

Ministerial responses — Report 6 of 2022¹

1 This can be cited as: Parliamentary Joint Committee on Human Rights, Ministerial responses, *Report 6 of 2022*; [2022] AUPJCHR 54.



Attorney-General

Mr Josh Burns MP
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

By email: human.rights@aph.gov.au

Dear Chair

Thank you for your letter of 20 October 2022, regarding the Committee's *Report 5 of 2022*, containing comments on the National Anti-Corruption Commission Bill 2022 and the National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022 (the Bills).

I appreciate the time the Committee has taken to consider the Bills.

I enclose the Government's response to each of the recommendations made by the Committee in relation to the Bills.

Yours sincerely

THE HON MARK DREYFUS KC MP

21 / 11 / 2022

Encl. *Government response to recommendations of the Committee*



Australian Government

Australian Government response to the
Parliamentary Joint Committee on Human Rights
recommendations in Report 5 of 2022 on the
National Anti-Corruption Commission Bill 2022 and the
National Anti-Corruption Commission (Consequential and
Transitional Provisions) Bill 2022

DRAFT

November 2022

Australian Government response to the Parliamentary Joint Committee on Human Rights recommendations in Report 5 of 2022

National Anti-Corruption Commission Bill 2022

National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022

The Government thanks the Committee for considering the National Anti-Corruption Commission Bill 2022 (the NACC Bill) and the National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022 (the Consequential Bill).

The Government provides the following responses to the Committee's recommendations.

Recommendation 1 The committee considers that the compatibility of the measure may be assisted were the bill amended to require that if the Commissioner is considering making a non-disclosure notation on a notice to produce or summons and the Commissioner is aware that a person has a disability or other vulnerability that may impact their ability to comply with a non-disclosure notation, they must consider making exceptions to allow the person to obtain any necessary assistance in order that they may engage fairly with the Commission's processes.

Agreed.

The Government notes the importance of ensuring that the NACC Bill contains strong procedural fairness and accessibility requirements for people who are engaging with the Commission.

The Government will amend Part 4 Division 4 Subdivision A of the NACC Bill to provide that if:

- the Commissioner includes a non-disclosure notation on a notice to produce or summons, and
- the Commissioner is aware that the person who is the subject of the notice or summons has a disability or vulnerability that could affect their ability to comply with the notice or summons or otherwise affect their ability to engage with the Commissioner's processes,

then the Commissioner must consider exercising their power under subclause 95(2) to permit the person to disclose information to obtain assistance that is necessary to enable the person to comply with the notice or summons, or to otherwise engage with the Commission's processes.

The Government will also make similar amendments to Part 4 Division 4 Subdivision B of the NACC Bill, which provides for the Commissioner to give directions limiting the use or disclosure of investigation material.

These amendments to the NACC Bill would be in addition to a standing permission for a person who has been issued a notice to produce or summons with a non-disclosure notation to consult a medical practitioner or psychologist for the purpose of seeking mental health support, as recommended by the Joint Select Committee on the National Anti-Corruption Commission Legislation.

Recommendation 2 The committee recommends that the statement of compatibility with human rights be updated to:

- 1) Set out the compatibility of provisions providing for immunity from civil proceedings (clauses 196 and 269) with the right to an effective remedy; and
- 2) Explain why clause 97 would only require the Commissioner to consider cancelling a non-disclosure notation after a period of five years has passed (and not some shorter period of time).

Agreed.

The Government will update the Statement of Compatibility in the Explanatory Memorandum to the NACC Bill.

Recommendation 3 The committee considers that the compatibility of the measure with the rights to freedom of expression and peaceful assembly may be assisted were clause 82 of the bill amended to remove paragraphs (d) and (e) (which make it a contempt to use insulting language or creating a disturbance near a Commission hearing).

Agreed in part.

The Government will amend clause 82 of the NACC Bill to omit paragraph (1)(e) (creating a disturbance near a hearing).

The Government will retain paragraph 82(1)(d) (insults, disturbs or uses insulting language towards a Commissioner during a hearing). Insulting, disturbing or using insulting language towards a Commissioner during a hearing would tend to directly or indirectly obstruct the Commissioner in the conduct of the hearing and, therefore, in the conduct of a corruption investigation. The Government notes that the conduct covered by the paragraph would also likely constitute a contempt of court or, if done in the presence of a House or Committee of the Parliament, a contempt of Parliament. Prohibiting such conduct is necessary to ensure that the Commissioner can conduct a hearing in an effective manner.

Recommendation 4 The committee recommends that the statement of compatibility with human rights be updated to set out the compatibility of clause 82 with the rights to freedom of expression and assembly.

Agreed.

The Government will update the Statement of Compatibility in the Explanatory Memorandum to the NACC Bill.

Recommendation 5 The committee considers that the compatibility of the measure with the right to freedom of expression may be assisted were the bill amended to remove paragraph 124(2A)(b), with the effect that where an issuing officer is considering whether to issue a search warrant to search a journalist or their employer or premises, they must always be required to have regard to the public interest, as set out in subclause 124(2B).

Agreed.

The Government is committed to protecting the freedom of the press in Australia. The NACC Bill contains robust safeguards to protect the identities of journalists' sources and uphold the public interest associated with a free press.

Substituted paragraph 3E(2A)(b) of the *Crimes Act 1914*, to be inserted by cl 124 of the of the NACC Bill, would limit the application of the journalistic safeguards for search warrants to circumstances where the Commission is investigating a secrecy offence. In the context of the Commission's work, which may be triggered by media reporting on any kind of corruption, the Government considers that it would be appropriate for that journalistic safeguard to apply more broadly. The Government will amend clause 124 of the NACC Bill to remove substituted paragraph 3E(2A)(b) of the *Crimes Act*.

Recommendation 6 The committee recommends that the statement of compatibility with human rights be updated to set out the compatibility of these provisions with the right to freedom of expression.

Agreed.

The Government will update the Statement of Compatibility in the Explanatory Memorandum to the NACC Bill.

Recommendation 7 The committee recommends that a foundational human rights assessment of existing covert surveillance powers be undertaken, in particular of the powers in the *Telecommunications (Interception and Access) Act 1979*, the *Surveillance Devices Act 2004*, the *Proceeds of Crime Act 2002* and the *Crimes Act 1914* to assess their compatibility with human rights, in particular the right to privacy.

Noted.

The Attorney-General's Department is leading a major reform of Australia's electronic surveillance laws in response to recommendations of the *Comprehensive Review of the Legal Framework of the National Intelligence Community*. The reform aims to replace the *Telecommunications (Interception and Access) Act 1979* (TIA Act), the *Surveillance Devices Act 2004* (SD Act), and parts of the *Australian Security Intelligence Organisation Act 1979* to address technological difficulties, inconsistency and complexity associated with the use of electronic surveillance powers. The compatibility of powers currently provided for in the TIA Act and the SD Act will be considered as part of this reform.

A foundational assessment of the compatibility of the powers contained in the *Crimes Act* and *Proceeds of Crime Act 2002* would go substantially beyond the scope of the amendments to those Acts contained in the Consequential Bill. The Government will consider the compatibility of any future amendments to the powers contained in the *Crimes Act* and *Proceeds of Crime Act* in the context of those amendments.