

**NATIONAL ANTI-CORRUPTION COMMISSION (CONSEQUENTIAL  
AMENDMENTS) REGULATIONS 2023**

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The *National Anti-Corruption Commission Act 2022* (NACC Act) establishes the National Anti-Corruption Commission (NACC) as an independent agency responsible for detecting, preventing, investigating and reporting on serious or systemic corrupt conduct in the Commonwealth public sector.

The NACC Act received Royal Assent on 12 December 2022 and has been proclaimed to commence on 1 July 2023. The *National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022* (Consequential Act) will commence at the same time as the operative provisions of the NACC Act.

On commencement of the Consequential Act, item 1 of Schedule 1 to that Act will repeal the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) and ACLEI will be subsumed into the NACC. At the same time, item 53 of Schedule 2 to the Consequential Act will operate so that references in Commonwealth instruments to ACLEI, the Integrity Commissioner, or Assistant Integrity Commissioner, are read as references to the NACC, the National Anti-Corruption Commission Commissioner (Commissioner) or a Deputy Commissioner.

The Governor-General may make regulations prescribing matters that are required or permitted to be prescribed by regulations, or necessary or convenient to be prescribed for carrying out or giving effect to:

- the *Commonwealth Electoral Act 1918*, under section 395 of that Act;
- the *Data Availability and Transparency Act 2022* (DAT Act), under section 134 of that Act;
- the *Defence Act 1903*, under section 124 of that Act, including procedures, powers and reporting obligations of the Inspector-General of the Australian Defence Force (IGADF);
- the LEIC Act, under section 224 of that Act;
- the *Parliamentary Business Resources Act 2017*, under section 61 of that Act; and
- Part IIA of the *Public Order (Protection of Persons and Property) Act 1971* (POPPP Act), under section 13H of that Act.

These Acts do not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

Schedule 1 to the Regulations would amend various Commonwealth regulations to facilitate the effective operation of the NACC. The Regulations would make necessary consequential amendments to regulations where item 53 of Schedule 2 to the Consequential Act would not operate, or where a direct substitution made by item 53 would not be appropriate. The Regulations would also ensure that the amended legislation reflects the expanded jurisdiction of the NACC as compared to ACLEI.

Schedule 1 to the Regulations would amend the following:

- *Data Availability and Transparency Regulations 2022* (DAT Regulations);
- *Electoral and Referendum Regulation 2016* (Electoral Regulations);
- *Inspector-General of the Australian Defence Force Regulation 2016* (IGADF Regulations);  
and
- *Public Order (Protection of Persons and Property) Regulations 2019* (POPPP Regulations).

Schedule 1 to the Regulations would also amend the *Parliamentary Business Resources Regulations 2017* (PBR Regulations) to ensure that all applications for legal financial assistance by current and former Ministers and Assistant Ministers for NACC related matters are instead made under the relevant provisions of the *National Anti-Corruption Commission Regulations 2023* (NACC Regulations).

Schedule 2 to the Regulations would repeal the *Law Enforcement Integrity Commissioner Regulations 2017* (LEIC Regulations), which would lapse when the LEIC Act is repealed by item 1 of Schedule 1 to the Consequential Act.

#### *DAT Regulations*

The Regulations would amend the DAT Regulations to prescribe certain provisions of the NACC Act as provisions under which the sharing of data is barred under the DAT Act. The Regulations would also amend the DAT Regulations to clarify that the sharing of data in relation to the sections of the LEIC Act currently prescribed continues to be barred after the commencement of the NACC Act, in circumstances where the NACC continues an investigation under the LEIC Act. These exclusions would ensure that sensitive data collected by the NACC is not disclosed.

#### *Electoral Regulations*

The Regulations would amend the Electoral Regulations to remove existing references to ACLEI and the LEIC Act and replace them with appropriate NACC references. These amendments would prescribe arrangements for the Australian Electoral Commission (AEC) to share electoral roll information with the NACC and the purposes for which that information may be used by the NACC (for example, in connection with a corruption investigation or corruption issue within the meaning of the NACC Act).

#### *IGADF Regulations*

The Regulations would amend the IGADF Regulations to replace the reference to ACLEI with a reference to the NACC. This amendment would allow the IGADF to disclose inquiry-related information to the NACC in the same way as that information was able to be shared with ACLEI prior to its transition to the NACC.

#### *LEIC Regulations*

The Regulations would repeal the LEIC Regulations. The LEIC Regulations prescribes matters that were necessary for the effective operation of ACLEI, the Integrity Commissioner and the LEIC Act. This amendment would support the transition of ACLEI to the NACC.

#### *PBR Regulations*

The Regulations would amend the PBR Regulations to prevent payment of legal financial assistance under the PBR Regulations in relation to eligible matters arising under the NACC Act. This amendment to the PBR Regulations would support the operation of the legal financial assistance scheme for parliamentarians established under the NACC Regulations.

### POPPP Regulations

The Regulations would amend the POPPP Regulations to replace references to the Integrity Commissioner with references to the Commissioner. This would ensure that the Commissioner is able to exercise powers under Part IIA of the POPPP Act, in the same way as the Integrity Commissioner could prior to ACLEI's transition to the NACC.

The Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations would commence on 1 July 2023.

Details of the Regulations are set out in the **Attachment A**.

## **CONSULTATION**

Consultation with affected agencies was undertaken on the draft regulations in May 2023. In particular, the following external agencies and persons were consulted:

- the Australian Commission for Law Enforcement Integrity (ACLEI) in relation to the entire instrument as ACLEI's functions will transition to the NACC once it commences on 1 July 2023;
- the Department of Finance in relation to the amendments to the DAT Regulations, the Electoral Regulations and the PBR Regulations given their responsibility for administering these instruments;
- the Department of Defence, in relation to the amendment to the IGADF Regulations for which the Department of Defence is responsible.

The Departments of Finance and Defence approved the text of the amendments. All agencies and officer-holders consulted were supportive of the Regulations.

## **REGULATION IMPACT STATEMENT**

The Office of Impact Analysis (OIA) advised that a Regulatory Impact Statement is not required as the Regulations are unlikely to have more than a minor regulatory impact. The proposal only imposes some powers and obligations on federal public sector public officials acting in their official capacity and will not affect businesses, individuals or community organisations (OIA23-05064).

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.*

The Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## **Overview of the legislative instrument**

The NACC Act establishes the NACC as an independent agency responsible for detecting, preventing, investigating and reporting on serious or systemic corrupt conduct in the Commonwealth public sector. The NACC Act received Royal Assent on 12 December 2022 and has been proclaimed to commence on 1 July 2023. The Consequential Act will commence at the same time as the operative provisions of the NACC Act.

On commencement of the Consequential Act, item 1 of Schedule 1 to that Act will repeal the LEIC Act and ACLEI will be subsumed into the NACC. At the same time, item 53 of Schedule 2 to the Consequential Act will operate so that references in Commonwealth instruments to ACLEI, the Integrity Commissioner, or Assistant Integrity Commissioner, are read as references to the NACC, the Commissioner or a Deputy Commissioner.

Schedule 1 to the Regulations would make necessary consequential amendments to regulations where item 53 of the Consequential Act would not operate, or where a direct substitution would not be appropriate. The Regulations would also ensure that the amended regulations reflect the expanded jurisdiction of the NACC as compared to ACLEI.

Schedule 1 to the Regulations would also amend the PBR Regulations to ensure that all applications from current and former Ministers and Assistant Ministers for legal financial assistance relating to matters arising under the NACC Act are made under the relevant provisions of NACC Regulations.

Schedule 2 to the Regulations would repeal the LEIC regulations, which would lapse when the LEIC Act is repealed by item 1 of Schedule 1 to the Consequential Act.

### **Human rights implications**

#### ***Right to an effective remedy contained in article 2(3) of the ICCPR***

Article 2(3) of the ICCPR guarantees the right to an effective remedy for any violation of rights or freedoms recognised by the ICCPR, including the right to have such a remedy determined by competent judicial, administrative or legislative authorities. The content of the right also includes an obligation to ensure that the competent authorities enforce such remedies when they are granted.

#### ***Amendment to the PBR Regulations.***

The Regulations may engage the right to effective remedy by preventing access under Division 2 of Part 5 of the PBR Regulations to legal financial assistance in relation to eligible matters arising under the NACC Act. This would only impact current and former Ministers and Assistant Ministers. However, this limitation would be offset by provisions contained in the NACC Regulations which provide equivalent legal financial assistance to those who would otherwise be eligible for assistance under the PBR Regulations.

In addition, the purpose of the amendment to the PBR Regulations is to streamline processes for applicants, eliminate duplication of assistance available under multiple schemes, and ensure consistency in the level of assistance available to all parliamentarians for NACC Act matters. It would also allow for the sensitivity of NACC Act processes and investigations to be considered in reporting arrangements, as prescribed by the NACC Regulations.

### ***Right to a fair trial and fair hearing contained in article 14(1) of the ICCPR***

Article 14(1) of the ICCPR protects the right to a fair and public criminal trial, and public hearing in civil proceedings. It provides that all persons shall be equal before the courts and tribunals and, in the determination of criminal charges or any suit at law, the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law.

#### *Amendment to the PBR Regulations.*

The Regulations may engage the right to a fair trial and fair hearing by limiting access to legal financial assistance in relation to eligible matters under Division 2 of Part 5 of the PBR Regulations. This would only impact current and former Ministers and Assistant Ministers. However, this limitation would be offset by provisions contained in the NACC Regulations which provide equivalent legal financial assistance to those who would otherwise be eligible for assistance under the PBR Regulations.

### ***Prohibition on interference with privacy and attacks on reputation contained in article 17 of the ICCPR***

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to the protection of the law against such interference or attacks.

The Regulations may engage a person's privacy in certain circumstances and limit this right, as outlined below. However, the right to privacy may be limited where the limitation is lawful and not arbitrary. The use of the term 'arbitrary' means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted 'reasonableness' to imply that any limitation must be proportionate and necessary to achieve a legitimate objective.

In addition, several amendments contained in the Regulations would promote the right to privacy and reputation by imposing additional safeguards on the sharing of confidential information. The amendments would balance the right to privacy and reputation with the need for transparency and the right to freedom of expression, including the right to seek, receive and impart information.

#### *Amendments to the DAT Regulations*

The Regulations would support the operation of the NACC Act by amending the DAT Regulations to prescribe sections 98, 101, 228, 233 and 234 of the NACC Act as provisions under which the sharing of data is barred under the DAT Act. These exclusions recognise that there are certain circumstances in which secrecy or non-disclosure provisions should continue to have their ordinary operation, ensuring that sensitive data collected by agencies with integrity or oversight functions is not disclosed.

The amendments to the DAT Regulations would promote the right to privacy, noting the NACC's expanded jurisdiction.

#### *Amendments to the Electoral Regulations*

The amendments to the Electoral Regulations would provide for the NACC's ability to access information on the electoral roll for prescribed purposes. These amendments may limit the right to

privacy and reputation, as they would provide for the NACC to access and use information contained on the electoral roll for the same purposes as ACLEI, but in relation to the NACC's broader jurisdiction.

To the extent the provision may limit the right to privacy, it is reasonable, necessary and proportionate to a legitimate objective. The provision is reasonable because there are limitations on the permitted purpose for which the NACC can seek to access the electoral roll, for example, access is limited to identifying and locating offenders, suspects or witnesses in relation to an investigation. This access is necessary, because it ensures that the NACC has access to a source of contact information to identify and locate people involved in a corruption issue. This is critical to ensure the effective operation of the NACC. In addition, any disclosures made in relation to an 'enforcement related activity' are permitted under the *Privacy Act 1988* (Privacy Act), which reflects the legitimate purpose and necessity of these types of disclosures.

#### *Amendments to IGADF Regulations*

The amendment to the IGADF regulations would replace the reference to ACLEI with a reference to the NACC, and remove reference to state and territory integrity agencies. This amendment would allow the IGADF to disclose inquiry-related information to the NACC. For example, this would ensure that the NACC is able to receive information that may be relevant to a corruption investigation involving a staff member of the Australian Defence Force.

This engages the right to privacy as inquiry-related information provided to the NACC may include personal information.

The provision of this information to the NACC is reasonable, necessary and proportionate to a legitimate objective. The NACC will be responsible for detecting, preventing, investigating and reporting on serious or systemic corrupt conduct in the Commonwealth public sector. This amendment will support the NACC to access information it requires to conduct effective investigations. In addition, any disclosures made for law enforcement purposes are permitted under the Privacy Act, which reflects the legitimate purpose and necessity of these types of disclosures.

#### *Amendments to the POPPP Regulations*

The amendments to the POPPP Regulations would replace references to the Integrity Commissioner with relevant references from the NACC Act. The amendments to these regulations would enable staff of the NACC to give directions to members of the public for the purpose of protecting the NACC and its premises, thus ensuring the security of its hearings and the safety of its staff and others who may be on the premises. For example, this may allow NACC staff members to demand personal information under certain circumstances and to collect information about authorised officers for public display. These amendments may limit the right to privacy by allowing NACC staff members to engage in searches and collect personal information about individuals on NACC premises.

The limitation on the right to privacy and reputation is reasonable, necessary and proportionate to a legitimate objective. These amendments would serve the legitimate objective of ensuring public order and security at NACC premises, including at premises where NACC hearings may be conducted, and protect NACC staff and witnesses. Given the nature of evidence and or material that would be available at hearings and the people in attendance (such as law enforcement officers and witnesses), safety and security at these hearings would be paramount.

Safeguards in the POPPP Act and POPPP Regulations place limitations on when and how these powers can be exercised. For example, there are limitations on the ability of authorised officers to conduct frisk searches, the requirement that authorised officers be easily identifiable to the community, and limitations on how information gained under the POPPP Regulations can be used. Establishing certain limitations on the right to privacy in these circumstances is reasonable, necessary and proportionate to a legitimate objective.

***Right to freedom of expression, including to seek, receive and impart information***

Article 19 of the ICCPR establishes the right to freedom of expression, including the freedom to seek, receive and impart information and ideas. The exercise of this right may be subject to restrictions only if provided by law and where it is necessary for the protection of national security, or to respect the rights of others.

The Regulations may engage with the right to freedom of expression insofar as amendments to the DAT regulations may limit the ability of individuals to access information about government activities.

***Amendments to the DAT Regulations***

The amendments to the DAT Regulations would ensure that sensitive information collected by the NACC is barred from being publicly disclosed by exempting it from the operation of the DAT Act. These amendments may place some limitations on the right to seek, receive, and impart information. However, these limitations are legitimate, necessary and proportionate to the purpose of protecting national security interests, sensitive information, investigative materials and also the privacy of individuals.

**Conclusion**

The Regulations are compatible with human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. To the extent that measures in the Regulations limit those rights and freedoms, such limitations are reasonable, necessary and proportionate.

## **NOTES ON SECTIONS**

### **PART 1 – Preliminary**

#### **Section 1 – Name**

Section 1 would provide that the title of the Regulations is the *National Anti-Corruption Commission (Consequential Amendments) Regulations 2023* (Regulations).

#### **Section 2 – Commencement**

This section would provide for the Regulations to commence on 1 July 2023.

#### **Section 3 – Authority**

This section would provide that the Regulations will be made under the following legislation:

- the *Commonwealth Electoral Act 1918*;
- the *Data Availability and Transparency Act 2022*;
- the *Defence Act 1903*;
- the *Law Enforcement Integrity Commissioner Act 2006*;
- the *Parliamentary Business Resources Act 2017*;
- the *Public Order (Protection of Persons and Property) Act 1971*.

#### **Section 4 – Schedules**

This section would provide that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the relevant Schedule, and any other item in a Schedule to the Regulations has effect according to its terms.



## **SCHEDULE 1—Amendments**

This Schedule would make consequential amendments to relevant Commonwealth instruments to support the establishment and operation of the NACC. The amendments would primarily replace references to ACLEI, the LEIC Act and the Integrity Commissioner contained in instruments with references to the NACC, the NACC Act and the Commissioner. The effect of these amendments would be to support the transition of ACLEI to the NACC.

### ***Data Availability and Transparency Regulations 2022***

#### **Item [1] – Section 5 (table item dealing with the *Law Enforcement Integrity Commissioner Act 2006*, column headed “Act or legislative instrument”)**

This item would amend the table item in section 5 of the DAT Regulations that deals with the LEIC Act. The amendment would clarify that the reference to the LEIC Act in the table refers to the LEIC Act as it continues to apply under the Consequential Act.

Item 1 of Schedule 1 to the Consequential Act will repeal the LEIC Act when it commences on 1 July 2023. The LEIC Act establishes ACLEI, which will transition to become part of the NACC after commencement. Schedule 2 to the Consequential Act provides for transitional arrangements to support the transfer of ACLEI’s existing investigations, inquiries, functions and powers to the NACC once the NACC commences. Schedule 2 will ensure that the Commissioner is able to continue investigations under the LEIC Act as if the LEIC Act had not been repealed, and that obligations that existed under the LEIC Act (for example, non-disclosure obligations) continue to apply after the NACC commences.

Items 9(2), 11(2) and 12(2) of Schedule 2 to the Consequential Act provide that non-disclosure notations made under sections 77A and 91 of the LEIC Act, and confidentiality directions made under section 90 of the LEIC Act, will continue to have effect after the NACC commences as if the LEIC Act was not repealed.

This item would clarify that the sharing of data in relation to sections 77A, 90 and 91 of the LEIC Act continues to be barred for the purposes of the DAT Act after the LEIC Act is repealed. This would ensure that these secrecy and non-disclosure provisions continue to operate after the NACC commences.

#### **Item [2] – Section 5 (after table item dealing with the *Law Enforcement Integrity Commissioner Act 2006*)**

This item would insert a new table item in section 5 of the DAT Regulations that would prescribe certain provisions of the NACC Act as provisions under which the sharing of data under the DAT Act is barred.

The DAT Act and the DAT Regulations establish a data sharing scheme that authorises and regulates the sharing of public sector data with accredited entities from all levels of government as well as industry, research and others in the private sector.

Section 17 of the DAT Act sets out when the sharing of data under this scheme is barred. This includes circumstances where the data is held by, originated with, or was received from, an excluded entity (under paragraph 17(2)(a) of the DAT Act), or in circumstances prescribed by the DAT Regulations (under subparagraph 17(4)(a)(i)). Section 5 of the DAT Regulations prescribes

provisions of Commonwealth Acts and legislative instruments under which the sharing of data is barred for the purposes of subparagraph 17(4)(a)(i) of the DAT Act. This includes provisions under the LEIC Act.

While the Consequential Act will amend the DAT Act on commencement to provide that the NACC, and the Inspector of the NACC, are excluded entities for the purposes of the DAT Act (as is the case for ACLEI), there may be circumstances where certain data falls outside this general exclusion and needs to be prescribed in the DAT Regulations. This includes where data does not originate with, or is not held by, or received from the NACC, but is nonetheless connected with its functions. For example, section 75 of the NACC Act enables the Commissioner to allow persons from outside the NACC to be present during a private hearing, meaning information concerning a current or ongoing hearing may not be information originating with, held by, or received from the NACC until the record of the hearing is made under section 67 of the NACC Act.

This item would prescribe the following sections of the NACC Act as provisions under which the sharing of data is barred:

- section 98 – Offence—failure to comply with non-disclosure notations;
- section 101 – Offence—use or disclosure of investigation material;
- section 228 – Confidentiality requirements for entrusted persons;
- section 233 – Confidentiality requirements for persons who receive information about investigations and inquiries; and
- section 234 – Public disclosure of protected information reports prohibited.

Prescribing confidentiality and non-disclosure provisions under the NACC Act in this section of the DAT Regulations is consistent with the approach of prescribing confidentiality and non-disclosure provisions in the LEIC Act.

The references to sections 98 and 101 of the NACC Act in this section would include those sections as applied by section 214 of the NACC Act, which specifies the powers available to the Inspector of the NACC. This would mean that the sharing of data under the DAT Act is also barred in relation to the breach of a non-disclosure notation or confidentiality direction issued by the Inspector of the NACC.

### ***Electoral and Referendum Regulation 2016***

#### **Item [3] Clause 1 of Schedule 1 (table item 3)**

This item would amend table item 3 of clause 1 of Schedule 1 to the Electoral Regulations to replace references to ACLEI and the LEIC Act with references to the NACC and the NACC Act.

Clause 1 of Schedule 1 to the Electoral Regulations prescribes the Commonwealth agencies that the AEC can share electoral roll information with, and the purposes for which the Commonwealth agency may use that information.

This item would replace ACLEI with the NACC as a prescribed authority for the purposes of section 6 of the Electoral Regulations and section 4(1) of the Electoral Act. This would enable the AEC to share electoral roll information with the NACC under section 91A of the Electoral Act in the same way as that information was able to be shared with ACLEI prior to its transition to the NACC.

This item would also set out the purposes for which the NACC is permitted to use electoral information as required by section 9 of the Electoral Regulations. Section 9 of the Electoral Regulations provides that, for the purposes of paragraph 91A(2AA)(b) of the Electoral Act, the prescribed authorities listed in the table at clause 1 of Schedule 1 to the Electoral Regulations are permitted to use electoral roll information for the permitted purposes listed in the table. This amendment would provide that the NACC would be able to use electoral roll information for:

- identifying or locating offenders, suspects or witnesses in relation to:
  - the investigation of, or reporting on, a corruption issue within the meaning of the NACC Act; or
  - a preliminary investigation under section 42 of the NACC Act; or
- collecting, correlating, analysing or disseminating information or intelligence in relation to corruption issues within the meaning of the NACC Act; or
- security vetting of employee or potential employees; or
- identifying or locating offenders, suspects or witnesses in relation to an investigation that is being conducted, or reported on, in accordance with item 2 of Schedule 2 to the Consequential Act after the NACC commences; or
- identifying or locating offenders, suspects or witnesses in relation to an investigation that is being reported on in accordance with item 38 of Schedule 2 to the Consequential Act after the NACC commences.

The purposes for which the NACC would be able to use electoral roll information are consistent with those that applied to ACLEI prior to its transition into the NACC, with appropriate amendments to reflect the NACC's expanded jurisdiction.

The NACC would also be able to use electoral roll information in relation to identifying offenders, suspects or witnesses in relation to investigations that were commenced by the Integrity Commissioner under the LEIC Act before the NACC commenced. Item 2 of Schedule 2 to the Consequential Act enables the Commissioner to continue an investigation under Part 6 of the LEIC Act that was commenced, but not completed at the time the NACC commences on 1 July 2023. This would ensure there are no transitional issues with the use of electoral roll information in relation to investigations continued by the Commissioner under the LEIC Act.

The NACC would also be able to use electoral roll information in relation to identifying offenders, suspects or witnesses named in reporting on investigations that were completed, but not reported on, by the Integrity Commissioner under Part 6 the LEIC Act before the NACC commenced. Item 38 of Schedule 2 to the Consequential Act requires the Commissioner to prepare an investigation report under subsection 54(1) of the LEIC Act if the Integrity Commissioner had completed an investigation of a corruption issue, but had not prepared a report under subsection 54(1) of the LEIC Act before the NACC commenced. In preparing a report under the LEIC Act, the NACC must provide an opportunity for people who are the subject of adverse findings or critical opinions to be heard before finalising the report. The NACC may also provide the report to certain persons, including a person whose conduct was investigated by ACLEI. This item would ensure that there are no transitional issues with the use of electoral roll information to locate those people in relation to reporting on investigations completed, but not reported on, by the Integrity Commissioner under Part 6 of the LEIC Act.

## ***Inspector-General of the Australian Defence Force Regulation 2016***

### **Item [4] –Paragraph 28L(1)(d)**

This item would repeal paragraph 28L(1)(d) of the IGADF Regulations, which prescribes ACLEI or an integrity agency of a State or Territory (within the meaning of the LEIC Act), as an agency that the IGADF may disclose inquiry-related information to. It would insert a new paragraph that would instead prescribe the National Anti-Corruption Commission for this purpose.

Section 28L of the IGADF Regulations authorises the IGADF to disclose inquiry-related information to certain agencies and persons. Inquiry-related information includes a report about an inquiry and any information, documents or other things collected or created in relation to the conduct of an inquiry by the IGADF, an Assistant IGADF, or an inquiry officer.

This would enable the IGADF to disclose inquiry-related information to the NACC in the same way as that information was able to be shared with ACLEI prior to its transition to the NACC.

The existing paragraph 28L(1)(d) also provides that the IGADF may disclose inquiry-related information to an ‘integrity agency for a State or Territory’ within the meaning of the LEIC Act. As there is no comparable definition in the NACC Act, this reference would be omitted. However, the IGADF would still be able to disclose information to such bodies under paragraph 28L(1)(f) of the IGADF Regulations, which allows information to be disclosed to State and Territory agencies in appropriate circumstances.

## ***Parliamentary Business Resources Regulations 2017***

### **Item [5] – At the end of Subdivision A of Division 2 of Part 5**

This item would amend the PBR Regulations to insert a new section at the end of Subdivision A of Division 2 of Part 5 that would prevent current and former Ministers and Assistant Ministers from applying for legal financial assistance under the PBR Regulations if they are eligible to apply for assistance under the NACC Regulations.

Division 2 of Part 5 of the PBR Regulations establishes a scheme to provide current and former Ministers and Assistant Ministers with legal financial assistance in respect of legal proceedings that arise as a consequence of them holding the office of a Minister of State.

The new section 82A would provide that assistance is not payable to an applicant under Division 2 of Part 5 where it is in relation to an ‘eligible matter’ within the meaning of the NACC Regulations.

The term ‘eligible matter’ is defined in section 17 of the NACC Regulations as any of the following:

- any matter arising under the NACC Act, other than a prosecution for an offence against the NACC Act;
- an application that any person has made, or proposes to make, to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under the NACC Act.

The NACC Regulations establish a scheme to provide legal financial assistance to all parliamentarians, including current and former Ministers and Assistant Ministers, in relation to their

engagement with the NACC. The level of assistance available under the NACC Regulations will align with what would otherwise be available to current and former Ministers and Assistant Ministers under the PBR Regulations, and to eligible persons under Appendix E of the *Legal Services Directions 2017*. The scheme under the NACC Regulations includes important safeguards with respect to approving applications and reporting obligations to protect against interference with NACC investigations and processes.

This amendment would provide clarity about which scheme Ministers and Assistant Ministers would be required to apply under and avoid duplication in the use of Commonwealth resources.

### ***Public Order (Protection of Persons and Property) Regulations 2019***

#### **Items [6] – Section 5 (definition of *Integrity Commissioner*)**

These items would repeal the definition of *Integrity Commissioner* (defined as having the same meaning as in the LEIC Act) in section 5 of the POPPP Regulations.

#### **Item [7] – Paragraph 6(b)**

This item would amend paragraph 6(b) of the POPPP Regulations to replace the reference to the ‘Integrity Commissioner’ with a reference to the ‘National Anti-Corruption Commissioner’. While item 53 of Schedule 2 to the Consequential Act would operate so that the Commissioner would be read into this paragraph, this amendment would make clear on the face of the Regulations that the Commissioner is an investigatory authority to which Part IIA of the POPPP Act applies, in the same way as the Integrity Commissioner was an investigatory authority prior to NACC commencing.

Section 6 of the POPPP Regulations prescribes investigatory authorities for the purposes of Part IIA of the POPPP Act. Part IIA of the POPPP Act permits authorised officers of prescribed investigatory authorities to exercise certain powers in relation to a person who is on its premises (‘authority premises’). These powers include:

- requiring a person to give certain information to the authorised officer, including their name, residential address and reason for being on the authority premises (under section 13C of the POPPP Act);
- searching a person or requiring a person to deposit any personal effects with the authorised officer (under section 13D of the POPPP Act);
- seizing any firearms, explosive substances or weapons discovered by the authorised officer during a search of the person (under section 13D of the POPPP Act); and
- directing a person to leave the authority premises (under section 13E of the POPPP Act).

An authorised officer is only able to exercise powers under section 13C and 13D of Part IIA of the POPPP Act where they believe on reasonable grounds that it is necessary in the interests of security to exercise the power.

#### **Item [8] – Subsection 11(3)**

This item would amend subsection 11(3) of the POPPP Regulations to replace references to the ‘Integrity Commissioner’ with references to the ‘National Anti-Corruption Commissioner’. While item 53 of Schedule 2 to the Consequential Act would operate so that the NACC Commissioner would be read into this subsection, this amendment would make clear on the face of the Regulations

that authorised officers of the NACC may disclose information collected under section 13C of the POPPP Act to the Commissioner.

Section 11 of the POPPP Regulations creates arrangements for authorised officers of investigatory authorities to disclose information that they obtain under section 13C of the POPPP Act to certain bodies. Section 13C of the POPPP Act allows an authorised officer to require a person on the investigatory authority's premises to provide certain personal information, including their name, residential address and reason for being on the investigatory authority's premises.

This amendment would allow authorised officers of the NACC to disclose information collected under section 13C of the POPPP Act to the Commissioner if they reasonably believe it is necessary in the interests of security to do so, in the same way that authorised officers could share information with the Integrity Commissioner, prior to ACLEI's transition to the NACC.

## **SCHEDULE 2—Repeals**

This Schedule would repeal the *Law Enforcement Integrity Commissioner Regulations 2017*.

### ***Law Enforcement Integrity Commissioner Regulations 2017***

#### **Item [1] – The whole of the instrument**

This item would repeal the LEIC Regulations. Item 1 of Schedule 1 to the Consequential Act will repeal the LEIC Act when it commences on 1 July 2023. The LEIC Regulations are made under section 224 of the LEIC Act and would lapse when the LEIC Act is repealed.