

Interactions between the NACC Act and the PID Act

Commonwealth integrity framework - how the *National Anti-Corruption Act 2022* and the *Public Interest Disclosure Act 2013* interact.

The *National Anti-Corruption Commission Act 2022* (NACC Act) and the *Public Interest Disclosure Act 2013* (PID Act) are each core parts of the **Commonwealth integrity framework**. The NACC Act and the PID Act provide pathways for public officials to report corruption and other integrity-related wrongdoing, as well as protections for those who do so, and have been designed to operate together. This fact sheet summarises how the two frameworks interact.

CORRUPT CONDUCT AND CORRUPTION ISSUES

Under the NACC Act, a person engages in **corrupt conduct** if they:

- » are a public official and they **breach public trust, abuse their office** as a public official, or **misuse information** they have gained in their capacity as a public official, or
- » do something that could **cause a public official to behave dishonestly or in a biased way** when they carry out their official duties.

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

Public officials can choose to refer a corruption issue, or provide information about a corruption issue, directly to the National Anti-Corruption Commission (NACC) or they can make a disclosure to an authorised recipient under the PID Act (see also 'mandatory referrals' in this Factsheet).

The NACC may decide to investigate allegations of **serious or systemic** corrupt conduct.

MANDATORY REFERRALS TO THE NACC

Any staff member of a Commonwealth agency who performs or exercises functions or powers relating to allocation or investigation of internal disclosures under the PID Act (a 'PID officer') has a **mandatory referral obligation** under the NACC Act if:

- » in the course of exercising their functions or powers they handle an internal disclosure that raises a **corruption issue** under the NACC Act,
- » the PID officer suspects the issue could involve **serious or systemic** corrupt conduct.

When these criteria are met, the PID officer must refer the corruption issue to the NACC **as soon as reasonably practicable** after becoming aware of the issue, unless a specified exception applies. In the case of a PID officer from an intelligence agency, they must refer it to either the NACC or the Inspector-General of Intelligence and Security (IGIS).

'Serious' and 'systemic' are not defined in the NACC Act, and take their ordinary meaning. The National Anti-Corruption Commissioner (Commissioner) may, in future, provide more detailed guidance on assessing what amounts to serious or systemic corrupt conduct.

PROTECTIONS – NACC DISCLOSURES AND REFERRALS

Both the PID Act and the NACC Act provide immunity from liability and criminalise reprisal action. The PID Act also provides civil remedies (e.g. compensation) for those who experience reprisal.

Disclosures about corruption issues made **directly to the NACC** are recognised as a type of public interest disclosure under the PID Act, if:

- » the person disclosing the information is or was a public official under the PID Act, and
- » the information tends to show disclosable conduct (or the discloser believes on reasonable grounds that it does).

In these circumstances, the discloser can access **both NACC Act and PID Act whistleblower protections** however if the NACC declines to investigate and refers the matter to another agency, it will no longer be recognised as a public interest disclosure under the PID Act.

If an internal disclosure to an agency results in **mandatory referral** to the NACC, the PID Act protections apply to the public official who made the disclosure, and the NACC Act protections apply to the PID officer who makes the referral.

The PID officer must tell the discloser if they refer the disclosure to the NACC or the IGIS.

EFFECT OF NACC REFERRAL ON PID ACT PROCESSES

Following the referral of a corruption issue to the NACC or the IGIS, a PID officer is still required to handle or deal with the internal disclosure in accordance with the PID Act, **unless the Commissioner has issued a stop action direction**.

Importantly, a PID officer who is handling a disclosure which raises a corruption issue cannot make a decision not to allocate or investigate (as the case may be) under the PID Act merely because the disclosure has been referred to the NACC or the IGIS.

If a **stop action direction** has prevented allocation or investigation of a disclosure, but that direction is subsequently **revoked**, the usual **timeframes** stipulated in the PID Act for these actions begin again from the date the PID officer becomes aware that a stop action direction no longer applies.

If a disclosure has been investigated under the NACC Act while the stop action direction was in force, it may be open to the principal officer to decide not to investigate (or further investigate) the disclosure. The principal officer will need to be reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation.

For further information see
www.ombudsman.gov.au

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