



Australian Government

Australian Government response to the
Parliamentary Joint Committee on Intelligence and Security report:

Advisory Report on Item 250 of the National Anti-Corruption
Commission (Consequential and Transitional Provisions) Bill 2022

July 2023 **Recommendations**

Recommendation 1

The Committee recommends that the Department of Home Affairs and the Attorney-General's Department provide the Committee with an outline of the work to date in relation to reform of Australia's electronic surveillance framework. This should include the option of the Committee receiving an oral briefing.

Response:

The Government **agrees** to this recommendation.

The Attorney-General has written to the Committee providing an outline of work undertaken to reform Australia's legislative electronic surveillance framework.

Recommendation 2

The Committee recommends that the Government ensure the protection of parliamentary privilege in relation to the use of covert powers in its Reform of Australia's Electronic Surveillance Framework. Further the Committee considers that the Telecommunications (Interception and Access) Act 1979 should be expressly amended to ensure that the provisions of that Act do not abrogate parliamentary privilege.

Response:

The Government **notes** this recommendation.

The Government recognises the important role that parliamentary privilege plays in a robust and functioning democracy and in ensuring that Parliament, including its committees and members, are able to fulfil their functions.

Recommendation 3

The Committee recommends that the Government convey to the National Anti-Corruption Commission and each other agency tasked with using powers under the Telecommunications (Interception and Access) Act 1979, its expectation that investigators will receive training in relation to parliamentary privilege.

Response:

The Government **agrees** to this recommendation.

The Government will communicate its expectation to Commonwealth agencies (including the National Anti-Corruption Commission) that investigators using powers under the TIA Act will receive training on parliamentary privilege. The Government will also consult state and territory governments whose agencies exercise powers under the TIA Act on arrangements to support the protection of parliamentary privilege in their respective jurisdictions.

Recommendation 4

The Committee recommends that the National Anti-Corruption Commission Act 2022 be amended to provide for a mechanism to ensure the protection of Parliamentary Privilege during National Anti-Corruption Commission investigations.

Response:

The Government **does not agree** to this recommendation.

Section 274 of the *National Anti-Corruption Commission Act 2022* expressly preserves parliamentary privilege in relation to the activities of the NACC, ensuring that parliamentary privilege will apply to the NACC in the same way it applies to all executive agencies.

The Government considers that a memorandum of understanding between the NACC and the Parliament is the most appropriate method to determine an appropriate process to ensure the protection of parliamentary privilege during NACC investigations.

Recommendation 5

The Committee recommends that there be a memorandum of understanding between the National Anti-Corruption Commission, the Australian Government and the Parliament in relation to the use of covert powers and parliamentary privilege.

Response:

The Government **agrees** to this recommendation **in principle**.

The development of a memorandum of understanding (MoU) is a matter to be negotiated by the Presiding Officers, the Attorney-General and the NACC.

A future NACC MoU may draw on the experience of the AFP and the MoU on the Execution of Search Warrants in relation to a member of parliament made in 2021. The Attorney-General, the Speaker of the House of Representatives, and the President of the Senate are seeking to review and update that MoU to cover the AFP's investigative powers under the TIA Act and the SD Act in relation to MPs, during the 47th Parliament.

Recommendation 6

The Committee recommends that, given the sensitivity of information to be collected and stored by the National Anti-Corruption Commission, the NACC should be required to comply with the Essential Eight Maturity Model to Maturity Level Three as recommended by the Australian Cyber Security Centre and that it report annually to the Parliament on its compliance.

Response:

The Government **agrees** to this recommendation **in principle**.

The Chief Executive Officer (CEO) of the NACC, as the accountable authority for the agency for the purposes of the *Public Governance, Performance and Accountability Act 2013*, will have overall responsibility for the protective security of their entity's people, information and assets. To achieve this, the CEO will be responsible for implementing the Protective Security Policy Framework (PSPF) core and supporting requirements and having effective protective security arrangements in place. This includes *PSPF policy 10: Safeguarding data from cyber threats*, which requires that, at a minimum, entities meet the Essential Eight Model (E8) Maturity Level 2 requirements.

The Attorney-General's Department and the Australian Commission for Law Enforcement Integrity are establishing a new, independent ICT environment for the NACC, which will be operational from 1 July 2023. As part of this work, they are working with the Australian Cyber Security Centre to ensure that the NACC's ICT environment meets the requirements for Maturity Level Three under the E8. These requirements include robust application controls, patching, user application hardening, restricted administrative privileges and multi-factor authentication.

This will ensure that the NACC has robust controls in place to mitigate against cyber risk and avoid incidents that may result in unauthorised access to or extraction of sensitive information.

The NACC will also be subject to strong statutory oversight, including the Parliamentary Joint Committee on the National Anti-Corruption Commission (PJC-NACC) which will be able to monitor and review the performance by the Commissioner of their functions. In addition, the Commissioner will be required to produce an annual report to be provided to the Houses of the Parliament. The PJC-NACC will be able to examine and report on any matter appearing in, or arising out of the annual report.

Recommendation 7

The Committee recommends that, given the risk of insider threat, employees at the National Anti-Corruption Commission be required to obtain a security clearance at least to Negative Vetting Level 1, with increased requirements up to Positive Vetting depending on their access to sensitive information.

Response:

The Government **notes** this recommendation.

Under the *Public Governance, Performance and Accountability Act 2013* all non-corporate Commonwealth entities are required to comply with the Protective Security Policy Framework (PSPF). Under the PSPF, it is the responsibility of the accountable authority to ensure the security of their entity's people, information and assets and to manage security risks effectively. As the relevant accountable authority, the Chief Executive Officer of the NACC must assess the entity's security risks and context and determine the necessary security clearance requirements of its personnel. In accordance with the core requirement of *PSPF policy 9: Access to information*, each entity must ensure that those who access sensitive or security classified information have an appropriate security clearance and need to know that information.

Given the NACC's jurisdiction over the Commonwealth public sector, including national security agencies, it is expected that the entity will support a wide range of security clearance levels to manage access to sensitive and classified information, such as Negative Vetting Level 1 and beyond. Consistent with the PSPF, the NACC will be required to put in place measures to control access to information systems holding sensitive and classified information, that meet the policy detailed in Requirement 3 of PSPF policy 9.