



# National Anti-Corruption Commission

What does it mean for logistics professionals

# Outline

What is the NACC

Powers of the NACC

Corruption in the supply chain

Are customs brokers covered

Old vs New

If you suspect corrupt behaviour



NACC

# What is the NACC

- A new independent Commonwealth agency
- Commenced 1 July 2023
- Role – detect, investigate and prevent serious or systemic corruption in the Commonwealth public sector
- Operates under the *National Anti-Corruption Commission Act 2022*
- The Government cannot tell the NACC what or who to investigate
- Commissioner is Paul Brereton – A former judge and war crimes investigator
- The NACC received 541 complaints in its first month
- “Mr Brereton said the NACC was “was more likely to be interested in investigating matters that have current practical relevance, rather than those that are historic”.

# What can the NACC investigate

- Issues of serious or systemic corrupt conduct in the Australian Government Public Sector
  - *Serious or systemic are not defined*
  - *must involve a public official*
  - *must be possible corrupt conduct*
- Does not extend to acts of State and Territory public officials (there are state and territory bodies that can investigate)
- Does not extend to foreign governments

# What is corrupt conduct – s8

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that **could** adversely affect, either directly or indirectly:
  - (i) the **honest or impartial exercise of any public official's powers** as a public official; or
  - (ii) the **honest or impartial performance of any public official's functions** or duties as a public official;
- (b) any conduct of a public official that constitutes or involves a **breach of public trust**;
- (c) any conduct of a public official that constitutes, involves or is engaged in for the purpose of **abuse of the person's office as a public official**;
- (d) any conduct of a public official, or former public official, that constitutes or involves the **misuse of information or documents** acquired in the person's capacity as a public official.

# Corrupt conduct

- The Conduct does not have to be for the person's benefit
- The conduct could have occurred before the NACC commenced
- Can be conduct by a public official alone, or with other persons who are not public officials
- NACC can investigate whether a person "will engage in corrupt conduct"
- The NACC can investigate "attempts" to engage in corrupt conduct



Investigative  
powers



# Very wide powers

Can investigate in any manner the Commissioner sees fit

Can issue a “Notice to Produce” requiring production of any document or thing relevant to an investigation – offence to fail to comply

Commissioner can hold hearings

Can be summonsed to attend the hearing or produce information – Offence to comply

Can have legal representation at the hearing

Offence to destroy information or give false information

Usual self-incrimination or legal professional privilege defences do not apply

Can apply for search warrants

# Existing ABF / DAFF powers

- The ABF / DAFF have very wide investigative powers that include production of documents and the issuing of warrants
- Powers tend to be more focused on compliance with the Customs / Biosecurity Acts rather than investigating corruption
- NCBLAC can conduct hearings and can summons a witness and production of documents





Corruption in  
supply chains



# Why is the supply chain vulnerable

ABF/DAFF have thousands of employees and the findings of corruption are low -

Variety of benefits available from corrupt behaviour:

- Reduction in taxes or payment of refunds
- Obtaining commercially sensitive information (ABF holds supplier names, invoices prices, shipping rates)
- Facilitating criminal activity – drug and tobacco imports
- Facilitating the clearance of goods – no biosecurity inspection

People in relatively low positions have access to very valuable information

# Examples of corruption in supply chains

- ABF officer sentenced after accessing information to assist an associate that was allegedly illegally importing tobacco – Officer was accessing restricted information in the ICS
- Allegations of officers checking container and plane movements in the ICS to assist with drug importations – identifying whether or not containers were marked for inspection
- Making false claims through the tourist refund scheme – payments were going to the accounts of the officers that processed the claim – guilty of obtaining a financial advantage by deception
- DAWE officer found guilty of assisting imports by permitting lenient inspections of quarantine inspections of plants and passing sensitive information onto them
- DAWE officer assisted a buildings import company by supplying them with confidential information about their competitors and enabling the quick release of consignments



Who is covered

# Who is a public official

- A parliamentarian
- A **staff member** of a Commonwealth agency
- A staff member of the NACC
- A person acting for and on behalf of, or as a deputy of a delegate of the above people

# How are non-Government employees covered

You are a staff member if you satisfy the below elements

1 - An individual (or in the case of a company) a director, officer, employee of a company, that exercises powers, or performs functions conferred on the individual/company by or under a provision of a law of the Commonwealth

And

2 – The power is exercised, or the function is performed, for the purpose of assisting a Commonwealth agency, or another staff member of such an agency, in the performance of the agency's or other staff member's functions



# Approved arrangements – examples

## Automatic Entry Processing

Approved arrangements allow operators to manage biosecurity risks and/or perform the documentary assessment of goods in accordance with departmental requirements, using their own sites, facilities, equipment and people, and without constant supervision by the department and with occasional compliance monitoring or auditing.

1. Are you exercising a power or performing a function conferred by a provision of law when assessing documents— Yes, only those that enter into approved arrangements can perform this function
2. Is that power exercised for the purpose of assisting the ABF in the performance of the ABF's functions? – Yes, if you did not perform this task, DAFF would have to perform it

# This is the view of DAFF

## Who does this notice affect?

This notice is applicable to any individual or entity that performs work for, or on behalf of, the Department of Agriculture, Fisheries and Forestry. This includes contractors, consultants, third-party providers, Biosecurity Industry Participants and Approved Arrangements.

# Are customs brokers covered when exercising powers under the Customs Act

1. Are you exercising a power or performing a function conferred by a provision of law – Yes, when you lodge a import entry on behalf of another party – only a licensed broker can do this
2. Is that power exercised for the purpose of assisting the ABF in the performance of the ABF's functions? – No.
  - a) *It is not the function of the ABF to lodge import entries. In lodging an import entry you are assisting the importer.*
  - b) *If you did not lodge the entry, the ABF would not do it*

# What about licensed depots / warehouses

1. Are you exercising a power or performing a function conferred by a provision of law – Yes, when you store customs controlled goods. Only a licensed premises can do this
2. Is that power exercised for the purpose of assisting the ABF in the performance of the ABF's functions? – No.
  - a) *It is not the function of the ABF to store customs controlled goods.*
  - b) *If you did not store the goods, they would not leave the wharf*
  - c) *You are assisting the importer not the ABF*



# What about Trusted Traders

- 13 (1) A contracted service provider for a Commonwealth contract is:
- (a) a person (other than the Commonwealth or a Commonwealth agency) who:
    - (i) is a party to the Commonwealth contract; and
    - (ii) is responsible for the provision of goods or services (or both) under the Commonwealth contract;

Trusted Traders do enter into a contract with the Government.

Trusted Traders are not responsible for the provision or services under the Trusted Trader Agreement

Trusted Traders do not otherwise perform functions that would have been performed by the Commonwealth

# In some instances everyone is covered

It is corrupt conduct to engage in conduct that adversely affects the honesty or impartiality of a public official

Examples:

- Bribing a public official
- Pressuring a friend who is a public official to behave in a certain way
- Pressuring a Biosecurity Industry Participant to perform a function under an AA in a certain way



# Difficult position

- Conduct is corrupt if it **could** affect the impartial exercise of the power
- Can a Biosecurity Industry Participant be truly impartial when they perform the functions for a party (importer) that is paying them:
  - The BIP may feel they will lose business if they make an adverse finding against the importer
  - If the goods are not released the BIP may be liable to the shipping line for detention charges
- It does not matter whether or not the BIP acts impartially - all that matters is that the conduct “could” affect impartial conduct
- The *Biosecurity Act 2015* set out that a BIP can be paid for performing functions under an AA
- It is about the “perception”

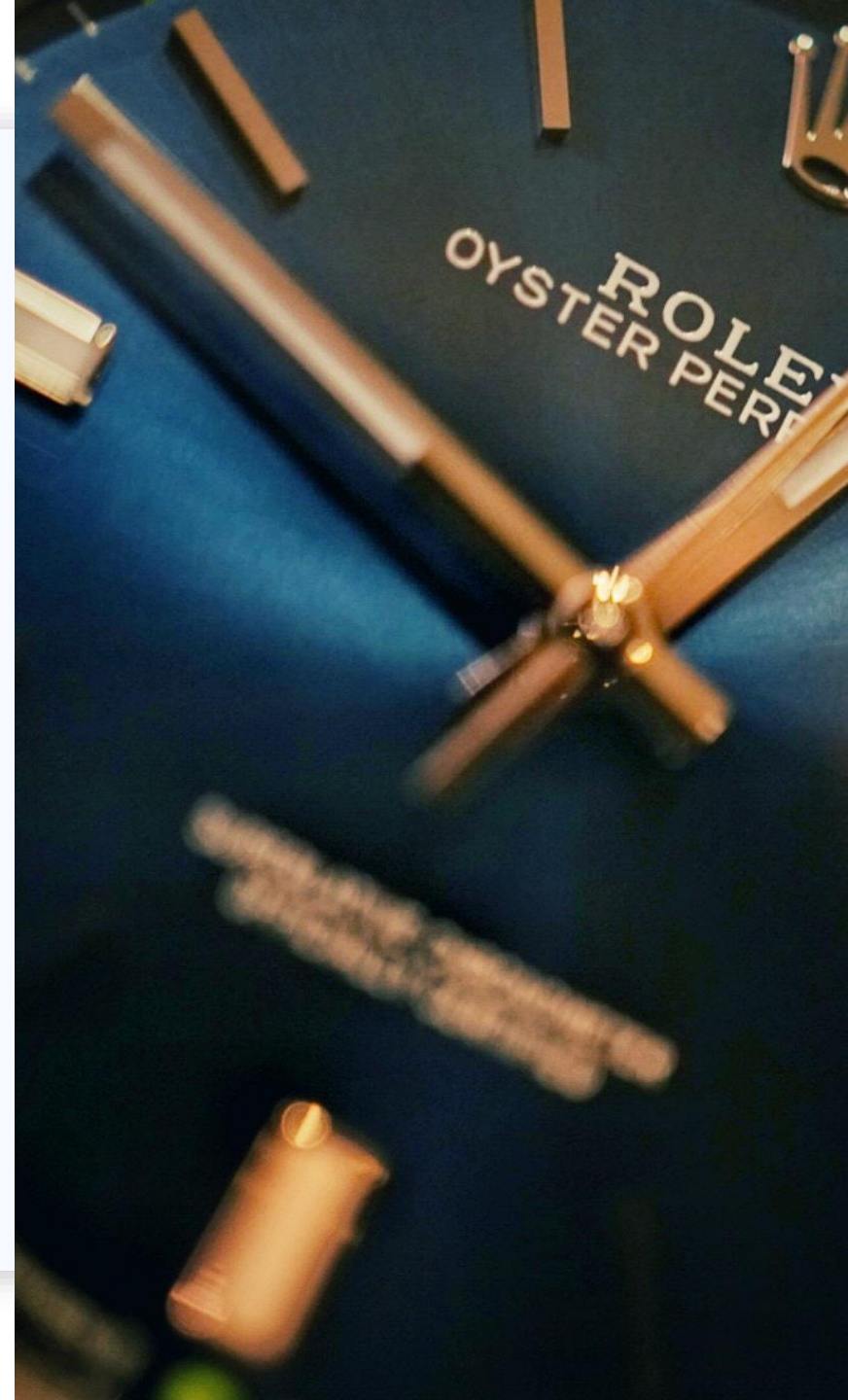
## Suggested approach

- Don't handle any staff or related party consignments
- If you are handling consignments for friends, if it is possible, have a unconnected staff member handle the consignment – prevent involvement by the connected party
- Separate the client management role and the role of performing the AA functions
- Document service agreements
- Have a quality assurance system in place – detect unusual conduct
- Have an anti-corruption policy in place
- Avoid bonuses etc for entries processed without inspection



# What about gifts from clients

- What is the value of the gift – is it only token – less than \$30
- Am I in a high-risk or sensitive role?
- What perceptions would arise if I accepted the offer?
- Would accepting a gift, benefit or hospitality bring my firm into disrepute?
- Would accepting a gift, benefit or hospitality potentially foster a relationship that may give rise to a conflict of interest or a sense of obligation?
- Does the offer relate to my “public office” or is it more widely available to others?





Will this change  
your day-to-day  
life

# Is it likely that an investigation will target customs brokers / logistics professionals

- If you, or an ABF / DAFF officer, is involved in corrupt behavior – yes

More Generally – it will depend on if it is seen as a vulnerable area

*“And the commission will also conduct public inquiries into corruption risks and vulnerabilities, and measures to prevent corruption, in Commonwealth agencies and in Commonwealth programs.”*

*“For example, we may conduct a public inquiry into risks and vulnerabilities, not involving a specific allegation of corruption, in a program in which contractors are used by a government agency to deliver benefits intended for members of the public.”*



# No change, but more likely to be caught

- The NACC only has power to investigate serious and systemic corruption issues – the laws were not introduced to target customs brokers
- Conduct that is corrupt conduct will already result in serious penalties
- NACC may raise awareness of what is corrupt conduct and may result in the reporting of issues
- NACC may have different compliance / investigative priorities than the ABF / DAFF
- Should prompt you to consider the appearance of certain transactions / conversations



Existing wide  
conditions/requirements  
on customs brokers

## CONDITION

**Fit and proper person** - A customs broker shall do all things necessary to ensure that all persons who participate in the work of the customs broker are fit and proper persons

## NCBLAC REFERRAL

**Performance of duties** – Broker ceases to perform the duties of a customs broker in a satisfactory and responsible manner

**Wrongful conduct** – Customs broker is guilty of conduct that is an abuse of the rights and privileges arising from their licence

**Breach of law** – Broker commits an offence against the Customs Act (any offence) or a Commonwealth or State Act punishable by at least 12 months in prison

**General** – Cancellation is necessary for the protection of the revenue or otherwise in the public interest

# Examples of offences / consequences

- 186 Biosecurity Act – contravening conditions applying to conditionally non-prohibited goods imported into Australia – 5 years imprisonment or over \$200K in fines
- 418 / 423 Biosecurity Act – Approved Arrangement can be suspended / revoked where the BIP is no longer a fit and proper person
- 428 Biosecurity Act – Offence to fail to carry out a biosecurity activity in accordance with the AA – 5 years imprisonment or over \$200K in fines
- BIP are already “public officials” under the Criminal Code – a variety of offences existing relating to corrupt conduct
- Customs Act – Provision of false information – 234, 243T/U



Reporting  
corrupt conduct

# Reporting Corrupt Conduct

Reports can be made via the NACC website or calling 1300 489 844

Examples of what could be reported:

- Conduct of Government employees
- Importers or exporters seeking to inappropriately influence Government decisions
- BIP that is acting corruptly

NACC will not mediate disputes, including those with the ABF / DAFF or review decisions made by the ABF / DAFF

Protected from civil, criminal or administrative liability - other than for making false or misleading statements





# Questions

[rwiese@cgtlaw.com.au](mailto:rwiese@cgtlaw.com.au)

03 9844 4238