

# Submission to the Parliamentary Joint Committee on the National Anti-Corruption Commission

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June 2026

The Australia Institute welcomes the opportunity to make a submission to the Inquiry into aspects of the NACC's performance of its functions by the Parliamentary Joint Committee on the National Anti-Corruption Commission.

Prior work by the Australia Institute and the National Integrity Committee of former judges is particularly relevant to three of the inquiry's terms of reference:

- (3) the availability of support mechanisms for people engaging with the Commission;
- (4) the Commission's approach to public reporting and communication with the broader public about its role; and
- (5) the effectiveness of the Commission's corruption prevention and education activities.

## Summary

The Australia Institute has previously identified problems with the establishment of the NACC in 2022, which continue to impede the performance of its mandate.

For an anti-corruption commission, public hearings are an essential form of public communication and education (TOR 4 and 5). The NACC is not permitted to hold public hearings every time it would be in the public interest to do so.

Australia Institute polling research found that 67% of Australians thought that the NACC should be able to hold public hearings whenever it is in the public interest to do so.

A Whistleblower Protection Authority would protect whistleblowers reporting potential corruption to the NACC (TOR 3), but despite this measure being contained in the original proposal for the corruption watchdog, it was not included in the final legislation to establish the NACC. Australia Institute polling research found that 84% of Australians supported the introduction of a Whistleblower Protection Authority.

Government control of the NACC is relevant to TOR 5. No party should hold the majority vote on the NACC's parliamentary committee, nor should the Chair be limited to a member of the Government. The NACC's parliamentary committee should be able to select any member as its Chair, or the Chair could be chosen on a rotational basis.

To improve outcomes considered under TOR 5, the NACC Inspector's powers under s 184 could be expanded so as to include oversight of the performance of the NACC, including how long its inquiries take.

## Introduction

The Australia Institute has been advocating for a national anti-corruption body since 2017.<sup>1</sup> The National Integrity Committee, a group of former judges established under the auspices of The Australia Institute,<sup>2</sup> created a blueprint for the essential requirements for an effective national corruption watchdog.<sup>3</sup>

The National Integrity Committee envisaged an anti-corruption body that would fill a serious gap in Australia's capacity to address corruption. Some basic principles that the National Anti-Corruption Commission (NACC) should adhere to were provided in the NIC's submission to the Joint Select Committee on National Anti-Corruption Commission Legislation.<sup>4</sup>

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<sup>1</sup> The Australia Institute (n.d.) *The National Anti-Corruption Commission*, <https://australiainstitute.org.au/initiative/a-national-integrity-commission-with-teeth/an-idea-whose-time-has-come/>; Aulby (2017) *The case for a federal corruption watchdog*, <https://australiainstitute.org.au/report/the-case-for-a-federal-corruption-watchdog-icac-needed-to-fill-the-gaps-in-our-integrity-system/>

<sup>2</sup> The Australia Institute (n.d.) *National Integrity Committee*, <https://australiainstitute.org.au/expert/national-integrity-committee/>

<sup>3</sup> National Integrity Commission (2022) *Submission to NACC Joint Select Committee*, <https://australiainstitute.org.au/report/submission-to-nacc-joint-select-committee/>

<sup>4</sup> National Integrity Commission (2022) *Submission to NACC Joint Select Committee*, p 1

These are that:

1. it must be an independent body, provided with adequate resourcing to enable it to promote integrity and accountability and to prevent, investigate, and expose corruption.
2. it must have a broad jurisdiction, including the ability to investigate any conduct of any person that adversely affects or could adversely affect, the honest or impartial exercise of public administration.
3. it must be granted the full investigative powers of a Royal Commission to undertake its work.
4. it must have the power to hold public hearings.
5. it should be governed by a Chief Commissioner and two Deputy Commissioners appointed by the Governor-General on recommendations from a multi partisan Parliamentary committee. Whenever the numerical representation of the crossbench in the Parliament so warrants, this committee should include a representative of the crossbench.
6. the Chief Commissioner must be a judge or a retired judge of a Supreme Court or the Federal Court or be qualified for such an appointment.
7. it must be empowered to make findings of fact, and, in appropriate cases, findings of corrupt conduct.
8. it must be subject to oversight to ensure that it always acts with absolute impartiality and fairness, and within its charter.

## Public hearings whenever in the public interest

The National Integrity Committee foresaw that the high threshold set for holding a public hearing would “prevent most public hearings taking place, even where it is clearly in the public interest to do so”.<sup>5</sup>

As the National Integrity Committee explained in 2022, hearings function as an investigative, preventative, and educative tool against corruption and misconduct. They deter people from engaging in corrupt behaviour, encourage witnesses to come forward, and create a culture of public integrity. Public hearings can also legitimise integrity bodies as they allow the public to see for themselves that justice is being done. As such, they act as a bulwark against concerns of administrative impropriety and overreach.<sup>6</sup>

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<sup>5</sup> National Integrity Committee (2022) *Submission to NACC Joint Select Committee*

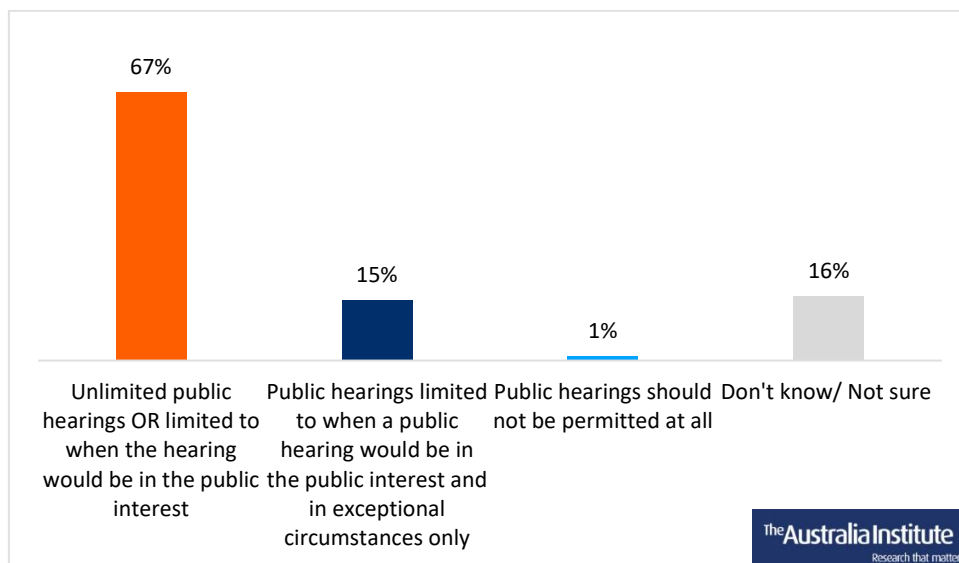
<sup>6</sup> National Integrity Committee (2022) *Submission to NACC Joint Select Committee*

Commissions with a higher bar for holding public hearings appear to hold fewer public hearings and release fewer public reports.<sup>7</sup> This is counterproductive as secrecy can undermine the public's confidence in the corruption watchdog.<sup>8</sup> Further, the current requirement that public hearings can only be held when it would be in the 'public interest' and 'in exceptional circumstances', is vague and open to litigation which could delay an inquiry.<sup>9</sup>

The role of the NACC is greater than simply detecting and investigating corruption; it is to shine a light on corruption, educate and deter public officials from engaging in corrupt conduct, and ultimately restore trust and faith in public institutions and democracy. Public hearings advance all of these objectives.<sup>10</sup>

As shown in Figure 1, Australia Institute polling found that only 15% of Australians think public hearings should be limited to when a public hearing would be in the public interest and in exceptional circumstances only, as the current legislation stipulates.<sup>11</sup> Over two-thirds (67%) of Australians think that public hearings should be held when it is in the public interest to do so.<sup>12</sup>

**Figure 1: When the NACC should be allowed to hold public hearings**



<sup>7</sup> Chitrusu and Browne (2022) *The importance of public hearings: The case against the "exceptional circumstances" test*, <https://australiainstitute.org.au/report/submission-to-nacc-joint-select-committee/>

<sup>8</sup> National Integrity Committee (2022) *Submission to NACC Joint Select Committee*

<sup>9</sup> National Integrity Committee (2022) *Submission to NACC Joint Select Committee*

<sup>10</sup> National Integrity Committee (2022) *Submission to NACC Joint Select Committee*, p 3

<sup>11</sup> *National Anti-Corruption Commission Act 2022* (Cth), s 73(2)

<sup>12</sup> The Australia Institute (2024) *Polling – National Anti-Corruption Commission public hearings*, <https://australiainstitute.org.au/report/polling-national-anti-corruption-commission-public-hearings-2/>

## Whistleblower Protection Authority

Earlier legislation for a federal anti-corruption watchdog, including those proposed by independent MP Cathy McGowan,<sup>13</sup> independent MP Helen Haines,<sup>14</sup> and the Greens,<sup>15</sup> included a whistleblower protection authority or other whistleblower protections.<sup>16</sup>

This was missing from the legislation that the Albanese Government introduced and that was ultimately passed by Parliament.<sup>17</sup>

Australia Institute research finds that a Whistleblower Protection Authority would support whistleblowing laws by:<sup>18</sup>

- Being a source of practical guidance and support for whistleblowers;
- Assisting agencies with coordination and management of disclosures;
- Promoting best-practice whistleblowing policies and procedures;
- Investigating alleged detrimental action and recommending remedies;
- Supporting enforcement litigation in strategic cases where whistleblowers deserve remedies; and
- Administering a rewards scheme for whistleblowers.

Such an authority would support people engaging with the NACC, particularly giving whistleblowers the protections they require to be able to speak up without fear of reprisal.

A Whistleblower Protection Authority is a popular proposal among Australians, as shown in Figure 2. Australia Institute polling research found that 84% of Australians supported the introduction of a Whistleblower Protection Authority.<sup>19</sup>

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<sup>13</sup> National Integrity Commission Bill 2018, cls 160–186

<sup>14</sup> Australian Federal Integrity Commission Bill 2020, cls 164–190

<sup>15</sup> National Integrity Commission Bill 2018 (No. 2), cls 160–186

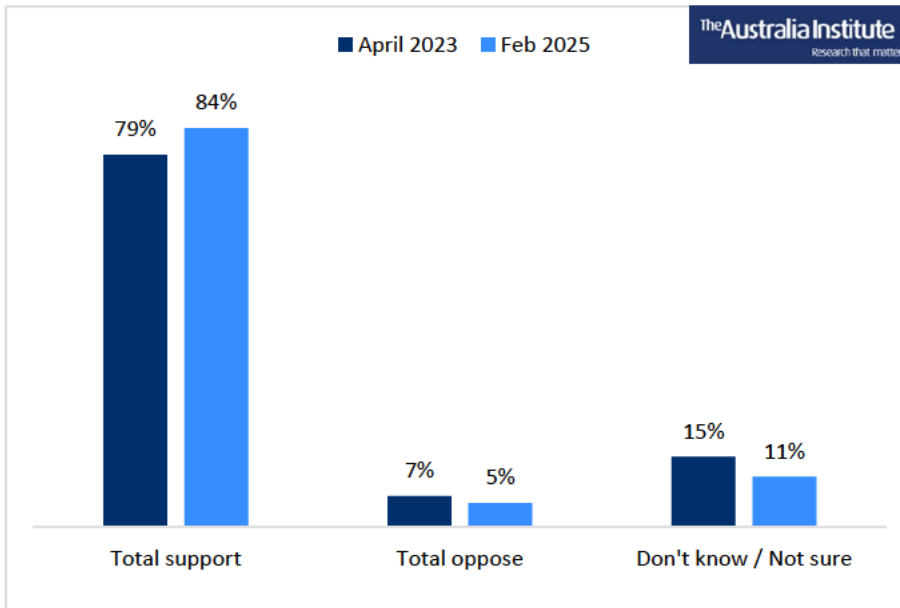
<sup>16</sup> Brown (2022) “How and why Australian whistleblowing laws need an overhaul: new report”, *The Conversation*, <https://theconversation.com/how-and-why-australian-whistleblowing-laws-need-an-overhaul-new-report-195019>

<sup>17</sup> Brown (2022) “How and why Australian whistleblowing laws need an overhaul: new report”; National Anti-Corruption Commission Bill 2022, cls 23–31

<sup>18</sup> Browne and Predavec (2025) *A Whistleblower Protection Authority for Australia*, <https://australiainstitute.org.au/report/a-whistleblower-protection-authority-for-australia/>

<sup>19</sup> Browne and Predavec (2025) *A Whistleblower Protection Authority for Australia*

Figure 2: Introduction of an Australian whistleblower protection authority



## NACC committee not controlled by the government

In their submission to NACC Joint Select Committee, members of the National Integrity Committee argued that the NACC Act should ensure that no party has the majority vote on the NACC's parliamentary committee. Further, it found that the parliamentary committee overseeing the NACC should be able to select any member as its Chair and not be limited to a member of the Government.<sup>20</sup>

Currently, the Chair of the committee has a deliberative vote and, if votes are equal, a casting vote. In effect, this means that the Government of the day controls the committee – including the ability to appoint the Commissioner and Deputy Commissioners. To avoid this situation, the National Integrity Committee argued that the NACC's parliamentary committee ought to be able to select any member of the committee to be its Chair. Alternatively, the Chair could rotate between committee members.<sup>21</sup>

<sup>20</sup> National Integrity Committee (2022) *Submission to NACC Joint Select Committee*, p 2

<sup>21</sup> National Integrity Committee (2022) *Submission to NACC Joint Select Committee*, p 2

## Broaden the powers of the NACC Inspector

The NACC Inspector oversees the operations and conduct of the NACC. In particular, it ensures that the NACC acts fairly and complies with the law. In its submission to the NACC Bill, the National Integrity Committee argued that the NACC Inspector ought to also be responsible for oversight of the performance of the NACC, as well as conduct issues.<sup>22</sup>

The Inspector's powers are focused on ensuring the NACC itself remains free from corruption or other ethical issues. As the National Integrity Committee explained, while s 184(1)(e) does extend the Inspector's functions to investigating complaints made in relation to the conduct or activities of the NACC, the Inspector could also be responsible for oversight of the performance of the NACC, including how long its inquiries take.<sup>23</sup> This would support the effectiveness of the NACC's corruption prevention activities and overall performance of its functions.

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<sup>22</sup> National Integrity Committee (2022) *Submission to NACC Joint Select Committee*, p 2

<sup>23</sup> National Integrity Committee (2022) *Submission to NACC Joint Select Committee*, p 2