

ACTION ALERT AA 22-5: NATIONAL ANTI-CORRUPTION COMMISSION

As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government, we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

October 2022

The Government has introduced new legislation on this topic, and this Alert outlines the main features and suggests points that might be taken up in any lobbying of MPs and Senators during the Parliamentary examination of the Bill.

Background

Following several years of rising concern in the community about integrity in politics, the new Labor government has prepared legislation in response. It is based to some extent on the experience of existing state and territory legislation, as well as on the Bill drawn up by Helen Haines MP, independent member for Indi. It is a response to increasing public pressure and the views of many legal experts throughout Australia.

The Legislation

On 28 September 2022, the Government introduced to Parliament two Bills – the National Anti-Corruption Commission Bill and the National Anti-Corruption Commission (Consequential and Transition Provisions) Bill. The new National Anti-Corruption Commission (NACC) “will have broad jurisdiction to investigate public sector corruption as well as prevention and education functions to bolster anti-corruption efforts in the Commonwealth public sector”. The plan is to have it in place by mid-2023. Here are the main features of the legislation:

- Independence from government – two commissioners and an inspector with discretion as to how the role is undertaken.
- Power to investigate the conduct of public officials including ministers, parliamentarians, statutory office holders, employees and contractors of government agencies.
- Investigations may be undertaken on the basis of a referral from any person or by a decision of the NACC itself.
- Public officials making disclosures will be protected from civil, criminal or administrative liability, and threats of reprisal, as well as by the existing provisions of the Public Interest Disclosure Act 2013.
- Journalists will not be expected to reveal the identity of sources, and the ABC and SBS will not be able to be searched without a warrant.

- The NACC will have investigative powers equivalent to a Royal Commission, and will not be subject to ministerial direction. There will be powers to obtain assistance from telecommunications and technology industry participants. Public hearings may be held if the NACC sees it as in the public interest and in 'exceptional circumstances'.
- The NACC will have to report on completed investigations to the Attorney-General, and can publish reports seen to be in the public interest. Parliament will be informed of any case in which a public hearing has been held.
- The NACC will not determine criminal guilt or liability, but can refer evidence to the Director of Public Prosecutions for further consideration.
- The NACC may conduct public inquiries into corruption risks, as part of its preventive and educational role.
- The NACC (including its appointments and budget) will be overseen by a Parliamentary Joint Committee and an Inspector.

Details of the legislation can be found at www.aph.gov.au through the 'Bills' icon. There is a joint committee examining the legislation. The committee is chaired by Senator Linda White, deputy chair Helen Haines MP. The committee is due to report by 10 November. Membership of the committee and other details about submissions can be found at www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Anti-Corruption_Commission_Legislation/NACC. Submissions can be sent to NACC@aph.gov.au

Commentary

Michelle Grattan (*Sydney Morning Herald*, 30 September 22) said that the Prime Minister and Leader of the Opposition have found much in common over the draft legislation. Their concern about public hearings exposing ministers is understandable given they stand a greater risk of such exposure than minor parties and independents. The draft therefore reflects a closer affinity to the Victorian model (IBAC) than the NSW one (ICAC). On the other hand, the Greens and independents favour a more open model, as originally proposed by Helen Haines MP.

Michael Pascoe (*New Daily*, 30 September 22) said the legislation would enable the NACC to judge the ethical dimension of politicians' actions as well as the legal guidelines involved. This should put paid to 'pork barrelling'.

Jack Waterford (*The Canberra Times*, 1 October 22) focused on the access to information held by government agencies. He points out that there is already a tendency for the Attorney-General to refuse Freedom of Information requests if security agencies demand protection against exposure of possible maladministration or incompetence. He understands concerns about reputational damage to ministers, but considers that the public has a right to know what is being done to stop systemic corruption, and public hearings are more likely to satisfy this.

Bernard Keane (*Crikey*, 4 October 22) drew attention to moves by some Coalition MPs (notably Julian Leeser) to prevent the NACC deciding whether to hold public hearings. The intention would be to transfer that power to an independent judge. The likely result would be delays caused as the court system is used for ongoing appeals by those being investigated.

Bill Browne (*Australia Institute*) said in a webinar on 29 September 2022 that the legislation satisfied most of the criteria agreed by the AI's national integrity committee of former judges. The main area of contention is whether the bar for public hearings is set too high by insisting on 'exceptional circumstances'. Another issue could be the composition of the Parliamentary committee that will oversee the legislation – at present it will be 50% government (plus a casting vote for chair) and 50% opposition and crossbench members.

Global Compliance News (www.globalcompliancenes.com) reports that "on a global level, we see more and more countries promulgating new and more sophisticated anti-corruption legislation as well as aggressive enforcement by government regulators". Western countries with strong sanctions are UK, France, Germany, Norway and the Netherlands. In our region, Japan, Indonesia, Malaysia, South Korea, Thailand and Vietnam have taken action along these lines.

Stephen Charles KC, Michael Barker KC and Geoffrey Watson SC, on behalf of the Centre for Public Integrity, issued a media release on 28 September in which they welcomed the legislation as having strong investigative powers and broad jurisdiction. They expressed concern that (a) third parties attempting to corrupt officials (e.g. by giving false information) would not be covered, and (b) the limit on public hearings would hide corruption.

The following are comments of relevant expert organisations:

<https://theconversation.com/how-does-the-governments-long-awaited-anti-corruption-bill-rate-an-integrity-expert-breaks-it-down-189878> article by A.J.Brown from Griffith University on behalf of Transparency International Australia

<https://johnmenadue.com/the-nacc-bill/> Article by Stephen Charles, retired judge from Victoria. Also part of Accountability Roundtable

<https://www.abc.net.au/news/2022-10-01/laura-tingle-new-national-anti-corruption-commission/101491154>

Action

The areas where Friends may want to express views include (a) the scope of the legislation, (b) the powers of the NACC, (c) the extent to which the 'public interest' is likely to be valued above any 'exceptional circumstances, and (d) the funding and resources available for the new body. In addition to contacting your own MPs and Senators, you may wish to approach the following parliamentarians who are especially engaged with this issue:

Attorney-General Mark Dreyfus – Mark.Dreyfus.MP@apq.gov.au

Home Affairs Minister Clare O'Neil – Clare.O'Neil.MP@aph.gov.au

Public Service Minister Katy Gallagher - Senator.Katy.Gallagher@aph.gov.au

Leader of Opposition Peter Dutton – Peter.Dutton.MP@aph.gov.au

Shadow Attorney-General Julian Leeser - Julian.Leeser.MP@aph.gov.au

Shadow Public Service Jane Hume - Senator.Hume@aph.gov.au

Australian Greens Leader Adam Bandt - Adam.Bandt.MP@aph.gov.au

Senator Linda White (chair of joint committee) – senator.white@aph.gov.au

Greens Justice David Shoebridge - Senator.Shoebridge@aph.gov.au

Independent Helen Haines (deputy chair of joint committee) - Helen.Haines.MP@aph.gov.au

Independent Zali Steggall - Zali.Steggall.MP@aph.gov.au

Independent David Pocock - Senator.Pocock@aph.gov.au

Independent Andrew Wilkie MP - Andrew.Wilkie.MP@aph.gov.au

For details of the ongoing Integrity Project of Quakers, **see**
www.quakersaustralia.info/concerns/quakers-taking-action.

Canberra

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