



PARLIAMENT OF AUSTRALIA

Parliamentary Joint Committee on the National Anti-Corruption Commission

31 January 2025

Written questions on Notice

National Anti-Corruption Commission

Questions from Senator Shoebridge:

1. Why were private hearings conducted in only 3 out of 26 investigations per the NACC Annual report?
2. In relation to the 3 investigations in which 18 witnesses were examined, were any of the 18 witnesses persons who were charged or against whom charges were likely to be laid? If no suspected persons were examined, what were the reasons for not examining such persons?
3. In relation to the private hearings which were conducted, were any orders made under s75(2) NACC Act for other persons such as investigators to be present at the hearings? Was the NACC restricted in permitting any investigators to be present?
4. Why were no investigations concluded during the 2023-2024 reporting period?
5. In relation to the 7 joint investigations:
 - a) Were joint taskforces or joint investigative teams set up with counterpart state or federal law enforcement agencies?
 - b) Were any federal or state law enforcement agency staff who were involved in the investigation and charging of related suspects, seconded to the NACC?
 - c) Did the NACC have a free and complete exchange of information with the federal and state law enforcement agencies which were partners in the 7 joint investigations?
 - d) Was any need identified to quarantine information and not share it with all investigators?
6. Were any private hearings conducted in relation to the 7 joint investigations? If there were any such hearings, were orders made under s75(2) NACC Act for any investigators from the joint agencies to be present? Was the Commissioner restricted in permitting any persons to be present at the private hearings?
7. In relation to the investigations conducted in 2023-2024, has the NAAC shared investigation material or derivative material with federal and/or state law enforcement agencies and with prosecutors?

8. In addition to the 18 witness summonses issued in 2023-2024:
 - e) How many additional summonses were issued as at 22 November 2024?
 - f) How many matters were these summonses issued in relation to?
 - g) Did any of the additional summonses relate to persons who were charged or against whom charges were likely to be laid?
9. How many orders have been made under s100 NACC Act to disclose investigative material to a law enforcement agency or the prosecution in relation to persons who have been charged or who are likely to be charged? Have any applications been made to a Court under s106 NACC Act for investigative material or derivative material to be disclosed to the prosecutor of a witness in the interests of justice?
10. If the NACC has not questioned any witness who has been charged or against whom charges are imminent, has this had an impact on the ability of the NACC to effectively complete its investigations?
11. Is the NACC aided or hindered by the holding of the High Court in *X7 v Australian Crime Commission* [2013] HCA 29 [157]-[160] that the fundamental principle of the of the common law is that the onus of proof rests upon the prosecution and its companion rule that the accused cannot be required to testify to the commission of the offence charged?

The response to the senator's question is as follows:

1. Why were private hearings conducted in only 3 out of 26 investigations per the NACC Annual report?

The 26 investigations were commenced successively over the 12-month period covered by the report, with the majority commenced in the second half of the period. Hearings are one of many information and evidence gathering techniques available to the Commission and are not necessary or appropriate for every investigation.

Typically, when they are appropriate, hearings are most effective after an investigation has collected enough evidence and intelligence from a range of sources to construct a robust case theory. This ensures that an examination can be comprehensive and that a witness' evidence can be properly tested. The 3 investigations in which hearings were held were investigations in which hearings were an appropriate strategy and which had progressed to the point where they would likely be useful and effective.

2. In relation to the 3 investigations in which 18 witnesses were examined, were any of the 18 witnesses persons who were charged or against whom charges were likely to be laid? If no suspected persons were examined, what were the reasons for not examining such persons?

None of the 18 witnesses were persons who had been charged or against whom charges were imminent, in the sense referred to in section 130.

In 2 of the 3 investigations in which witnesses were examined, the witnesses examined included persons of interest in respect of whom a finding of corrupt conduct might potentially have been made, but charges were not imminent. In the third, the witnesses examined in the reporting period were not persons of interest. Subsequently, the Commission has examined one person of interest in that investigation, but charges were not imminent.

In another investigation, as a result of which a person was charged, no private hearing was conducted because sufficient evidence had been obtained by other techniques and their evidence was not necessary for the purposes of the investigation. Where a person has been charged, or charges are imminent, the additional threshold imposed under subsection 63(3), and the rationale for it, are relevant considerations. The Revised Explanatory Memorandum to the NACC Bill explains that the additional threshold “*would reinforce the point that a hearing is intended to be held for the purposes of a relevant corruption investigation and not to bolster confiscation action or the prosecution of a witness*” (at [7.67]-[7.70]).

3. In relation to the private hearings which were conducted, were any orders made under s75(2) NACC Act for other persons such as investigators to be present at the hearings? Was the NACC restricted in permitting any investigators to be present?

Commission investigators, who are staff members of the NACC, were present at all hearings, under section 75(2), (3) and (5)(iii). The Commission has not been restricted in permitting investigators to be present at private hearings.

4. Why were no investigations concluded during the 2023-2024 reporting period?

Corruption investigations are complex and typically require the collection and analysis of very large amounts of documents and other data. Moreover, in order to avoid the destruction or concealment of evidence, and the potential collusion or intimidation of witnesses, it is often necessary to collect evidence through covert and frequently lengthy investigative strategies. In addition, any investigation that is to result in the Commissioner making a finding of corrupt conduct cannot be finalised without complying with the requirements of procedural fairness in accordance with section 153 of the NACC Act.

Of the 26 investigations, the majority were commenced in the second half of the reporting period. The first investigation commenced is a particularly large and complex one. None had reached the procedural fairness stage, or a point where it could be decided to take no further action, by 30 June 2024. One had reached the stage of commencement of a criminal prosecution, the outcome of which will affect the future course of the investigation.

5. In relation to the 7 joint investigations:

- a) **Were joint taskforces or joint investigative teams set up with counterpart state or federal law enforcement agencies?**
- b) **Were any federal or state law enforcement agency staff who were involved in the investigation and charging of related suspects, seconded to the NACC?**
- c) **Did the NACC have a free and complete exchange of information with the federal and state law enforcement agencies which were partners in the 7 joint investigations?**
- d) **Was any need identified to quarantine information and not share it with all investigators?**

In relation to the 7 joint investigations:

- a) No JTFs were established. For each joint investigation, a Joint Agency Agreement was established. In 3 investigations, staff from a partner agency were assigned to assist with the investigation, but no JTF was established.
- b) No, save that AFP secondees to the NACC were involved in supporting the execution of search warrants.
- c) Yes. In the 7 joint investigations, relevant information was freely shared between the partner agencies.
- d) No.

6. Were any private hearings conducted in relation to the 7 joint investigations? If there were any such hearings, were orders made under s75(2) NACC Act for any investigators from the joint agencies to be present? Was the Commissioner restricted in permitting any persons to be present at the private hearings?

Private hearings were conducted in one joint investigation. Personnel from the partner investigative agency did not attend those hearings. The Commissioner was not restricted in permitting persons to be present if appropriate.

7. In relation to the investigations conducted in 2023-2024, has the NACC shared investigation material or derivative material with federal and/or state law enforcement agencies and with prosecutors?

The Commission has shared investigation material (within the meaning of s 99 of the NACC Act) or derivative material (within the meaning of s 133 of the NACC Act) as follows:

- In one investigation, with federal law enforcement agencies.
- In a second investigation (being an ACLEI legacy investigation which transitioned to a NACC Act investigation) with state and federal law enforcement agencies.

- In a third investigation, which is related to the second, also with state and federal law enforcement agencies.
- In a fourth investigation (being an ACLEI legacy investigation which transitioned to a NACC Act investigation), with state and federal law enforcement agencies and with prosecutors.
- In a fifth investigation (being an ACLEI legacy investigation which transitioned to a NACC Act investigation), with state and federal law enforcement agencies and with prosecutors.
- In a sixth investigation, with prosecutors.
- In a seventh investigation (being an ACLEI legacy investigation which transitioned to a NACC Act investigation), with prosecutors.

In each case, the material disclosed was, or was derived from, information provided under a notice to produce (s 99(1)(a)). The investigations referred to secondly, fourthly, fifthly and seventhly are not included in the 26 investigations commenced by the Commission as they were ACLEI legacy matters.

8. In addition to the 18 witness summonses issued in 2023-2024:

- a) How many additional summonses were issued as at 22 November 2024?**
- b) How many matters were these summonses issued in relation to?**
- c) Did any of the additional summonses relate to persons who were charged or against whom charges were likely to be laid?**

Between 1 July 2024 and 22 November 2024:

- a) a further 14 witnesses were summoned to give evidence,
- b) those summonses related to 5 corruption investigations, one of which was also one of the 3 in which witnesses were examined before 30 June 2024.
- c) none of the summonses referred to above required the appearance of a person who had been charged or against whom charges were imminent, in the sense referred to in section 130. One related to a person of interest in respect of whom a finding of corrupt conduct might potentially be made, but at that time charges were not imminent. Two related to persons of interest against whom it is now likely that charges may be laid, but at the time of the hearing charges were not imminent.

9. How many orders have been made under s100 NACC Act to disclose investigative material to a law enforcement agency or the prosecution in relation to persons who have been charged or who are likely to be charged? Have any applications been made to a Court under s106 NACC Act for investigative material or derivative material to be disclosed to the prosecutor of a witness in the interests of justice?

As the NACC has not had occasion to issue a post-charge or post-confiscation application summons (see answer 10 below), no orders have been made under s 100 of the NACC Act which direct that a person may disclose investigation material (within the meaning of s 99(1)) to a law enforcement agency or a prosecutor in relation to persons who have been charged or are likely to be charged.

No applications have been made under section 106 of the NACC Act.

10. If the NACC has not questioned any witness who has been charged or against whom charges are imminent, has this had an impact on the ability of the NACC to effectively complete its investigations?

No. The NACC has not issued any post-charge or post-confiscation application summonses because it has not needed to. In the case in which a person has been charged, sufficient evidence for the purposes of the investigation was obtained without examining the person. If a person's evidence was so critical that without it, the investigation would be rendered ineffective, then that circumstance would be relevant to the threshold decision under subsection 63(3) (also discussed in answer 2 above).

11. Is the NACC aided or hindered by the holding of the High Court in *X7 v Australian Crime Commission* [2013] HCA 29 [157]-[160] that the fundamental principle of the of the common law is that the onus of proof rests upon the prosecution and its companion rule that the accused cannot be required to testify to the commission of the offence charged?

The principles set out in *X7 v Australian Crime Commission* [2013] HCA 29 neither aid nor hinder nor otherwise affect the NACC, because they do not apply to NACC investigations. Under s 150 of the NACC Act, a finding by the Commission that a person has engaged in corrupt conduct is not a finding of criminal guilt. In corruption investigations, the Commission applies the *Briginshaw* standard of comfortable satisfaction on the balance of probabilities in making a finding of corrupt conduct. The rule that an accused cannot be required to testify does not apply to the Commission, where the rule against self-incrimination is abrogated by s 113. Even where a person has been charged, they can still be required to give evidence to the Commission if it is considered necessary: s 63(3). Because there is only a 'use' and not a 'derivative use' immunity under s 113(2), the difficulties that can sometimes result from the use of derivative material, as was the case in *X7*, do not arise.