



Australian Government

National Anti-Corruption Commission

# Brief for Attorney-General for Palau

**The Hon PLG Brereton, AM, RFD, SC**  
**National Anti-Corruption Commissioner**  
**24 January 2024**

[www.nacc.gov.au](http://www.nacc.gov.au)

# Topics

- **Origins and Establishment**
- **Mission and Organisation**
- **Jurisdiction & corrupt conduct**
- **Referrals and assessment**
- **What is meant by serious and systemic?**
- **Powers and protections**
- **Outcomes and reports**

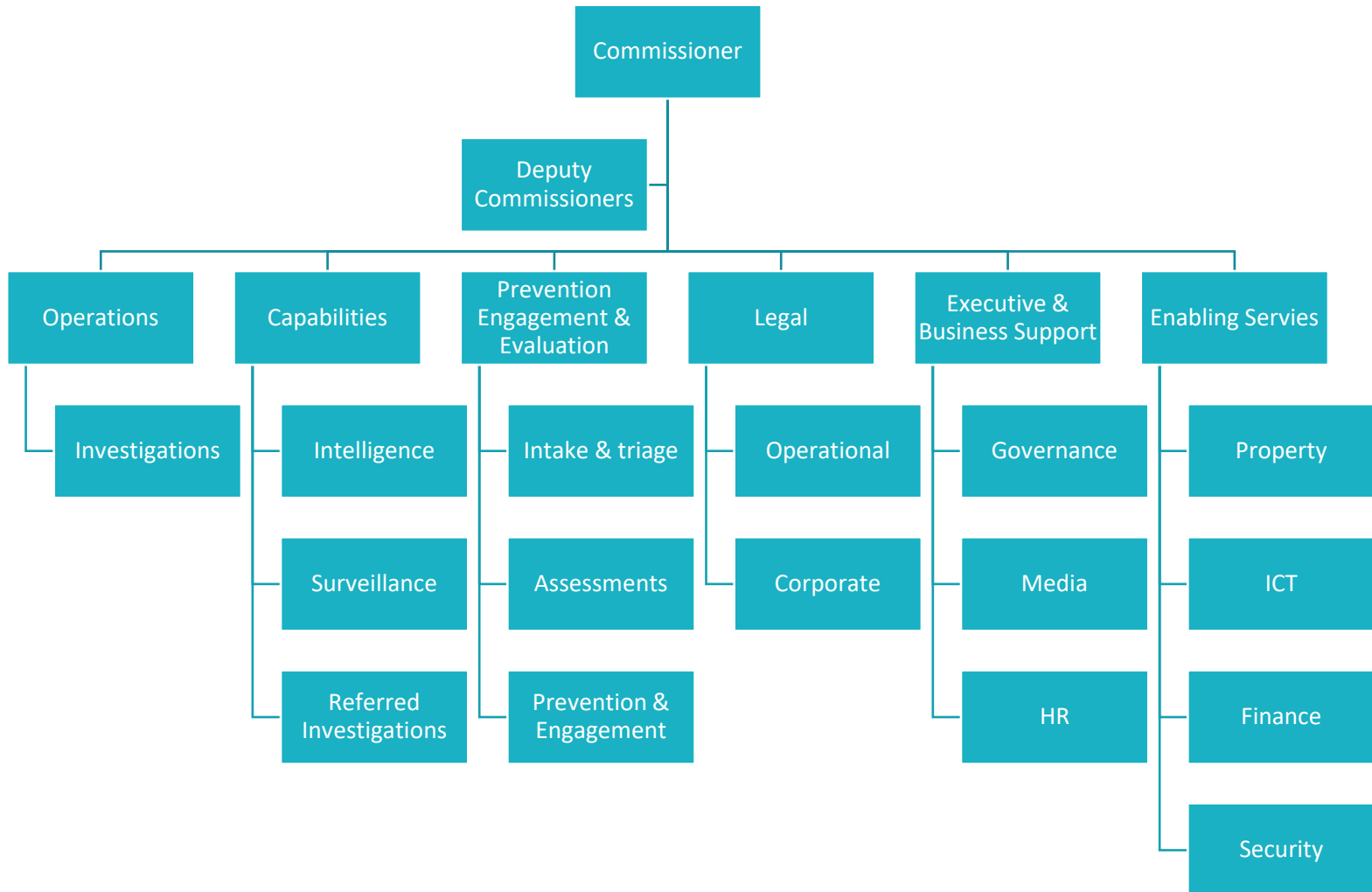
# Origins and establishment

- State and territory anti-corruption commissions
- No Commonwealth commission with broad-based jurisdiction
- Election issue
- Legislation October 2022
- Commencement 1 July 2023

## Mission

To enhance integrity in the Commonwealth public sector, by **detering, detecting** and **preventing** corrupt conduct involving Commonwealth public officials, through **education, monitoring, investigation, reporting** and **referral**.

# Organisation



## Corrupt conduct: s8(1)

(a) Conduct of any person that adversely affects a public official's *honest or impartial exercise of powers or performance of duties*

(b) Conduct of a public official that involves a *breach of public trust*

(c) Conduct of a public official that involves *abuse of office*

(d) Conduct of a public official or former public official that involves the *misuse of information or documents*

➤ **Not mere maladministration or mistakes**

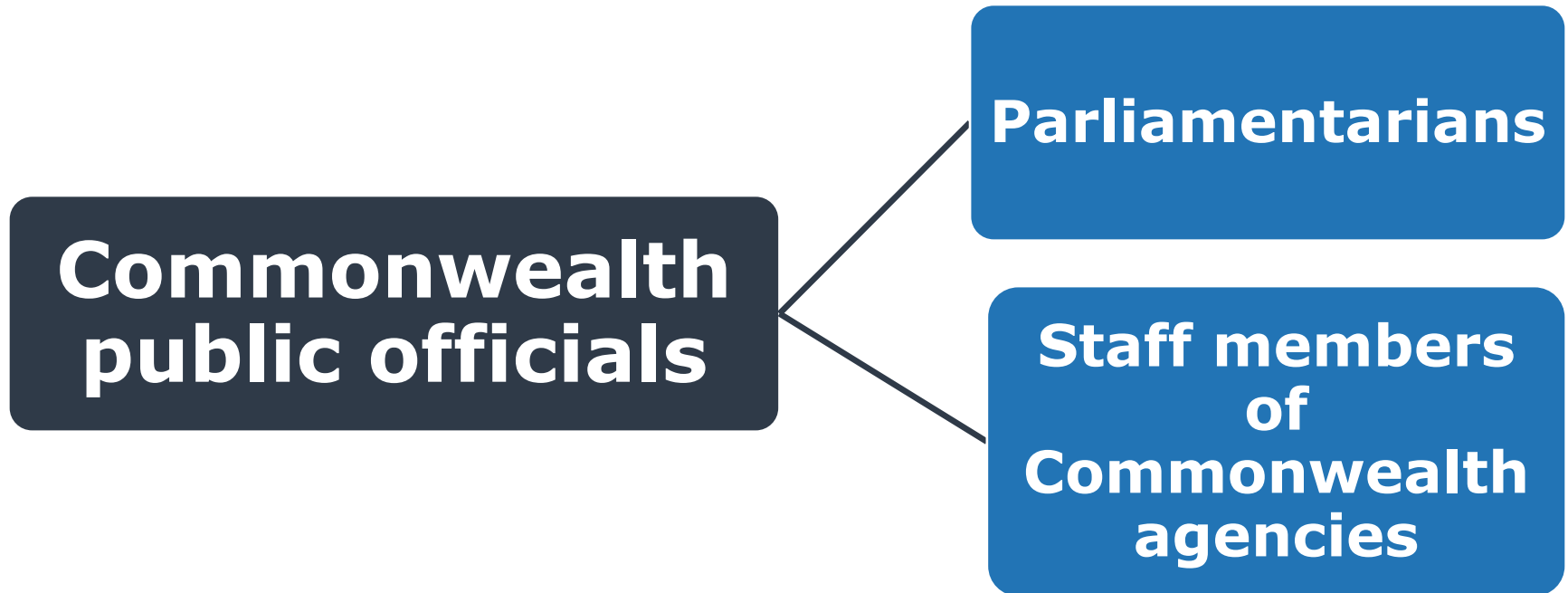
## Exclusions: s8(2)

**Paragraph 8(1)(a) (conduct of any person) does not apply in relation to conduct of the following:**

- (a) the Governor-General;**
- (b) a Deputy Governor-General;**
- (c) a Justice of the High Court *or a judge of a court created by the Parliament;***
- (d) a judge of a court of a State or Territory;**
- (e) a member of a Royal Commission;**
- (f) the Inspector, or a person assisting the Inspector.**

## Commonwealth public officials: s8, s10

The touchstone of jurisdiction is an issue of corrupt conduct by, or affecting, a *Commonwealth public official*.





## Staff members: s12

### Staff members of an agency include:

- **if the agency is a Commonwealth entity—*an official (within the meaning of the PGPA Act) of the entity;***
- **in any case—an individual who is employed by, or engaged in assisting the agency or a staff member of the agency on behalf of the agency or the Commonwealth (which could include consultants); and**
- **an individual involved in providing services to or for the agency under a Commonwealth contract.**

# Referrals

- **Voluntary.** Anyone can refer a matter to the Commission
- **Mandatory.** An agency head who becomes aware of a corruption issue must refer the issue to the Commission if it concerns the conduct of a staff member of the agency, and the agency head suspects that the issue could involve corrupt conduct that is serious or systemic
- **Own motion.** the Commission can investigate a corruption issue of which it becomes aware of its own motion without any referral

# Making a referral

**Online:**  
[www.nacc.gov.au](http://www.nacc.gov.au)

**Phone:**  
1300 489 844

**Post**

# Whistleblower protections

- ✓ If you refer or provide information to the Commission about a corruption issue, you are not subject to any civil, criminal or administrative liability (including disciplinary action) for doing so.
- ✓ In addition, no contractual or other right or remedy can be enforced against you for doing so.
  - These protections override all other laws of the Commonwealth.
  - The only exception is that action can still be taken for making false or misleading statements to the Commission.
- ✓ Taking reprisal action against anyone who makes a referral, provides information, or gives evidence to the Commission is a criminal offence.

# Assessment

- **Triage:**
  - Does the referral concern a Commonwealth public official?
  - Does the referral raise a corruption issue?
    - Preliminary investigation?
- **Assessment:**
  - Should the Commission deal with the issue and if so how?
    - Conduct a Commission-only corruption investigation
    - Conduct a joint investigation with another agency
    - Refer to relevant agency for investigation
    - Refer to relevant agency for consideration
    - Take no further action
- No obligation to consider dealing with any referral
- Notification to referrers

## Serious or systemic

### Serious

Requires something that is significant; it involves something more than "negligible" or "trivial", but it does not have to be "severe" or "grave".

### Systemic

Means something that is more than an isolated case; it involves a pattern of behaviour, or something that affects or is embedded in a system.

**The mandatory referral obligation is triggered if the suspected corrupt conduct could be *either* serious or systemic**

## Investigatory powers

- To compel provision of documents and information
- To summons for examination at hearing
  - Ordinarily in private
  - Exceptionally in public
- Information cannot be withheld on grounds of
  - legal professional privilege
  - public interest immunity
  - privilege against self-incrimination. However, information provided under compulsion cannot be admitted in evidence in a criminal prosecution of the person providing it.

## Outcomes and reports

- Finding of “corrupt conduct”
- Recommendations
- Referrals
- Report to Attorney-General
- Parliament
- Public release



# Oversight

- Inspector
- Parliamentary Joint Committee

# Data and trends to date

- 2424 referrals
  - 1920 referrals excluded at triage
  - 62 referrals pending triage
  - 200 triaged referrals under assessment including 11 under preliminary investigation
  - 161 referrals assessed :
    - no further action in 144 cases.
    - 3 referrals to agencies for investigation or consideration, in 1 of those cases with oversight by the Commission.
    - 6 Commission-only corruption investigations.
    - 3 joint investigations.
- Procurement
- Promotion
- Misuse of information

# Prevention and Engagement

- Presentations to:
  - Parliamentarians
  - Senior public servants
  - High risk agencies
  - Professional associations
  - Civil society organisations
- International
  - CCPCJ
  - CoSP10
    - Teienewa Vision

# The Pacific

- Staff exchanges
- Information exchange
- MoU
  
- APSACC Darwin 29-31 July 2024



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# Questions?

- ✓ Subscribe to the website using your 'gov.au' email address and check back regularly for updates. More information and resources will be added when available.
- ✓ Call us on 1300 489 844 (voicemail is available outside standard business hours).

[www.nacc.gov.au](http://www.nacc.gov.au)