



Inspector of the National Anti-Corruption Commission

Inspector of the National Anti-Corruption Commission

Annual Report

2023-24

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Inspector of the National Anti-Corruption Commission Annual Report 2023-24

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Acknowledgement of Country

We acknowledge the traditional custodians of Australia and their continuing connection to land, sea and community. We pay our respects to the people, the cultures and the Elders, past and present, and thank them for their ongoing contributions to the culture and prosperity of the Australian nation.

Letter of transmittal



Inspector of the National Anti-Corruption Commission

30 October 2024

Senator the Hon Sue Lines
President of the Senate
Parliament House
CANBERRA ACT 2600

Dear President,

Pursuant to Standing Order 166, relating to the presentation of documents when the Senate is not sitting, I present to you the inaugural annual report of the Inspector of the National Anti-Corruption Commission for the period 1 July 2023 to 30 June 2024.

This report has been prepared for the purposes of section 198 of the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act), and outlines the performance of my functions as Inspector of the National Anti-Corruption Commission during the financial year.

I am satisfied the report does not include section 235 certified information or sensitive information as defined in the NACC Act, and is therefore suitable to be laid before each House of Parliament.

Sincerely,

Gail Furness SC
Inspector of the National Anti-Corruption Commission
E-mail: enquiries@naccinspector.gov.au

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1. Foreword

I am pleased to present this Annual Report, being the first annual report for the Inspector of the National Anti-Corruption Commission. I commenced as the inaugural Inspector on 1 July 2023, having been appointed on a part-time basis for a 7-year term.

The position was established to provide oversight of the National Anti-Corruption Commission (NACC), complementing other oversight mechanisms including the Parliamentary Joint Committee on the NACC and the Commonwealth Ombudsman.

I am an independent officer of the Parliament, and I am independent from the Australian Government and from the NACC. As a recognition of my independence, I was granted an exemption from the Australian Government Branding Policy and, in particular, to remove the words 'Australian Government' from my branding with the crest remaining.

The first year of my role has been productive. It commenced with establishing my office, hiring staff to support me and putting in place various systems and processes to ensure appropriate handling of information, collection of data, and to assist in identifying trends in concerns being raised.

As I am not a Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013*, but a secondary statutory entity within the Attorney-General's Department (AGD), AGD provides enabling services for me to fulfil my functions. I would like to express my gratitude for the assistance and respect for independence provided by AGD, in particular, the Chief Financial Officer and his staff.

I am accountable to the Parliament, including through the Parliamentary Joint Committee on the NACC (Parliamentary Committee). I have provided 2 private briefings to the Parliamentary Committee, about my first year of activities.

I entered into a Memorandum of Understanding (MOU) with NACC on 5 February 2024 which sets out the processes for notification of NACC corruption issues and other maladministration complaints, notification of the exercise of certain powers by NACC and consultation and provision of other information.

Throughout the year I have engaged with the NACC through formal quarterly meetings held with the Commissioner, Deputy Commissioners and the Chief Executive Officer. We have also exchanged correspondence concerning complaints and other areas of mutual interest including policies and procedures, and administrative matters.

During this first year I received 2 mandatory referrals from the NACC.

My first year ended with an announcement by the NACC not to pursue referrals from the Royal Commission into the Robodebt Scheme (Robodebt RC referrals). In response to the hundreds of complaints received by my office about that decision, on 13 June 2024, I announced I was inquiring into the NACC's decision.

I refer to the period dealt with in this Report, the 2023-24 financial year, as 'the reporting period'.

2. About the Inspector

The Inspector of the National Anti-Corruption Commission (Inspector) is Gail Furness SC who commenced as the inaugural Inspector on 1 July 2023, having been appointed on a part-time basis for a 7-year term.

The Inspector is an independent officer of the Parliament.

The position of Inspector is established by the *National Anti-Corruption Commission Act 2022* (Cth) (the Act). (References to sections in this Report should be taken to sections of the Act, unless specified otherwise).

The Inspector is independent from the Australian Government and from the National Anti-Corruption Commission. The Inspector is not subject to anyone's direction when performing her functions and exercising her powers.

The Inspector complements other oversight mechanisms, including the Parliamentary Joint Committee on the NACC (the Parliamentary Committee) and the Commonwealth Ombudsman, to ensure robust oversight of the NACC.

The Parliamentary Committee monitors and reviews how the Inspector performs her functions. This includes examining and reporting to the Parliament on the Inspector's annual reports.

The Parliamentary Committee may also request the Inspector's assistance in reviewing whether the NACC has sufficient finances and resources.

3. The Inspector's functions and powers

3.1. Functions of the Inspector

The Inspector's functions are to:

- detect corrupt conduct within and relating to the NACC
- undertake preliminary investigations into NACC corruption issues
- conduct investigations into NACC corruption issues that could involve corrupt conduct that is serious or systemic
- refer NACC corruption issues to the NACC, Commonwealth agencies and State or Territory government entities
- investigate complaints of agency maladministration or officer misconduct made to relation to the conduct or activities of the NACC or a staff member of the NACC
- audit the NACC for the purpose of monitoring compliance with the laws of the Commonwealth and detecting agency maladministration and officer misconduct
- make recommendations to the NACC on the outcome of such audits
- provide relevant information and documents to the Parliamentary Committee

- receive public interest disclosures under the *Public Interest Disclosure Act 2013* (PID Act)
- report and make recommendations to Parliament on the results of the Inspector performing her functions. (s 184).

3.2. Complaints and referrals

Any person may refer a corruption issue relating to the NACC or provide other information to the Inspector about corrupt conduct relating to the NACC.

Any person can complain or provide information to the Inspector about maladministration or officer misconduct relating to the NACC. They can do so via webform, email, post or phone and can make an anonymous complaint.

The Inspector cannot investigate complaints or referrals about anyone other than the NACC or a staff member of the NACC.

Information about how to make a complaint or referral, including the Inspector's complaints handling policy, is available on the Inspector's website at www.naccinspector.gov.au.

3.2.1 Mandatory referrals

If the Commissioner becomes aware of a NACC corruption issue, the Commissioner must refer the NACC corruption issue to the Inspector. (s 203)

A staff member of NACC who, in the course of performing or exercising functions or powers under various provisions of the *Public Interest Disclosure Act 2013* becomes aware of a NACC corruption issue, must refer it to the Inspector. (s 204)

3.3. Dealing with NACC corruption issues

The Inspector can undertake preliminary investigations into NACC corruption issues. (s 184(1)(b))

The Inspector can do so to confirm the existence or nature of a NACC corruption issue and to assist the Inspector to decide whether or how to deal with a NACC corruption issue. (s 42(1))

The Inspector can conduct a NACC corruption issue investigation only if the Inspector is of the opinion that the issue could involve corrupt conduct that is serious or systemic. (s 184(1)(c); s 210(3))

The Inspector can investigate a NACC corruption issue jointly, refer it to NACC for investigation or refer it other agencies for consideration. (s 184; s 210)

The Inspector is under no duty to consider whether to deal with a NACC corruption issue. (s 210(6))

3.4. Maladministration

The Inspector can investigate complaints of maladministration or officer misconduct made in relation to the NACC or a staff member of the NACC. (s 184(e))

3.5. Powers of the Inspector

Preliminary investigations

The Inspector can direct the head of a Commonwealth agency and serve a notice to produce on a person to give information, a document or a thing to the Inspector. (s 42(2))

NACC corruption investigations and NACC complaint investigations

The Inspector can direct the head of the Commonwealth agency (including the NACC) and serve a notice to produce on a person to give the information, document or thing specified to the Inspector. (s 57)

The Inspector may hold hearings and summon a person to attend a hearing. (s 62; s 63)

A hearing must be held in private, unless the Inspector decides to hold the hearing, or part of the hearing, in public. The Inspector may decide to hold a hearing, or part of a hearing, in public if the Inspector is satisfied that exceptional circumstances justify holding the hearing, or the part of the hearing, in public; and it is in the public interest to do so. (s 73)

With some exceptions, the Inspector may enter any place occupied by a Commonwealth agency (including the NACC) at any reasonable time of the day to inspect and seize documents. (s 117)

3.6. Reporting

The Inspector must prepare a NACC investigation report after completing a NACC corruption investigation or a NACC complaint investigation. (s 215)

The investigation report must set out the Inspector's findings or opinions, a summary of evidence and other material on which those findings or opinions is based, any recommendations and the reasons for those recommendations. (s 215(2))

The Inspector may recommend, among other things, terminating a person's employment and adopting measures to remedy any deficiencies in relevant policies, practices and procedures. (s 215(6))

If the Inspector is critical of a person or agency in her report, the Inspector must give the person and/or agency an opportunity to respond. If the Inspector includes in her report, an opinion or finding that a person has engaged in corrupt conduct, the Inspector must also include a summary of any response given by that person if the person requests them to do so. The Inspector must not, however, include in the investigation report, any information in a response that would identify any person who, in her opinion, has not engaged in corrupt conduct unless the Inspector:

- is satisfied that it is necessary to do so in the public interest; and
- is satisfied that doing so will not cause unreasonable damage to the reputation, safety or wellbeing of the person; and
- includes in the report a statement that, in the opinion of the Inspector, the person has not engaged in corrupt conduct. (s 219)

The Inspector must advise specified people of the outcome of its investigation, including the Chief Executive Officer and Commissioner of the NACC. (s 220; s 224; s 225)

The Inspector can request the NACC or the agency concerned to give details of any action that they have taken or propose to take with respect to a recommendation. (s 226)

The Inspector may publish all or part of an investigation report if the Inspector is satisfied it is in the public interest to do so. (s 222)

If public hearings were held during the investigation, the report must be tabled in Parliament. (s 221)

3.7. Audit

The Inspector can audit the operations of the NACC to monitor its compliance with the laws of the Commonwealth and to detect maladministration and officer misconduct. (s 184(1)(f))

When conducting an audit, the Inspector:

- may enter any premises occupied by the NACC
- is entitled to have all reasonable facilities and assistance that the NACC Commissioner is capable of providing
- is entitled to have full and free access at all reasonable times to any information, documents or other property of the NACC
- may require a staff member of the NACC to provide any information the Inspector considers necessary, being information:
 - that is in the staff member's possession, or to which the staff member has access; and
 - that is relevant to the audit
- may examine, make copies of or take extracts from any information or documents. (s 214A)

The Inspector can make recommendations to the NACC on the outcomes of her audits. (s 184(1)(g))

It is likely that the Inspector will make public the results of any audits, unless special circumstances apply.

4. Protections from liability and reprisals

Part 4 of the Act provides protections to persons who provide information about a corruption issue, a NACC Act process, a NACC corruption issue or a complaint in relation to the conduct or activities of the NACC or a staff member of the NACC, to the Inspector (making a NACC disclosure).

The Act provides that a person is not subject to any civil, criminal or administrative liability as a result of making a NACC disclosure.

It is also a criminal offence for anyone to take, or threaten to take, reprisal action of any kind against a person for making a NACC disclosure.

5. Accountability

The Inspector is accountable to the Parliament.

The Inspector reports to both Houses of the Parliament on the results of performing its functions. (s 184(1)(g); s 184(1)(j)). The Inspector also provides an Annual Report to Parliament. (s 198)

The Inspector can provide relevant information and documents to the Parliamentary Committee.

The Parliamentary Committee's functions are set out in s 177 and relevantly include:

- to monitor and review the performance by the Commissioner and the Inspector of their functions
- 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
- to examine and report to the Parliament on any matter appearing in, or arising out of any NACC investigation report that is laid before the Houses of the Parliament under s 221; and each annual report prepared by the Inspector under s 198
- to examine trends and changes in corruption among those who are subject to the Act and report to both Houses of the Parliament on any change that the Committee thinks desirable to the following:
 - the functions or powers of the Commissioner or the Inspector
 - the procedures followed by the Commissioner or the Inspector
 - the NACC's staffing or structure
 - the staffing arrangements for the Inspector
- to review the NACC's budget and finances, and to report to both Houses of the Parliament on the following matters:
 - whether the NACC has sufficient finances and resources to effectively perform its functions and to request that the Inspector assist in the exercise of this function
 - whether the NACC's budget should be increased to ensure that it will have sufficient finances and resources to effectively perform its functions
 - any other matter arising out of the review that the Committee considers relevant.

The Committee is not authorised to, relevantly:

- investigate a corruption issue or a NACC corruption issue
- 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
- review a decision made, or an operational activity carried out, in relation to a NACC Act process (which relevantly includes a NACC corruption investigation and a NACC complaint investigation) that is still being conducted

- review an operational activity of the NACC, the Inspector, a Commonwealth agency or a State or Territory government entity.

The Inspector appeared before the Parliamentary Committee in private on 2 occasions.

The Inspector can also be called to Senate Estimates as part of the Attorney-General's Portfolio. Although initially included on the program for the 2024-25 Budget estimates hearings, the Inspector was ultimately not required and dismissed by the Legal and Constitutional Affairs Legislation Committee before appearing.

6. Engagement with the NACC

6.1. Memorandum of understanding

The Inspector entered into a MOU with the Commissioner on 5 February 2024. The MOU sets out the arrangements for interaction between the NACC and the Inspector to facilitate the performance of the Inspector's functions, in particular concerning referral of matters, access to information and points of contact between the parties. The MOU is available on the Inspector's website.

The Commissioner provided the Inspector with the documents set out in the MOU, namely delegations and papers relating the Commission's Audit and Risk Committee, Governance Committee and Operations Committee. Seventy-nine policies and standard operating procedures of the NACC (including updated versions), were also provided on request by the Inspector. The Inspector provided comments on some of these policies and procedures.

The Inspector attended 2 quarterly meetings with the Commissioner, the CEO and one or more Deputy Commissioners. Matters of mutual relevance were discussed.

6.2. Summons

Under s 63(8), if the NACC Commissioner summons a person to attend a hearing (private or public), the Commissioner must give to the Inspector, within 3 business days after the summons is issued:

- a copy of the summons, and
- a copy of the record of reasons for the summons

During the reporting period the NACC provided the Inspector with information pursuant to s 63(8).

7. Performance of the Inspector's statutory functions

7.1. Audits

The Inspector did not conduct an audit during the reporting period.

7.2. Investigations

The Inspector did not conduct any preliminary investigations or NACC corruption investigations during the reporting period. The Inspector commenced an inquiry into the decision by NACC not to pursue Robodebt RC referrals, during the reporting period, which became an agency maladministration or officer misconduct investigation (a NACC complaint investigation). That investigation was not completed in the reporting period.

7.3. Mandatory referrals

The Commissioner must refer any NACC corruption issues he becomes aware of, to the Inspector. (s 203) NACC corruption issues must be referred as soon as reasonably practicable and include all information relevant to the issue which is available at the time of the referral.

The threshold of serious or systemic corruption does not apply to the NACC Commissioner's mandatory referral obligation. Once it has been referred, the Inspector decides whether the issue meets the serious or systemic threshold to warrant an investigation.

During the reporting period, 2 NACC corruption issues were referred by the Commissioner to the Inspector, under s 203 of the Act.

The first referral concerned a person who made an offer to pay a staff member of the NACC what might be considered a secret commission. The Inspector inquired of the Commissioner what action the Commission proposed to take in relation to the matter.

Having obtained further information, the Commissioner informed the Inspector his view, that it is doubtful that the person 'was aware of the NACC officer's position and in any event, does not appear to have suggested that the NACC officer take any action in his capacity as such, and that the NACC officer acted appropriately in response to the approach made to him, I do not propose to take any further action in relation to the matter'.

The Inspector formed the view that no statutory action was warranted by her under s 210(6).

There were discussions between the Inspector and the Commissioner as to how best to deal with the second NACC corruption issue referred to the Inspector by the Commissioner. Options included for the Inspector refer the issue to the Commission for investigation under s 210(1)(c), conduct a joint investigation between the Inspector and the Commission, or referral to the Australian Federal Police. Ultimately, the Commission decided to deal with the matter as a corruption issue.

7.4. Complaints

The Inspector received over 1300 contacts during the year. Of these 50 were considered complaints, 1164 were specific complaints about the NACC's decision not to investigate the Robodebt RC referrals and the remainder were inquiries and other contacts.

7.4.1 Complaints about maladministration or officer misconduct

Many complainants used the language of 'corrupt conduct' or 'maladministration' to describe their complaint or referral. The Inspector, however, considered each complaint made and whether the complaint could, if established, amount to maladministration or concern a NACC corruption issue.

Following that consideration, the Inspector determined that the Inspector did not receive any voluntary referrals of NACC corruption issues.

There were 2 complaints (other than the Robodebt RC referrals) received which the Inspector considered could, if established, amount to maladministration.

COMPLAINT 1

The complainant complained in October 2023 that NACC made an error of law in deciding their referral was not within jurisdiction. Their referral concerned, among other matters, 'family court writers' and a state government department. The Commission wrote to them, stating that their referral was not in jurisdiction because it concerned a state department. The complainant sought a review, which confirmed the first decision. The NACC's review did, however, refer to the family court writers, which the original assessment did not.

The Inspector advised the Commissioner that it seemed likely that the reference to 'family court officers' was a reference to a Commonwealth public official by virtue of provisions of the *Family Law Act 1975*. The Commissioner agreed with the Inspector's assessment that the referral was within jurisdiction and noted that 'some errors of this kind are inevitable at triage'. The Commissioner informed the Inspector that he was instituting a procedure to ensure that review decisions are subject to legal review.

The Inspector did not consider that, in the circumstances, the error of law amounted to maladministration and noted that the Commissioner was changing the NACC's processes.

COMPLAINT 2

The complainant wrote to the Inspector in January 2024, after the NACC declined to investigate their referral to the NACC. The NACC told the complainant that they were not able to identify a corruption issue. On the Inspector's assessment, there were 2 identified corruption issues. After the Inspector's requests for information, the Commissioner conducted a more detailed assessment than had been done initially. The Commissioner agreed, albeit on a slightly different basis, that there were 2 identified corruption issues in the referral.

The Inspector identified systemic issues arising from the inadequate and flawed handling of the referral by the Commission. The Commissioner did not take issue with that description of the handling of the referral.

The first systemic issue was the need for an 'accurate, comprehensive, accessible, electronic and customised record/case management system'. The Commissioner agreed and explained the difficulties of the NACC's case management system and advised it is being 'continuously improved'.

The second issue was the need for a pathway for more complex referrals, which the Commissioner told the Inspector has now been introduced.

The third issue was that the letter to the complainant was unsigned. The Commissioner advised the Inspector he proposed to implement an arrangement by which outcome correspondence will be released over the CEO's signature block, with the actual decision-maker endorsing it with their initials, 'for CEO'.

Finally, the Commissioner agreed with the Inspector's observation that the Commission needs to have Intake and Triage officers with the appropriate skills and training required to discern from a volume of material what must be read, the order in which it should be read and what can be merely scanned or ignored, and is endeavoring to do so. Conscious that this complaint was assessed in the early days of the Commission's operations and the Commissioner's response, the Inspector formed the view that the Commission's handling of the complaint did not amount to agency maladministration.

7.4.2 Robodebt referrals

The Inspector received over 1164 complaints relating to the Robodebt RC referrals. Common themes arising from the complaints received were:

- the Commissioner's conflict of interest
- the NACC's decision disregarded, disrespected and/or misunderstood the Royal Commissioner's referral
- lack of public accountability for former Ministers and former Australian Public Service (APS) employees
- the decision was unacceptable, unreasonable and unjust to the victims of the Robodebt Scheme

- the NACC's reasons for its decision not to investigate the referrals were inadequate
- the lack of timeliness in the NACC's decision.

The Inspector considered that one or more of these complaints could amount to agency maladministration or officer misconduct. As stated earlier, the Inspector commenced an inquiry into the decision by NACC not to pursue the Robodebt RC referrals, during the reporting period, which became an agency maladministration or officer misconduct investigation. That investigation was not completed in the reporting period.

7.4.3 Other complaints themes

NACC did not investigate

Of the 50 other complaints, 42 primarily concerned the decision by NACC not to investigate their referral to the NACC.

The Commission does not have a duty to consider whether to deal with a corruption issue (s 41(7)) and may take no action in relation to a corruption issue (s 41(6)). The Commissioner is not obliged to give reasons for the decisions made in response to referrals to the Commission.

One complaint about the Commissioner's decision not to investigate warrants mentioning.

COMPLAINT

This complainant made a referral to the Commission about, among others, 2 named land councils in Queensland. The Commission replied to him, stating that land councils were not within its jurisdiction.

A primary concern of the complainant was that the NACC's website stated that its jurisdiction covered land councils.

At the request of the complainant, the Commission carried out a review of its assessment, and determined the previous assessment was correct—that the complainant's referral does not fall within the jurisdiction of the Commission. No reference was made to the website and the apparent discrepancy, although the complainant had drawn it to NACC's attention.

The complainant contacted the Inspector in March 2024. The Inspector's office considered the *Public Governance and Performance and Accountability Act 2013* which defines 'Commonwealth entity'. It was clear that some land councils did fall within NACC's jurisdiction but not all. Those mentioned by the complainant did not. The Inspector wrote to the Commission seeking confirmation of the Inspector's understanding.

The Commissioner confirmed that understanding and advised that the Commission would amend its website to clarify which land councils are within jurisdiction. The Commissioner also stated a further internal review was being undertaken after further representation by the complainant.

The NACC has an internal review process for intake or assessment decisions. In the early operation of the NACC, a person had to call the NACC to request a review of the NACC's

decision in relation to their referral. More recently, NACC has established an online webform to receive requests for review. The NACC's service charter (published on its website) has also been updated to provide information on requesting a review of an intake or assessment outcome.

Although the Inspector can be contacted at any stage of a person's dealings with the NACC, the Inspector will usually advise a person she generally does not intervene while a review is underway. The person can contact the Inspector again if they are unhappy with the review outcome.

Service standards

Seven complaints were made to the Inspector about the service standards they said they received when making a referral to the Commission. Most of these complaints concerned the timeframes in which the Commission responded to their referral, having regard to the published guidelines by the NACC; that is, they did not receive responses in the time indicated by NACC.

Generally, the Inspector considers the setting of timeframes and the time taken to respond to referrals was not a matter which fell within her jurisdiction. The Inspector had regard to the large number of initial referrals, and, unless the length of time was unreasonable in all the circumstances, the Inspector took no action.

7.4.4 Timeframes for dealing with complaints

Of the 50 complaints, the Inspector finalised 39 in the reporting period. The average time taken to finalise a complaint was approximately 3.5 weeks. Just over 10% of complaints were finalised in more than 6 weeks, with most of those complaints involving requests for additional information from the NACC.

7.5. Enquiries and other contacts

The Inspector dealt with about 160 enquiries and other contacts.

Just under half (76) of the enquiries did not relate to NACC.

About one third (46) of the contacts addressed their correspondence to the NACC or contained content which should have been addressed to the NACC.

Ten per cent (16) of the enquiries related to difficulties with making a referral to the NACC or receiving information from the NACC. The issues raised were

- there was no email address to send a referral
- the webform was difficult to use
- the webform did not permit a copy of the completed form to be downloaded
- it was not possible to upload documents with the webform
- the letter was not signed by an individual, rather the 'intake and triage' team.

It is noted that many of these issues have been resolved or are in the process of being resolved by the NACC.

Two former and one current employee of NACC wrote to the Inspector expressing concerns and/or providing information at aspects of the management of the Commission's operations. While each person identified themselves to the Inspector they wished to remain anonymous to the Commission. The Inspector did not consider the matters could amount to

agency maladministration or officer misconduct or give rise to a corruption issue. Nevertheless, the Inspector advised the Commissioner about the concerns for the Commissioner's information.

8. Other reportable statistics

This section provides reporting on information required by the Regulation, not otherwise dealt with in this report.

Regulation section	Information required	Number and details
39(a)	Applications made to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under the <i>Administrative Decisions (Judicial Review) Act 1977</i> 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 Inspector	Nil
39(b)	Other court proceedings involving the Inspector	Nil
40(1)	Certificates issued by the Attorney-General under section 235 of the Act	Nil
40(2)	International relations certificates issued by the Attorney-General under section 236 of the Act	Nil

9. Engagement with Commonwealth and State agencies

The Inspector engaged with various Commonwealth and State agencies. During the reporting period, the Inspector met with:

- the Inspector-General of Intelligence and Security
- the Inspector-General of the Australian Defence Force
- the Clerks of Parliament
- the Commonwealth Ombudsman
- the Australian Information Commissioner and Privacy Commissioner
- the Auditor-General
- the Public Service Commissioner
- the Independent National Security Legislation Monitor
- the Department of Foreign Affairs and Trade.

The Inspector has reached out to the following agencies with the intention of developing an MOU or other arrangement to facilitate the appropriate sharing of information:

- the Commonwealth Ombudsman
- intelligence agencies as defined in the Act
- the Australian Federal Police Commissioner
- the Department of Foreign Affairs and Trade.

The Inspector hosted the 2023 annual meeting of State and Territory Inspectors and Parliamentary Commissioners on 14 November in Sydney.

The Inspector attended a meeting of Commonwealth Inspectors-General on 12-13 March 2024 in Brisbane.

Both forums enabled the participating agencies to share learnings and challenges in their various roles.

10. Intersection between Ombudsman and Inspector

The Ombudsman has jurisdiction to investigate actions relating to matters of administration. That jurisdiction extends to departments and prescribed authorities (s 5(1)(a) *Ombudsman Act 1976* (Cth) (Ombudsman Act)).

There is an issue as to whether the Inspector is a 'prescribed authority' for the purposes of the Ombudsman Act and therefore amenable to the jurisdiction of the Ombudsman.

A 'prescribed authority' is defined as, relevantly, a person holding, or performing the duties of, an office established by an enactment (s 3(c) Ombudsman Act). The Inspector appears to fall within this definition.

However, s 3(a)(ii) Ombudsman Act includes what is not a prescribed authority:

... a body that has the power to take evidence on oath or affirmation and is required, or is expressly permitted, by an enactment to be constituted by, or to include among its members, a person who is a Justice or Judge of a court created by the Parliament or a person who has, by virtue of an Act, the same status as a Justice or Judge of such a court, is not a prescribed authority.

The Inspector appears to also fall within this definition.

10.1. Public interest disclosures

Section 184(1)(j) of the NACC Act provides that the Inspector has the function of receiving public interest disclosures (within the meaning of the PID Act) and to deal with those disclosures.

The PID Act provides for protection to a person who makes a NACC disclosure, which is defined in the NACC Act as a disclosure to the Inspector about a NACC corruption issue,

However, the Inspector is not an 'agency' under the PID Act (s 71 PID Act) and 'agencies' under the PID Act have various obligations in relation to protected disclosures being made to them.

That said, there are provisions in the NACC Act in respect of the Inspector which mirror the obligations and protections under the PID Act. Accordingly, a person can make a disclosure to the Inspector and receive the same protection, that is the person is not subject to any civil, criminal or administrative liability (including disciplinary action) for the disclosure. (s 24 NACC Act)

The Inspector has raised both these matters with the Attorney-General's Department as the Attorney-General is the responsible Minister for the NACC Act and the PID Act. The Inspector expects they will be clarified by the next reporting period.

11. Access to information

The Inspector maintains a website with technical support of AGD. It contains information about the Inspector's functions and powers, how to make a complaint, contact information for the Office and any publications. The website also includes information for the public about freedom of information (FOI) requests, privacy and the information the Inspector will publish.

11.1. Freedom of information

The Inspector is subject to the *Freedom of Information Act 1982* (FOI Act) and must comply with the requirements of that Act, including Information Publication Scheme (IPS) requirements.

The Inspector's website includes a FOI disclosure log which contains information that has been released in response to an FOI request.

No FOI requests were received during the reporting period.

The Inspector's website also includes how the Inspector complies with the requirements of the IPS and informs the Inspector's Agency Plan.

11.2. Gifts and benefits register

Although the Inspector is not required to have a gifts and benefits register, the Inspector publishes all details of gifts or benefits received by her and/or her Office. The Inspector's gifts and benefits register is published on the Inspector's webpage.

11.3. Declarations to Minister

The Inspector is required to give notice to the Attorney-General 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 (s 190).

The Inspector has complied with this requirement.

11.4. Policies and procedures

The Inspector's *Complaints handling policy and procedure* provides information on how to make a complaint to the Inspector, and outlines how the Inspector may deal with complaints.

The Office complies with general APS and AGD policies and procedures, such as, information security, record keeping, procurement, financial expenditure and workplace conduct.

12. Administration

12.1. Attorney-General's Department services

The Inspector is a secondary statutory entity within the Attorney-General's portfolio and is not a standalone Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA).

A MOU between the Inspector and AGD was executed on 30 August 2023. This provides for enabling services to support the Inspector to fulfil her functions, and includes support from AGD in relation to finance, security, HR and IT systems.

Under the MOU, the agreed cost of services provided by AGD for 2023/24 was \$114,528. The MoU is available on the Inspector's website.

Although the Inspector uses the AGD network and document management system, her Office operates on a dataset which is separate from the rest of the department and can only be accessed by limited persons who includes staff assisting the Inspector, the records management administrators and IT which have access to back-of-house systems. An internal audit is regularly completed to ensure no other AGD staff or other persons have accessed the Inspector's files.

12.2. Premises

The Inspector occupies premises in Sydney which are managed by the NSW Premier's Department. The premises are also used by the Inspector for her part-time position as Inspector of the Independent Commission Against Corruption.

There is a MOU between the NSW Premier's Department and AGD to support this arrangement. The agreed costs payable by AGD to NSW for the use of the premises is \$18,252 per annum.

Appropriate measures have been put in place to ensure confidentiality of information.

12.3. Staff

The Inspector is assisted by 2 full-time staff; a Director and Administration Officer. Those staff occupy Australian Government Solicitor premises in Brisbane. Further assistance is provided by other AGD staff on an ad-hoc or temporary basis, as required.

Staff assisting the Inspector work solely at the direction of the Inspector, however, they are employees of AGD. This means AGD induction procedures, mandatory training and general APS and departmental policies and procedures apply to staff.

In addition to mandatory and general APS training, the Director completed specific training on topics including the FOI Act, the PID Act, complaints handling, and data analytics.

12.4. Budget and finance

For the 2023-24 financial year the Inspector was allocated a budget of \$1,352,958. After overheads of \$114,528 (to AGD) this provided \$1,238,430 to cover the Inspector's remuneration, staff remuneration and other costs to be allocated at the Inspector's discretion.

The Inspector's actual spend for 2023-24 was \$684,405.

This underspend is partly due to not commencing with the full staffing profile that was expected.

13. Glossary

Complaint Investigation

An investigation into a complaint made in relation to the conduct or activities of the NACC or a staff member of the NACC (s 212(2)).

Corrupt conduct

There are 4 types of corrupt conduct under the NACC Act. (s 8(1))

A person engages in corrupt conduct if:

- they are a public official and they breach public trust
- they are a public official and they abuse their office as a public official
- they are a public official or former public official and they misuse information they have gained in their capacity as a public official
- they do something that adversely affects a public official's honest or impartial exercise of powers or performance of official duties. Any person can engage in this type of corrupt conduct, even if they are not a public official themselves.

Maladministration

Maladministration is:

- unlawful conduct
- corrupt conduct
- an act which is unreasonable, unjust, oppressive or improperly discriminatory
- an act which comes from improper motives
- a decision that has taken into account irrelevant matters
- an act which arises from mistake of law or fact
- where reasons were not given and should have been given
- an act in accordance with a law or established practice that may be unreasonable, unjust, oppressive or improperly discriminatory in its effect. (s 184(3))

NACC Act process

NACC Act process means:

- a corruption investigation; or
- a NACC complaint investigation; or
- a NACC corruption investigation; or
- a public inquiry. (s 7)

NACC corruption issue

A NACC corruption issue is:

- where a staff member of NACC has engaged, is engaging, or will engage, in corrupt conduct or
- where a person does something that adversely affects a NACC staff member's honest or impartial exercise of powers or performance of public duties. The person does not have to be a public official. (s 201)

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 Inspector-General of Intelligence and Security (IGIS) under Part 5 of the Act; or
- (b) the person refers, or provides other information about, a NACC corruption issue to the Inspector under ss 202 or 203 of the Act; or
- (c) the person gives evidence or information, or produces a document or a thing, under the 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. (s 23)

NACC investigation report

After completing:

- a NACC corruption investigation; or
- a NACC complaint investigation;

the Inspector must prepare a report (a ***NACC investigation report***) on the investigation. (s 215(1))

Officer misconduct

Officer misconduct is conduct of a staff member of the NACC that would be maladministration if the NACC did it. (s 184(3))

