

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 55

National Health Security Act 2007

National Health Security Regulations 2008

Part 2 of the *National Health Security Act 2007* (the Act) establishes a national system of public health surveillance to enhance the capacity of the Commonwealth, States and Territories to identify, and respond to, public health events of national significance or international concern.

Section 95 of the Act provides that the Governor-General may make regulations prescribing 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 purpose of the Regulations is to prescribe the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP) as intelligence agencies authorised to use information obtained under the Act for broader intelligence purposes, in addition to the specified permissible purposes.

Recognising the importance of protecting personal information, the Act includes strong confidentiality protections.

The legislation operates by authorising the disclosure of personal information by public health officials only for specific permissible purposes described in sections 19 and 20.

Disclosure in other circumstances is prohibited. Section 21 creates an offence where a person obtains protected information and makes a record of, discloses or otherwise uses the information for a purpose not authorised by sections 19 and 20 of the Act. The maximum penalty for such an offence is imprisonment for two years.

There are positive defences to cover other appropriate use or disclosure of personal information. Sections 22 to 26 describe these circumstances.

Subsection 23(2) provides that the section 21 offence does not apply where an officer or employee of an intelligence agency obtains protected information and makes a record of (or discloses or otherwise uses) the information in the performance of their functions and duties, or the exercise of their powers, as an officer or employee of the intelligence agency.

The Act defines an intelligence agency to mean a Commonwealth Government agency that has responsibility for intelligence gathering or security and is prescribed in Regulations.

The Regulations prescribe ASIO and the AFP as intelligence agencies for the purposes of paragraph 23(2)(b).

These agencies are also determined by the Minister for Health and Ageing by legislative instrument as responsible bodies, along with other Commonwealth, State and Territory government agencies, for the purposes of Part 2 of the Act, thus authorising employees or officers to obtain, record, disclose and otherwise use protected information for permissible purposes under the Act.

Consultation

Both ASIO and AFP were consulted in development of the Act and in preparation of the Regulations.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after registration on the Federal Register of Legislative Instruments.