National Anti-Corruption Commission

Protections for whistleblowers and witnesses

This fact sheet provides information on protections that exist under the NACC Act.

The following protections are provided for whistleblowers and others who provide information to the Commission:

- Anyone who makes a referral, provides information or gives evidence to the NACC about a corruption issue is protected from civil, criminal or administrative liability (including disciplinary action) for doing so, and no contractual right or remedy can be taken against them. However, this does not prevent action being taken for making false or misleading statements.
- It is a criminal offence punishable by imprisonment for anyone to take any reprisal action against a person for making a referral, providing information or giving evidence to the Commission.

Protection from liability

This means, for example, that a person who refers a corruption issue has immunity from defamation proceedings in respect of the disclosure. Similarly, a contract to which the person is a party could not be terminated for breach of contract on the basis of the disclosure. Disciplinary action cannot be taken against them for making the disclosure.

Protection from reprisals

It is also a criminal offence for anyone to take, or threaten to take, reprisal action of any kind against a person for making a referral, providing information or giving evidence to the Commission. A 'reprisal' is when a person causes another person detriment because they believe or suspect that the other person has, may or could disclose a corruption issue to the NACC.

Detriment includes:

- dismissal from employment
- injury in employment
- detrimental changes to an employment position
- discrimination between a person and other employees of the employer.

The maximum penalty for taking a reprisal, or threatening to take a reprisal, against a person is imprisonment for two years.

Reasonable administrative action by an organisation to protect a person from detriment is not a reprisal. For example, if a person makes a disclosure about practices in their immediate work area, it may be appropriate to help them transfer to another area so they do not experience any detriment.

These protections from liability or reprisal are generally available to any person who refers or provides other information about a corruption issue to the NACC. This applies even where their disclosure involves breaching another law, though this is subject to some exceptions (see below).

Reputational damage

The Commissioner has powers and obligations to make statements, or include statements in reports, to avoid damage to the reputation of persons who have been investigated or who have given evidence at a hearing:

- where the person has been investigated, and the Commissioner forms the opinion that the person has not engaged in corrupt conduct, the Commissioner must include a statement to that effect in the report at the completion of the investigation.
- where the person has given evidence at a hearing and is not the subject of any findings or opinions in relation to the investigation, the Commissioner may include a statement to that effect in the report at the completion of the investigation, if satisfied it is appropriate and practicable to do so to avoid damage to the person's reputation.
- the Commissioner may make public statements during an investigation.

Procedural fairness

The Commission must give individuals or agencies who may be the subject of adverse opinions or findings in a report an opportunity to respond. A summary of the relevant submissions made by the person or agency must be included in the report at their request.

Judicial review of findings is available, by application to the Federal Court.

Exceptions to protections

A person **does not** receive protection from liability for their own conduct by disclosing it to the NACC. For example, a public servant who misuses an official power to advance a personal interest and then refers their own conduct to the NACC in the hope of avoiding liability for that conduct does not obtain protection.

A person who knowingly makes a false or misleading disclosure to the NACC is not protected from liability for false or misleading statements.

Contact us

Please use our webform to make a report of corrupt conduct.

If in doubt about whether to refer a matter to the Commission, contact us.

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