



National Anti-Corruption Commission

The National Anti-Corruption Commission

**Council of Australasian Tribunals
NSW Chapter: Annual Conference**

nacc.gov.au

Scope

- Origin and functions:
 - Purpose and mission, jurisdiction
 - How we receive referrals and decide what to investigate
- The first year:
 - Emerging trends
 - Priorities
- Corruption prevention:
 - Corruption prevention strategies
 - Corruption prevention themes
- Opportunities for cooperation

Origins and establishment



Integrity

A key election issue clearly expressed by the Australian people



Mandate

A government acting on that expressed desire



Leadership

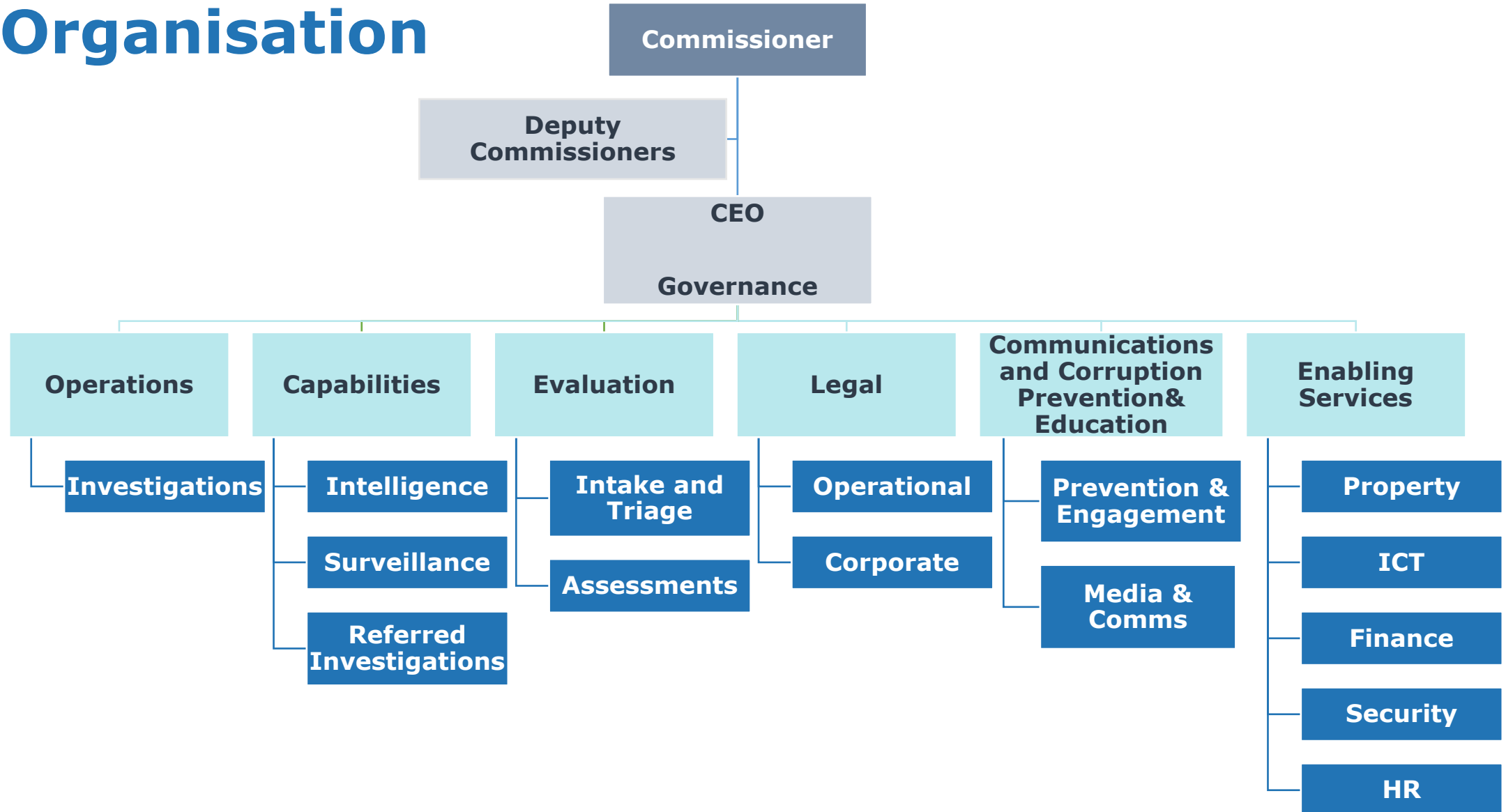
APS leadership embedding a pro-integrity culture at all levels

Purpose and Mission

Purpose: To provide independent assurance to the Australian community that corrupt conduct involving Commonwealth public officials is prevented, detected, investigated, and responded to appropriately.

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



A corruption issue: s9

The touchstone of the Commission's jurisdiction is a "corruption issue".

That is a question of whether a person has engaged, is engaging, or will engage in, corrupt conduct.

What is corrupt conduct?

Breach of
public trust

Abuse of office

Misuse of
information or
documents

An act that leads to a public official behaving other than
honestly and impartially

Breach of public trust: s8(1)(b)

- Public powers are conferred on public officials for the public benefit
- It will be a breach of public trust if a power is not exercised honestly for the purpose for which it is conferred
- ***The key feature of a breach of trust is the exercise of a power, or the performance of a function, for an improper or collateral purpose.***
- This could include the use official powers to advance a personal interest; or applying public resources for a purpose for which they were not appropriated.

Abuse of office: s8(1)(c)

- The concept of an abuse of office by a public official involves the official intentionally engaging in **improper** acts or omissions in their official capacity, to gain a benefit for themselves or another person, or to cause a detriment to another person.
- An abuse of office can be committed through the exercise of influence arising from the person's public office or the use of information obtained in their capacity as a public official.

Misuse of official information: s8(1)(d)

- Any conduct of a public official, or a former public official, that constitutes or involves the misuse of information or documents acquired in the persons capacity as a public official, is corrupt conduct
- That includes:
 - Unauthorised access
 - Unauthorised disclosure
 - Unauthorised use

Conduct affecting honesty or impartiality

- Any conduct of ***any person*** that **adversely affects**, or **could adversely affect**, directly or indirectly, the **honest or impartial performance of any *public official's* functions as a public official**.
- Includes a public official's own conduct if it has or could have the specified effect in relation to the official's own functions.

Serious or systemic

Serious

Something that is significant; something more than 'negligible' or 'trivial', but it does not have to be 'severe' or 'grave'

Systemic

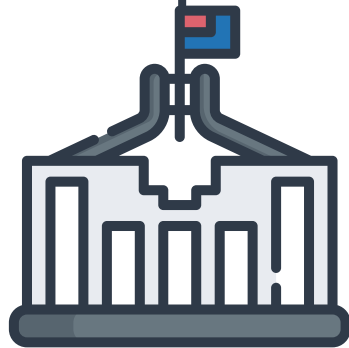
Something that is more than an isolated case and involves a pattern of behaviour, or something that affects or is embedded in a system

Some important qualifications

- The notion is concerned with probity in public administration.
- Mere maladministration is not corruption:
 - Generally, bad faith and/or personal benefit (for self or another) is necessary to make it corrupt.
- The Act does not legislate new standards of behaviour:
 - The conduct it characterises as corrupt conduct has always been regarded as improper.
 - Retrospective operation is therefore appropriate.

Jurisdiction of the NACC

Commonwealth
public officials



Parliamentarians



Staff members
of agencies

Staff members



An official
of the entity

An individual who
is employed by or
engaged in
assisting an agency
(including
consultants)

An individual
involved in
providing services
to or for an
agency under a
Commonwealth
contract

Referrals to the Commission



Voluntary

Anyone can submit a corruption report to the Commission or provide information about a corruption issue



Mandatory

If an agency head suspects serious or systemic corruption involving a staff member, they must report it to the Commission



Own motion

The Commission can investigate a corruption issue it becomes aware of on its own motion without a referral

Making a referral



Online

nacc.gov.au



Phone

1300 489 844



Post

GPO Box 605
Canberra ACT 2601

Whistleblower protections

Protection: Not subject to civil, criminal, or administrative liability (including disciplinary action) for making disclosure

Contractual rights: No contractual or other right or remedy can be enforced against whistleblowers

Reprisals: It is a criminal offence to take reprisals against whistleblowers

Exception: Making false or misleading statements to the NACC

Dealing with a corruption issue: s 41

- If it could be serious or systemic:
 - Investigation by Commission (s41(1)(a))
 - Joint investigation with another Commonwealth or State agency (s41(1)(b))
- Refer to another agency for investigation (s41(1)(c))
- Refer to another agency for consideration (s41(1)(d))
- Take no further action (s41(6))
- No duty to consider dealing with a referral (s41(7))

Assessment of referrals

Triage

- Does the referral concern a Commonwealth public official?
- Does the referral raise a corruption issue?

Assessment

- Serious or systemic?
- Should the Commission deal with the issue and if so, how?
 - Preliminary investigation?

Evaluation of referrals

Pathways and Prospects

Scale and gravity

Strategic Corruption
Priorities

Public interest

Will a NACC
investigation add value?

Will an inquiry
'clear the air'?

Investigatory powers



Require the production of documents and information



Search premises, people, intercept communications and use surveillance devices under warrant



Summon witnesses for examination at hearings

Investigation conclusion and reporting

- **Commission's role:** At the conclusion of an investigation, the Commission provides a report to the Attorney-General
- **Findings:** The report may include a finding that a person has engaged in 'corrupt conduct'. This is an administrative finding, not a finding of criminal guilt
- **Recommendations and referrals:** The Commission can also make recommendations, including to terminate the employment of an APS employee, under section 15(2) of the *Public Service Regulations 2023*; and refer matters to prosecutorial agencies

Judicial review

- **No duty** to consider whether to deal with a corruption issue, regardless of by whom referred: s 41(7)
 - **No obligation to give reasons** for not dealing with an issue.
 - Decisions whether or not or how to deal with a referral are **not amenable to judicial review.**
- A finding of corrupt conduct is **an administrative finding of fact:** s 149(3)
 - Briginshaw standard
 - Rules of procedural fairness apply: s 150
 - **Such a finding is amenable to judicial review.**

Independence and accountability

- Fixed term appointment, not renewable
- No one can direct the Commission what to investigate
 - Reinforced by s 41(7) and own motion powers
- Oversight by
 - Inspector
 - Parliamentary Joint Committee

Statistics – 1 July 2023 to 30 June 2024

3,189

referrals

(+ 361)

29

preliminary
investigations

(+ 4)

26

corruption
investigations

(+ 3)

7

investigations
from ACLEI

5 matters in
court

(+ 2)

3 convictions

1 committal

Emerging trends in public sector corruption

Procurement

Recruitment

**Public/private
interface**

**Preferring
family,
friends and
associates**

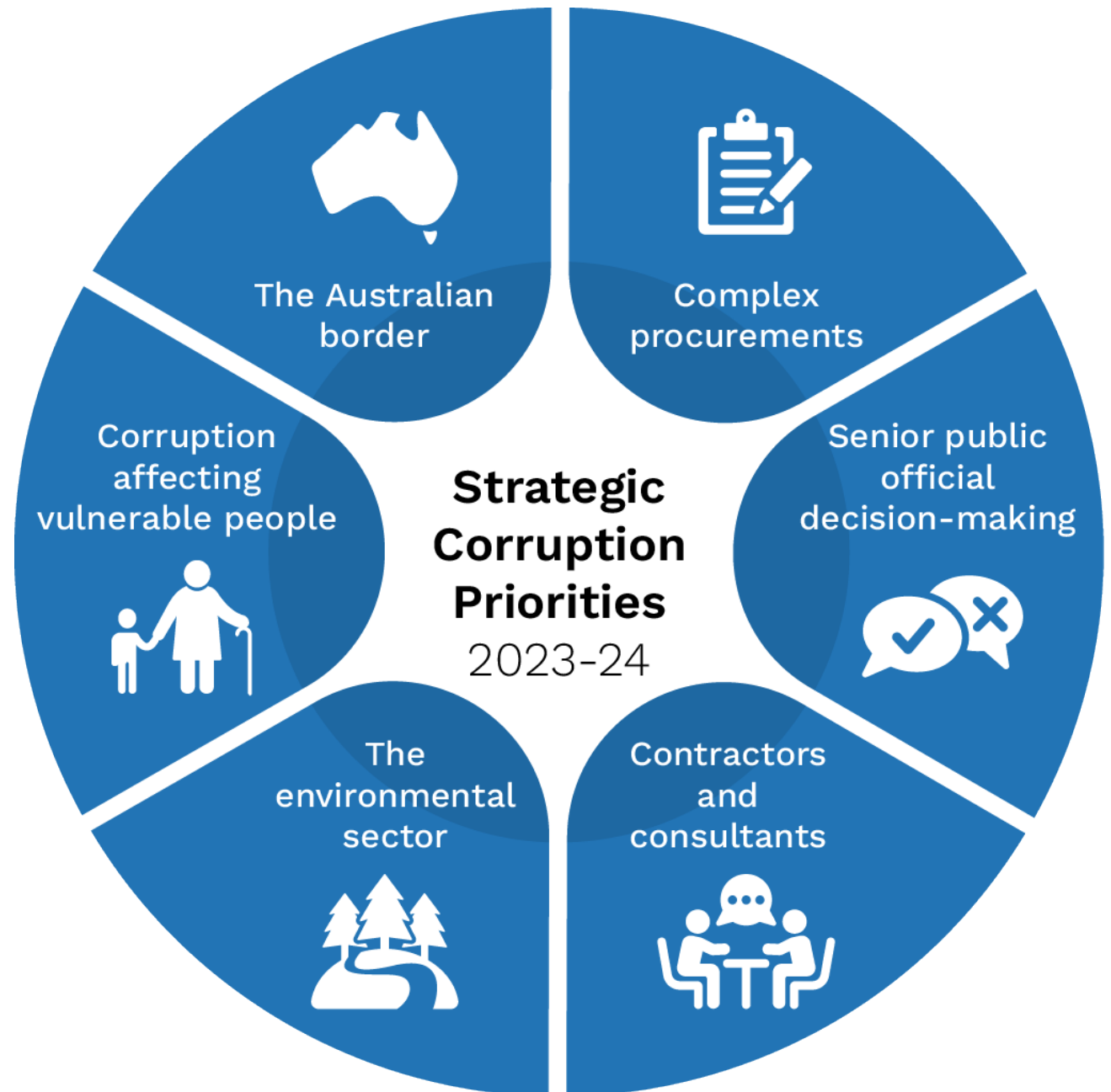
**Use of
insider
information**

**Compromised
decision
making**

**Conflict of
interests**

Priorities

To assist in prioritising our efforts logically, the Commission has adopted 6 Strategic Corruption Priorities to guide its work



Current investigations

- 6 relate to former or current **parliamentarians**
- 3 relate to former or current **parliamentary staffers**
- 4 relate to **contractors or consultants**
- 7 relate to **senior executive officials**
- 8 relate to **law enforcement officials**

- 8 relate to *procurement*
- 1 relates to *recruitment*
- 4 relate to the *border*
- 4 relate to *law enforcement misconduct*
- 3 relate to *grants*

- Most investigations do **not** result in a finding of corrupt conduct

Operation Kingscliff

Issue: Procuring appointment of relative without disclosing relationship

Corrupt conduct: Abuse of office to dishonestly obtain a benefit for another

Investigation:

- Departmental documentary record
- POI communications
- Compulsory examinations

Corruption risk: Recruitment - preference of associates, use of inside information

Operation Pelican

Issue: Soliciting a secret commission for awarding a Commonwealth contract.

Corrupt conduct: Abuse of office to dishonestly obtain a benefit for self

Investigation:

- Telecommunication intercepts
- Surveillance devices
- Controlled operation

Corruption risk: Procurement

Transparency v Secrecy

Referrals and Investigations

- Weekly statistics
- Subject matter or status not disclosed
 - Unless or until court or other public action

Hearings

- Generally in private; public in exceptional circumstances only
 - Unfair premature damage to reputations
 - To elicit information and evidence
 - Often facilitates evidence and disclosures

Reports

- Where there has been a public hearing
- If satisfied it is in the public interest to do so
 - Where there has been a finding of corrupt conduct
 - To clear the air of unsubstantiated allegations

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Corruption prevention strategies



Support potential targets to recognise and resist



Encourage and facilitate reporting



Grow a culture which does not tolerate corruption

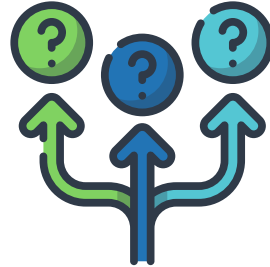


Conduct public inquiries

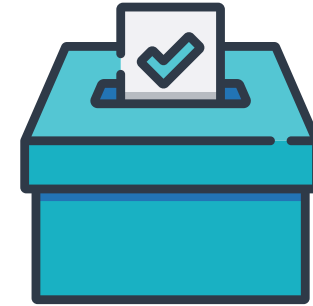
Corruption prevention themes



Conflicts
of interest



Ethical
decision
making



Issues
associated with
elections

The impact of organisational culture

How people respond to ethical dilemmas is determined more by organisational culture than by policy and protocol

Culture establishes
accepted bounds
and **decision**
points for behaviour

Culture provides
organisational norms
and boundaries for
value-based decisions



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