

# **Australian Crime Commission Amendment Regulations 2003 (No. 3) 2003 No. 252**

## **EXPLANATORY STATEMENT**

### Statutory Rules 2003 No. 252

Issued by the authority of the Minister for Justice and Customs

Subject: *Australian Crime Commission Act 2002*

*Australian Crime Commission Amendment Regulations 2003 (No. 3)*

Section 62 of the *Australian Crime Commission Act 2002* ('the Act') provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Australian Crime Commission Regulations 2002* ('the Principal Regulations') set out various matters necessary to give effect to the Act.

The purpose of the regulations is to prescribe certain provisions of New South Wales laws to allow certain persons or bodies of the Australian Crime Commission (ACC) to exercise certain duties, functions or powers conferred on them by those New South Wales laws.

The Commonwealth Government has established the ACC as a cooperative agency to strengthen the fight against nationally significant crime. The ACC has duties, functions and powers conferred on it by the Act and can also have duties, functions and powers conferred on it by corresponding State laws.

The conferral of duties, functions and powers by State laws is necessary to enable the ACC to conduct an intelligence operation or an investigation in relation to a State offence that does not have a federal aspect. Section 55A of the Act provides for the conferral of such duties, functions and powers.

In particular, subsection 55A(2) of the Act provides for a law of a State to confer a duty, function or power on the ACC for the investigation of a matter relating to a relevant criminal activity or for the undertaking of an intelligence operation. Under paragraphs 55A(2)(b) and (d), such a duty, function or power must be of the same kind conferred by the Act or any other Act, or be of a kind specified in regulations.

Subsection 55A(4) of the Act provides for a law of a State to confer a duty, function or power for the investigation of a matter relating to a relevant criminal activity on the Board, the Chair of the Board, the CEO, an examiner or a member of the staff of the ACC. Under paragraph 55A(4)(b), such a duty, function or power must be of the same kind conferred by the Act or any other Act, or be of a kind specified in regulations.

Subsection 55A(5) provides for a law of a State to confer a duty, function or power for the undertaking of an intelligence operation on the Board, the Chair of the Board, the CEO, an examiner or a member of the staff of the ACC. Under paragraph 55A(5)(b), such a duty, function or power must be of the same kind conferred by the Act or any other Act, or be of a kind specified in regulations.

Section 4 of the Act provides that a relevant criminal activity means any circumstances implying, or any allegations, that a serious and organised crime may have been, may be being, or may in future be, committed against a law of the Commonwealth, of a State or of a Territory. That section also provides that an intelligence operation means the collection, correlation, analysis or

dissemination of criminal information and intelligence relating to federally relevant criminal activity.

Regulation 8A of the Principal Regulations provides that the State laws referred to in Schedule 3 of the regulations may confer a duty, function or power on the person or body mentioned in Schedule 3 of the regulations for the purposes of subparagraphs 55A(4)(b)(ii) and 55A(5)(b)(ii) of the Act.

The purpose of the regulations is to prescribe certain provisions of New South Wales laws for the purposes of paragraphs 55A(2)(b), 55A(4)(b) and 55A(5)(b) of the Act, for the conferral of certain duties, functions and powers on the ACC, the Chair of the Board, the CEO, an examiner or a member of the staff of the ACC. These duties, functions or powers are for the investigation of matters relating to relevant criminal activities or the undertaking of intelligence operations. Certain provisions in the following New South Wales laws have been identified as requiring prescription by the Principal Regulations:

- the *Births, Deaths and Marriages Registration Regulation 2001*;
- the *Crimes (Detention After Arrest) Regulation 1998*;
- the *Law Enforcement and National Security (Assumed Identities) Act 1998*;
- the *Law Enforcement (Controlled Operations) Act 1997*;
- the *Law Enforcement (Controlled Operations) Regulation 1998*;
- the *New South Wales Crime Commission Act 1985*; and
- the *Witness Protection Act 1985*.

Recently, New South Wales enacted the *Australian Crime Commission (State Provisions) Act 2003* to provide for the operation of the ACC in New South Wales. The New South Wales legislation complements the Act and the Principal Regulations by enabling the ACC to undertake like functions to those under the Act for State offences, irrespective of whether those offences have a federal aspect. This complementary legislative framework ensures that the ACC can operate as effectively and seamlessly as possible on a national basis.

The regulations also make minor technical amendments to accommodate the insertion of a new subsection, and to substitute clearer headings in other places.

Details of the regulations are set out in the [Attachment](#).

The regulations commence on gazettal.

## ATTACHMENT

### *Australian Crime Commission Amendment Regulations 2003 (No. 3)*

**Regulation 1** describes how the regulations are to be cited.

**Regulation 2** provides that the regulations commence on gazettal.

**Regulation 3** provides that the Principal Regulations are amended in accordance with Schedule 1 of the regulations.

**Schedule 1, Item 1** inserts a new subregulation 8A(1) in the Principal Regulations providing that the State laws referred to in Schedule 4 of the regulations may confer a duty, function or power on the ACC for the purposes of subparagraphs 55A(2)(b)(ii) and (d)(ii) of the Act.

In order for the ACC to operate as a cooperative agency to strengthen the fight against nationally significant crime, the ACC has duties, functions and powers conferred on it by the ACC Act and corresponding State laws.

The subregulation allows the relevant State laws to confer certain duties, functions and powers on the ACC that are necessary to ensure that the ACC can operate as effectively and seamlessly as possible on a national basis.

**Schedule 1, Item 2** amends regulation 8A of the Principal Regulations to change the reference to 'each duty, function or power' to 'each kind of duty, function or power'. This amendment more accurately reflects the wording of subparagraphs 55A(4)(b)(ii) and 55A(5)(b)(ii) and is consistent with the new subregulation 8A(1).

**Schedule 1, Item 3** renumbers regulation 8A of the Principal Regulations to subregulation 8A(2), allowing for the insertion of subregulation 8A(1).

The new subregulation 8A(2) allows the relevant State laws to confer duties, functions and powers on certain persons and bodies for the purpose of subparagraphs 55A(4)(b)(ii) and 55A(5)(b)(ii) of the Act.

**Schedule 1, Item 4** substitutes the heading for Schedule 3 of the Principal Regulations, clarifying that the Schedule prescribes duties, functions and powers conferred on certain persons and bodies by State laws.

**Schedule 1, Item 5** inserts Part 1 in Schedule 3 of the Principal Regulations. The Part identifies the duty, function or power conferred by the relevant New South Wales laws on a particular person or body. The Schedule lists the relevant legislation and provision, the type of duty, function or power conferred, and the person or body on whom the duty, function or power is conferred.

**Schedule 1, Item 6** inserts Schedule 4 in the Principal Regulations. The Schedule identifies the duty, function or power conferred by the relevant New South Wales laws on the ACC. The Schedule lists the relevant legislation and provision, and the type of duty, function or power conferred. This is distinguished from Schedule 3, in that Schedule 4 identifies duties, functions or powers conferred on the ACC as a whole.