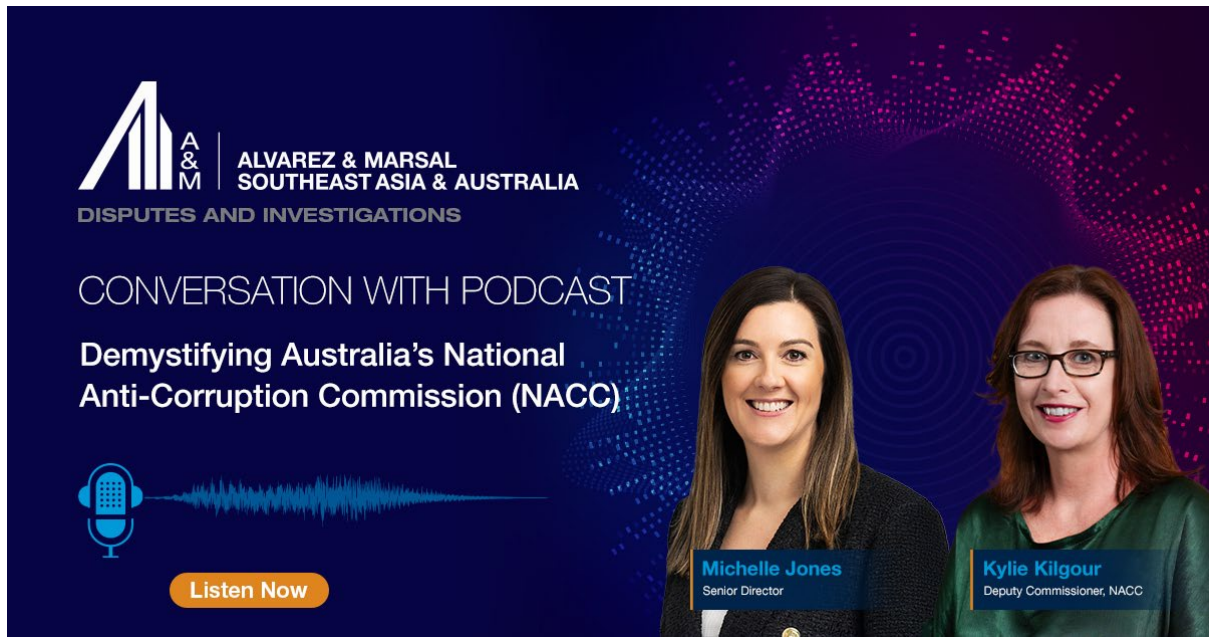


Conversation with podcast - Demystifying Australia's National Anti-Corruption Commission



Transcript

Facilitator: Michelle Jones

Speaker: Kylie Kilgour, NACC

0:00 – 0:32

Michelle Jones

Welcome to A&M Conversation With: A show where Alvarez and Marsal leaders discuss the trends impacting business today. I'm Michelle Jones, a Senior Director in Melbourne's Disputes and Investigations team. This is the first in a series of Australian podcasts where we bring you interesting topics associated with fraud, corruption, and serious misconduct.

Firstly today, a big thank you to Kylie Kilgour, who's Deputy Commissioner at the National Anti-Corruption Commission – the NACC.

So, Kylie, tell us a little bit about your background and how you came to work at the NACC.

0:32 – 1:30

Kylie Kilgour

Thanks very much for having us, Michelle. So, I started my professional career as a lawyer in Sydney, in community legal centres back in 1994. After about five years working there, I went to the UK for 10 years, and I was doing legal aid policy work while I was over there. In 2006, I returned to Australia and settled in Melbourne and joined the Victorian Public Service and the Department of Justice and Community Safety, where I worked until 2018. Including, I became a Deputy Secretary responsible for the criminal justice system. And as part of that work, I became aware of what I'll call the Lawyer X litigation. And that then led, in 2019–2020, to me being the CEO for the Lawyer X Royal Commission. And that then led to me becoming a Deputy Commissioner at

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IBAC from 2021 to 2024. And then, when the NACC was being established in 2023, I was asked to apply for some of the positions there, and I was fortunate enough to be appointed a Deputy Commissioner at the NACC. I started there in February 2024.

1:30 – 1:50

Michelle Jones

Great. Well, welcome. So, today we're exploring the background of the NACC, some case examples, and looking at its purpose and its mission. So, Kylie, we've got state-based corruption commissions across Australia addressing public sector and police misconduct. What brought about the NACC's creation in July 2023?

1:50 – 2:56

Kylie Kilgour

Yes, so the states and territories have had anti-corruption commissions, some of them for many years. So, say for example, New South Wales, Queensland, Western Australia — they all established their equivalent commissions back in the early 1990s. The absence of a national anti-corruption commission with a broad jurisdiction in respect to the Commonwealth public sector was a prominent issue in the 2022 federal election, and after that election, work began on drafting the NACC legislation and establishing the foundations for the NACC.

So, on July 1, 2023, we commenced operations, and that included subsuming the old Australian Commission for Law Enforcement Integrity, which I'll talk a bit about later on. And government announced our role as to provide independent assurance to the people of Australia that corrupt conduct involving Commonwealth public officials is prevented, detected, investigated, and responded to appropriately. Therefore, we've adopted it as our mission to enhance integrity in the Commonwealth public sector by deterring, detecting, and preventing corrupt conduct involving Commonwealth public officials through education, monitoring, investigation, reporting, and referral.

2:56 – 3:02

Michelle Jones

Great. And upon commencement, did you take over responsibility for those existing ACLEI cases?

3:02 – 3:15

Kylie Kilgour

Yes, we did. And with respect to that work, the Commission has so far obtained seven convictions. We've got four matters currently before the courts, and we've published three investigation reports.

3:15 – 3:21

Michelle Jones

Great. And to set the scene, could you let us know who can make reports to the NACC, and who must make reports?

3:21 – 3:42

Kylie Kilgour

So, anyone, including people who are members of the public, can make a voluntary referral via our website or our 1300 number. The people who must make referrals to us — we call them mandatory referrals — and that applies to agency heads and also what are called Public Interest Disclosure Officers. They can also make those reports via our website or a 1300 number.

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3:42 – 3:45

Michelle Jones

And what's the next jurisdiction?

3:45 – 4:03

Kylie Kilgour

So, the Commission's jurisdiction is concerned with corrupt conduct that involves Commonwealth public officials, either by them or by external parties that affect the honesty and impartiality of a public official. A public official is defined to include Commonwealth parliamentarians, including ministers and staff members of Commonwealth agencies.

4:03 – 4:08

Michelle Jones

Now, the term “staff members” is quite broad. Who does that include?

4:08 – 4:23

Kylie Kilgour

So, the definition of “staff member” of a Commonwealth agency includes not only individuals employed by the agency, but also those engaged in any way in assisting the agency. This includes over 200 agencies and 380,000 public sector employees.

4:23 – 4:39

Michelle Jones

So, this also includes parliamentarians and staff members of APS agencies. I guess our audience would inherently understand those, but I see it also includes contractors and service providers. Can you give us some examples of who they might be?

4:39 – 6:10

Kylie Kilgour

So, people engaged in assisting an agency captures those retained as consultants and advisers, including, for example, lawyers, accountants, or consultants from private firms like yourselves, retained to act for a Commonwealth agency. An individual responsible for delivering services to or on behalf of the Commonwealth under a contract with a Commonwealth agency is also deemed to be a staff member of the agency.

Some examples include individuals who provide services under labour hire contracts, including ICT contractors; individuals who provide services under a contract to provide whole-of-government travel services; individuals who work for private firms that deliver government programs, such as employment programs; and individuals who work for private firms that provide security and medical services in immigration detention centres.

Generally, recipients of Commonwealth grants will also be considered contracted service providers for the purposes of the Commission's jurisdiction. This is the case if the grant funding agreement includes the provision of goods or services in connection with the activities of the Commonwealth. For example, grant recipients in the social services or economic development portfolios.

Grant recipients can also come under the Commission's jurisdiction if they engage in conduct that adversely affects the honesty and impartiality of a public official's exercise and performance of their powers, functions, and duties.

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That's all very complicated, and the Commission has published a detailed fact sheet on its website which explains how individuals working for service providers contracted by government and grant recipients come within our jurisdiction.

6:10 – 6:26

Michelle Jones

Okay. Now, let's talk about how the NACC defines corruption. We know that varying definitions across corruption agencies can often confuse the public when matters are reported in the media. What's the definition of corrupt conduct under the NACC's legislation?

6:26 – 7:17

Kylie Kilgour

Under the NACC Act, a public official engages in corrupt conduct if they breach the public trust, abuse their public office, or misuse official information.

In addition, any person — so that's not confined to public officials — engages in corrupt conduct if they do something to cause a public official to behave other than honestly and impartially in performing their public duties.

Also, the definition of corrupt conduct extends to attempting, conspiring, or planning to engage in any of those types of conduct, and participating in another's corrupt conduct. These notions are similar to accessory liability in criminal law.

However, conduct engaged in as part of a political activity is not considered corrupt conduct under the NACC Act, so long as it does not involve or affect the use of public resources or the performance of a public official's functions.

7:17 – 7:29

Michelle Jones

Now, I know there are some differences in the corruption definition between the NACC and the state-based corruption agencies. Using Victoria's IBAC as an example, could you explain the difference?

7:29 – 8:42

Kylie Kilgour

Sure. So, IBAC's definition of corrupt conduct is more limited than the NACC's, as it requires the conduct to also be what is described in the legislation as a "relevant offence."

It starts out quite similarly to the NACC Act, in that section 4 of the IBAC Act defines corrupt conduct as conduct, or an attempt or conspiracy to engage in conduct — whether it takes place inside or outside of Victoria — that:

- adversely affects the honest performance of the functions of a public officer or public body;
- constitutes or involves the dishonest performance of the functions of a public officer or public body;
- constitutes or involves knowingly or recklessly breaching public trust;
- involves the misuse of information or material acquired in the course of the performance of the functions of a public officer or public body;
- is intended to adversely affect the effective performance of the functions or powers of a public officer or public body and results in the person or their associate obtaining a specified benefit.

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But in addition, for conduct to be considered corrupt conduct under the IBAC legislation, it must also constitute a “relevant offence.” This means either:

- an indictable offence against any Act, or
- one of the common law offences of attempt to pervert the course of justice, bribery of a public official, perverting the course of justice, or misconduct in public office.

8:42 – 8:51

Michelle Jones

Okay. So, you mentioned breach of public trust. A breach of public trust is looking at a power that was exercised for an improper purpose. What's an example of that?

8:51 – 9:29

Kylie Kilgour

So, it would be a breach of public trust if a power is not exercised honestly for the purpose for which it is conferred on a public official. The concept of a breach of public trust does not depend on personal gain or benefit for a third party.

The key feature of a breach of trust is the exercise of a power or the performance of a function for an improper purpose. This could include the use of official powers to advance a personal interest, or applying public resources for a purpose for which they were not appropriated.

For example, if grants from public funds were made for a predominantly private or partisan purpose, that may involve a breach of public trust and therefore may be considered corrupt conduct under the NACC Act.

9:29 – 9:40

Michelle Jones

And similarly, an abuse of public office would cover an improper act intended to gain a benefit or cause a detriment. Would an undeclared conflict of interest be covered here?

9:40 – 10:06

Kylie Kilgour

So, this comes up a lot, and it's important to remember that not declaring a conflict of interest is not, in itself, corrupt conduct — it's what happens as a result of that.

For example, giving a contract to a company you have a personal interest in — for instance, you have shares or you're the director of that company — that conduct could amount to an abuse of office. The undeclared conflict of interest might be part of a course of conduct that allowed you to manage to do that.

10:06 – 10:17

Michelle Jones

And finally, the misuse of official information. Presumably, this would cover using the official information for a different reason. Does there have to be a gain or advantage to the staff member?

10:17 – 11:20

Kylie Kilgour

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Well, usually, there is a reason why a public official has accessed and used or passed on information they shouldn't have, and that often is about finding out something they want to know — which could be thought of as a benefit, even though it's an intangible one — or helping someone else get this information, for which they might be getting paid in some way.

An investigation that comes to mind is Operation Wilson. This involved allegations of corrupt conduct by a former Australian Border Force officer who was associated with an individual being investigated for illicit tobacco importation. The investigation established that the ABF officer concurrently worked for a company that imported tobacco, and he looked up information on request for the importer in relation to certain shipping containers — some of which contained illicit tobacco.

The accesses to information were unrelated to the ABF officer's employment, and the investigation established that the ABF officer engaged in corrupt conduct, namely, abuse of office. This resulted in a guilty plea to two charges of unauthorised access to restricted data, and a successful conviction.

11:20 – 11:29

Michelle Jones

Isolated jurisdiction also extends to conduct that adversely affects a public official's honesty or impartiality. What would be an example of that?

11:29 – 12:37

Kylie Kilgour

Bribes are the easiest example to think of, and we've got a very recent case relating to that, which I'll talk about briefly. This was an investigation we called Operation Pelican — a joint investigation led by us and supported by Australian Federal Police officers over 10 days in March 2024.

It related to a Western Sydney Airport employee soliciting a bribe, or attempting to. Western Sydney Airport is a Commonwealth-owned company, and so it's considered a Commonwealth agency for the purposes of our Act. Its employees and officers are therefore Commonwealth public officials, and within our jurisdiction.

The employee sought a bribe of \$250,000 from a company that was tendering for a contract to provide car park services at the airport, worth an estimated \$5 million. The director of that company reported the employee to senior management at Western Sydney Airport, and we — along with the AFP — were quickly notified of the matter.

We were able to investigate and lay charges in just under two weeks. The now former employee has pled guilty, and sentencing is scheduled for late July 2025.

12:37 – 13:09

Michelle Jones

Okay. Now, moving on to the number of reports — it seems a common problem with integrity agencies is the volume of reports about behaviour that is not corrupt conduct.

It was reported that at the close of the first 12 months of operations, the NACC received over 3,100 referrals, had 29 matters in preliminary investigation, with a further 26 that had progressed to investigation.

So, could you explain to us the difference between a preliminary investigation and an investigation?

13:09 – 13:54

Kylie Kilgour

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The Act allows us to conduct preliminary investigations in order to assess whether a corruption issue arises, and if so, how we want to deal with it.

In a preliminary investigation, we can use our power to issue notices to produce, and seek voluntary cooperation with our lines of inquiry. However, we can't use our examination powers or tools like telephone intercepts, surveillance devices, and the like. Preliminary investigations are generally quicker than a full investigation.

A full investigation is conducted when we are clear that we have a viable hypothesis of corrupt conduct — one that we've determined could involve serious or systemic corruption and warrants our investigation.

In a corruption investigation, we can use the full range of overt and covert powers, and these investigations can take quite a long time.

13:54 – 14:00

Michelle Jones

Okay, great. So, do you have a separate team that conducts those preliminary investigations, and how detailed are they?

14:00 – 14:27

Kylie Kilgour

We've actually got two areas of the Commission that work on our preliminary investigations: our Evaluation Branch and our Operations Branch.

Assessment officers in the Evaluation Branch handle the less complex preliminary investigations, while investigators in the Operations Branch take on the more complex ones.

The task is to assess whether or not a corruption issue arises, and if so, how to deal with it. The amount of detail required to do that will vary from case to case.

14:27 – 14:42

Michelle Jones

Now, going back to those numbers — so, 3,100 received in your first 12 months, and then 26 progressing through to investigation — that's a huge number of referrals that haven't made their way through to investigation.

What are the main reasons for that?

14:42 – 15:11

Kylie Kilgour

There are a couple of things I'll say about that. First, there's still a lot of confusion about our role. A large number of referrals are out of jurisdiction because they either aren't about a Commonwealth public official, or the matter referred is not considered corrupt conduct as defined in our Act.

Also, some people think we are like an administrative review body or a last-resort complaints body — which we aren't. So they might be unhappy with a decision a Commonwealth agency has made that affects them, and they want us to review or overturn that — but we don't do that.

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15:11 – 15:30

Michelle Jones

We know that anyone can refer a matter to the Commission, and some people must refer corruption issues. Coupled with that, we know the NACC can also investigate matters on its own motion.

Given that breadth — and the fact that the NACC is a small agency with around 250 staff — how do you decide what you do and do not investigate?

15.30 – 16:34

Kylie Kilgour

Like all anti-corruption commissions, we have to make strategic decisions about what matters we prioritise for investigation.

In deciding what we will investigate, we consider the prospects of whether an investigation will uncover corrupt conduct. We then prioritise our efforts — usually according to the gravity, scale, and egregiousness of the conduct; our strategic priorities; the potential consequences of the conduct; and, above all, whether and to what extent an investigation is likely to add value in the public interest.

We also consider our capabilities and capacity, and whether there is any other agency with the appropriate capabilities that is able and willing to investigate the corruption issue.

To assist in prioritising our efforts, the Commission in 2023 adopted six what we call strategic corruption priorities. These are:

- corruption at the Australian border,
- corruption in complex procurements,
- corruption in senior public official decision-making,
- corruption involving contractors and consultants,
- corruption in the environmental sector, and
- corruption affecting vulnerable people.

16:34 – 16:40

Michelle Jones

And I presume you choose those cases which are significant — something other than trivial or negligible.

16:40 – 17:25

Kylie Kilgour

Yes, so under our legislation, for us to be able to investigate, there must potentially be serious or systemic corrupt conduct.

When determining if the nature of the conduct is sufficiently serious, we may consider the following:

- the objective seriousness of the issue,
- the importance or significance of the conduct, and
- the gravity of the actual or potential consequences, such as the personal benefit gained or the loss to the Commonwealth.

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Factors can include whether the conduct is potentially criminal — and if so, the penalty — the seniority of the person of interest, the amount involved, and the potential impacts.

In deciding whether the conduct may be systemic, we consider whether the behaviour forms part of a pattern of conduct, is not isolated, or — if it is isolated — whether it could affect a large number of people.

17:25 – 17:38

Michelle Jones

Okay, but given your resource constraints, are there cases that meet the definition of corrupt conduct but do not pass the serious or systemic threshold?

Do those get passed back to agencies to investigate?

17:38 – 17:53

Kylie Kilgour

Yeah, so like I said, we can't investigate matters unless we are satisfied they are serious or systemic.

So, we have to find other ways to deal with those, and we do have powers to refer matters back for investigation — either to the agency that referred it to us or to other suitable agencies.

17:53 – 18:07

Michelle Jones

So, just because the referral satisfies the requirements of serious or systemic corrupt conduct, you may still choose to refer or dismiss it when the investigation will not add value in the public interest. Is that right?

18:07 – 18:25

Kylie Kilgour

Yes. For example, us investigating very old historical matters is less likely to add value in the public interest — especially if there have already been other types of inquiries conducted into them.

I'd also note that our consideration of what is in the public interest is not the same as whether the public is interested.

18:25 – 18:30

Michelle Jones

So, what happens to those cases that meet the criteria but are not in the public interest?

18:30 – 18:44

Kylie Kilgour

We have very broad discretion under our legislation about what we do or don't investigate.

We'll consider whether there's another agency that could take action in relation to the referral, or we may be able to use the information in our corruption prevention education or our strategic intelligence work.

18:44 – 18:49

Michelle Jones

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So, you've got all these powers — but who's watching the watch?

18:49 – 19:12

Kylie Kilgour

The Inspector of the NACC is an independent officer of the Parliament, appointed by the Governor-General. Their role is to investigate allegations of serious or systemic corrupt conduct within the Commission, and complaints about the conduct of the Commission or its staff.

The Commonwealth Ombudsman also monitors our use of some of our covert powers. And, if we want a search warrant, we have to apply to the courts like other law enforcement bodies.

19:12 – 19:24

Michelle Jones

And the NACC is accountable to the Parliament and to the Oversight Committee as a delegate for Parliament.

To what extent does the Oversight Committee get involved in reviewing triage decisions?

19:24 – 20:00

Kylie Kilgour

So they've got no role in that. The Commission is overseen by what's called the Parliamentary Joint Committee on the National Anti-Corruption Commission. We call it the PJC-NACC for short, and the Joint Committee can't review our operational decisions, methods, or activities, but its role does include considering the appointments of the Commissioner, and the Deputy Commissioners, and the Inspector, after nomination by the relevant Minister (who at the moment is the Attorney-General), reviewing, examining, and inquiry into the performance of the functions of the Commissioner and the operation of the Commission, and reviewing the budget and finances of the Commission.

20:00 – 20:06

Michelle Jones

Okay? And you touched on additional powers. Can you tell us the range of powers available to the NACC?

20:06 – 20:50

Kylie Kilgour

So if we decide to investigate a corruption issue, we've got powers to require production of documents and information under warrant. We can search premises and people. We can intercept communications, and that can include using surveillance devices. We can summon witnesses for examination on oath or affirmation at our hearings. Ordinarily, these are held in private, but in exceptional circumstances, we can conduct public hearings. Information and evidence can't be withheld from us on the grounds of legal professional privilege or public interest immunity, nor can it be withheld under the privilege against self-incrimination. But evidence obtained in those circumstances—we can't use that against the witness by whom it is given in any criminal prosecution of that witness.

20:50 – 20:56

Michelle Jones

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Right, and you touched on earlier: what are some of the reasons investigating can add value in the public interest?

20:56 – 21:25

Kylie Kilgour

So, generally, an investigation will add value in the public interest if it exposes serious or systemic corrupt conduct of current relevance, particularly by senior public officials, that has not otherwise been investigated and may not otherwise come to light. But sometimes the value may lie in clearing the air—a conclusion that there was not corrupt conduct where there has been an allegation or perception of corruption. That may assist in restoring public confidence and reputations. Investigations can also have a deterrent effect, which is also in the public interest.

21:25 – 21:47

Michelle Jones

So we know your purpose, jurisdiction, and we have dissected corrupt conduct. Let's now move to reflecting on your first two years. The NACC has so far received 5,200 referrals of suspected corrupt conduct in the first two years of operation. Is that broadly in line with the numbers at New South Wales ICAC and Victoria's IBAC?

21:47 – 22:12

Kylie Kilgour

It is, though it's important to remember New South Wales ICAC and IBAC also have local government in their jurisdiction. And in the case of IBAC, they also have police misconduct as well. But we have received a huge number, particularly in the first three months of 2023, and then a very steady number over the rest of the 2023–24 period. So we've been very busy assessing these matters, and we've managed to assess over 85% of them so far.

22:12 – 22:50

Michelle Jones

Getting back to those ACLEI cases, you said you had seven that resulted in convictions. Could you give us some color on those cases? Firstly, Operation Numbung, which concerned a former Superintendent in the Australian Federal Police, who pled guilty to charges relating to fraudulent use of his Commonwealth credit card, amounting to more than \$17,000 in personal expenditure. He was fined \$5,000 and given a good behavior bond for three years. Now, a lot of people might think that's not necessarily a lot of money. If that was something that was reported today, would it be investigated by the NACC?

22:50 – 23:21

Kylie Kilgour

Well, ACLEI was focused on law enforcement officials—which, you know, is obvious—but ours is a much broader jurisdiction. So we are tending to refer a lot of matters back to the AFP if they're about police, but in some cases, we also do joint investigations with them. What I'd say about this case is it involved a Superintendent, and that's a fairly high-ranking police officer. And depending upon what that credit card use was about, we might still investigate these types of matters in the future.

23:21 – 23:28

Michelle Jones

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Okay, that makes sense. So, with all these historic matters, does it mean you're not restricted by time limits?

23:28 – 23:57

Kylie Kilgour

So, when thinking about ACLEI matters, the time since offending occurred is considered by the Commonwealth Director of Public Prosecutions in bringing prosecutions, and they may decline to prosecute very old cases. But with respect to the NACC, as I mentioned earlier, we received a lot of referrals about historical or dated matters. We can investigate corrupt conduct that occurred before we existed, and there's no legal time limit on historic conduct. However, as a matter of discretion, we're less likely to investigate those historic matters.

23:57 – 24:03

Michelle Jones

Okay, another case I read about was Operation Barker that had two defendants. Can you tell us a bit about that?

24:03 – 25:10

Kylie Kilgour

So, Operation Barker was a joint investigation with the Australian Taxation Office in relation to a former ATO employee accepting a bribe from a taxpayer they were auditing to reduce personal and business tax debts of that taxpayer by in excess of \$6 million. The bribe handover occurred in August 2016 on the Granville Railway Station Bridge, which is in Sydney, and it involved \$100,000 in cash being handed over in a white plastic bag. The former ATO employee was convicted and sentenced on the 12th of March 2024 to five years' imprisonment, with a non-parole period of two years and six months, for several contraventions of the Commonwealth Criminal Code, including accepting a bribe as a Commonwealth public official and abuse of office.

In August 2024, one accomplice was convicted and sentenced to imprisonment for three years and 14 days, and then in December 2024, another accomplice was convicted and sentenced to imprisonment for two years and 10 months. The sentence of the former ATO official recently came under appeal, and the appeal hearing before the New South Wales Court of Criminal Appeal is listed for July.

25:10 – 25:21

Michelle Jones

Wow. Interesting. So, most of those cases you mentioned were joint cases with other agencies. When you run these or refer them back to agencies, who retains control?

25:21 – 26:06

Kylie Kilgour

So, there are a few ways we run joint investigations. We might take the lead role, with the other agency assisting us with discrete tasks like search warrants or arrests, and other times we assist the other agency—e.g., by doing some forensic accounting analysis for them. We are undertaking joint investigations less frequently than was the case with ACLEI, partly because we are a bigger agency, and we also prefer, where practicable, to retain control in matters.

We refer back some of these matters—we retain oversight of the agency investigation, which requires ongoing monitoring by us. In other cases, we give it back to the agency to deal with, and we take no further action in relation to it. So, for example, if they've already progressed to the stage of a criminal prosecution by the Commonwealth DPP.

26:06 – 26:25

Michelle Jones

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Okay, and by retaining oversight, I assume you're referring to your powers under Section 51—to give directions on planning and conducting the investigation—and Section 52, requiring the agency to provide progress and/or completion reports. Can you give us some examples of how that works in practice?

26:25 – 26:37

Kylie Kilgour

Yes. So, first, we'll set timing and priority expectations, and we'll also provide advice about how we expect them to conduct their investigation and what any outcome reports need to cover off on.

26:37 – 26:49

Michelle Jones

So, you mentioned referring back to agencies. I'm curious as to what happens when the agency is unable to meet your timeliness expectations or simply doesn't have the appropriately skilled people.

26:49- 27:07

Kylie Kilgour

So, we have a small team who are responsible for ongoing communication with agencies, so that we can discuss any barriers to them completing the investigation. Sometimes, we are seeing agencies hire external help, but there is always the possibility that we will take it back if an agency really says they are struggling.

27:07 – 27:12

Michelle Jones

I guess what I'm getting at is: so there's no option to say, "We just can't do it."

27:12 – 27:28

Kylie Kilgour

No, not really. I mean, before we make a referral, we have to be satisfied the agency has the capability to do it before we make that decision. And there has been one case where an agency decided it didn't have the capability, even though we thought that they did, and we took that matter back.

27:28 – 28:16

Michelle Jones

Okay. And if we turn now to the notion of detection, I'm curious as to the methods by which these instances of corruption were detected. From the ACFE's 2024 Report to the Nation, it showed that the most common detection avenue for employee fraud and corruption was 43% from a whistleblower's tip-off, which was more than three times as likely as other detection mechanisms like internal audit, management review, or document examination.

Australia saw a large uptake in in-house or externally managed whistleblower hotlines in response to the new whistleblower requirements under the Corporations Act—that was in 2019. Do you think there are similarities in the detection methods in the cases that are referred to the NACC?

28:16 – 30:18

Kylie Kilgour

Yeah, that's a really interesting question. So, while there are some individuals—mainly heads of Commonwealth agencies—who are obliged to refer corruption issues of which they become aware (which we call mandatory

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referrals), anyone can make a voluntary referral to the Commission. And voluntary referrals have made up the vast majority of the over 5,500 referrals we've received to date.

A small portion of those referrals are from people who might be considered whistleblowers, and they're afforded protections under both our Act and the Commonwealth Public Interest Disclosure Act, which I'll call the PID Act. So, this means that while the Commission's jurisdiction is focused on public officials, anyone who makes a referral that raises a corruption issue to the Commission attracts the protections that are provided for under the NACC Act.

And Part Four of the NACC Act is an important part, in that it provides the specific protections from liability and reprisals for anyone who refers a corruption issue, or who provides information or evidence to the Commission. These protections are intended to encourage people to come forward and report suspected corrupt conduct.

And I'll just also briefly touch on the Commonwealth PID Act. That Act empowers an agency to appoint an authorized officer, called a PID officer, to receive disclosures of information under the Act. PID officers have mandatory referral obligations to the Commission in relation to corruption issues they become aware of in performing their functions as a PID officer, including through an internal disclosure made under the PID Act.

So, a PID officer who makes a mandatory referral obtains the protections under the NACC Act, while the original discloser retains the protections provided under the PID Act.

It's a bit complicated, but that's how it works. And whilst the PID Act sets out the obligations under the PID scheme, it is supported by other policy frameworks, such as the Commonwealth Fraud and Corruption Control Framework. That framework requires entities to have appropriate mechanisms to detect fraud and corruption and to establish channels for officials, service providers, and the public to report suspected corrupt conduct—including channels for reporting under the PID Act.

30:18 – 30:34

Michelle Jones

Okay, and I can see in your Act that you also have the power to stop an agency investigation. Is that something you use when you receive progress reports on a referred matter, and why would you do that if you've already decided that it should be investigated?

30:34 – 31:00

Kylie Kilgour

Look, it's actually more likely going to happen when we're first notified of possible serious or systemic corrupt conduct by an agency head or a PID officer. So, they may have found out about it during the course of some other kind of investigation they've been doing—e.g., into a PID or employee misconduct—and we may need them to stop so that we can take it over as a corruption investigation and avoid there being parallel investigations, which might result in one compromising the other.

31:00 – 31:08

Michelle Jones

Okay, moving back to the joint investigations, could you give us an example of how you work with the other agencies?

31:08 – 31:50

Kylie Kilgour

So, Operation Pelican, that I mentioned earlier, is a great example of a joint investigation with the Australian Federal Police. So, like I said before, the managing director of the company that was tendering for the

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contract—so that was the intended recipient of the bribe—reported the allegation to the Western Sydney Airport’s executive. The following day, the entity referred the matter both to the Commission and the AFP.

The Commission opened a joint investigation with the AFP, and over a 10-day period, the matter was investigated utilizing a wide variety of tactics, techniques, and procedures. The person of interest, who originally sought a bank transfer to an account in Singapore, was persuaded to accept a cash payment in Sydney, and was arrested after taking money in the course of a controlled operation.

31:50 – 31:57

Michelle Jones

And with that case, Pelican, why was it done with the AFP and not the NACC alone? Did they have additional powers?

31:57 – 32:06

Kylie Kilgour

Look, I am a little bit limited in what I can say about a controlled operation, but it was largely to do with the need to arrest the person at the scene and the safety requirements surrounding that.

32:06 – 32:14

Michelle Jones

So, following on from the NACC’s first financial year, have the referrals since then from other agencies been at a similarly high level?

32:14 – 32:27

Kylie Kilgour

Similar, but they've dropped off a little bit. So, since the 1st of July, 2024, the Commission has received just over 2,000 referrals, and that compares with 3,189 referrals in 2023.

32:27 – 32:31

Michelle Jones

And you're continuing to work through those historic ACLEI matters?

32:31 – 33:37

Kylie Kilgour

Yes, yes, there's still a number before the courts and then others where we're yet to publish a final report. So, to give you an example of why some of the matters before the courts are taking such a long time, I'll just talk a little bit about an investigation called Operation Mint.

This was a joint investigation commenced by ACLEI, and also involved the AFP, Victoria Police, and AUSTRAC. A member of the AFP was arrested for corruption, theft, and money laundering offenses allegedly committed between January and April 2019, and that officer is alleged to have stolen cryptocurrency in the sum of 47 Bitcoin. At the time, the value of the Bitcoin was more than \$100,000.

In August 2024, the individual was charged on indictment with contraventions of the Criminal Code and the Crimes Act (Victoria). That prosecution is proving extremely complex and is taking some time to resolve. Currently, we're in the Court of Appeal having a discussion—or an argument, I guess—about whether or not Bitcoin is considered property.

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33:37 – 33:46

Michelle Jones

Wow. Interesting.

Okay, in thinking ahead with the actions for the rest of the calendar year, what are the next key corruption prevention priorities?

33:46 – 34:09

Kylie Kilgour

So, we've got some priority work streams to facilitate our corruption prevention outcomes into 2025. These include post-election engagement with new parliamentarians and their staff, the publication of a guide on ethical decision-making, and the delivery of the next Australian Public Sector Anti-Corruption Conference in September 2026.

34:09 – 34:13

Michelle Jones

Great. Okay, can you give us some more insight on how these have come about?

34:13 – 35:39

Kylie Kilgour

Yeah, sure. So, obviously, with the 2025 federal election having just finished, in the immediate term we're focused on post-election engagement with new and returning parliamentarians to support education on the corruption risks and vulnerabilities that are likely to arise in the new parliamentary term.

In early May 2025, the Commissioner released an open letter to election participants on corruption risks and vulnerabilities in the context of that federal election. That letter addressed several issues, including the use of parliamentary resources and staff, the use of official information, the making of public sector appointments, grants, government advertising, and gifts and donations.

And the Commissioner will be discussing how these issues will remain corruption vulnerabilities with incoming parliamentarians once Parliament begins sitting again in July.

Ethical decision-making has come about in response to a range of integrity failures in the Commonwealth public sector that occurred prior to the Commission's commencement, which have given a renewed prominence to the challenges that can confront public servants in an environment where the public service is expected to be highly responsive to government. So, equipping decision-makers to exercise their functions ethically in an environment where there can be many pressures is vital.

And we will be taking our turn to host APSACC in Canberra in September 2026, and this has a theme of a strategic approach to integrity, culture, systems, and accountability. You can find out more about that on the APSACC website.

35:39 – 35:58

Michelle Jones

I note also the NACC undertook a Commonwealth Integrity Survey in September last year. The results were gathered from 171 responding agencies, out of a total of 191 potential participants, which I thought was really strong. Did you find a huge amount of useful data?

35:58 – 36:44

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Kylie Kilgour

Yeah, we sure did. So, we had over 58,000 survey responses, and the purpose of the survey was to understand observations and perceptions of integrity and corruption, and to identify potential areas of risk in agencies.

The Commission is using the survey data now to make general assessments about the risk of corruption occurring, to identify potential corruption vulnerabilities across the Commonwealth public sector, and to identify any issues, topics, or themes that can inform our corruption prevention and education initiatives.

We also recently provided agency heads with their individual reports in a de-identified manner, and the broad results and insights were also published on our website. These have been segmented into three areas: organisational controls, employee comprehension, and reporting likelihood.

36:44 – 37:33

Michelle Jones

Overall, what stood out to me positively was that the majority of employees had faith in the integrity of their agency and the agency's anti-corruption controls. Another plus was that most employees felt they could identify corruption within their area of responsibility. This shows that the awareness and training is paying off.

The survey showed that most employees were willing to report corruption if they had direct access to specific information, rather than just being told about it or having a suspicion. We find this also in the private whistleblower space—i.e., people are more likely to report if they have some evidence or proof, although it's not required under the Corporations Act.

Do you think there's a hesitation because people are unaware they can report on corruption without actually having proof, or for some other reason?

37:33 – 38:23

Kylie Kilgour

Look, we interpret this aspect of the survey as indicating that most public servants are responsible, and so they don't report unless there's something to back it up. They won't just pass on rumours, gossip, or hearsay. And, I mean, that's great, because we encourage responsible reporting.

So, if you've got reasonable grounds that someone has engaged in serious or systemic corrupt conduct, you should report it. And it does help us if people can describe the evidence they have—what they've seen or heard—but it's important to clarify that we do not expect, and in fact advise against, people going out and searching for or downloading documents and evidence to provide to us.

All we need is a description, which we can then follow up, using our powers to get material. Making private inquiries can also compromise our later investigation.

38:23 – 38:53

Michelle Jones

Okay, interesting. Another reason for not reporting as a whistleblower that I see on the private side is the fear of retaliation. Similar themes emerged in the survey, which identified that over 30% of respondents did not take action because they were concerned they would be subject to detrimental or adverse action if they made a report.

Do you think areas for improvement—such as further internal training or the introduction of a disclosure protection officer or data—would help remove this fear of reporting?

38:53 – 40:15

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Kylie Kilgour

Yeah, that's a really interesting question. I'm just going to unpack the survey data a little bit more, because I think it's quite interesting to look at.

All survey respondents were asked to identify why an employee would not report corrupt conduct within an organization. In this section of the survey, we allowed for multiple responses, so we actually ended up with a total of 221,065 responses provided by the 58,000 respondents.

Those 221,000 responses included impact on the reporter's career in about 23,000—so that's roughly 10% of the responses—also fear of retaliation or reprisals in roughly the same number, and repercussions beyond career impact in about 12,000 matters, or about 6%.

Because of the multiple responses, there's almost certainly overlap.

What I'd note is that there is a Commonwealth PID Act, like I said before, and most Commonwealth agencies now have PID officers because of this, who can support disclosures. Also, many Commonwealth agencies now have dedicated integrity areas as well, who can be a great source of support to people who want to make reports of corrupt conduct.

And, like I said before, the NACC Act also provides protections to referrers against reprisal action, and we have a witness liaison officer who can also provide support to people.

40:15 – 40:33

Michelle Jones

And I know you can still make anonymous disclosures to the NACC, but presumably this might limit the investigation and feedback, like we see in the investigations that we do. Do you think that you'd be successfully able to investigate and prosecute where a disclosure was originally made by an anonymous whistleblower?

40:33 – 40:47

Kylie Kilgour

Look, it really depends on what other evidence we can get. So, the more specific the anonymous referral is, the better. And yeah, obviously, we can't give feedback to anonymous referrers, and that may—that may—be frustrating for them.

40:47 – 41:06

Michelle Jones

So, back to the survey. Also on the reporting side, the results showed that, aside from having proof and retaliation, the other top reasons for not reporting corruption were because it could affect their career, and because reporters didn't think action would be taken.

What are your thoughts on those results?

41:06 – 41:45

Kylie Kilgour

Yeah, so like I said before, we do think that there's a lot of overlap between the responses, but the survey also showed that there's a reasonably supportive reporting culture.

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So, 67% of the question respondents considered that colleagues would be supportive or very supportive of those who reported corrupt conduct. And in respect to the most recent incident of corrupt conduct of which they were aware in that agency, 64% of those who responded took some action.

That still leaves some room for improvement, and so there's therefore a key role for senior leadership to ensure that systems are in place to respond to and support people who report—or want to report—corrupt conduct.

41:45 – 42:11

Michelle Jones

And with the questions on the awareness of corruption, I found it interesting that 15% of respondents said they had specific knowledge of corrupt conduct in their agency, with 19% saying it's happening now, and 30% of those saying it happened in the last 12 months. That's still a relatively large percentage in what Transparency International would label as not a very corrupt country.

What are your thoughts on that?

42:11 – 42:57

Kylie Kilgour

Yeah. Well, by comparison, the 2023 Australian Public Service Census, only 3.1% of the respondents answered yes to a similar question, which was: In the last 12 months, have you witnessed another APS employee in your agency engaging in behaviour that you consider may be serious enough to be viewed as corruption?

So, what we're thinking at the moment is that our survey results may indicate that the respondents to our survey self-selected as a sample that was more highly attuned to suspect corruption.

We certainly haven't got that number of mandatory referrals—or even voluntary referrals—coming from public servants. So, it's interesting that there is that gap between what people are seeing in their agencies and what's coming through to us.

42:57 – 43:03

Michelle Jones

Okay, great. Now, looking ahead, what do you think are the emerging themes in public sector corruption in Australia?

43:03 – 43:36

Kylie Kilgour

So, obviously, it's early days for the Commission, but the main domains in which we're seeing both perception and, to a lesser extent, actuality of corrupt conduct are in the fields of procurement, recruitment, entitlements, misuse of resources—especially staff—and the interface of the public sector and the private sector.

In all of those areas, the perceived and actual mechanisms of corruption are typically, firstly, nepotism and cronyism—so the preferring of family, friends, and associates—and secondly, the misuse of official information to gain an advantage.

43:36 – 43:47

Michelle Jones

Great. Well, thank you so much, Kylie, for sharing those wonderful insights into the operations of the NACC and for reflecting on your first couple of years. Thanks, Kylie.

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43:47 – 43:48

Kylie Kilgour

Thanks, Michelle.

43:48 – 44:12

Speaker 3

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