) does not apply if:

(a) possession of the document or thing by the person could constitute an offence; or

(b) inspecting or copying the document or thing (as the case requires) would compromise or damage the document or thing; or

(c) the Commissioner is satisfied that allowing the person to inspect the document or view the thing would prejudice:

(i) a corruption investigation or any other NACC Act process; or

(ii) any action taken as a result of a NACC Act process.

Authorised Version C2026C00231 registered 19/06/2026

111 When documents and things must be returned

(1) This section applies if the Commissioner is satisfied that a document or thing produced under this Act is not required (or is no longer required) for the purposes of:

(a) a corruption investigation or any other NACC Act process; or

(b) any action taken as a result of a NACC Act process.

(2) The Commissioner must take reasonable steps to return the document or thing to the person from whom it was received, or to the owner if that person is not entitled to possess it.

(3) However, the Commissioner does not have to take those steps if:

(a) possession of the document or thing by a person could constitute an offence; or

(b) the document or thing may otherwise be retained, destroyed or disposed of under a law, or an order of a court or tribunal, of the Commonwealth or of a State or a Territory; or

(c) the document or thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

112 Magistrate may permit documents and things to be retained, forfeited etc.

(1) A magistrate may, on application by the Commissioner, make an order under subsection (2) in relation to a document or thing produced under this Act if the magistrate is satisfied that there are reasonable grounds to suspect that, if the document or thing is returned to any of the following persons, it is likely to be used by that person or another person in the commission of a serious offence:

(a) the owner of the document or thing;

(b) the person who produced the document or thing.

(2) The orders are as follows:

(a) an order that the document or thing may be retained for the period specified in the order;

Authorised Version C2026C00231 registered 19/06/2026

(b) an order that the document or thing is forfeited to the Commonwealth;

(c) for a thing (other than a document)—an order that:

(i) the thing be sold and the proceeds given to the owner of the thing; or

(ii) the thing be sold in some other way;

(d) an order that the document or thing is to be destroyed or otherwise disposed of.

Persons with interests in documents or things

(3) Before making an application under this section in relation to a document or thing, the Commissioner must:

(a) take reasonable steps to discover who has an interest in the document or thing; and

(b) if it is practicable to do so, notify each person who the Commissioner believes to have such an interest of the proposed application.

(4) The magistrate must allow a person who has an interest in the document or thing to appear and be heard in determining the application.

*Meanings of **magistrate** and **serious offence***

(5) A ***magistrate*** is a magistrate who is remunerated by salary or otherwise, and includes a Judge, or acting Judge, of the Local Court of New South Wales or of the Local Court of the Northern Territory.

(6) A ***serious offence*** is:

(a) an offence against a law of the Commonwealth punishable by imprisonment for 2 years or more; or

(b) an offence against either of the following provisions of the *Charter of the United Nations Act 1945*:

(i) Part 4 of that Act;

Authorised Version C2026C00231 registered 19/06/2026

(ii) Part 5 of that Act, to the extent that it relates to the *Charter of the United Nations (Sanctions—ISIL (Da'esh) and Al-Qaida) Regulations 2008*; or

(c) an offence against a law of a State that:

(i) has a federal aspect (within the meaning of the *Crimes Act 1914*); and

(ii) is punishable by imprisonment for 2 years or more.

Authorised Version C2026C00231 registered 19/06/2026

Division 6—Privileges and protections

113 Self-incrimination

(1) A person is not excused from giving an answer or information, or producing a document or thing, as required by a notice to produce or at a hearing on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

(2) However, the answer or information given, or the document or thing produced, is not admissible in evidence against the person in:
  (a) a criminal proceeding; or
  (b) a proceeding for the imposition or recovery of a penalty; or
  (c) a confiscation proceeding.

(3) Subsection (2) does not:
  (a) apply to the production of a document that is, or forms part of, a record of an existing or past business; or
  (b) affect whether the answer, information, document or thing is admissible in evidence against the person in:
    (i) a confiscation proceeding, if the answer or information was given, or the document or thing was produced, at a time when the proceeding had not commenced and was not imminent; or
    (ii) a proceeding for an offence against this Part, other than an offence against subsection 75(5) (person present at a private hearing without authority); or
    (iii) a proceeding for an offence against section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) that relates to a notice to produce or a hearing; or
    (iv) a proceeding for an offence against section 144.1 or 145.1 of the *Criminal Code* (about forgery) that relates to a notice to produce or a hearing; or

Authorised Version C2026C00231 registered 19/06/2026

(v) a proceeding for an offence against section 149.1 of the *Criminal Code* (about obstruction of Commonwealth public officials) that relates to this Act.

Note: For subparagraph (b)(i), the court may order otherwise (see subsection 109(4)).

(4) Paragraph (3)(b) does not, by implication, affect the admissibility or relevance of the information, document or thing for any other purpose.

114 Public interest grounds

(1) A person is not excused from giving an answer or information, or producing a document or thing, as required by a direction to produce, a notice to produce, or at a hearing, on the ground that doing so:

(a) would disclose legal advice given to a person; or

(b) would disclose a communication that is protected against disclosure by legal professional privilege; or

(c) would breach a secrecy provision (other than an exempt secrecy provision); or

(d) would be otherwise contrary to the public interest.

(2) Subsection (1) does not apply in relation to advice or a communication that concerns:

(a) a person's compliance with:

(i) a direction to produce; or

(ii) a notice to produce; or

(b) a person's attendance, or reasonably anticipated attendance, at a hearing.

(3) Paragraph (1)(a) does not apply in relation to legal advice given for the purposes of, or in the course of, a person's work as a journalist in a professional capacity.

(4) Paragraph (1)(b) does not apply in relation to a communication made for the purposes of, or in the course of, a person's work as a journalist in a professional capacity.

Authorised Version C2026C00231 registered 19/06/2026

(5) The fact that a person is not excused under subsection (1) from answering a question or giving information, or producing a document or thing, does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that answer, information, document or thing.

(6) A person does not commit an offence, and is not liable to any penalty, under the provisions of any other enactment because the person:

(a) gives information, or produces a document or thing, as required by:

(i) a direction to produce; or

(ii) a notice to produce; or

(b) gives an answer or information, or produces a document or thing, as required at a hearing.

115 Material sought from legal practitioners

(1) This section applies if a legal practitioner refuses to give an answer or information, or produce a document or thing, on the grounds that doing so would disclose advice or a communication to which section 114 (public interest grounds) does not apply.

Note: See the exceptions set out in subsections 114(2), (3) and (4).

(2) The legal practitioner must, if required by the Commissioner, give the Commissioner the name and address of the person (the ***client***) who is able to waive the legal professional privilege concerned.

(3) If the client agrees to disclosure of the advice or communication by the legal practitioner:

(a) the fact that the legal practitioner discloses the advice or communication does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the advice or communication; and

(b) the advice or communication does not cease to be the subject of legal professional privilege merely because it is disclosed.

Authorised Version C2026C00231 registered 19/06/2026

116 Other protections

(1) A person who gives an answer or information, or produces a document or thing, as required by a direction to produce, a notice to produce, or at a hearing, has the same protection as a witness in proceedings in the High Court.

(2) The Commissioner may make such arrangements as are necessary to do the following:

(a) to prevent prejudice to the safety of a person because the person or another person:

(i) has, or is to, respond to a notice to produce; or

(ii) has been, or is to be, a witness at a hearing;

(b) to protect a person from intimidation or harassment because the person or another person:

(i) has, or is to, respond to a notice to produce; or

(ii) has been, or is to be, a witness at a hearing.

(3) The arrangements include arrangements with:

(a) the Minister; or

(b) the AFP Commissioner; or

(c) the head (however described) of the police force of a State or Territory.

(4) This section does not limit the *Witness Protection Act 1994*.

Authorised Version C2026C00231 registered 19/06/2026

Division 7—Search powers

Subdivision A—Search powers

117 Entering certain places without a search warrant

General rule—places occupied by Commonwealth agencies

(1) For the purposes of a corruption investigation, the Commissioner (or another authorised officer) may:

(a) enter any place occupied by a Commonwealth agency, at any reasonable time of the day; and

(b) carry on the investigation at that place; and

(c) inspect any documents relevant to the investigation that are kept at that place; and

(d) make copies of, or take extracts from, any documents so inspected; and

(e) for the purpose of making a copy of, or taking an extract from, a document, remove the document from that place; and

(f) seize a document or thing found at that place if the Commissioner (or other authorised officer) believes on reasonable grounds that:

(i) the document or thing is relevant to an indictable offence; and

(ii) seizure of the document or thing is necessary to prevent its concealment, loss or destruction or its use in committing an indictable offence.

Exception—Court premises and places occupied by parliamentarians or their staff, the ABC and SBS

(2) Subsection (1) does not apply in relation to:

(a) premises occupied by the High Court or a court created by the Parliament; or

(b) any place in the Parliamentary precincts (within the meaning of the *Parliamentary Precincts Act 1988*); or

Authorised Version C2026C00231 registered 19/06/2026

(c) premises made available to a parliamentarian under the *Parliamentary Business Resources Act 2017*; or

(d) any premises occupied by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

Exception—prohibited and restricted Defence areas

(3) Subsection (1) does not apply in relation to a place mentioned in subsection (4), unless:

(a) the Minister administering the *Defence (Special Undertakings) Act 1952* (or another Minister acting for and on behalf of that Minister) has approved the person entering the place or area; and

(b) the person complies with any conditions imposed by the Minister giving the approval in relation to:

(i) the person entering that place or area; and

(ii) the manner in which the investigation is to be carried on at that place or area.

(4) The places are as follows:

(a) a place that is a prohibited area for the purposes of the *Defence (Special Undertakings) Act 1952* under section 7 of that Act;

(b) an area of land or water, or an area of land and water, that is declared under section 14 of that Act to be a restricted area for the purposes of that Act.

Exception—places declared by the Attorney-General

(5) If the Attorney-General is satisfied that carrying on an investigation of a corruption issue at a place might prejudice the security or defence of the Commonwealth, the Attorney-General may, by written notice to the Commissioner, declare the place to be a place to which this subsection applies.

(6) While the declaration is in force, subsection (1) does not authorise a person to do anything at the place unless:

Authorised Version C2026C00231 registered 19/06/2026

(a) a Minister specified in the declaration (or another Minister acting for and on behalf of that Minister) has approved the person entering the place; and

(b) the person complies with any conditions imposed by the Minister giving the approval in relation to:

(i) the person entering that place; and

(ii) the manner in which the investigation is to be carried on at that place.

(7) A declaration by the Attorney-General under this section is not a legislative instrument.

118 Receipts for documents and things seized without warrant

(1) If a document or thing is seized, or removed from a place, under section 117 (entering certain places without a search warrant), the Commissioner (or another authorised officer) must provide a receipt for the thing.

(2) If 2 or more documents or things are seized or moved, they may be covered by the one receipt.

119 Search warrants, and stopping and searching conveyances

(1) For the purposes of a corruption investigation, an authorised officer who is not a constable for the purposes of the *Crimes Act 1914* has the same powers and duties under Divisions 2, 3 and 5 of Part IAA of that Act as a constable has under those Divisions.

(2) The *Crimes Act 1914* has effect for the purposes of this section with the modifications set out in Subdivision B.

120 Use and return of documents and things

Using and sharing documents and things

(1) Subdivision A of Division 4C of Part IAA of the *Crimes Act 1914* applies in relation to the following as if they were things seized under Part IAA of that Act:

Authorised Version C2026C00231 registered 19/06/2026

(a) a document, thing or copy seized or made under section 117 (entering certain places without a search warrant);
(b) a document, thing, copy or photograph seized or made under Part IAA of the *Crimes Act 1914* as applied by section 119 (search warrants, and stopping and searching conveyances).

Return of documents and things

(2) Subdivision B of Division 4C of Part IAA of the *Crimes Act 1914* applies in relation to a thing seized under section 117 (entering certain places without a search warrant) as if the thing had been seized under Division 2 of Part IAA of the *Crimes Act 1914*.

(3) Subdivision B of Division 4C of Part IAA of the *Crimes Act 1914* applies in relation to a thing seized under that Act as applied by section 119 (search warrants, and stopping and searching conveyances).

Modification of the Crimes Act

(4) For the purposes of this section, the *Crimes Act 1914* has effect:
(a) as if a reference to the Commissioner (within the meaning of that Act) were a reference to the National Anti-Corruption Commissioner; and
(b) as if the following paragraph were inserted after paragraph 3ZQU(5)(a) of that Act:
"(aa) a body (whether incorporated or not) that is established by the law of a State or Territory for purposes that include the purpose of investigating corruption in State or Territory government entities; or"

Subdivision B—Modification of Crimes Act search powers

121 Application of Subdivision

This Subdivision applies for the purposes of section 119 (search warrants, and stopping and searching conveyances).

Authorised Version C2026C00231 registered 19/06/2026

122 Subsection 3C(1)—definition of *evidential material*

The *Crimes Act 1914* has effect as if the definition of ***evidential material*** in subsection 3C(1) of that Act were substituted with the following definition:

"evidential material means the following, and includes such things in electronic form:

(a) a thing relevant to the investigation of a corruption issue which could, in the opinion of the Commissioner, involve corrupt conduct that is serious or systemic;

(b) a thing relevant to an indictable offence or a thing relevant to a summary offence."

123 Divisions 2, 3 and 5 of Part IAA—references to constable and Commissioner

(1) Divisions 2, 3 and 5 of Part IAA of the *Crimes Act 1914* (and any related definitions in that Act) have effect as if:

(a) a reference to a constable included a reference to an authorised officer; and

(b) a reference to the Commissioner (within the meaning of that Act) were a reference to the National Anti-Corruption Commissioner.

(2) Despite paragraph (1)(a), subsection 3ZW(1) of the *Crimes Act 1914* has effect as if the reference in that subsection to a constable were a reference to an authorised officer.

124 Subsections 3E(1) and (2)—when search warrants can be issued

The *Crimes Act 1914* has effect as if subsections 3E(1) and (2) of that Act were substituted with the following subsections:

"(1) An issuing officer may issue a warrant to search premises if the officer is satisfied, by information on oath or affirmation, that:

Authorised Version C2026C00231 registered 19/06/2026

(a) there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises; and

(b) if the search would not be for the purposes of investigating an offence—there are reasonable grounds for believing that, if a person was served with a summons to produce the evidential material, the material might be concealed, lost, mutilated or destroyed.

(2) An issuing officer may issue a warrant authorising an ordinary search or a frisk search of a person if the officer is satisfied, by information on oath or affirmation, that:

(a) there are reasonable grounds for suspecting that the person has in their possession, or will within the next 72 hours have in their possession, any evidential material; and

(b) if the search would not be for the purposes of investigating an offence—there are reasonable grounds for believing that, if the person was served with a summons to produce the evidential material, the material might be concealed, lost, mutilated or destroyed.

(2A) Subsection (2B) applies if the warrant is to search:

(a) a person (the ***journalist***) who works in a professional capacity as a journalist; or

(b) the employer of the journalist (working in that capacity); or

(c) premises occupied or controlled by the journalist or the employer (in the capacities covered by paragraphs (a) and (b)).

(2B) In deciding whether to issue the warrant, the issuing officer must have regard to whether the public interest in issuing the warrant outweighs:

(a) the public interest in protecting the confidentiality of the identity of the journalist's source; and

(b) the public interest in facilitating the exchange of information between journalists and members of the public so as to facilitate reporting of matters in the public interest."

Authorised Version C2026C00231 registered 19/06/2026

125 Subsection 3E(4)—previous warrants

The *Crimes Act 1914* has effect as if subsection 3E(4) of that Act were substituted with the following subsection:

"(4) If the person applying for the warrant is one of the following and has, at any time previously, applied for a warrant relating to a corruption issue and the same person or premises, the person must state particulars of those applications and their outcomes in the information:

(a) an authorised officer;

(b) a member of the Australian Federal Police;

(c) a special member of the Australian Federal Police."

126 Provisions of sections 3E, 3F, 3FA, 3L and 3LAA

Offence** to include **corruption issue

(1) The *Crimes Act 1914* has effect as if a reference in the following provisions of that Act to an ***offence*** included a reference to a ***corruption issue***:

(a) paragraph 3E(5)(a);

(b) subparagraphs 3E(6)(a)(i) and (7)(a)(i);

(c) subparagraphs 3F(1)(d)(i) and (2)(c)(i);

(d) subparagraphs 3FA(1)(b)(i) and (2)(b)(i).

Subparagraphs 3E(6)(a)(ii) and (7)(a)(ii)—relevant things

(2) The *Crimes Act 1914* has effect as if subparagraphs 3E(6)(a)(ii) and (7)(a)(ii) of that Act were substituted with the following subparagraph:

"(ii) a thing relevant to an offence that is an indictable offence, or to a corruption issue that the Commissioner is investigating; or"

Authorised Version C2026C00231 registered 19/06/2026

Subparagraph 3F(1)(d)(ii)—evidential material

(3) The *Crimes Act 1914* has effect as if subparagraph 3F(1)(d)(ii) of that Act were substituted with the following subparagraph:

"(ii) evidential material in relation to an offence that is an indictable offence, or to a corruption issue that the Commissioner is investigating; or"

Subparagraph 3F(2)(c)(ii)—relevant things

(4) The *Crimes Act 1914* has effect as if subparagraph 3F(2)(c)(ii) of that Act were substituted with the following subparagraph:

"(ii) a thing relevant to an offence that is an indictable offence, or to a corruption issue that the Commissioner is investigating; or"

Subparagraphs 3FA(1)(b)(ii) and (2)(b)(ii)—evidential material

(4A) The *Crimes Act 1914* has effect as if subparagraphs 3FA(1)(b)(ii) and (2)(b)(ii) of that Act were substituted with the following subparagraph:

"(ii) evidential material in relation to an offence that is an indictable offence, or to a corruption issue that the Commissioner is investigating; or"

Subsection 3FA(8)

(4B) The *Crimes Act 1914* has effect as if the references in subsection 3FA(8) of that Act to the Australian Federal Police included references to the National Anti-Corruption Commission.

Subsections 3L(1B) and 3LAA(3)

(5) The *Crimes Act 1914* has effect as if the references in subsections 3L(1B) and 3LAA(3) of that Act to the Australian Federal Police were references to the National Anti-Corruption Commission.

Authorised Version C2026C00231 registered 19/06/2026

127 Subparagraph 3LA(2)(b)(i)—accessing computer systems

The *Crimes Act 1914* has effect as if subparagraph 3LA(2)(b)(i) of that Act were substituted with the following subparagraphs:

"(i) reasonably suspected of having committed the offence stated in the relevant warrant; or

(ia) reasonably suspected of having engaged in the corrupt conduct which is the subject of the corruption issue stated in the relevant warrant; or"

128 Provisions of section 3T

Relevant things—indictable offences and corruption issues

(1) The *Crimes Act 1914* has effect as if paragraph 3T(1)(a) of that Act were substituted with the following paragraph:

"(a) a thing relevant to an indictable offence, or to a corruption issue that the Commissioner is investigating, is in or on a conveyance; and"

Relevant things—other offences and corruption issues

(2) The *Crimes Act 1914* has effect as if subsection 3T(3) of that Act were substituted with the following subsection:

"(3) If, in the course of searching for the thing, the constable or authorised officer finds another thing relevant to an offence, or to a corruption issue that the Commissioner is investigating, the constable or authorised officer may seize that thing if the constable or authorised officer suspects, on reasonable grounds, that:

(a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and

(b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent."

Authorised Version C2026C00231 registered 19/06/2026

Division 8—Interaction with criminal procedure and confiscation proceedings

Subdivision A—Key concepts

129 Meaning of *pre-charge*

(1) An event covered by subsection (2) is a ***pre-charge*** event in relation to a person if it happens at a time when:

(a) the person has not been charged with a relevant offence and such a charge is not imminent; or

(b) all such charges have been resolved.

(2) The events are as follows:

(a) a notice to produce is issued to the person;

(b) a summons is issued for the person to attend a hearing as a witness;

(c) a hearing commences at which the person is to appear as a witness;

(d) material at a hearing that relates to the person becomes investigation material;

(e) such investigation material or derivative material is used or disclosed.

130 Meaning of *post-charge*

(1) An event covered by subsection (2) is a ***post-charge*** event in relation to a person if it happens at a time when:

(a) the person has been charged with a relevant offence and that charge is still to be resolved; or

(b) such a charge is imminent.

(2) The events are as follows:

(a) a notice to produce is issued to the person;

(b) a summons is issued for the person to attend a hearing as a witness;

Authorised Version C2026C00231 registered 19/06/2026

(c) a hearing commences at which the person is to appear as a witness;
(d) material at a hearing that relates to the person becomes investigation material;
(e) such investigation material or derivative material is used or disclosed.

131 Meaning of *relevant offence*

An offence is a ***relevant offence*** if:
(a) in the case of investigation material, derivative material or a witness—the subject matter of the notice to produce or hearing, as relevant, relates to the subject matter of the offence; or
(b) in the case of a summons—the subject matter of the summons relates to the subject matter of the offence.

132 Meaning of *imminent* and *protected suspect*

*When a charge for an offence is **imminent***

(1) A charge for an offence is ***imminent*** for a person if:
(a) the person is a protected suspect; or
(b) the person is under arrest for the offence, but has not been charged with the offence; or
(c) a person with authority to commence a process for prosecuting the person for the offence has decided to commence, but has not yet commenced, the process.

Note: Paragraph (1)(c) would apply, for example, if a person with authority to lay a charge has decided to lay, but not yet laid, the charge.

*When a confiscation proceeding is **imminent***

(2) A confiscation proceeding against a person is ***imminent*** if a person with authority to commence the proceeding has decided to commence, but has not yet commenced, the proceeding.

Authorised Version C2026C00231 registered 19/06/2026

*Meaning of **protected suspect***

(3) Each of the following is a ***protected suspect***:

(a) a protected suspect (within the meaning of Part IC of the *Crimes Act 1914*);

(b) a person who would be covered by paragraph (a) if the definition of Commonwealth offence in section 23B of that Act included any offence against a law of a State or Territory.

133 Meaning of *derivative material*

Any evidence, information, document or thing obtained directly or indirectly from investigation material is ***derivative material***.

134 Meaning of *pre-confiscation application*

(1) An event covered by subsection (2) is a ***pre-confiscation application*** event in relation to a person if it happens at a time when:

(a) a relevant confiscation proceeding has not commenced against the person and such a proceeding is not imminent; or

(b) all such proceedings have been resolved.

(2) The events are as follows:

(a) a notice to produce is issued to the person;

(b) a summons is issued for the person to attend a hearing as a witness;

(c) a hearing commences at which the person is to appear as a witness;

(d) material at a hearing that relates to the person becomes investigation material;

(e) such investigation material or derivative material is used or disclosed.

Authorised Version C2026C00231 registered 19/06/2026

135 Meaning of *post-confiscation application*

(1) An event covered by subsection (2) is a ***post-confiscation application*** event in relation to a person if it happens at a time when:

(a) a relevant confiscation proceeding has commenced against the person and that proceeding is still to be resolved; or

(b) such a proceeding is imminent.

(2) The events are as follows:

(a) a notice to produce is issued to the person;

(b) a summons is issued for the person to attend a hearing as a witness;

(c) a hearing commences at which the person is to appear as a witness;

(d) material at a hearing that relates to the person becomes investigation material;

(e) such investigation material or derivative material is used or disclosed.

136 Meaning of *confiscation proceeding*

(1) A ***confiscation proceeding*** means a proceeding under:

(a) the *Proceeds of Crime Act 2002* (***the Act***); or

(b) a corresponding law within the meaning of the Act.

(2) A prosecution for an offence under the Act or a corresponding law is not a ***confiscation proceeding***.

(3) A proceeding is taken to be a ***confiscation proceeding*** against a person if:

(a) for a proceeding under the Act—the person is a suspect (within the meaning of the Act) for the proceeding; or

(b) for a proceeding under a corresponding law—the person is in a corresponding category for that law.

Authorised Version C2026C00231 registered 19/06/2026

137 Meaning of *relevant confiscation proceeding*

A confiscation proceeding is a ***relevant confiscation proceeding*** if:

(a) in the case of investigation material, derivative material or a witness—the subject matter of the notice to produce or hearing, as relevant, relates to the subject matter of the proceeding; or

(b) in the case of a summons—the subject matter of the summons relates to the subject matter of the proceeding.

138 Meaning of *proceeds of crime authority*

Each of the following is a ***proceeds of crime authority***:

(a) a proceeds of crime authority within the meaning of the *Proceeds of Crime Act 2002*;

(b) an authority of a State or Territory responsible for conducting a confiscation proceeding under a corresponding law (within the meaning of the *Proceeds of Crime Act 2002*).

139 When a charge or confiscation proceeding is *resolved*

Charge for an offence

(1) A charge for an offence is ***resolved*** in relation to a person at the latest of the following times:

(a) when:

(i) the charge is withdrawn; or

(ii) the charge is dismissed; or

(iii) the person is not committed on the charge following a committal hearing; or

(iv) the person is acquitted of the offence; or

(v) the person is sentenced for the offence; or

(vi) the person is dealt with by being the subject of an order made as a consequence of a finding of guilt; or

(vii) the charge is otherwise finally dealt with;

Authorised Version C2026C00231 registered 19/06/2026

(b) if an appeal relating to a conviction for the offence the subject of the charge is not lodged within the period for lodging such an appeal—when that period ends;

(c) if an appeal relating to a conviction for the offence the subject of the charge is lodged—when the appeal lapses or is finally determined.

(2) Despite paragraph (1)(b), if an appeal relating to a conviction for an offence the subject of the charge is lodged after that period ends, the charge ceases to be ***resolved*** until that appeal lapses or is finally determined.

Confiscation proceedings

(3) A confiscation proceeding is ***resolved*** in relation to a person at the latest of the following times:

(a) when the proceeding is discontinued;

(b) if an appeal relating to the proceeding is not lodged within the period for lodging such an appeal—when that period ends;

(c) if an appeal relating to the proceeding is lodged—when the appeal lapses or is finally determined.

(4) Despite paragraph (3)(b), if an appeal relating to the proceeding is lodged after that period ends, the proceeding ceases to be ***resolved*** until that appeal lapses or is finally determined.

Subdivision B—Commissioner's powers—limited operation provisions

140 Limited operation—Commissioner's power to issue notices to produce

Limitation to pre-charge and pre-confiscation application operation

(1) In addition to its effect apart from this subsection, this Act also has the effect it would have if the Commissioner's power to issue a

Authorised Version C2026C00231 registered 19/06/2026

notice to produce were, by express provision, confined to a power to issue either or both of the following:

(a) a pre-charge notice to produce;

(b) a pre-confiscation application notice to produce.

Limitation of scope of post-charge notice to produce

(2) In addition to its effect apart from this subsection, this Act also has the effect it would have if the information, documents or things required to be given under a post-charge notice to produce excluded, by express provision, information, documents or things in relation to the subject matter of the charge or imminent charge.

Limitation of scope of post-confiscation application notice to produce

(3) In addition to its effect apart from this subsection, this Act also has the effect it would have if the information, documents or things required to be given under a post-confiscation application notice to produce excluded, by express provision, information, documents or things in relation to the subject matter of the confiscation proceeding or imminent confiscation proceeding.

141 Limited operation—Commissioner's power to hold hearings

In addition to its effect apart from this subsection, this Act also has the effect it would have if the Commissioner's power to hold a hearing were, by express provision, confined to a power to hold either or both of the following:

(a) a pre-charge hearing;

(b) a pre-confiscation application hearing.

Authorised Version C2026C00231 registered 19/06/2026

142 Limited operation—Commissioner's power to summon person

Limitation to pre-charge and pre-confiscation application operation

(1) In addition to its effect apart from this subsection, this Act also has the effect it would have if the Commissioner's power to issue a summons to a person to attend a hearing were, by express provision, confined to a power to issue either or both of the following:
  (a) a pre-charge summons;
  (b) a pre-confiscation application summons.

Limitation of scope of post-charge summons

(2) In addition to its effect apart from this subsection, this Act also has the effect it would have if the matters in relation to which a person who has been issued a post-charge summons is required to give evidence or information, or produce a document or thing, at a hearing excluded, by express provision, matters in relation to the subject matter of the charge or imminent charge.

Limitation of scope of post-confiscation application summons

(3) In addition to its effect apart from this subsection, this Act also has the effect it would have if the matters in relation to which a person who has been issued a post-confiscation application summons is required to give evidence or information, or produce a document or thing, at a hearing excluded, by express provision, matters in relation to the subject matter of the confiscation proceeding or imminent confiscation proceeding.

Limitation to post-charge operation

(4) In addition to its effect apart from this subsection, this Act also has the effect it would have if, by express provision:
  (a) subsection 63(2) excluded any reference to a post-confiscation summons or a confiscation proceeding; and
  (b) paragraph 63(6)(b) were omitted.

Authorised Version C2026C00231 registered 19/06/2026

Limitation to post-confiscation operation

(5) In addition to its effect apart from this subsection, this Act also has the effect it would have if, by express provision:
  (a) subsection 63(2) excluded any reference to a post-charge summons or a charge; and
  (b) paragraph 63(6)(a) were omitted.

143 Limited operation—obtaining derivative material

Limitation relating to offences

(1) In addition to its effect apart from this subsection, this Act also has the effect it would have if the use or disclosure by an entity of investigation material under subsection 104(1) in relation to a witness for the purpose of obtaining derivative material were, by express provision, confined to either or both of the following:
  (a) a pre-charge use or disclosure;
  (b) a post-charge use or disclosure of pre-charge investigation material.

Limitation relating to confiscation proceedings

(2) In addition to its effect apart from this subsection, this Act also has the effect it would have if the use or disclosure by an entity of investigation material under subsection 104(1) in relation to a witness for the purpose of obtaining derivative material were, by express provision, confined to either or both of the following:
  (a) a pre-confiscation application use or disclosure;
  (b) a post-confiscation application use or disclosure of pre-confiscation application investigation material.

Limitation of entities

(3) In addition to its effect apart from this subsection, this Act also has the effect it would have if the entities that may lawfully use or disclose investigation material in relation to a witness for the

Authorised Version C2026C00231 registered 19/06/2026

purpose of obtaining derivative material were, by express provision, limited to one or more of the following entities:

(a) a staff member of the NACC;

(b) a person or body investigating whether the witness committed an offence against a law of the Commonwealth or of a State or Territory;

(c) the Inspector;

(d) a person assisting the Inspector;

(e) a prosecuting authority;

(f) a proceeds of crime authority;

(g) any other person or body, other than a prosecutor of the witness, lawfully in possession of the investigation material;

(h) any other person or body, other than a proceeds of crime authority, lawfully in possession of the investigation material.

144 Limited operation—disclosing investigation material to prosecutors of the witness

In addition to its effect apart from this subsection, this Act also has the effect it would have if the disclosure of investigation material under subsection 105(1) in relation to a witness to a prosecutor of the witness were, by express provision, confined to either or both of the following:

(a) a pre-charge disclosure;

(b) a post-charge disclosure of investigation material that is:

(i) pre-charge investigation material; and

(ii) made under an order made under subsection 106(1).

145 Limited operation—disclosing derivative material to prosecutors of the witness

In addition to its effect apart from this subsection, this Act also has the effect it would have if the disclosure of derivative material under subsection 105(3) in relation to a witness to a prosecutor of

Authorised Version C2026C00231 registered 19/06/2026

the witness were, by express provision, confined to any one or more of the following:

(a) a pre-charge disclosure;

(b) a post-charge disclosure of derivative material that is obtained from pre-charge investigation material (whether from a pre-charge use of that investigation material or otherwise);

(c) a post-charge disclosure of derivative material that is:

(i) obtained from post-charge investigation material; and

(ii) made under an order made under subsection 106(1).

146 Limited operation—material that may always be disclosed to prosecutors of the witness

In addition to its effect apart from this subsection, this Act also has the effect it would have if the disclosure of investigation material or derivative material under subsection 107(1) or (2) in relation to a witness to a prosecutor of the witness were, by express provision, confined to any one or more of the following:

(a) a pre-charge disclosure;

(b) a post-charge disclosure of pre-charge investigation material;

(c) a post-charge disclosure of derivative material that is obtained from pre-charge investigation material (whether from a pre-charge use of the investigation material or otherwise);

(d) a post-charge disclosure of derivative material that is obtained from post-charge investigation material.

147 Limited operation—disclosing material to proceeds of crime authorities

In addition to its effect apart from this section, this Act also has the effect it would have if the disclosure of investigation material or derivative material under subsection 109(1) in relation to a person were, by express provision, confined to any one or more of the following:

Authorised Version C2026C00231 registered 19/06/2026

(a) a pre-confiscation application disclosure;
(b) a post-confiscation application disclosure of pre-confiscation application investigation material;
(c) a post-confiscation application disclosure of derivative material that is obtained from pre-confiscation application investigation material (whether from a pre-confiscation application use of the investigation material or otherwise);
(d) a post-charge disclosure of derivative material that is obtained from post-confiscation application investigation material.

Subdivision C—Witness' fair trial—limited operation

148 Limited operation—witness' fair trial

In addition to its effect apart from this section, this Act also has the effect it would have if subsection 106(4), or paragraph 106(4)(d), had not been enacted.

Authorised Version C2026C00231 registered 19/06/2026

Part 8—Reporting on corruption investigations

149 Report on corruption investigation

Commissioner must prepare an investigation report

(1) After completing a corruption investigation, the Commissioner must prepare a report (an ***investigation report***) on the investigation.

Contents of an investigation report

(2) Subject to section 151, the investigation report must set out:
  (a) the Commissioner's findings or opinions on the corruption issue; and
  (b) a summary of the evidence and other material on which those findings or opinions are based; and
  (c) any recommendations that the Commissioner thinks fit to make; and
  (d) if recommendations are made—the reasons for those recommendations.

Note: See also section 153, which requires the Commissioner to give certain persons an opportunity to respond before including certain information in the report. That section also requires additional information to be included in an investigation report in certain circumstances.

(3) For the purposes of paragraph (2)(a), if the Commissioner forms the opinion that a person whose conduct has been investigated has engaged in corrupt conduct of a serious or systemic nature, the Commissioner must include a statement to that effect in the investigation report.

(4) To avoid doubt, for the purposes of paragraph (2)(a), if the Commissioner forms the opinion that a person whose conduct has been investigated has not engaged in corrupt conduct the Commissioner must set out that opinion in the report.

Authorised Version C2026C00231 registered 19/06/2026

(5) If:

(a) a person gives evidence at a hearing in relation to a corruption investigation; and

(b) the person is not the subject of any findings or opinions in relation to the corruption investigation;

the Commissioner may include a statement to that effect in the investigation report if the Commissioner is satisfied that it is appropriate and practicable to do so to avoid damage to the person's reputation.

Recommendations that may be made

(6) Without limiting paragraph (2)(c), the Commissioner may make one or more of the following recommendations:

(a) taking action in relation to a person, in accordance with relevant procedures, with a view to improving their performance;

(b) terminating the employment of a person in accordance with relevant procedures;

(c) taking action to rectify or mitigate the effects of the conduct of a person;

(d) adopting measures to remedy deficiencies in the policy, procedures or practices that facilitated:

(i) the employment or engagement of an unsuitable person; or

(ii) a person engaging in corrupt conduct; or

(iii) the failure to detect corrupt conduct engaged in by a person.

Section does not limit what may be included in an investigation report

(7) This section does not limit what may be included in an investigation report.

Authorised Version C2026C00231 registered 19/06/2026

150 Effect of findings or opinions about corrupt conduct

(1) This section applies if an investigation report includes a finding or opinion that a person has engaged, is engaging or will engage in corrupt conduct or conduct that could constitute or involve corrupt conduct.

(2) The finding or opinion does not constitute a finding or opinion that the person is guilty of or has committed, is committing or will commit an offence.

151 Excluding certain information from investigation report

(1) The Commissioner must exclude the following from an investigation report:

(a) section 235 certified information;

(b) information that the Commissioner is satisfied is sensitive information.

Note: This information must be included in a protected information report (see section 152).

(2) Before including information in the report, the Commissioner must consult with the head of each Commonwealth agency or State or Territory government entity to which the information relates about whether the information is sensitive information.

152 Protected information report

If the Commissioner excludes information from an investigation report under section 151, the Commissioner must prepare another report (a ***protected information report***) that sets out:

(a) the information; and

(b) the reasons for excluding the information from the investigation report.

Note: If a protected information report is given to a person, the person must not disclose the report, or information contained in the report, to the public or a section of the public (see section 234).

Authorised Version C2026C00231 registered 19/06/2026

153 Opportunity to respond must be given before including certain information in investigation report

(1) Before including in an investigation report an opinion, finding or recommendation that is critical (either expressly or impliedly) of a Commonwealth agency, a State or Territory government entity or any other person, the Commissioner must give the head of the agency, the head of the entity or the other person concerned:

(a) a statement setting out the opinion, finding or recommendation; and

(b) a reasonable opportunity to respond to the opinion, finding or recommendation.

(2) The response may be given by:

(a) the head of the Commonwealth agency or of the State or Territory government entity concerned, or a person authorised by the head; or

(b) in relation to any other person concerned—the other person concerned, or, with approval, a person representing the other person.

(3) If:

(a) the opinion or finding is that a person has engaged in corrupt conduct; and

(b) the person provides a response to the finding or opinion;

the Commissioner must include in the investigation report a summary of the substance of the response if the person requests the Commissioner to do so.

(4) Subsection (3) is subject to section 151.

(5) However, the Commissioner must not include in the investigation report any information in a response provided under this section that would identify any person who, in the opinion of the Commissioner, has not engaged in corrupt conduct unless the Commissioner:

(a) is satisfied that it is necessary to do so in the public interest; and

Authorised Version C2026C00231 registered 19/06/2026

(b) is satisfied that doing so will not cause unreasonable damage to the reputation, safety or wellbeing of the person; and

(c) includes in the report a statement that, in the opinion of the Commissioner, the person has not engaged in corrupt conduct.

154 Commissioner to give copies of reports to certain persons

(1) The Commissioner must give the person referred to in subsection (2):

(a) the investigation report; and

(b) if a protected information report is prepared in relation to the investigation—the protected information report.

(2) For the purposes of subsection (1), the person is:

(a) if the investigation report relates to an investigation that concerned the conduct of the Minister—the Prime Minister; or

(b) otherwise—the Minister.

(3) Subject to subsection (5), the Commissioner:

(a) must give a copy of an investigation report; and

(b) may give a copy of a protected information report;

to the following persons:

(c) for a corruption investigation concerning the conduct of a current Minister—the Prime Minister;

(d) for a corruption investigation concerning the conduct of a staff member of a Commonwealth agency—the head of the agency and the person mentioned in subsection (4);

(e) for a corruption investigation concerning the conduct of the head of a Commonwealth agency:

(i) the person mentioned in subsection (4); and

(ii) if the head of the Commonwealth agency is an Agency Head (within the meaning of the *Public Service Act 1999*)—the Australian Public Service Commissioner;

Authorised Version C2026C00231 registered 19/06/2026

(f) for a corruption investigation concerning the conduct of a senator—the President of the Senate;

(g) for a corruption investigation concerning the conduct of a member of the House of Representatives—the Speaker of the House of Representatives.

Note: A parliamentary office is a type of Commonwealth agency and the parliamentarian is the head of the agency (see subsection 11(1)).

(4) For the purposes of paragraphs (3)(d) and (e), the person is:

(a) if the Commonwealth agency is a Department of the Parliament established under the *Parliamentary Service Act 1999*:

(i) for the Department of the Senate—the President of the Senate; or

(ii) for the Department of the House of Representatives—the Speaker of the House of Representatives; or

(iii) otherwise—both the President of the Senate and the Speaker of the House of Representatives; or

(b) if the Commonwealth agency is established or continued in existence by an Act and paragraph (a) does not apply—the Minister administering that Act; or

(c) if the Commonwealth agency is a Commonwealth entity and neither paragraph (a) nor paragraph (b) applies—the Minister having general responsibility for the activities of the entity.

(5) The Commissioner must exclude the following from a protected information report given under paragraph (3)(b):

(a) section 235 certified information, if the disclosure of the information would contravene the certificate issued under section 235;

(b) information that the Commissioner is satisfied:

(i) is sensitive information; and

(ii) is desirable in the circumstances to exclude from the report.

Authorised Version C2026C00231 registered 19/06/2026

(6) In deciding whether to exclude information from a protected information report under paragraph (5)(b), the Commissioner must seek to achieve an appropriate balance between:

(a) the interest of a person mentioned in paragraphs (3)(c) to (g) or subsection (4), to whom the report is to be given, in having the information included in the report; and

(b) the prejudicial consequences that might result from including the information in the report.

155 Tabling of investigation report in Parliament

If:

(a) the Commissioner gives the Minister or the Prime Minister an investigation report under subsection 154(1); and

(b) one or more public hearings were held in the course of the investigation to which the investigation report relates;

the Minister or Prime Minister (as the case may be) must table the report in each House of the Parliament within 15 sitting days of that House after its receipt.

156 Publishing investigation report in whole or part

(1) The Commissioner may publish the whole or a part of an investigation report if:

(a) the Commissioner has given the Minister or the Prime Minister the investigation report under subsection 154(1); and

(b) the Commissioner is satisfied that it is in the public interest to publish the whole or the part of the report (as the case may be).

(2) This section is subject to section 157.

157 Opportunity to respond must be given before publishing an investigation report containing critical opinions etc.

(1) This section applies to an investigation report that:

Authorised Version C2026C00231 registered 19/06/2026

(a) has not been tabled in Parliament; and

(b) is published, in whole or in part, under section 156 more than 3 months after the report is given to the Minister or the Prime Minister under subsection 154(1).

(2) The investigation report must not include an opinion, finding or recommendation that is critical (either expressly or impliedly) of a Commonwealth agency, a State or Territory government entity or any other person, unless the Commissioner has given the head of the agency, the head of the entity or the other person concerned:

(a) a statement setting out the opinion, finding or recommendation; and

(b) a reasonable opportunity to respond to:

(i) the opinion, finding or recommendation; and

(ii) the proposed publication of the opinion, finding or recommendation.

(3) The response may be given by:

(a) the head of the Commonwealth agency or of the State or Territory government entity concerned, or a person authorised by the head; or

(b) in relation to any other person concerned—the other person concerned, or, with approval, a person representing the other person.

158 Advising person who referred corruption issue of outcome of the investigation

(1) The Commissioner may advise a person (or a representative nominated by the person) of the outcome of an investigation of a corruption issue raised by the person in a referral under Part 5.

(2) One way of advising the person (or the representative) is to give a copy of all or part of the investigation report prepared in relation to the investigation.

(3) In advising the person of the outcome of the investigation, the Commissioner:

Authorised Version C2026C00231 registered 19/06/2026

(a) must not disclose section 235 certified information to the person if the disclosure of the information to the person would contravene the certificate issued under section 235; and

(b) must exclude information from the advice if the Commissioner is satisfied that:

(i) the information is sensitive information; and

(ii) it is desirable in the circumstances to exclude the information from the advice.

(4) Before giving the person information about the outcome of the investigation, the Commissioner must consult with the head of each Commonwealth agency or State or Territory government entity to which the information relates about whether the information is sensitive information.

(5) In deciding whether to exclude information from the advice under paragraph (3)(b), the Commissioner must seek to achieve an appropriate balance between:

(a) the person's interest in having the information included in the advice; and

(b) the prejudicial consequences that might result from including the information in the advice.

159 Advising person whose conduct is investigated of outcome of the investigation

(1) The Commissioner must advise a person of the outcome of a corruption investigation if the Commissioner investigates a corruption issue concerning the conduct of the person.

(3) Without limiting subsection (1), the Commissioner may advise the person of the outcome of the investigation by giving the person a copy of the whole or a part of the investigation report prepared in relation to the investigation.

(4) In advising the person under subsection (1), the Commissioner:

Authorised Version C2026C00231 registered 19/06/2026

(a) must not disclose section 235 certified information to the person if the disclosure of the information to the person would contravene the certificate issued under section 235; and

(b) must exclude information from the advice if the Commissioner is satisfied that:

(i) the information is sensitive information; and

(ii) it is desirable in the circumstances to exclude the information from the advice.

(5) Before giving the person information under subsection (1), the Commissioner must consult with the head of each Commonwealth agency or State or Territory government entity to which the information relates about whether the information is sensitive information.

(6) In deciding whether to exclude information from the advice under paragraph (4)(b), the Commissioner must seek to achieve an appropriate balance between:

(a) the person's interest in having the information included in the advice; and

(b) the prejudicial consequences that might result from including the information in the advice.

(7) However, subsection (1) does not apply if advising the person of the outcome of the investigation:

(a) is not reasonably practicable; or

(b) would be contrary to the public interest, including because it might prejudice:

(i) a person's fair trial; or

(ii) a NACC Act process; or

(iii) any other investigation that is being undertaken by a Commonwealth agency or a State or Territory government entity; or

(iv) any action taken as a result of a NACC Act process or an investigation covered by subparagraph (iii).

Authorised Version C2026C00231 registered 19/06/2026

160 Follow-up action on investigation report

(1) The Commissioner may request the head of a Commonwealth agency to whom an investigation report is given to give the Commissioner, within a specified time, details of any action that the head of the Commonwealth agency has taken, or proposes to take, with respect to a recommendation included in the investigation report.

(2) The head of the Commonwealth agency must comply with the request.

(3) If the Commissioner is not satisfied with the response of the head of the Commonwealth agency to the request, the Commissioner may refer to the person mentioned in subsection (4):

(a) the Commissioner's recommendation and the reasons for that recommendation; and

(b) the response of the head of the agency to the recommendation; and

(c) the Commissioner's reasons for not being satisfied with that response.

(4) For the purposes of subsection (3), the person is:

(a) if the Commonwealth agency is a parliamentary office:

(i) for a parliamentarian who is a senator—the President of the Senate; or

(ii) for a parliamentarian who is a member of the House of Representatives—the Speaker of the House of Representatives; or

(b) if the Commonwealth agency is a Department of the Parliament established under the *Parliamentary Service Act 1999*:

(i) for the Department of the Senate—the President of the Senate; or

(ii) for the Department of the House of Representatives—the Speaker of the House of Representatives; or

(iii) otherwise—both the President of the Senate and the Speaker of the House of Representatives; or

Authorised Version C2026C00231 registered 19/06/2026

(c) if the Commonwealth agency is established or continued in existence by an Act and paragraph (b) does not apply—the Minister administering that Act; or

(d) if the Commonwealth agency is a Commonwealth entity and neither paragraph (b) nor paragraph (c) applies—the Minister having general responsibility for the activities of the entity.

(5) If the Commissioner refers material to a person under subsection (3), the Commissioner may also send a copy of that material to:

(a) the President of the Senate for presentation to the Senate; and

(b) the Speaker of the House of Representatives for presentation to the House of Representatives.

(6) The Commissioner must exclude the following from the copy of the material sent under subsection (5):

(a) section 235 certified information;

(b) information that the Commissioner is satisfied is sensitive information.

(7) Before sending a copy of material under subsection (5), the Commissioner must consult with the head of each Commonwealth agency or State or Territory government entity to which the material relates about whether the material contains sensitive information.

Authorised Version C2026C00231 registered 19/06/2026

Part 9—Public inquiries

161 Commissioner may conduct public inquiries

(1) The Commissioner may, on the Commissioner's own initiative, conduct a public inquiry into one or more of the following:

(a) corruption risks and vulnerabilities in Commonwealth agencies;

(b) measures to prevent corruption in Commonwealth agencies.

(2) A public inquiry is not a corruption investigation, and must not be, or involve, an inquiry into a particular corruption issue.

(3) The Commissioner may conduct a public inquiry in such manner as the Commissioner thinks fit.

162 Commissioner may invite submissions

The Commissioner may invite submissions on matters that are the subject of a public inquiry.

163 Commissioner's powers

(1) Part 7 (investigating corruption issues) applies for the purposes of a public inquiry in the same way as that Part applies to the investigation of a corruption issue.

(2) However:

(a) the following provisions of Part 7 do not apply for the purposes of a public inquiry:

(i) Subdivision E of Division 3 (travel documents and arrest of witnesses);

(ii) Division 7 (search powers); and

(b) that Part, as applied by this section, does not authorise:

(i) a notice to produce to be served on a person other than an agency head; or

Authorised Version C2026C00231 registered 19/06/2026

(ii) the taking of any action in relation to a post-charge or a post-confiscation application event.

164 Reporting on public inquiries

(1) After completing a public inquiry, the Commissioner must prepare a report (the ***inquiry report***) on the inquiry.

Contents of inquiry report

(2) Without limiting what the report may include, it must include:
   (a) the Commissioner's findings or opinions on corruption risks, vulnerabilities, and the effectiveness of corruption prevention arrangements in Commonwealth agencies; and
   (b) a summary of the evidence and other material on which those findings or opinions are based; and
   (c) any recommendations concerning the need for, or desirability of, legislative or administrative reform to prevent corruption; and
   (d) if recommendations are made—the reasons for those recommendations.

(3) The report must not include:
   (a) findings or opinions about specific instances of corrupt conduct; or
   (b) section 235 certified information; or
   (c) information that the Commissioner is satisfied is sensitive information.

(4) Before including information in the report, the Commissioner must consult with the head of each Commonwealth agency or State or Territory government entity to which the information relates about whether the information is sensitive information.

165 Protected information report

If the Commissioner excludes section 235 certified information or sensitive information from an inquiry report, the Commissioner

Authorised Version C2026C00231 registered 19/06/2026

must prepare another report (a ***protected information report***) that sets out:

(a) the information; and

(b) the reasons for excluding the information from the inquiry report.

Note: If a protected information report is given to a person, the person must not disclose the report, or information contained in the report, to the public or a section of the public: see section 234.

166 Opportunity to respond must be given before including certain information in inquiry report

(1) Before including in an inquiry report an opinion, finding or recommendation that is critical (either expressly or impliedly) of a Commonwealth agency, a State or Territory government entity or any other person, the Commissioner must give the head of the agency, the head of the entity or the other person concerned:

(a) a statement setting out the opinion, finding or recommendation; and

(b) a reasonable opportunity to respond to the opinion, finding or recommendation.

(2) The response may be given by:

(a) the head of the Commonwealth agency or of the State or Territory government entity concerned, or a person authorised by the head; or

(b) in relation to any other person concerned—the other person concerned, or, with approval, a person representing the other person.

167 Commissioner to give copies of reports to certain persons

(1) The Commissioner must give the Minister:

(a) the inquiry report; and

(b) if a protected information report is prepared in relation to the inquiry—the protected information report.

Authorised Version C2026C00231 registered 19/06/2026

(2) For a public inquiry concerning a Commonwealth agency, the Commissioner:

(a) must give a copy of an inquiry report; and

(b) may give a copy of a protected information report;

to the following persons:

(c) the agency head;

(d) if the agency is established or continued in existence by an Act—the Minister administering that Act (subject to paragraph (e));

(e) if the agency is a Department of the Parliament established under the *Parliamentary Service Act 1999*:

(i) for the Department of the Senate—the President of the Senate; or

(ii) for the Department of the House of Representatives—the Speaker of the House of Representatives; or

(iii) otherwise—both the President of the Senate and the Speaker of the House of Representatives;

(f) if the agency is a Commonwealth entity—the Minister having general responsibility for the activities of the entity.

(3) The Commissioner must exclude the following from a protected information report given under paragraph (2)(b):

(a) section 235 certified information, if the disclosure of the information would contravene the certificate issued under section 235;

(b) information that the Commissioner is satisfied:

(i) is sensitive information; and

(ii) is desirable in the circumstances to exclude from the report.

(4) In deciding whether to exclude information from a protected information report under paragraph (3)(b), the Commissioner must seek to achieve an appropriate balance between:

(a) the interest of a person mentioned in paragraphs (2)(c) to (f), to whom the report is to be given, in having the information included in the report; and

Authorised Version C2026C00231 registered 19/06/2026

(b) the prejudicial consequences that might result from including the information in the report.

168 Tabling of inquiry report in Parliament

The Minister must table an inquiry report in each House of the Parliament within 15 sitting days of that House after the Minister receives the report if:

(a) public submissions were invited on matters that were the subject of the inquiry; or

(b) one or more public hearings were held in the course of the inquiry.

169 Publishing inquiry report in whole or part

(1) The Commissioner may publish the whole or part of an inquiry report if:

(a) the Commissioner has given the Minister the inquiry report under subsection 167(1); and

(b) the Commissioner is satisfied that it is in the public interest to publish the whole or the part of the report (as the case may be).

(2) This section is subject to section 170.

170 Opportunity to respond must be given before publishing an inquiry report containing critical opinions etc.

(1) This section applies to an inquiry report that:

(a) has not been tabled in Parliament; and

(b) is published, in whole or in part, under section 169 more than 3 months after the report is given to the Minister under subsection 167(1).

(2) The inquiry report must not include an opinion, finding or recommendation that is critical (either expressly or impliedly) of a Commonwealth agency, a State or Territory government entity or

Authorised Version C2026C00231 registered 19/06/2026

any other person, unless the Commissioner has given the head of the agency, the head of the entity or the other person concerned:

(a) a statement setting out the opinion, finding or recommendation; and

(b) a reasonable opportunity to respond to:

(i) the opinion, finding or recommendation; and

(ii) the proposed publication of the opinion, finding or recommendation.

(3) The response may be given by:

(a) the head of the Commonwealth agency or of the State or Territory government entity concerned, or a person authorised by the head; or

(b) in relation to any other person concerned—the other person concerned, or, with approval, a person representing the other person.

171 Follow-up action on inquiry report

(1) The Commissioner may request the head of a Commonwealth agency to whom an inquiry report is given to give the Commissioner, within a specified time, details of any action that the head of the Commonwealth agency has taken, or proposes to take, with respect to a recommendation included in the inquiry report.

(2) The head of the Commonwealth agency must comply with the request.

(3) If the Commissioner is not satisfied with the response of the head of the Commonwealth agency to the request, the Commissioner may refer to the person mentioned in subsection (4):

(a) the Commissioner's recommendation and the reasons for that recommendation; and

(b) the response of the head of the agency to the recommendation; and

(c) the Commissioner's reasons for not being satisfied with that response.

Authorised Version C2026C00231 registered 19/06/2026

(4) For the purposes of subsection (3), the person is:

(a) if the Commonwealth agency is a parliamentary office:

(i) for a parliamentarian who is a senator—the President of the Senate; or

(ii) for a parliamentarian who is a member of the House of Representatives—the Speaker of the House of Representatives; or

(b) if the Commonwealth agency is a Department of the Parliament established under the *Parliamentary Service Act 1999*:

(i) for the Department of the Senate—the President of the Senate; or

(ii) for the Department of the House of Representatives—the Speaker of the House of Representatives; or

(iii) otherwise—both the President of the Senate and the Speaker of the House of Representatives; or

(c) if the Commonwealth agency is established or continued in existence by an Act and paragraph (b) does not apply—the Minister administering that Act; or

(d) if the Commonwealth agency is a Commonwealth entity and neither paragraph (b) nor (c) applies—the Minister having general responsibility for the activities of the entity.

(5) If the Commissioner refers material to a person under subsection (3), the Commissioner may also send a copy of that material to:

(a) the President of the Senate for presentation to the Senate; and

(b) the Speaker of the House of Representatives for presentation to the House of Representatives.

(6) The Commissioner must exclude the following from the copy of the material sent under subsection (5):

(a) section 235 certified information;

(b) information that the Commissioner is satisfied is sensitive information.

Authorised Version C2026C00231 registered 19/06/2026

(7) Before sending a copy of material under subsection (5), the Commissioner must consult with the head of each Commonwealth agency or State or Territory government entity to which the material relates about whether the material contains sensitive information.

Authorised Version C2026C00231 registered 19/06/2026

Part 10—Oversight of the National Anti-Corruption Commission

Division 1—Parliamentary Joint Committee on the National Anti-Corruption Commission

172 Parliamentary Joint Committee on the National Anti-Corruption Commission

(1) As soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on the National Anti-Corruption Commission, is to be appointed according to the practice of the Parliament.

(2) The Committee is to consist of 12 members:
  (a) 6 members of the Senate appointed by the Senate; and
  (b) 6 members of the House of Representatives appointed by that House.

(3) The 6 members appointed by each of the Senate and the House of Representatives must consist of the following:
  (a) 3 members of the Government;
  (b) 2 members of the Opposition;
  (c) 1 member of the Parliament who is a member of neither the Government nor the Opposition.

173 Chair of the Committee

Office of Chair of the Committee

(1) There must be a Chair of the Committee, who must be a member of the Government elected by the members of the Committee from time to time.

Authorised Version C2026C00231 registered 19/06/2026

(2) The Chair holds office during the pleasure of the Committee.

(3) A person holding office as Chair ceases to hold the office if the person:
  (a) ceases to be a member of the Committee; or
  (b) resigns the office.

(4) A person holding office as Chair may resign the office by giving a signed notice of resignation to a meeting of the Committee.

Votes of the Chair

(5) At meetings of the Committee at which the Chair is present, the Chair:
  (a) has a deliberative vote; and
  (b) has a casting vote if votes are equal.

174 Eligibility for appointment as a Committee member

A member of the Parliament is not eligible for appointment as a member of the Committee if the member is:
  (a) a Minister; or
  (b) the President of the Senate; or
  (c) the Speaker of the House of Representatives; or
  (d) the Deputy President and Chair of Committees of the Senate; or
  (e) the Deputy Speaker of the House of Representatives.

175 Terms of office of Committee members

(1) A member holds office during the pleasure of the House of the Parliament by which the member was appointed.

(2) A person ceases to hold office as a member of the Committee if:
  (a) the House of Representatives expires by the passing of time or is dissolved; or

Authorised Version C2026C00231 registered 19/06/2026

(b) the person becomes the holder of an office specified in any of the paragraphs of section 174; or

(c) the person ceases to be a member of the House of the Parliament by which the person was appointed; or

(d) the person resigns the person's office as provided by subsection (3).

(3) A member of the Committee appointed by a House of the Parliament may resign the member's office by giving the Presiding Officer of that House a written resignation.

(4) A House of the Parliament may appoint one of its members to fill a vacancy among the members of the Committee appointed by that House.

176 Powers and proceedings of the Committee

All matters relating to the powers and proceedings of the Committee are to be determined by resolution of both Houses of the Parliament.

177 Functions of the Committee

(1) The Committee has the following functions:

(a) to consider proposed recommendations for the appointment of the following positions in accordance with section 178:

(i) the Commissioner;

(ii) a Deputy Commissioner;

(iii) the Inspector;

(b) to monitor and review the performance by the Commissioner and the Inspector of their functions;

(c) to report to both Houses of the Parliament, with such comments as it thinks fit, on any matter connected with the performance of the functions of the Commissioner or the Inspector that the Committee considers should be directed to the attention of the Parliament;

Authorised Version C2026C00231 registered 19/06/2026

(d) to examine and report to the Parliament on any matter appearing in, or arising out of, the following:
  (i) any investigation report that is laid before the Houses of the Parliament under section 155;
  (ii) each annual report prepared by the Commissioner under section 271;
  (iii) any NACC investigation report that is laid before the Houses of the Parliament under section 221;
  (iv) each annual report prepared by the Inspector under section 198;

(e) to examine trends and changes in corruption among those who are subject to this Act and report to both Houses of the Parliament on any change that the Committee thinks desirable to the following:
  (i) the functions or powers of the Commissioner or the Inspector;
  (ii) the procedures followed by the Commissioner or the Inspector;
  (iii) the NACC's staffing or structure;
  (iv) the staffing arrangements for the Inspector;

(f) to inquire into any question in connection with the Committee's functions that is referred to it by either House of the Parliament, and to report to that House upon that question;

(g) to review the NACC's budget and finances, and to report to both Houses of the Parliament on the following matters:
  (i) whether the NACC has sufficient finances and resources to effectively perform its functions;
  (ii) whether the NACC's budget should be increased to ensure that it will have sufficient finances and resources to effectively perform its functions;
  (iii) any other matter arising out of the review that the Committee considers relevant.

Authorised Version C2026C00231 registered 19/06/2026

(2) The Committee may request that the Inspector assist the Committee in the exercise of the function mentioned in paragraph (1)(g).

(3) Subsection (1) does not authorise the Committee to:

(a) investigate a corruption issue or a NACC corruption issue; or

(b) reconsider a decision or recommendation made by the Commissioner or the Inspector 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; or

(c) review a decision made, or an operational activity carried out, in relation to a NACC Act process that is still being conducted; or

(d) review an operational activity undertaken or proposed to be undertaken by a person or body mentioned in subsection (4); or

(e) review any of the following to the extent that they are available to a person or body mentioned in subsection (4):

(i) sensitive operational information;

(ii) operationally sensitive information (within the meaning of Schedule 1 to the *Intelligence Services Act 2001*);

(iii) operational methods;

(iv) operational assistance; or

(f) review information provided by, or by an agency of, a foreign government where that government does not consent to the disclosure of the information; or

(g) review an aspect of the activities of an intelligence agency that does not affect an Australian person; or

(h) review the content of, or conclusions reached in, assessments or reports made by an intelligence agency, or review sources of information on which such assessments or reports are based; or

(i) review anything done by the Office of National Intelligence in carrying out the evaluation functions mentioned in section 9 of the *Office of National Intelligence Act 2018*.

Authorised Version C2026C00231 registered 19/06/2026

(4) The persons and bodies are:
  (a) the NACC; or
  (b) the Inspector; or
  (c) a Commonwealth agency; or
  (d) a State or Territory government entity.

178 Committee may approve or reject recommendation for appointment

Appointments that the Committee must approve or reject

(1) The Committee must approve or reject a proposed recommendation referred to the Committee by the Minister for the appointment of the following positions:
  (a) the Commissioner;
  (b) a Deputy Commissioner;
  (c) the Inspector.

Decision to approve or reject

(2) The Committee must make the decision on a proposed recommendation within:
  (a) 14 calendar days after the referral; or
  (b) if, within the first 14 calendar days after the referral, the Committee notifies the Minister that it requires additional time to consider the referral—44 calendar days after the referral.

(3) As soon as practicable after making the decision, the Committee must:
  (a) give the Minister written notice of the decision; and
  (b) report the decision to both Houses of the Parliament.

(4) The Committee is taken to have approved the proposed recommendation if the Committee does not give notice under paragraph (3)(a) within the period specified in paragraph (2)(a) or (b) as the case requires.

Authorised Version C2026C00231 registered 19/06/2026

179 Staff of the Committee must be cleared for security purposes

Each member of the staff of the Committee must be cleared for security purposes to a level that is appropriate having regard to the information that the member of staff will deal with in that capacity.

180 Protection of information and documents

(1) The Committee must make arrangements for the protection and security of all information held, and all records made, by the Committee while such information and records remain in the Committee's possession.

(2) The Committee must ensure that any documents having a security classification (within the meaning of section 90.5 of the *Criminal Code*) provided to the Committee by a person are returned to the person as soon as possible after the members have examined them.

181 Committee's access to certain information

If:

(a) a person would, but for this subsection, be required to give information, or produce a document, to the Committee; and

(b) either:

(i) the information is, or the document contains, section 235 certified information; or

(ii) the information or document is covered by an international relations certificate issued under section 236;

the person must not give the information, or produce the document, to the Committee.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—The Inspector of the National Anti-Corruption Commission

Subdivision A—Functions and powers of the Inspector

182 The Inspector

(1) There is to be an Inspector of the National Anti-Corruption Commission.

(2) The Inspector is an independent officer of the Parliament.

(3) The functions, powers, rights, immunities and obligations of the Inspector are as specified in this Act and in any other Act. There are no implied functions, powers, rights, immunities or obligations arising from the Inspector being an independent officer of the Parliament.

183 Independence

Subject to this Act and any other Act, the Inspector:

(a) has complete discretion in performing or exercising the Inspector's functions or powers; and

(b) is not subject to direction from anyone when doing so.

184 Functions of the Inspector

(1) The Inspector has the following functions:

(a) to detect corrupt conduct within, and relating to, the NACC;

(b) to undertake preliminary investigations into NACC corruption issues or possible NACC corruption issues;

(c) to conduct NACC corruption investigations into NACC corruption issues that could involve corrupt conduct that is serious or systemic;

Authorised Version C2026C00231 registered 19/06/2026

(d) to refer NACC corruption issues to the NACC, Commonwealth agencies and State or Territory government entities;

(e) to investigate complaints of agency maladministration or officer misconduct made in relation to the conduct or activities of:

(i) the NACC; or

(ii) a staff member of the NACC;

(f) to audit the operations of the NACC for the purpose of:

(i) monitoring compliance with the laws of the Commonwealth; and

(ii) detecting agency maladministration and officer misconduct;

(g) to make recommendations to the NACC on the outcomes of such audits;

(h) to provide relevant information and documents to the Committee;

(j) to receive public interest disclosures (within the meaning of the *Public Interest Disclosure Act 2013*) and to deal with those disclosures;

(k) to report, and make recommendations, to both Houses of the Parliament on the results of performing the functions mentioned in paragraphs (a) to (j).

(2) The Inspector also has such other functions conferred on the Inspector by this Act or by any other Act.

(3) For the purposes of this section:

agency maladministration means an act or omission engaged in by the NACC that:

(a) is unlawful conduct; or

(b) is not unlawful, but:

(i) is corrupt conduct; or

(ii) is unreasonable, unjust, oppressive or improperly discriminatory in its effect; or

(iii) arises, wholly or in part, from improper motives; or

Authorised Version C2026C00231 registered 19/06/2026

(iv) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration; or

(v) arises, wholly or in part, from a mistake of law or fact; or

(vi) is conduct of a kind for which reasons should have, but have not, been given; or

(c) is in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.

officer misconduct means conduct engaged in by a staff member of the NACC, which, if engaged in by the NACC, would amount to agency maladministration.

Subdivision B—Appointment of the Inspector

185 Appointment of the Inspector

Appointment by Governor-General

(1) The Inspector of the National Anti-Corruption Commission is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

(2) Before the Minister makes a recommendation to the Governor-General:

(a) the Minister must have referred the proposed recommendation to the Committee under section 178; and

(b) one of the following must have occurred:

(i) the Committee was taken to have approved the proposed recommendation under subsection (4) of that section;

(ii) the Committee has notified the Minister that it has decided to approve the proposed recommendation.

Qualifications for appointment

(3) A person must not be appointed as the Inspector unless the person:

Authorised Version C2026C00231 registered 19/06/2026

(a) is a retired judge of a federal court or a court of a State or Territory; or

(b) is enrolled as a legal practitioner (however described) of a federal court or the Supreme Court of a State or Territory and has been so enrolled for at least 5 years.

(4) A person must not be appointed as the Inspector if the person has previously been appointed as the Commissioner.

Period of appointment

(5) The Inspector holds office for the period specified in the instrument of appointment. The period must not exceed 10 years.

(6) The Inspector must not be reappointed.

Basis of appointment

(7) The Inspector may be appointed on a full-time or part-time basis.

186 Acting appointments

(1) The Minister may, by written instrument, appoint a person to act as the Inspector:

(a) during a vacancy in the office of the Inspector (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Inspector:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Qualification for acting appointment

(2) A person must not be appointed to act as the Inspector unless the person is qualified, as mentioned under subsections 185(3) and (4), to be appointed as the Inspector.

Authorised Version C2026C00231 registered 19/06/2026

187 Remuneration

(1) The Inspector is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Inspector is to be paid the remuneration that is prescribed by the regulations.

(2) The Inspector is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

188 Leave of absence

(1) If the Inspector is appointed on a full-time basis, the Inspector has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) If the Inspector is appointed on a full-time basis, the Minister may grant the Inspector leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) If the Inspector is appointed on a part-time basis, the Minister may grant leave of absence to the Inspector on the terms and conditions that the Minister determines.

189 Other paid work

The Inspector must not engage in paid work outside the duties of the Inspector's office without the Minister's approval.

190 Disclosure of interests to the Minister

The Inspector must give written notice to the Minister of all interests, pecuniary or otherwise, that the Inspector has or acquires and that conflict or could conflict with the proper performance of the Inspector's functions.

Authorised Version C2026C00231 registered 19/06/2026

191 Other terms and conditions

The Inspector holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

192 Resignation

(1) The Inspector may resign the Inspector's appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

193 Termination of appointment

(1) The Governor-General may terminate the appointment of the Inspector if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Inspector:
  (a) for misbehaviour; or
  (b) if the Inspector is unable to perform the duties of the Inspector's office because of physical or mental incapacity.

(2) The Governor-General must terminate the appointment of the Inspector if the Inspector:
  (a) becomes bankrupt; or
  (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  (c) compounds with the Inspector's creditors; or
  (d) makes an assignment of the Inspector's remuneration for the benefit of the Inspector's creditors.

Authorised Version C2026C00231 registered 19/06/2026

Subdivision C—Persons assisting the Inspector

194 Persons assisting the Inspector

Persons made available to the Inspector

(1) The Inspector may be assisted by the following persons, whose services are made available to the Inspector in connection with the performance of any of the Inspector's functions:
  (a) APS employees in the Department;
  (b) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*);
  (c) persons employed under the *Australian Security Intelligence Organisation Act 1979*;
  (d) persons employed under the *Intelligence Services Act 2001*;
  (e) Parliamentary Service employees (within the meaning of the *Parliamentary Service Act 1999*);
  (f) members of the Australian Defence Force;
  (g) members of the Australian Federal Police.

(2) When performing services for the Inspector under subsection (1), a person is subject to the directions of the Inspector.

Consultants

(3) The Inspector may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Inspector's functions.

(4) The consultants are to be engaged on the terms and conditions that the Inspector determines in writing.

Legal counsel

(5) The Inspector may appoint a legal practitioner to assist the Inspector in relation to a particular NACC corruption investigation.

Authorised Version C2026C00231 registered 19/06/2026

195 Meaning of *person assisting* the Inspector

Each of the following is a ***person assisting*** the Inspector for the purposes of this Act:

(a) a person made available to the Inspector as mentioned in subsection 194(1);

(b) a person engaged as a consultant under subsection 194(3);

(c) a legal practitioner appointed to assist the Inspector under subsection 194(5).

Subdivision D—Immunities of Inspector and persons assisting

196 Immunity from civil proceedings for the Inspector and persons assisting

(1) The Inspector is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the Inspector's functions, powers or duties under, or in relation to, this Act.

(2) A person whom the Inspector requests, in writing, to assist the Inspector, or a person assisting the Inspector, is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith for the purpose of assisting the Inspector.

197 Immunities from certain State and Territory laws

Neither the Inspector nor a person assisting the Inspector is required under, or by reason of, a law of a State or Territory:

(a) to obtain or have a licence or permission for doing any act or thing in the exercise of powers or the performance of duties of the Inspector; or

(b) to register any vehicle, vessel, animal or article belonging to the Commonwealth.

Authorised Version C2026C00231 registered 19/06/2026

Subdivision E—Annual report by Inspector

198 Annual report

(1) As soon as practicable after the end of each financial year, the Inspector must:
  (a) prepare a report (the ***annual report***) relating to the performance of the Inspector's functions during the financial year; and
  (b) cause a copy of the annual report to be tabled in each House of the Parliament.

(2) The copy of the annual report must be tabled as soon as practicable after the end of the financial year, and in any event, by the following 31 December.

(3) Subject to section 199, the annual report must include the information prescribed by the regulations.

199 Exclusion of certain information from annual report

The Inspector must exclude the following from the annual report:
  (a) section 235 certified information;
  (b) information that the Inspector is satisfied is sensitive information.

200 Effect of findings or opinions about corrupt conduct

(1) This section applies if an annual report includes a finding or opinion that a person has engaged, is engaging or will engage in corrupt conduct or conduct that could constitute or involve corrupt conduct.

(2) The finding or opinion does not constitute a finding or opinion that the person is guilty of or has committed, is committing or will commit an offence.

Authorised Version C2026C00231 registered 19/06/2026

Division 3—NACC corruption issues

Subdivision A—Meaning of NACC corruption issue

201 Meaning of *NACC corruption issue*

(1) A ***NACC corruption issue*** is an issue of whether, in the circumstances mentioned in subsection (2), a person:

(a) has engaged in corrupt conduct; or

(b) is engaging in corrupt conduct; or

(c) will engage in corrupt conduct.

Note: A NACC corruption issue is not a corruption issue: see subsection 9(2).

(2) The circumstances are:

(a) the person is a staff member of the NACC; or

(b) the conduct of the person adversely affects, or could adversely affect, either directly or indirectly:

(i) the honest or impartial exercise of the powers of a staff member of the NACC; or

(ii) the honest or impartial performance of the functions, duties of a staff member of the NACC; or

(c) the person's conduct occurs in conspiracy with a staff member of the NACC.

(3) For the purposes of subsection (2), it is immaterial whether the conduct was, is or will be engaged in before the staff member was, or while the staff member is or was, a staff member of the NACC.

Subdivision B—Referring NACC corruption issues

202 Any person may refer NACC corruption issue

(1) Any person may refer a NACC corruption issue or provide other information about a NACC corruption issue to the Inspector.

Authorised Version C2026C00231 registered 19/06/2026

(2) The Inspector may request the referral or information to be:
  (a) given in a particular way; or
  (b) accompanied or supported by further information.

203 Mandatory referral—Commissioner

If the Commissioner becomes aware of a NACC corruption issue, the Commissioner must refer the NACC corruption issue to the Inspector.

204 Mandatory referral—Public Interest Disclosure Act disclosures

(1) A staff member of the NACC who, in the course of performing or exercising functions or powers under Division 1 or 2 of Part 3 of the *Public Interest Disclosure Act 2013* (including as a delegate), becomes aware of a NACC corruption issue, must refer the NACC corruption issue to the Inspector.

(2) If the staff member became aware of the NACC corruption issue as a result of an internal disclosure made under the *Public Interest Disclosure Act 2013*, the staff member must, as soon as reasonably practicable, notify the discloser of the staff member's referral of the issue under this section.

205 Mandatory referral—secrecy provisions

The obligation to refer a NACC corruption issue under this Subdivision applies despite any secrecy provision (other than an exempt secrecy provision).

206 Mandatory referral—exceptions

A person is not required to refer a NACC corruption issue under this Subdivision if the person believes on reasonable grounds that the Inspector is already aware of the issue.

Authorised Version C2026C00231 registered 19/06/2026

207 Mandatory referral—timing and information requirements

Timing requirements

(1) A person who is required to refer a NACC corruption issue under this Subdivision must do so as soon as reasonably practicable after becoming aware of the issue or within such later time as is allowed by the Inspector.

Information requirements

(2) A person who is required to refer a NACC corruption issue under this Subdivision must include with the referral all information relevant to the issue that is in the person's possession or control at the time the referral is made.

(3) If the person subsequently becomes aware of any further information that is relevant to the issue, the person must give the further information to the Inspector as soon as reasonably practicable.

Exceptions to information requirements

(4) A person is not required to provide information under this section if:

(a) the person has reasonable grounds to believe that the Inspector is already aware of the information; or

(b) the Inspector has advised the person that the provision of information about the NACC corruption issue is not required.

Note: This section has effect subject to section 236 (Attorney-General's certificate in relation to international relations).

208 Effect of referral on continued actions

The referral of a NACC corruption issue under this Subdivision does not:

(a) subject to any direction to stop taking action given by the Inspector under subsection 43(1) (as modified by

Authorised Version C2026C00231 registered 19/06/2026

section 211), prevent the NACC from continuing to take any action in relation to conduct that is the subject of the issue; or

(b) affect the obligations of the NACC in relation to that conduct under any other law.

Subdivision C—Dealing with NACC corruption issues

209 Inspector may deal with NACC corruption issues

The Inspector may deal with a NACC corruption issue that:

(a) is referred to the Inspector; or

(b) the Inspector becomes aware of in any other way.

210 How Inspector deals with NACC corruption issues

(1) The Inspector may deal with a NACC corruption issue in any one or more of the following ways:

(a) by investigating the NACC corruption issue;

(b) by investigating the NACC corruption issue jointly with a Commonwealth agency, the NACC or a State or Territory government entity;

(c) by referring, for investigation, the NACC corruption issue to the NACC (if the Inspector is satisfied that it is appropriate for the NACC to investigate the issue);

(d) by referring, for consideration, the NACC corruption issue to a Commonwealth agency, the NACC or a State or Territory government entity.

(2) An investigation mentioned in paragraph (1)(a) or (b) is a ***NACC corruption investigation***.

NACC corruption investigation threshold—serious or systemic corrupt conduct

(3) The Inspector may conduct, or continue to conduct, a NACC corruption investigation only if the Inspector is of the opinion that the issue could involve corrupt conduct that is serious or systemic.

Authorised Version C2026C00231 registered 19/06/2026

General matters

(4) NACC corruption issues may be investigated together.

(5) The Inspector may, at any time, reconsider whether or how to deal with a NACC corruption issue.

Inspector may decide to take no action

(6) The Inspector may decide to take no action in relation to a NACC corruption issue.

Inspector under no duty to consider whether to deal with NACC corruption issue

(7) The Inspector does not have a duty to consider whether to deal with a NACC corruption issue under this section, whether the Inspector is requested to do so by the person who referred the issue or by any other person, or in any other circumstances.

211 Other matters related to dealing with NACC corruption issues

Part 6 (other than sections 40 and 41) applies in relation to a NACC corruption investigation with the modifications set out in the following table:

Modifications

Item	A reference to...	is taken to...
1	the Commissioner	be a reference to the Inspector.
2	the NACC	be a reference to the Inspector.
3	a NACC Commissioner	be a reference to the Inspector.
4	a corruption issue	be a reference to a NACC corruption issue.
5	a corruption investigation	be a reference to a NACC corruption investigation.

Authorised Version C2026C00231 registered 19/06/2026

Modifications		
Item	**A reference to...**	**is taken to...**
6	an agency head	include a reference to the Commissioner.
7	a head	include a reference to the Commissioner.
8	a Commonwealth agency	include a reference to the NACC.
9	an agency	include a reference to the NACC.

Authorised Version C2026C00231 registered 19/06/2026

Division 4—Investigating and reporting by Inspector

Subdivision A—Investigations by Inspector

212 Application of Division

(1) This Division applies:

(a) to the Inspector's investigation of a NACC corruption issue that could, in the Inspector's opinion, involve corrupt conduct that is serious or systemic; and

(b) whether the investigation is conducted:

(i) by the Inspector only; or

(ii) jointly by the Inspector and a Commonwealth agency, the NACC or a State or Territory government entity.

(2) This Division also applies to an investigation into a complaint made in relation to the conduct or activities of the NACC or a staff member of the NACC (a ***NACC complaint investigation***).

213 Conduct of investigations generally

The Inspector may perform the investigation in such manner as the Inspector thinks fit.

214 Inspector's powers to investigate

(1) Divisions 2 to 6 and 8 of Part 7, and sections 117, 118, 120, 267 and 268, apply in relation to the investigation with the modifications set out in the following table:

Modifications

Item	A reference to...	is taken to...
1	the Commissioner	be a reference to the Inspector.
2	the NACC	be a reference to the Inspector.

Authorised Version C2026C00231 registered 19/06/2026

Modifications		
Item	**A reference to...**	**is taken to...**
3	a NACC Commissioner	be a reference to the Inspector.
4	a corruption issue	be a reference to: (a) a NACC corruption issue; or (b) a complaint made in relation to the conduct or activities of the NACC or a staff member of the NACC.
5	a corruption investigation	be a reference to: (a) a NACC corruption investigation; or (b) a NACC complaint investigation.
6	an authorised officer	be a reference to a person appointed by the Inspector under section 267 (appointment of authorised officers) as applied by this section.
7	an agency head	include a reference to the Commissioner.
8	a head	include a reference to the Commissioner.
9	a Commonwealth agency	include a reference to the NACC.
10	an agency	include a reference to the NACC.
11	a staff member of the NACC	be a reference to: (a) the Inspector; or (b) a person assisting the Inspector.

Authorised Version C2026C00231 registered 19/06/2026

(2) However:

(a) Subdivision E of Division 3 of Part 7 (travel documents and arrest of witnesses) does not apply for the purposes of a NACC complaint investigation; and

(b) the following provisions of that Part, as applied by this section, do not authorise, in the context of a NACC complaint investigation, the taking of any action in relation to a post-charge or a post-confiscation application event:

(i) Subdivision B of Division 2 (notices to produce);

(ii) Division 3 (hearings); and

(c) item 6 of the table in subsection (1) does not apply to subsections 267(1) and (4); and

(d) item 11 of the table in subsection (1) does not apply to the following provisions:

(i) paragraph 104(3)(a);

(ii) paragraph 143(3)(a).

214A Inspector's powers to conduct audits

For the purposes of conducting an audit as mentioned in paragraph 184(1)(f), the Inspector:

(a) may, at all reasonable times, enter and remain on any premises occupied by the NACC; and

(b) is entitled to all reasonable facilities and assistance that the Commissioner is capable of providing; and

(c) is entitled to full and free access at all reasonable times to any information, documents or other property of the NACC; and

(d) may require a staff member of the NACC to provide any information the Inspector considers necessary, being information:

(i) that is in the staff member's possession, or to which the staff member has access; and

(ii) that is relevant to the audit; and

(e) may examine, make copies of or take extracts from any information or documents.

Authorised Version C2026C00231 registered 19/06/2026

Subdivision B—Reporting on NACC corruption investigations and NACC complaint investigations

215 Report on NACC corruption investigation or NACC complaint investigation

Inspector must prepare a NACC investigation report

(1) After completing:
  (a) a NACC corruption investigation; or
  (b) a NACC complaint investigation;
the Inspector must prepare a report (a ***NACC investigation report***) on the investigation.

Contents of a NACC investigation report

(2) Subject to section 217, the NACC investigation report must set out:
  (a) the Inspector's findings or opinions on the NACC corruption issue or the complaint; and
  (b) a summary of the evidence and other material on which those findings or opinions are based; and
  (c) any recommendations that the Inspector thinks fit to make; and
  (d) if recommendations are made—the reasons for those recommendations.

Note: See also section 219, which requires the Inspector to give certain persons an opportunity to respond before including certain information in the report. That section also requires additional information to be included in a NACC investigation report in certain circumstances.

(3) For the purposes of paragraph (2)(a), if:
  (a) the NACC investigation report relates to a NACC corruption investigation; and
  (b) the Inspector forms the opinion that a person whose conduct has been investigated has engaged in corrupt conduct of a serious or systemic nature;

Authorised Version C2026C00231 registered 19/06/2026

the Inspector must include a statement to that effect in the NACC investigation report.

(4) To avoid doubt, for the purposes of paragraph (2)(a), if:

(a) the NACC investigation report relates to a NACC corruption investigation; and

(b) the Inspector forms the opinion that a person whose conduct has been investigated has not engaged in corrupt conduct;

the Inspector must set out that opinion in the report.

(5) If:

(a) a person gives evidence at a hearing in relation to a NACC corruption investigation or a NACC complaint investigation; and

(b) the person is not the subject of any findings or opinions in relation to the investigation;

the Inspector may include a statement to that effect in the NACC investigation report if the Inspector is satisfied that it is appropriate and practicable to do so to avoid damage to the person's reputation.

Recommendations that may be made

(6) Without limiting paragraph (2)(c), the Inspector may make one or more of the following recommendations:

(a) taking action in relation to a person, in accordance with relevant procedures, with a view to improving their performance;

(b) terminating the employment of a person in accordance with relevant procedures;

(c) taking action to rectify or mitigate the effects of the conduct of a person;

(d) adopting measures to remedy deficiencies in the policy, procedures or practices that facilitated:

(i) the employment or engagement of an unsuitable person; or

(ii) a person engaging in corrupt conduct; or

Authorised Version C2026C00231 registered 19/06/2026

(iii) the failure to detect corrupt conduct engaged in by a person.

Section does not limit what may be included in a NACC investigation report

(7) This section does not limit what may be included in a NACC investigation report.

216 Effect of findings or opinions about corrupt conduct

(1) This section applies if a NACC investigation report includes a finding or opinion that a person has engaged, is engaging or will engage in corrupt conduct or conduct that could constitute or involve corrupt conduct.

(2) The finding or opinion does not constitute a finding or opinion that the person is guilty of or has committed, is committing or will commit an offence.

217 Excluding certain information from NACC investigation report

(1) The Inspector must exclude the following from a NACC investigation report:
(a) section 235 certified information;
(b) information that the Inspector is satisfied is sensitive information.

Note: This information must be included in a protected information report (see section 218).

(2) Before including information in a NACC investigation report, the Inspector must consult with the following about whether the information is sensitive information:
(a) the head of each Commonwealth agency or State or Territory government entity to which the information relates;
(b) if the information relates to the NACC or a staff member of the NACC—the Commissioner.

Authorised Version C2026C00231 registered 19/06/2026

218 Protected information report

If the Inspector excludes information from a NACC investigation report under section 217, the Inspector must prepare another report (a ***protected information report***) that sets out:

(a) the information; and

(b) the reasons for excluding the information from the NACC investigation report.

Note: If a protected information report is given to a person, the person must not disclose the report, or information contained in the report, to the public or a section of the public: see section 234.

219 Opportunity to respond must be given before including certain information in NACC investigation report

(1) Before including in a NACC investigation report an opinion, finding or recommendation that is critical (either expressly or impliedly) of a Commonwealth agency, a State or Territory government entity, the NACC or any other person, the Inspector must give the head of the agency, the head of the entity, the Commissioner or the other person concerned:

(a) a statement setting out the opinion, finding or recommendation; and

(b) a reasonable opportunity to respond to the opinion, finding or recommendation.

(2) The response may be given by:

(a) the head of the Commonwealth agency or of the State or Territory government entity concerned, or a person authorised by the head; or

(b) in relation to the NACC—the Commissioner, or a person authorised by the Commissioner; or

(c) in relation to any other person concerned—the other person concerned, or, with approval, a person representing the other person.

(3) If:

Authorised Version C2026C00231 registered 19/06/2026

(a) the opinion or finding is that a person has engaged in corrupt conduct; and

(b) the person provides a response to the finding or opinion;

the Inspector must include in the NACC investigation report a summary of the substance of the response if the person requests the Inspector to do so.

(4) Subsection (3) is subject to section 217.

(5) However, the Inspector must not include in the NACC investigation report any information in a response given under this section that would identify any person who, in the opinion of the Inspector, has not engaged in corrupt conduct unless the Inspector:

(a) is satisfied that it is necessary to do so in the public interest; and

(b) is satisfied that doing so will not cause unreasonable damage to the reputation, safety or wellbeing of the person; and

(c) includes in the report a statement that, in the opinion of the Inspector, the person has not engaged in corrupt conduct.

220 Inspector to give copies of reports to certain persons

(1) The Inspector must give the Commissioner, the CEO and the person referred to in subsection (2):

(a) the NACC investigation report; and

(b) if a protected information report is prepared in relation to the investigation—the protected information report.

(2) For the purposes of subsection (1), the person is:

(a) if the NACC investigation report relates to a NACC corruption investigation that concerned the conduct of the Minister—the Prime Minister; or

(b) otherwise—the Minister.

(3) Subject to subsection (5), the Inspector:

(a) must give a copy of a NACC investigation report relating to a NACC corruption investigation; and

Authorised Version C2026C00231 registered 19/06/2026

(b) may give a copy of a protected information report relating to the NACC corruption investigation;

to the following persons:

(c) for a NACC corruption investigation concerning the conduct of a current Minister—the Prime Minister;

(d) for a NACC corruption investigation concerning the conduct of a staff member of a Commonwealth agency—the head of the agency and the person mentioned in subsection (4);

(e) for a NACC corruption investigation concerning the conduct of the head of a Commonwealth agency:

(i) the person mentioned in subsection (4); and

(ii) if the head of the Commonwealth agency is an Agency Head (within the meaning of the *Public Service Act 1999*)—the Australian Public Service Commissioner;

(f) for a NACC corruption investigation concerning the conduct of a senator—the President of the Senate;

(g) for a NACC corruption investigation concerning the conduct of a member of the House of Representatives—the Speaker of the House of Representatives.

Note: A parliamentary office is a type of Commonwealth agency and the parliamentarian is the head of the agency (see subsection 11(1)).

(4) For the purposes of paragraphs (3)(d) and (e), the person is:

(a) if the Commonwealth agency is a Department of the Parliament established under the *Parliamentary Service Act 1999*:

(i) for the Department of the Senate—the President of the Senate; or

(ii) for the Department of the House of Representatives—the Speaker of the House of Representatives; or

(iii) otherwise—both the President of the Senate and the Speaker of the House of Representatives; or

(b) if the Commonwealth agency is established or continued in existence by an Act and paragraph (a) does not apply—the Minister administering that Act; or

Authorised Version C2026C00231 registered 19/06/2026

(c) if the Commonwealth agency is a Commonwealth entity and neither paragraph (a) nor paragraph (b) applies—the Minister having general responsibility for the activities of the entity.

(5) The Inspector must exclude the following from a protected information report given under paragraph (3)(b):

(a) section 235 certified information, if the disclosure of the information would contravene the certificate issued under section 235;

(b) information that the Inspector is satisfied:

(i) is sensitive information; and

(ii) is desirable in the circumstances to exclude from the report.

(6) In deciding whether to exclude information from a protected information report under paragraph (5)(b), the Inspector must seek to achieve an appropriate balance between:

(a) the interest of a person mentioned in paragraphs (3)(c) to (g) or subsection (4), to whom the report is to be given, in having the information included in the report; and

(b) the prejudicial consequences that might result from including the information in the report.

221 Tabling of NACC investigation report in Parliament

If:

(a) the Inspector gives the Commissioner a NACC investigation report under subsection 220(1); and

(b) one or more public hearings were held in the course of the investigation to which the NACC investigation report relates;

the Inspector must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Inspector gives the report.

Authorised Version C2026C00231 registered 19/06/2026

222 Publishing NACC investigation report in whole or in part

(1) The Inspector may publish the whole or a part of a NACC investigation report if:

(a) the Inspector has given the Commissioner the NACC investigation report under subsection 220(1); and

(b) the Inspector is satisfied that it is in the public interest to publish the whole or the part of the report (as the case may be).

(2) This section is subject to section 223.

223 Opportunity to respond must be given before publishing a NACC investigation report containing critical opinions etc.

(1) This section applies to a NACC investigation report that:

(a) has not been tabled in Parliament; and

(b) is published, in whole or in part, under section 222 more than 3 months after the report is given to the Commissioner under subsection 220(1).

(2) The NACC investigation report must not include an opinion, finding or recommendation that is critical (either expressly or impliedly) of a Commonwealth agency, a State or Territory government entity, the NACC or any other person, unless the Inspector has given the head of the agency, the head of the entity, the Commissioner or the other person concerned:

(a) a statement setting out the opinion, finding or recommendation; and

(b) a reasonable opportunity to respond to:

(i) the opinion, finding or recommendation; and

(ii) the proposed publication of the opinion, finding or recommendation.

(3) The response may be given by:

Authorised Version C2026C00231 registered 19/06/2026

(a) the head of the Commonwealth agency or of the State or Territory government entity concerned, or a person authorised by the head; or

(b) in relation to the NACC—the Commissioner, or a person authorised by the Commissioner; or

(c) in relation to any other person concerned—the other person concerned, or, with approval, a person representing the other person.

224 Advising person who referred NACC corruption issue or made complaint of outcome

(1) The Inspector may advise a person (or a representative nominated by the person) of the outcome of:

(a) an investigation of a NACC corruption issue raised by the person in a referral under section 202, 203 or 204; or

(b) if the person made the complaint in relation to which the NACC complaint investigation was conducted—the NACC complaint investigation.

(2) One way of advising the person (or the representative) is to give a copy of all or part of the NACC investigation report prepared in relation to the investigation.

(3) In advising the person of the outcome of the investigation, the Inspector:

(a) must not disclose section 235 certified information to the person if the disclosure of the information to the person would contravene the certificate issued under section 235; and

(b) must exclude information from the advice if the Inspector is satisfied that:

(i) the information is sensitive information; and

(ii) it is desirable in the circumstances to exclude the information from the advice.

(4) Before giving the person information about the outcome of the investigation, the Commissioner must consult with the head of

Authorised Version C2026C00231 registered 19/06/2026

each Commonwealth agency or State or Territory government entity to which the information relates about whether the information is sensitive information.

(5) In deciding whether to exclude information from the advice under paragraph (3)(b), the Inspector must seek to achieve an appropriate balance between:
  (a) the person's interest in having the information included in the advice; and
  (b) the prejudicial consequences that might result from including the information in the advice.

225 Advising person whose conduct is investigated of outcome of the investigation

(1) The Inspector must advise a person of the outcome of a NACC corruption investigation if the Inspector investigates a NACC corruption issue concerning the conduct of the person.

(3) The Inspector must advise a person of the outcome of a NACC complaint investigation if:
  (a) the complaint concerned the conduct of the person; and
  (b) the Inspector forms an opinion or makes a finding about the complaint.

(4) Without limiting subsection (1) or (3), the Inspector may advise the person of the outcome of the investigation by giving the person a copy of the whole or a part of the NACC investigation report prepared in relation to the investigation.

(5) In advising the person under subsection (1) or (3), the Inspector:
  (a) must not disclose section 235 certified information to the person if the disclosure of the information to the person would contravene the certificate issued under section 235; and
  (b) must exclude information from the advice if the Inspector is satisfied that:
    (i) the information is sensitive information; and

Authorised Version C2026C00231 registered 19/06/2026

(ii) it is desirable in the circumstances to exclude the information from the advice.

(6) Before giving the person information under subsection (1) or (3), the Inspector must consult with the head of each Commonwealth agency or State or Territory government entity to which the information relates about whether the information is sensitive information.

(7) In deciding whether to exclude information from the advice under paragraph (5)(b), the Inspector must seek to achieve an appropriate balance between:

(a) the person's interest in having the information included in the advice; and

(b) the prejudicial consequences that might result from including the information in the advice.

(8) However, neither subsection (1) nor (3) applies if advising the person of the outcome of the investigation:

(a) is not reasonably practicable; or

(b) would be contrary to the public interest, including because it might prejudice:

(i) a person's fair trial; or

(ii) a NACC Act process; or

(iii) any other investigation that is being undertaken by a Commonwealth agency or a State or Territory government entity; or

(iv) any action taken as a result of a NACC Act process or an investigation covered by subparagraph (iii).

226 Follow-up action on NACC investigation report

(1) The Inspector may request:

(a) the Commissioner; or

(b) the head of a Commonwealth agency to whom a NACC investigation report is given;

Authorised Version C2026C00231 registered 19/06/2026

to give the Inspector, within a specified time, details of any action that the Commissioner or the head of the Commonwealth agency has taken, or proposes to take, with respect to a recommendation included in the NACC investigation report.

(2) The Commissioner or the head of the Commonwealth agency must comply with the request.

(3) If the Inspector is not satisfied with the response of the Commissioner or the head of the Commonwealth agency to the request, the Inspector may refer to the person mentioned in subsection (4):

(a) the Inspector's recommendation and the reasons for that recommendation; and

(b) the response of the Commissioner or head of the agency to the recommendation; and

(c) the Inspector's reasons for not being satisfied with that response.

(4) For the purposes of subsection (3), the person is:

(a) if the response was made by the Commissioner—the Minister; or

(b) if the response was made by the head of a Commonwealth agency that is a parliamentary office:

(i) for a parliamentarian who is a senator—the President of the Senate; or

(ii) for a parliamentarian who is a member of the House of Representatives—the Speaker of the House of Representatives; or

(c) if the response was made by the head of a Commonwealth agency that is a Department of the Parliament established under the *Parliamentary Service Act 1999*:

(i) for the Department of the Senate—the President of the Senate; or

(ii) for the Department of the House of Representatives—the Speaker of the House of Representatives; or

Authorised Version C2026C00231 registered 19/06/2026

(iii) otherwise—both the President of the Senate and the Speaker of the House of Representatives; or

(d) if the response was made by the head of a Commonwealth agency that is established or continued in existence by an Act and paragraph (c) does not apply—the Minister administering that Act; or

(e) if the response was made by the head of a Commonwealth agency that is a Commonwealth entity and neither paragraph (c) nor paragraph (d) applies—the Minister having general responsibility for the activities of the entity.

(5) If the Inspector refers material to a person under subsection (3), the Inspector may also send a copy of that material to:

(a) the President of the Senate for presentation to the Senate; and

(b) the Speaker of the House of Representatives for presentation to the House of Representatives.

(6) The Inspector must exclude the following from the copy of the material sent under subsection (5):

(a) section 235 certified information;

(b) information that the Inspector is satisfied is sensitive information.

(7) Before sending a copy of material to a person under subsection (5), the Inspector must consult with the following about whether the material contains sensitive information:

(a) the head of each Commonwealth agency or State or Territory government entity to which the material relates;

(b) if the material relates to the NACC or a staff member of the NACC—the Commissioner.

Authorised Version C2026C00231 registered 19/06/2026

Part 11—Confidentiality, consultation and information sharing

Division 1—Confidentiality requirements

227 Key concepts

Authorised disclosers

(1) Each of the following is an ***authorised discloser***:
  (a) the Commissioner;
  (b) the Inspector.

Entrusted persons

(2) A person is an ***entrusted person*** if the person is:
  (a) a staff member of the NACC; or
  (b) the Inspector; or
  (c) a person assisting the Inspector (see section 195).

Sensitive information

(3) ***Sensitive information*** is information the disclosure of which:
  (a) could prejudice the security, defence or international relations of Australia; or
  (b) would prejudice relations between:
    (i) the Commonwealth Government and the Government of a State or Territory; or
    (ii) the Government of a State or Territory and the Government of another State or Territory; or
  (c) would involve disclosing:
    (i) deliberations or decisions of the Cabinet, or of any committee of the Cabinet, of the Commonwealth or of a State; or

Authorised Version C2026C00231 registered 19/06/2026

(ii) deliberations or advice of the Federal Executive Council or the Executive Council of a State or the Northern Territory; or

(iii) deliberations or decisions of the Australian Capital Territory Executive or of a committee of that Executive; or

(d) could reveal, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to:

(i) the enforcement of the criminal law of the Commonwealth, a State or Territory or a foreign country; or

(ii) a NACC Act process; or

(e) could reveal, or enable a person to ascertain, the identity of a person who is, or has been, a staff member of:

(i) the Australian Security Intelligence Organisation; or

(ii) the Australian Secret Intelligence Service; or

(f) could reveal, or enable a person to ascertain, the identity of a person who is, or has been, an agent of:

(i) the Australian Security Intelligence Organisation; or

(ii) the Australian Secret Intelligence Service; or

(iii) the Australian Geospatial-Intelligence Organisation; or

(iv) the Australian Signals Directorate; or

(g) could reveal information:

(i) about the capabilities of, or information sources or operational activities or methods available to, a law enforcement agency, intelligence agency or the Australian Defence Force; or

(ii) about particular operations that have been, are being or are proposed to be undertaken by a law enforcement agency, intelligence agency or the Australian Defence Force, or about proceedings relating to those operations; or

(iii) provided by, or on behalf of, the government of a foreign country, an authority of the government of a foreign country or an international organisation, where

Authorised Version C2026C00231 registered 19/06/2026

that government or organisation does not consent to the public disclosure of the information; or

(h) would prejudice the proper performance of the functions of the IGIS; or

(i) could endanger a person's life or physical safety; or

(j) could prejudice the protection of public safety; or

(k) would prejudice the fair trial of any person or the impartial adjudication of a matter; or

(l) would prejudice the proper enforcement of the law (including through corruption investigations, NACC corruption investigations or NACC complaint investigations); or

(m) would involve disclosing information whose disclosure is prohibited (absolutely or subject to qualifications) by or under another law of the Commonwealth; or

(n) would involve unreasonably disclosing a person's personal affairs; or

(o) would involve unreasonably disclosing confidential commercial information.

228 Confidentiality requirements for entrusted persons

(1) A person who is, or has been, an entrusted person commits an offence if:

(a) the person (whether directly or indirectly and whether while or after ceasing to be an entrusted person):

(i) makes a record of any information; or

(ii) discloses any information; and

(b) the person obtained the information:

(i) because of the person being an entrusted person; or

(ii) in the course of carrying out the person's duties as an entrusted person.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if the making of the record, or the disclosing of the information, is authorised by section 229 or 230.

Authorised Version C2026C00231 registered 19/06/2026

229 Authorisations to record or disclose information

Purposes connected with functions, powers and duties of Commissioner or Inspector

(1) A person may make a record of information, or disclose information, if:

(a) the person obtained the information:

(i) because of the person being an entrusted person; or

(ii) in the course of carrying out the person's duties as an entrusted person; and

(b) the person makes the record, or discloses the information, for purposes connected with the exercise of the powers, or the performance of the functions or duties, of the Commissioner or the Inspector under this Act; and

(c) for a disclosure:

(i) the disclosure is not a disclosure to the public, or a section of the public, of the whole or part of a protected information report, or information contained in such a report; and

(ii) the disclosure is not prevented by subsection (7), (9) or (10).

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

Disclosure to a Commonwealth agency or a State or Territory government entity

(2) An authorised discloser may disclose information to the head of a Commonwealth agency, or of a State or Territory government entity, if:

(a) the authorised discloser is satisfied that, having regard to the functions of the person or entity concerned, it is appropriate to do so; and

(b) the disclosure is not prevented by subsection (7), (9) or (10).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2026C00231 registered 19/06/2026

Disclosure between the Commissioner and the Inspector

(3) The Commissioner and the Inspector may disclose information to each other if:

(a) the Commissioner or Inspector (as the case requires) is satisfied that it is appropriate to do so; and

(b) the disclosure is not prevented by subsection (9) or (10).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

Disclosure required by another Commonwealth law

(4) A person may disclose information if:

(a) the disclosure is required under another law of the Commonwealth; and

(b) the disclosure is not prevented by subsection (9).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

Disclosure to protect life or physical safety

(5) An authorised discloser may disclose information to a particular person if the authorised discloser is satisfied that it is necessary to do so in order to protect that or another person's life or physical safety.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

Disclosure of publicly available information

(6) A person may make a record of information, or disclose information, if the information has already been lawfully made available to the public.

Restrictions on authorisations to disclose

(7) For the purposes of subsections (1) and (2), this subsection prevents a disclosure if the disclosure would contravene a

Authorised Version C2026C00231 registered 19/06/2026

certificate issued under section 235, unless the disclosure is made to an IGIS official.

(8) A person must notify the Attorney-General if the person intends to make a disclosure to an IGIS official, under subsection (1), (2) or (4), that would contravene a certificate issued under section 235.

(9) For the purposes of subsections (1) to (4), this subsection prevents a disclosure if the disclosure would be inconsistent with an arrangement entered into under section 239.

(10) For the purposes of subsections (1) to (3), this subsection prevents a disclosure of investigation material or derivative material unless the disclosure:

(a) is in accordance with any direction in effect under subsection 100(1) (directions about use or disclosure of investigation material); and

(b) complies with Subdivision B of Division 4 of Part 7 (use and disclosure of investigation material).

Relationship to other provisions

(11) Except as provided by subsections (7), (9) and (10), this section has effect despite any other provision of this Act.

230 Disclosure by authorised discloser in public interest

(1) If the Commissioner is satisfied that it is in the public interest to do so, the Commissioner may disclose information to the public, or a section of the public, about:

(a) the performance of the Commissioner's functions; or

(b) the exercise of the Commissioner's powers; or

(c) a corruption investigation conducted by the Commissioner (whether alone or jointly with a Commonwealth agency or a State or Territory government entity); or

(d) a public inquiry conducted by the Commissioner.

Authorised Version C2026C00231 registered 19/06/2026

(2) If the Inspector is satisfied that it is in the public interest to do so, the Inspector may disclose information to the public, or a section of the public, about:

(a) the performance of the Inspector's functions; or

(b) the exercise of the Inspector's powers; or

(c) a NACC corruption investigation conducted by the Inspector (whether alone or jointly with a Commonwealth agency, the NACC or a State or Territory government entity); or

(d) a NACC complaint investigation conducted by the Inspector.

(3) Subsections (1) and (2) have effect:

(a) subject to the following:

(i) subsections (4) to (6);

(ii) any direction in effect under section 100 (directions about use or disclosure of investigation material);

(iii) Subdivision B of Division 4 of Part 7 (use and disclosure of investigation material);

(iv) section 231 (opportunity to respond must be given before disclosure of critical opinions, findings and recommendations);

(v) any arrangement entered into under section 239; and

(b) despite any other provision of this Act.

(4) An authorised discloser must not disclose under subsection (1) or (2) information that includes an opinion or finding about whether a particular person engaged in corrupt conduct, unless the information is contained in a report prepared under Part 8 (reporting on corruption investigations) or Subdivision B of Division 4 of Part 10 (reporting on NACC corruption investigations and NACC complaint investigations).

(5) An authorised discloser must not disclose the following under subsection (1) or (2):

(a) section 235 certified information;

(b) information that the authorised discloser is satisfied is sensitive information.

Authorised Version C2026C00231 registered 19/06/2026

(6) Before disclosing information under subsection (1) or (2), the authorised discloser must consult with the head of each Commonwealth agency or State or Territory government entity to which the information relates about whether the information is sensitive information.

231 Opportunity to respond must be given before disclosure of critical opinions, findings and recommendations

(1) Information disclosed under section 230 must not include an opinion, finding or recommendation that is critical (either expressly or impliedly) of a Commonwealth agency, a State or Territory government entity, the NACC or any other person unless the head of the agency, the head of the entity, the Commissioner or the other person concerned has been given:

(a) a statement setting out the opinion, finding or recommendation; and

(b) a reasonable opportunity to respond to:

(i) the opinion, finding or recommendation; and

(ii) the proposed disclosure of the opinion, finding or recommendation.

(2) Subsection (1) is taken to be satisfied if the head of the agency, the head of the entity, the Commissioner or the other person concerned has been given the opportunity to respond to the opinion, finding or recommendation under section 153 (about including certain information in investigation reports).

(3) The response may be given by:

(a) the head of the Commonwealth agency or of the State or Territory government entity concerned, or a person authorised by the head; or

(b) in relation to the NACC—the Commissioner, or a person authorised by the Commissioner; or

(c) in relation to any other person concerned—the other person concerned, or, with approval, a person representing the other person concerned.

Authorised Version C2026C00231 registered 19/06/2026

232 Entrusted persons generally not compellable in proceedings

(1) This section applies to:

(a) proceedings before a court (whether exercising federal jurisdiction or not); and

(b) proceedings before any tribunal, authority or person having power to require the production of documents or the answering of questions, other than a Commonwealth integrity agency or a member of a Royal Commission.

(2) A person who is, or has been, an entrusted person is not compellable in any proceedings to which this section applies:

(a) to disclose any information that:

(i) the person obtained because of the person being an entrusted person, or in the course of carrying out the person's duties as an entrusted person; and

(ii) was disclosed or collected under the provisions of, or for the purposes of, this Act; or

(b) to produce any document that:

(i) has come into the person's custody or control because of the person being an entrusted person, or in the course of carrying out the person's duties as an entrusted person; and

(ii) was produced under the provisions of, or for the purposes of, this Act.

(3) Subsection (1) does not apply to a proceeding if:

(a) any of the following persons is a party to the proceeding in the person's official capacity:

(i) a NACC Commissioner;

(ii) a delegate of the Commissioner;

(iii) a person appointed or authorised by the Commissioner to exercise a power or perform a function under this Act;

(iv) the Inspector;

(v) the CEO; or

Authorised Version C2026C00231 registered 19/06/2026

(b) the proceeding is brought for the purposes of carrying into effect a provision of this Act; or

(c) the proceeding is a criminal proceeding, civil penalty proceeding or confiscation proceeding brought as a result of:

(i) a NACC Act process; or

(ii) an investigation of a corruption issue that the Commissioner oversees; or

(iii) a referral of a corruption issue to a Commonwealth agency or a State or Territory government entity under paragraph 41(1)(d).

(4) For the purposes of this section, ***produce*** includes permit access to, and ***production*** has a corresponding meaning.

(5) To avoid doubt, this section does not limit:

(a) section 103 (making investigation material available to courts); or

(b) section 106 (court's powers to order disclosure and to ensure a fair trial).

233 Confidentiality requirements for persons who receive information about investigations and inquiries

(1) This section applies if:

(a) an entrusted person discloses information to another person (the ***recipient***) who is not an entrusted person; and

(b) the information relates to:

(i) a preliminary investigation conducted by the Commissioner in performing the Commissioner's function mentioned in paragraph 17(b); or

(ii) a preliminary investigation undertaken by the Inspector in performing the Inspector's function mentioned in paragraph 184(1)(b); or

(iii) a NACC Act process; and

(c) the information has not been lawfully made available to the public.

Authorised Version C2026C00231 registered 19/06/2026

(2) An authorised discloser may, by written notice given to the recipient, impose such conditions on:

(a) the making of a record of the information by the recipient or other persons; and

(b) the disclosure of the information by the recipient or other persons;

as the authorised discloser considers appropriate to do any or all of the following:

(c) prevent prejudice to the preliminary investigation or NACC Act process, or any action taken as a result of the investigation or process;

(d) prevent further disclosure of information contained in a protected information report;

(e) protect the identity of:

(i) any person of interest to the preliminary investigation or NACC Act process; and

(ii) any person who has given, or who the authorised discloser reasonably believes may give, information to the authorised discloser in connection with the preliminary investigation or NACC Act process (including by giving evidence at a hearing).

Note: For variation or revocation of a notice under this subsection, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) A person commits an offence if:

(a) the person engages in conduct; and

(b) the person's conduct breaches a condition under subsection (2).

Penalty: Imprisonment for 2 years.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—Protected information reports

234 Public disclosure of protected information reports prohibited

(1) A person commits an offence if:

(a) the person discloses:

(i) the whole or part of a report; or

(ii) information contained in a report; and

(b) the report is, or the information is contained in, a protected information report; and

(c) the disclosure is to the public, or a section of the public.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply in relation to a disclosure authorised under subsection 229(4) (disclosure required by another Commonwealth law) or section 230 (disclosure by authorised discloser in public interest).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2026C00231 registered 19/06/2026

Division 3—National security and related matters

Subdivision A—Attorney-General's certificates about release of information

235 Attorney-General's certificate in relation to particular information

(1) The Attorney-General may, in writing, certify that any of the following disclosures would be contrary to the public interest on one or more of the grounds set out in subsection (3):

(a) disclosure of information that is about a matter specified in the certificate;

(b) disclosure of the contents of a document specified in the certificate;

(c) the giving of information, or the production of documents, to the Committee in relation to a matter specified in the certificate.

(2) The Attorney-General must be satisfied on reasonable grounds that the certificate is appropriate and necessary to protect the public interest.

(3) The grounds are that the disclosure would:

(a) prejudice the security, defence or international relations of Australia; or

(b) involve the disclosure of communications between a Minister and a Minister of a State or Territory, or between a Minister of a State or Territory and a Minister of another State or Territory, and would prejudice:

(i) relations between the Commonwealth Government and the Government of a State or Territory; or

(ii) relations between the Government of a State or Territory and the Government of another State or Territory; or

Authorised Version C2026C00231 registered 19/06/2026

(c) involve the disclosure of deliberations or decisions of the Cabinet or of any committee of the Cabinet; or

(d) reveal, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to:

(i) the enforcement of the criminal law of the Commonwealth, a State or Territory or a foreign country; or

(ii) a corruption investigation; or

(iii) a NACC corruption investigation; or

(iv) a NACC complaint investigation; or

(v) a public inquiry; or

(e) reveal, or enable a person to ascertain, the identity of a person who is, or has been, a staff member of:

(i) the Australian Security Intelligence Organisation; or

(ii) the Australian Secret Intelligence Service; or

(f) reveal, or enable a person to ascertain, the identity of a person who is, or has been, an agent of:

(i) the Australian Security Intelligence Organisation; or

(ii) the Australian Secret Intelligence Service; or

(iii) the Australian Geospatial-Intelligence Organisation; or

(iv) the Australian Signals Directorate; or

(g) reveal information:

(i) about the capabilities of, or information sources or operational activities or methods available to, a law enforcement agency, intelligence agency or the Australian Defence Force; or

(ii) about particular operations that have been, are being or are proposed to be undertaken by a law enforcement agency, intelligence agency or the Australian Defence Force, or about proceedings relating to those operations; or

(iii) provided by, or on behalf of, the government of a foreign country, an authority of the government of a foreign country or an international organisation, where

Authorised Version C2026C00231 registered 19/06/2026

that government or organisation does not consent to the public disclosure of the information; or

(h) prejudice the proper performance of the functions of the IGIS; or

(i) endanger a person's life or physical safety; or

(j) prejudice the protection of public safety; or

(k) prejudice the fair trial of any person or the impartial adjudication of a matter; or

(l) prejudice the proper enforcement of the law (including through corruption investigations, NACC corruption investigations or NACC complaint investigations).

(4) To avoid doubt, causing no more than embarrassment or prejudice to a person's reputation is not a ground covered by subsection (3).

(5) The certificate must specify the kind of disclosure that would be contrary to the public interest.

(6) Without limiting subsection (5), the kind of disclosure that may be specified in the certificate includes:

(a) disclosure generally; or

(b) disclosure to a specified person or group of persons; or

(c) disclosure otherwise than to a specified person or group of persons.

(7) Without limiting subsection (1), a certificate under that subsection may provide that the disclosure of information about the existence or non-existence of:

(a) information about a specified matter; or

(b) a document or thing;

would be contrary to the public interest because it would:

(c) prejudice the security, defence or international relations of Australia; or

(d) prejudice the proper performance of the functions of the IGIS.

(8) The Attorney-General must give a copy of the certificate to:

Authorised Version C2026C00231 registered 19/06/2026

(a) the Commissioner; and
(b) the Inspector; and
(c) the following:
(i) if the information or the document referred to in subsection (1) is in the possession of a Commonwealth agency—the head of the agency;
(ii) if the information or the document referred to in subsection (1) is in the possession of a person—the person.

(9) A disclosure ***contravenes*** a certificate issued under this section if the disclosure would be contrary to the public interest according to the terms of the certificate.

(10) A certificate made under subsection (1) is not a legislative instrument.

236 Attorney-General's certificate in relation to international relations

Effect of international relations certificate

(1) Despite any other provision of this Act, a person must not disclose information, or the contents of a document, under this Act if doing so would contravene an international relations certificate (see subsection (2)).

Issue of international relations certificate

(2) The Attorney-General may, in writing, issue a certificate (an ***international relations certificate***) certifying that disclosure of any of the following to the Commissioner or Inspector (as specified in the certificate) would be contrary to the public interest on the ground set out in subsection (4):
(a) information about a matter specified in the certificate;
(b) the contents of a document specified in the certificate.

Authorised Version C2026C00231 registered 19/06/2026

(3) The Attorney-General must be satisfied on reasonable grounds that the certificate is appropriate and necessary to protect the public interest.

(4) The ground is that the disclosure would harm or prejudice Australia's international relations in relation to information that was communicated in confidence, under an international agreement:

(a) by, or on behalf of, the government of a foreign country, an authority of the government of a foreign country or an international organisation; and

(b) to the Government of the Commonwealth, to an authority of the Commonwealth, or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth.

(5) To avoid doubt, causing no more than embarrassment or prejudice to a person's reputation is not a ground covered by subsection (4).

(6) Without limiting subsection (2), an international relations certificate may provide that the disclosure of information about the existence or non-existence of:

(a) information about a specified matter; or

(b) a document or thing;

would be contrary to the public interest on the ground set out in subsection (4).

Copies of international relations certificate

(7) The Attorney-General must give a copy of the certificate to:

(a) the Commissioner; and

(b) the Inspector; and

(c) the following:

(i) if the information or the document referred to in subsection (2) is in the possession of a Commonwealth agency—the head of the agency;

Authorised Version C2026C00231 registered 19/06/2026

(ii) if the information or the document referred to in subsection (2) is in the possession of a person—the person.

Definitions

(8) A disclosure ***contravenes*** an international relations certificate if the disclosure would be contrary to the public interest according to the terms of the certificate.

Certificate not a legislative instrument

(9) A certificate made under subsection (2) is not a legislative instrument.

Subdivision B—Arrangements relating to intelligence agencies and the IGIS

237 Person investigating or inquiring must consult—security matters

(1) This section applies if:
(a) the Commissioner becomes aware that a corruption issue or a public inquiry relates in any way to a security matter; or
(b) the Inspector becomes aware that a NACC corruption issue relates in any way to a security matter.

(2) The person who becomes so aware must consult with the head of the Australian Security Intelligence Organisation.

(3) However, if the issue or inquiry relates to that head, the person must consult instead with the head of the Office of National Intelligence.

(4) A ***security matter*** is:
(a) espionage; or
(b) sabotage; or
(c) politically motivated violence; or

Authorised Version C2026C00231 registered 19/06/2026

(d) promotion of communal violence; or
(e) an attack on Australian's defence system; or
(f) an act of foreign interference; or
(g) a serious threat to Australia's territorial and border integrity.

238 Consultation before requiring information, documents or things from IGIS officials

(1) This section applies if the Commissioner or the Inspector intends to exercise a power under this Act to require an IGIS official to give information or produce a document or thing, and the information, document or thing:
(a) originated from, or was collected by, an intelligence agency; or
(b) concerns the activities of an intelligence agency.

(2) The Commissioner or the Inspector must not require the IGIS official to give the information or produce the document or thing unless the Commissioner or the Inspector (as the case requires) has consulted the head of the intelligence agency.

(3) In deciding whether to require the IGIS official to give the information or produce the document or thing, the Commissioner or the Inspector must take into account the views of the head of the intelligence agency, but is not bound by them.

(4) However, the Commissioner or the Inspector need not consult the head of the intelligence agency if doing so would be likely to prejudice:
(a) a NACC Act process; or
(b) any action taken as a result of a NACC Act process.

239 Arrangements for dealing with intelligence information

Arrangements between Commissioner and head of intelligence agency

(1) The Commissioner must take all reasonable steps to ensure that:

Authorised Version C2026C00231 registered 19/06/2026

(a) at any time while the Commissioner or staff members of the NACC are obtaining, storing, accessing, using or disclosing intelligence information relating to an intelligence agency, an arrangement is in force between the Commissioner and the head of the intelligence agency in relation to such actions; and

(b) any obtaining, storage, accessing, use or disclosure of intelligence information relating to the agency by the Commissioner or staff members of the NACC is done in accordance with the arrangement.

(2) If, at a time, the Commissioner has taken all reasonable steps to ensure that an arrangement as mentioned in subsection (1) is in force with the head of an intelligence agency, the fact that an arrangement is not in force does not prevent the Commissioner or a staff member of the NACC from obtaining, storing, accessing, using or disclosing intelligence information relating to the agency at that time.

Arrangements between Inspector and head of intelligence agency

(3) The Inspector must take all reasonable steps to ensure that:

(a) at any time while the Inspector or persons assisting the Inspector are obtaining, storing, accessing, using or disclosing intelligence information relating to an intelligence agency, an arrangement is in force between the Inspector and the head of the intelligence agency in relation to such actions; and

(b) any obtaining, storage, accessing, use or disclosure of intelligence information relating to the agency by the Inspector or persons assisting the Inspector is done in accordance with the arrangement.

(4) If, at a time, the Inspector has taken all reasonable steps to ensure that an arrangement as mentioned in subsection (3) is in force with the head of an intelligence agency, the fact that an arrangement is not in force does not prevent the Inspector or a person assisting the

Authorised Version C2026C00231 registered 19/06/2026

Inspector from obtaining, storing, accessing, using or disclosing intelligence information relating to the agency at that time.

Effect of arrangements

(5) An arrangement cannot prevent the exercise of the Commissioner or Inspector's powers, or the performance of the Commissioner or Inspector's functions, under this Act.

Intelligence information

(6) ***Intelligence information*** is any information that:
(a) was acquired or prepared by or on behalf of an intelligence agency in connection with its functions; or
(b) relates to the performance by an intelligence agency of its functions; or
(c) identifies a person as being, or having been, a staff member (within the meaning of the *Intelligence Services Act 2001*) or agent of the Australian Secret Intelligence Service or the Australian Security Intelligence Organisation.

Subdivision C—Arrangements relating to foreign nationals

240 Person investigating or inquiring must consult—foreign nationals

(1) This section applies if:
(a) the Commissioner becomes aware that a corruption issue or a public inquiry relates in any way to:
(i) an official of a foreign country; or
(ii) conduct in a foreign country of a person who is not an Australian citizen or a permanent resident of Australia; or
(b) the Inspector becomes aware that a NACC corruption issue relates in any way to such an official or such conduct.

(2) The person who becomes so aware must consult with the Secretary of the Foreign Affairs Department.

Authorised Version C2026C00231 registered 19/06/2026

(3) The ***Foreign Affairs Department*** is the Department administered by the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

(4) A person is a ***permanent resident of Australia*** if the person is a permanent resident within the meaning of the *Australian Citizenship Act 2007*.

Authorised Version C2026C00231 registered 19/06/2026

Part 12—Administrative provisions for the National Anti-Corruption Commission

Division 1—Appointment of the NACC Commissioners

241 Appointment of the Commissioner

Appointment by Governor-General

(1) The National Anti-Corruption Commissioner is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

(2) Before the Minister makes a recommendation to the Governor-General:
  (a) the Minister must have referred the proposed recommendation to the Committee under section 178; and
  (b) one of the following must have occurred:
    (i) the Committee was taken to have approved the proposed recommendation under subsection (4) of that section;
    (ii) the Committee has notified the Minister that it has decided to approve the proposed recommendation.

Qualification for appointment

(3) A person must not be appointed as the Commissioner unless the person:
  (a) is a retired judge of a federal court or a court of a State or Territory; or
  (b) is enrolled as a legal practitioner (however described) of a federal court or the Supreme Court of a State or Territory and has been so enrolled for at least 5 years.

Authorised Version C2026C00231 registered 19/06/2026

Period of appointment

(4) The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(5) The Commissioner must not be reappointed.

Basis of appointment

(6) The Commissioner must be appointed on a full-time basis.

242 Appointment of the Deputy Commissioners

Appointment by Governor-General

(1) A National Anti-Corruption Deputy Commissioner is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

(2) Before the Minister makes a recommendation to the Governor-General:
  (a) the Minister must have referred the proposed recommendation to the Committee under section 178; and
  (b) one of the following must have occurred:
    (i) the Committee was taken to have approved the proposed recommendation under subsection (4) of that section;
    (ii) the Committee has notified the Minister that it has decided to approve the proposed recommendation.

Qualification for appointment

(3) A person must not be appointed as a Deputy Commissioner unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

(4) At least 2 Deputy Commissioners (or if there is only one Deputy Commissioner—that Deputy Commissioner) must be:
  (a) a retired judge of a federal court or a court of a State or Territory; or

Authorised Version C2026C00231 registered 19/06/2026

(b) enrolled as a legal practitioner (however described) of a federal court or the Supreme Court of a State or Territory and has been so enrolled for at least 5 years.

(5) A person must not be appointed as a Deputy Commissioner if the person has previously been appointed as the Commissioner.

Period of appointment

(6) A Deputy Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(7) A Deputy Commissioner may be reappointed on one occasion after the Deputy Commissioner's first appointment.

Basis of appointment

(8) A Deputy Commissioner may be appointed on a full-time or part-time basis.

243 Acting appointments

(1) The Minister may, by written instrument, appoint a person to act as a NACC Commissioner:

(a) during a vacancy in the office of the NACC Commissioner (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the NACC Commissioner:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Qualification for acting appointment

(2) A person must not be appointed to act as a NACC Commissioner unless:

Authorised Version C2026C00231 registered 19/06/2026

(a) if the person is to act as the Commissioner—the person is qualified, as mentioned under subsection 241(3), to be appointed as the Commissioner; or

(b) if the person is to act as a Deputy Commissioner—the person is qualified, as mentioned under subsection 242(3) or (4) (as the case requires), to be appointed as a Deputy Commissioner.

244 Remuneration

(1) A NACC Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the NACC Commissioner is to be paid the remuneration that is prescribed by the regulations.

(2) A NACC Commissioner is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

245 Leave of absence

(1) If a NACC Commissioner is appointed on a full-time basis, the NACC Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) If a NACC Commissioner is appointed on a full-time basis, the Minister may grant the NACC Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) If a Deputy Commissioner is appointed on a part-time basis, the Minister may grant leave of absence to the Deputy Commissioner on the terms and conditions that the Minister determines.

Authorised Version C2026C00231 registered 19/06/2026

246 Other paid work

A NACC Commissioner must not engage in paid work outside the duties of the NACC Commissioner's office without the Minister's approval.

247 Disclosure of interests

(1) A disclosure by a NACC Commissioner under section 29 of the PGPA Act (which deals with the duty to disclose interests) must be made to the Minister.

(2) Subsection (1) applies in addition to any rules made for the purposes of that section.

(3) For the purposes of this Act and the PGPA Act, a NACC Commissioner is taken not to have complied with section 29 of that Act if the NACC Commissioner does not comply with subsection (1) of this section.

248 Other terms and conditions

A NACC Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

249 Resignation

(1) A NACC Commissioner may resign the NACC Commissioner's appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

250 Termination of appointment

(1) The Governor-General may terminate the appointment of a NACC Commissioner if each House of the Parliament, in the same session

Authorised Version C2026C00231 registered 19/06/2026

of the Parliament, presents an address to the Governor-General praying for the removal of the NACC Commissioner:

(a) for misbehaviour; or

(b) if the NACC Commissioner is unable to perform the duties of the NACC Commissioner's office because of physical or mental incapacity.

(2) The Governor-General must terminate the appointment of a NACC Commissioner if the NACC Commissioner:

(a) becomes bankrupt; or

(b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) compounds with the NACC Commissioner's creditors; or

(d) makes an assignment of the NACC Commissioner's remuneration for the benefit of the NACC Commissioner's creditors.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—The CEO, staff etc. and authorised officers

Subdivision A—Appointment and functions of the CEO

251 The Chief Executive Officer

There is to be a Chief Executive Officer of the National Anti-Corruption Commission.

252 Functions of CEO

(1) The functions of the CEO are:
  (a) to manage the affairs of the NACC; and
  (b) to ensure the NACC performs its functions.

(2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of the CEO's functions.

253 Commissioner may give directions to CEO

(1) The Commissioner may give directions to the CEO about the performance of the CEO's functions.

(2) The CEO must comply with a direction given under subsection (1).

(3) Subsection (2) does not apply to the extent the direction relates to the CEO's performance of functions or exercise of powers under the following Acts in relation to the NACC:
  (a) the PGPA Act;
  (b) the *Public Service Act 1999*.

(4) A direction under subsection (1) is not a legislative instrument.

Authorised Version C2026C00231 registered 19/06/2026

254 Appointment of CEO

Appointment by Governor-General

(1) The CEO is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

(2) Before the Minister makes a recommendation to the Governor-General:
  (a) the Minister must have referred the proposed recommendation to the Commissioner; and
  (b) the Commissioner must have approved the proposed recommendation.

Qualification for appointment

(3) A person must not be appointed as the CEO unless the Commissioner is satisfied that the person has appropriate qualifications, knowledge or experience.

Period of appointment

(4) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Basis of appointment

(5) The CEO must be appointed on a full-time basis.

255 Acting appointments

The Commissioner may, by written instrument, appoint a person to act as the CEO:
  (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
  (b) during any period, or during all periods, when the CEO:
    (i) is absent from duty or from Australia; or

Authorised Version C2026C00231 registered 19/06/2026

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

256 Remuneration

(1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.

(2) The CEO is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

257 Leave of absence

(1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Commissioner may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

258 Other paid work

The CEO must not engage in paid work outside the duties of the CEO's office without the Commissioner's approval.

259 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Commissioner.

Authorised Version C2026C00231 registered 19/06/2026

260 Resignation

(1) The CEO may resign the CEO's appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

261 Termination of appointment

(1) The Governor-General may terminate the appointment of the CEO:
  (a) for misbehaviour; or
  (b) if the CEO is unable to perform the duties of the CEO's office because of physical or mental incapacity.

(2) The Governor-General must terminate the appointment of the CEO if:
  (a) the CEO:
    (i) becomes bankrupt; or
    (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with the CEO's creditors; or
    (iv) makes an assignment of the CEO's remuneration for the benefit of the CEO's creditors; or
  (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  (c) the CEO engages, except with Commissioner's approval, in paid work outside the duties of the CEO's office (see section 258); or
  (d) the CEO fails, without reasonable excuse, to comply with section 29 of the PGPA Act (which deals with the duty to disclose interests) or rules made for the purposes of that section.

Authorised Version C2026C00231 registered 19/06/2026

Subdivision B—Staff and consultants etc.

262 Staff

(1) The staff of the NACC must be persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:
  (a) the CEO and the APS employees assisting the CEO together constitute a Statutory Agency; and
  (b) the CEO is the Head of that Statutory Agency.

263 Consultants

(1) The CEO may, on behalf of the Commonwealth, engage consultants to assist in the performance of the NACC's functions.

(2) The consultants are to be engaged on the terms and conditions that the CEO determines in writing.

264 Persons assisting the NACC

(1) The NACC may be assisted by:
  (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to the NACC in connection with the performance of any of the NACC's functions; and
  (b) persons whose services are made available under arrangements made under subsection (2).

(2) The CEO may, on behalf of the Commonwealth, make an arrangement with the appropriate authority or officer of:
  (a) a State or Territory government; or
  (b) a State or Territory government authority; or
  (c) a government body or authority of a foreign country;

Authorised Version C2026C00231 registered 19/06/2026

under which the government or authority makes officers or employees available to the NACC to perform services in connection with the performance of any of the NACC's functions.

(3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory or foreign country with respect to the services of a person to whom the arrangement relates.

(4) When performing services for the NACC under this section, a person is subject to the directions of the CEO and a NACC Commissioner.

(5) To avoid doubt, a constable assisting the NACC continues to have, and may exercise, all their functions, powers and duties as such a constable.

Note: For ***constable***, see section 7.

265 Counsel assisting the NACC or a NACC Commissioner

The CEO may appoint a legal practitioner to assist the NACC or a NACC Commissioner as counsel:

(a) generally; or

(b) in relation to a particular corruption investigation.

266 Meaning of *staff member* of the NACC

Each of the following is a ***staff member*** of the NACC:

(a) the Commissioner;

(b) any Deputy Commissioners;

(c) the CEO;

(d) a member of the staff referred to in section 262;

(e) a consultant engaged under section 263;

(f) a person referred to in section 264 whose services are made available to the NACC;

(g) a legal practitioner appointed under section 265.

Authorised Version C2026C00231 registered 19/06/2026

Subdivision C—Authorised officers

267 Appointment of authorised officers

(1) The Commissioner may, in writing, appoint a person to be an authorised officer for the purposes of Part 7 (investigating corruption issues).

(2) The person may exercise such powers of an authorised officer under Part 7 as are specified in the appointment.

(3) The person must be:
  (a) a staff member of the NACC:
    (i) who the Commissioner considers has suitable qualifications or experience; or
    (ii) who is also a member of the AFP; or
    (iii) who is also a member of the police force or police service of a State or Territory; or
  (b) a member of the AFP.

(4) A person who is a member of a police force or police service (including the AFP) must not be appointed as an authorised officer unless the head (however described) of the force or service agrees to the appointment.

(5) In exercising powers as an authorised officer, the person must comply with any directions given by the Commissioner.

(6) If a direction under subsection (5) is given in writing, the direction is not a legislative instrument.

268 Identity cards

(1) The Commissioner must issue an identity card to a person who is an authorised officer for the purposes of Part 7 (investigating corruption issues).

(2) An identity card:
  (a) must be in the form approved in writing by the Minister; and

Authorised Version C2026C00231 registered 19/06/2026

(b) must contain a recent photograph of the authorised officer.

Identity card to be carried and produced on request

(3) An authorised officer must carry the identity card at all times when exercising powers as an authorised officer in accordance with Part 7.

(4) An authorised officer is not entitled to exercise any powers under Part 7 in relation to premises if:
(a) the occupier of the premises requires the authorised officer to produce the authorised officer's identity card for inspection by the occupier; and
(b) the authorised officer fails to comply with the requirement.

(5) An authorised officer is not entitled to exercise any powers under Part 7 in relation to a person if:
(a) the person requires the authorised officer to produce the authorised officer's identity card for inspection by the person; and
(b) the authorised officer fails to comply with the requirement.

(6) The ***occupier*** of premises is the person apparently in charge of the premises.

Offence

(7) A person commits an offence if:
(a) the person has been issued with an identity card; and
(b) the person ceases to be an authorised officer; and
(c) the person does not return the identity card to the Commissioner within 14 days after ceasing to be an authorised officer.

Penalty: 60 penalty units.

(8) An offence against subsection (7) is an offence of strict liability.

Authorised Version C2026C00231 registered 19/06/2026

(9) Subsection (7) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9): see subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2026C00231 registered 19/06/2026

Division 3—Immunities of staff members of the NACC

269 Immunity from civil proceedings for staff members of the NACC and persons assisting

(1) A staff member of the NACC is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the staff member's functions, powers or duties under, or in relation to, this Act.

(2) A person whom the Commissioner requests, in writing, to assist a staff member of the NACC is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith for the purpose of assisting the staff member.

270 Immunities from certain State and Territory laws

A staff member of the NACC is not required under, or by reason of, a law of a State or Territory:

(a) to obtain or have a licence or permission for doing any act or thing in the exercise of powers or the performance of duties as such a staff member; or

(b) to register any vehicle, vessel, animal or article belonging to the Commonwealth.

Authorised Version C2026C00231 registered 19/06/2026

Division 4—Annual report by Commissioner

271 Annual report

(1) The Commissioner must give the Minister, for presentation to each House of the Parliament, a report (the ***annual report***) on the performance of the Commissioner's functions during each financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

(2) The annual report for each financial year must include:

(a) the particulars prescribed by the regulations about the following:

(i) corruption issues referred to the Commissioner during that year;

(ii) corruption issues dealt with by the Commissioner during that year;

(iii) corruption investigations conducted by the Commissioner during that year;

(iv) corruption issues that the Commissioner referred to a Commonwealth agency or State or Territory government entity for investigation during that year;

(v) public inquiries conducted by the Commissioner during that year;

(vi) certificates issued by the Attorney-General under section 235 during that year;

(vii) international relations certificates issued during that year; and

(b) a description of the corruption investigations conducted by the Commissioner during that year that the Commissioner considers raise significant issues for, or reflect developments in, Commonwealth agencies; and

(c) a description of any patterns or trends, and the nature and scope, of corruption in Commonwealth agencies or by public

Authorised Version C2026C00231 registered 19/06/2026

officials that have come to the Commissioner's attention during that year; and

(d) any recommendations for changes to the laws of the Commonwealth or administrative practices of Commonwealth agencies that the Commissioner, as a result of performing the Commissioner's functions during that year, considers should be made; and

(e) the extent to which corruption investigations have resulted in the prosecution in that year of persons for offences; and

(f) the extent to which corruption investigations have resulted in confiscation proceedings in that year; and

(g) the details of the number and results of:

(i) applications made to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under the *Administrative Decisions (Judicial Review) Act 1977* for orders of review in respect of matters arising under this Act in connection with the performance of functions or exercise of powers by the Commissioner; and

(ii) other court proceedings involving the Commissioner;

being applications and proceedings that were determined, or otherwise disposed of, during that year.

(3) The Minister must table the annual report in each House of the Parliament within 15 sitting days of that House after its receipt.

(4) A report prepared under this section may be included in a report prepared and given to the Minister under section 46 of the PGPA Act in relation to the NACC.

272 Exclusion of certain information from annual report

The Commissioner must exclude the following from the annual report:

(a) section 235 certified information;

(b) information that the Commissioner is satisfied is sensitive information.

Authorised Version C2026C00231 registered 19/06/2026

273 Effect of findings or opinions about corrupt conduct

(1) This section applies if an annual report includes a finding or opinion that a person has engaged, is engaging or will engage in corrupt conduct or conduct that could constitute or involve corrupt conduct.

(2) The finding or opinion does not constitute a finding or opinion that the person is guilty of or has committed, is committing or will commit an offence.

Authorised Version C2026C00231 registered 19/06/2026

Part 13—Miscellaneous

Division 1—Parliamentary privilege and other protections

274 Effect of Act on parliamentary privileges and immunities

Apart from section 181 (committee's access to certain information), this Act does not affect the law relating to the powers, privileges and immunities of any of the following:

(a) each House of the Parliament;

(b) the members of each House of the Parliament;

(c) the committees of each House of the Parliament and joint committees of both Houses of the Parliament.

275 Protections relating to non-judicial functions and powers

To avoid doubt, this Act is a law of the Commonwealth relating to criminal matters for the purposes of sections 4AAA and 4AAB of the *Crimes Act 1914*.

Note: Sections 4AAA and 4AAB of the *Crimes Act 1914* deal with the performance of functions, and the exercise of powers, that are neither judicial nor incidental to a judicial function by judges, magistrates and justices of the peace.

Authorised Version C2026C00231 registered 19/06/2026

Division 2—Delegations and review

276 Delegation by the Commissioner

General delegations

(1) The Commissioner may delegate all or any of the Commissioner's functions, powers or duties to:
  (a) a Deputy Commissioner; or
  (b) a staff member of the NACC:
    (i) who is an SES employee or acting SES employee; or
    (ii) who holds, or is acting in, an Executive Level 2, or equivalent, position.

Appointment of CEO and decision to take no action

(2) Despite subsection (1), the Commissioner:
  (a) must not delegate the Commissioner's duty under subsection 254(3) (appointment of CEO); and
  (b) may delegate the Commissioner's power under subsection 41(6) (decision to take no action in relation to a corruption issue) to any staff member of the NACC.

Limits on general delegations

(3) Paragraph (1)(b) does not apply:
  (a) to a function, power or duty under:
    (i) Subdivisions A to D of Division 3 (hearings) of Part 7; or
    (ii) Division 7 (search powers) of Part 7; or
    (iii) Part 8 (reporting on corruption investigations); or
    (iv) Part 9 (public inquiries), other than the provisions of Part 7 as applied by section 163 (and not covered by subparagraph (i) or (ii)); or
    (v) section 230 (disclosure by authorised discloser in public interest); or

Authorised Version C2026C00231 registered 19/06/2026

(vi) this section; or

(b) in relation to making an arrangement mentioned in subsection 239(1) (arrangements for dealing with intelligence information).

(4) To avoid doubt, the reference in subparagraphs (3)(a)(i) and (ii) to Part 7 includes a reference to that Part as applied by section 163.

Form of delegation

(5) A delegation under this section must be in writing and signed by the Commissioner.

Complying with directions

(6) In performing or exercising a function, power or duty delegated under subsection (1) or paragraph (2)(b), the delegate must comply with any directions of the Commissioner.

276A Delegation by the Inspector

General delegations

(1) The Inspector may delegate all or any of the Inspector's functions, powers or duties to a person assisting the Inspector who:

(a) is an SES employee, or acting SES employee; or

(b) holds, or is acting in, an Executive Level 2, or equivalent, position.

Decision to take no action

(2) Despite subsection (1), the Inspector may delegate the Inspector's powers under the following provisions to any person assisting the Inspector:

(a) subsection 210(6) (decision to take no action in relation to a NACC corruption issue);

(b) section 214A (Inspector's powers to conduct reviews).

Authorised Version C2026C00231 registered 19/06/2026

Limits on general delegations

(3) Subsection (1) does not apply to a function, power or duty under:
  (a) Subdivisions A to D of Division 3 (hearings) of Part 7 (as modified by section 214); or
  (b) paragraph 184(1)(eb) (recommendations on outcomes of reviews); or
  (c) Subdivision B of Division 4 of Part 10 (reporting on NACC corruption investigations and NACC complaint investigations); or
  (d) section 230 (disclosure by authorised discloser in public interest); or
  (e) in relation to making an arrangement mentioned in subsection 239(3) (arrangements for dealing with intelligence information); or
  (f) this section.

Form of delegation

(4) A delegation under this section must be in writing and signed by the Inspector.

Complying with directions

(5) In performing or exercising a function, power or duty delegated under subsection (1) or (2), the delegate must comply with any directions of the Inspector.

277 Delegation by heads of Commonwealth agencies

(1) The head of a Commonwealth agency may delegate all or any of the head's functions, powers or duties under this Act to a staff member of that agency who is:
  (a) an SES employee or acting SES employee; or
  (b) an individual who is concerned in, or takes part in, the management of the agency.

Authorised Version C2026C00231 registered 19/06/2026

Limits on delegations

(2) Subsection (1) does not apply in relation to making an arrangement mentioned in subsection 239(1) (arrangements for dealing with intelligence information).

Complying with directions

(3) In performing a function or duty, or exercising a power, under subsection (1), the delegate must comply with any directions of the head of the agency.

278 Review of operation of Act

Undertaking the review

(1) The Minister must cause a review to be undertaken of the first 5 years of the operation of:
  (a) this Act; and
  (b) the amendments made by the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022*.

(2) The review must be undertaken by one or more persons who, in the Minister's opinion, possess appropriate qualifications to undertake the review.

Report to Minister

(3) The person or persons undertaking the review must give the Minister a written report of the review within 12 months after the end of the 5-year period.

Submissions

(4) The review must include an opportunity for the following to make written submissions on the operation of this Act:
  (a) persons who are or have been public officials;
  (b) members of the public.

Authorised Version C2026C00231 registered 19/06/2026

Assistance

(5) An entrusted person must, if requested to do so by the persons undertaking the review, assist them in:
  (a) conducting the review; and
  (b) preparing the written report.

Tabling of report

(6) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament as soon as practicable after its receipt by the Minister.

Section not to apply if review conducted by Parliamentary committee

(7) However, this section does not apply if a committee of one or both Houses of the Parliament (including the Parliamentary Joint Committee on the National Anti-Corruption Commission) has reviewed the operation of this Act, or started such a review, before the end of the 5-year period.

Authorised Version C2026C00231 registered 19/06/2026

Division 3—Instruments under the Act

279 Guidelines

(1) The Commissioner may make written guidelines to assist any or all of the following in connection with the operation of this Act:
  (a) public officials;
  (b) any other person the Commissioner considers appropriate.

(2) Guidelines made under subsection (1) are not a legislative instrument.

280 Regulations

(1) The Governor-General may make regulations prescribing matters:
  (a) required or permitted by this Act to be prescribed by the regulations; or
  (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may:
  (a) prescribe arrangements for the Commonwealth to provide financial assistance in respect of the following:
    (i) a person's representation at a hearing by a legal practitioner;
    (ii) an application, or proposed application, to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act;
    (iii) any other matter arising under, or in relation to, this Act; or
  (b) require that information or reports that are required to be given under prescribed provisions are also to be given to prescribed persons in specified circumstances.

Authorised Version C2026C00231 registered 19/06/2026

Appropriation

(3) The Consolidated Revenue Fund is appropriated for the purposes of making payments to, or for the benefit of, parliamentarians or former parliamentarians under arrangements prescribed for the purposes of paragraph (2)(a) (arrangements for providing financial assistance).

Authorised Version C2026C00231 registered 19/06/2026

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Authorised Version C2026C00231 registered 19/06/2026

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

Authorised Version C2026C00231 registered 19/06/2026

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

C[x] = Compilation No. x

ch = Chapter(s)

cl = clause(s)

cont. = continued

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

Ord = Ordinance

orig = original

p = page(s)

para = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

pt = Part(s)

r = regulation(s)/Court rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s) /rule(s)/subrule(s)/order(s)/suborder(s)

sch = Schedule(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

sub ch = Sub-Chapter(s)

sub div = Subdivision(s)

sub pt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2026C00231 registered 19/06/2026

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Anti-Corruption Commission Act 2022	88, 2022	12 Dec 2022	s 8–171 and 182–280: 1 July 2023 (s 2(1) items 2, 4, 5) s 172–181: 13 Dec 2022 (s 2(1) item 3) Remainder: 12 Dec 2022 (s 2(1) item 1)	
Public Interest Disclosure Amendment (Review) Act 2023	23, 2023	19 June 2023	Sch 4 (items 3–5): 1 July 2023 (s 2(1) item 5)	Sch 4 (item 5)
Inspector-General of Aged Care (Consequential and Transitional Provisions) Act 2023	56, 2023	17 Aug 2023	Sch 1 (items 5, 6): 16 Oct 2023 (s 2(1) item 1)	—
Members of Parliament (Staff) Amendment Act 2023	71, 2023	19 Sept 2023	Sch 4 (item 18): 17 Oct 2023 (s 2(1) item 5)	—
Inspector-General of Intelligence and Security and Other Legislation Amendment (Modernisation) Act 2023	73, 2023	20 Sept 2023	Sch 2 (item 3): 21 Sept 2023 (s 2(1) item 3)	—
Statute Law Amendment (Prescribed Forms and Other Updates) Act 2023	74, 2023	20 Sept 2023	Sch 4 (item 54): 18 Oct 2023 (s 2(1) item 3)	—

Authorised Version C2026C00231 registered 19/06/2026

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Inspector-General of Live Animal Exports Amendment (Animal Welfare) Act 2023	108, 2023	4 Dec 2023	Sch 1 (items 24–33): 5 Dec 2023 (s 2(1) item 1)	—

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Parliamentary Business Resources Legislation Amendment (Review Implementation and Other Measures) Act 2024 (C2024A00031)	31, 2024	30 May 2024	sch 1 (item 62): 1 July 2026 (s 2(1) item 2) sch 3: 31 May 2024 (s 2(1) item 3)	—
as amended by				
Parliamentary Business Resources Legislation Amendment (Machinery of Government Change) Act 2025 (C2025A00024)	24, 2025	27 Mar 2025	28 Mar 2025 (s 2(1) item 1)	—
Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024 (C2024A00039)	39, 2024	31 May 2024	sch 2 (item 96): 14 Oct 2024 (s 2(1) item 2)	—

Authorised Version C2026C00231 registered 19/06/2026

Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Parliamentary Workplace Support Service Amendment (Independent Parliamentary Standards Commission) Act 2024 (C2024A00086)	86, 2024	17 Sept 2024	sch 1 (item 14): 14 Oct 2024 (s 2(1) item 3)	—
Crimes and Other Legislation Amendment (Omnibus No. 1) Act 2024 (C2024A00093)	93, 2024	24 Oct 2024	sch 1 (items 44-47): 24 Nov 2024 (s 2(1) item 2)	sch 1 (item 47)
Universities Accord (National Student Ombudsman) Act 2024 (C2024A00139)	139, 2024	10 Dec 2024	sch 1 (item 10): 1 Feb 2025 (s 2(1) item 2)	—
Strengthening Oversight of the National Intelligence Community Act 2025 (C2025A00075)	75, 2025	4 Dec 2025	sch 1 (items 204, 205), sch 5 (item 4): 4 June 2026 (s 2(1) items 2, 4)	sch 5 (item 4)
Law and Justice Legislation Amendment (New South Wales Local Court) Act 2026 (C2026A00004)	4, 2026	5 Mar 2026	sch 1 (item 27): 28 Mar 2026 (s 2(1) item 1)	—

Authorised Version C2026C00231 registered 19/06/2026

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 7	am No 56, 2023; No 74, 2023; No 108, 2023; No 75, 2025
Part 2	
Division 3	
s 11	am No 108, 2023
Division 4	
s 12	am No 71, 2023; No 108, 2023; No 39, 2024
Division 5	
s 15	am No 56, 2023; No 108, 2023; No 86, 2024; No 139, 2024
Part 4	
Division 3	
s 29	am No 23, 2023
s 30	rs No 23, 2023
Part 6	
Division 1	
s 46	am No 31, 2024
Part 7	
Division 4	
Subdivision B	
s 101	am No 73, 2023
Division 5	
s 112	am No 4, 2026
Division 7	
Subdivision B	
s 126	am No 93, 2024

Authorised Version C2026C00231 registered 19/06/2026

Endnote 4—Amendment history

Provision affected	How affected
Part 13	
Division 3	
s 280.....	am No 31, 2024

Authorised Version C2026C00231 registered 19/06/2026