

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 155

Issued by the authority of the Minister for Justice

Australian Crime Commission Act 2002

Australian Crime Commission Amendment Regulation 2012 (No. 1)

Under section 62 of the *Australian Crime Commission Act 2002* (the ACC Act), the Governor-General may make regulations on matters required or permitted by that Act to be prescribed.

The *Crimes Legislation Amendment (Powers and Offences) Act 2012* (the Powers and Offences Act) received Royal Assent on 4 April 2012. The Powers and Offences Act amends key Commonwealth law enforcement legislation to provide further tools to assist in the effective investigation and enforcement of Commonwealth laws.

Part 2 of Schedule 2 to the Powers and Offences Act amends the ACC Act to clearly set out the Commonwealth, State, Territory and foreign and international bodies with which the ACC is authorised to share information and the requirements that must be met, including appropriateness and relevance to a 'permissible purpose' (as defined in the Act), before information can be shared. It also provides a clear legislative basis for the ACC to share information with private sector bodies where certain specified requirements are met. The Powers and Offences Act repealed a number of related provisions in the ACC Act to allow for this enhanced information-sharing framework.

The new section 59AA of the ACC Act outlines the government bodies with which the ACC is authorised to share information. This replaces subsections 59(7), (8), (9) and (11) of the ACC Act, which were repealed by the Powers and Offences Act. Schedule 6 (regulation 9) to the *Australian Crime Commission Regulations 2002* (the ACC Regulations) lists those bodies prescribed for the purposes of repealed subsection 59(7).

Prior to the enactment of the Powers and Offences Act, the ACC Act made no express provision for the dissemination of information outside government other than through public bulletins issued under section 60 of the ACC Act, or the ACC Annual Report. The new section 59AB of the ACC Act sets out the circumstances in which the ACC is authorised to share information with the private sector, and provides for the prescription by regulation of private sector bodies corporate, and classes of bodies corporate, with which the ACC can share information.

The purpose of the Regulation is to repeal Schedule 6 (regulation 9) of the ACC Regulations, and prescribe private sector bodies corporate, and classes of bodies corporate, for the purpose of Part 2 of Schedule 2 to the Powers and Offences Act. This includes bodies from the finance, aviation, maritime, gaming, leads brokerage and direct marketing industries.

The ACC has had extensive dealings with each of the industry groups reflected in the Regulation in the course of special operations and investigations, and accumulated a significant body of intelligence about the ways in which serious and organised criminal groups exploit vulnerabilities in the business practices of private sector bodies to commit offences against the bodies themselves or their clients, or to launder criminal assets.

Disclosing selected ACC information, including information that is too sensitive to be published in a public bulletin or the ACC Annual Report, to these private sector bodies will assist them in making their procedures more resistant to exploitation and identifying criminal activity. This will lead to more effective target hardening within these industries and give these bodies added capacity to identify criminal activity and report it to the ACC or other law enforcement bodies.

The ACC was consulted on the Regulation. No further consultation was required.

The Act specifies no conditions that needed to be satisfied before the Regulation was made.

The Regulation commences on the day after it is registered.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Authority: Section 62 of the *Australian Crime Commission Act 2002*

Statement of Compatibility with Human Rights

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

Australian Crime Commission Amendment Regulation 2012 (No. 1)

This Legislative Instrument is 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* (Cth).

Overview of the Legislative Instrument

The *Crimes Legislation Amendment (Powers and Offences) Act 2012* (the Powers and Offences Act) amends key Commonwealth law enforcement legislation to provide further tools to assist in the effective investigation and enforcement of Commonwealth laws.

Part 2 of Schedule 2 to the Powers and Offences Act amends the ACC Act to clearly set out the Commonwealth, State, Territory and foreign and international bodies with which the ACC is authorised to share information and the requirements that must be met, including appropriateness and relevance to a ‘permissible purpose’ (as defined in the Act), before information can be shared. It also provides a clear legislative basis for the ACC to share information with private sector bodies where certain specified requirements are met. The Powers and Offences Act repealed a number of related provisions in the ACC Act to allow for this enhanced information sharing framework.

The new section 59AA of the ACC Act outlines the government bodies with which the ACC is authorised to share information. This replaces subsections 59(7), (8), (9) and (11) of the ACC Act, which were repealed by the Powers and Offences Act. Schedule 6 (regulation 9) of the *Australian Crime Commission Regulations 2002* (the ACC Regulations) lists those bodies prescribed for the purposes of repealed subsection 59(7).

This Legislative Instrument repeals Schedule 6 (regulation 9) of the ACC Regulations, and prescribes private sector bodies corporate, and classes of bodies corporate, for the purpose of Part 2 of Schedule 2 to the Powers and Offences Act.

Human rights implications

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. This includes collecting, using, storing and sharing personal information, including its release without a person’s knowledge or consent.

Lawful interference with the right to privacy will not be ‘arbitrary’ where it occurs for a reason consistent with the ICCPR and is reasonable in the particular circumstances.

Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity.

The disclosure of information under Part 2 of Schedule 2 to the Powers and Offences Act, to the private sector bodies prescribed by this Legislative Instrument, is subject to conditions which ensure that the disclosure is proportionate, appropriate and necessary.

New section 59AB of the ACC Act provides that the ACC may only give information to a private sector body, as prescribed by this Legislative Instrument, where the CEO considers that it is necessary for a permissible purpose and the body has provided an undertaking not to further use or disclose the information and to comply with any conditions the ACC specifies. Further, the ACC may only provide personal information to private sector bodies where the CEO of the ACC considers it necessary for the purposes of preventing or detecting, or facilitating the collection of criminal information and intelligence in relation to, criminal offences or activities that might constitute criminal offences.

Under new subsection 59AB(4) of the ACC Act, where personal information (within the meaning of the *Privacy Act 1988*) is to be shared with one of the bodies prescribed by this Legislative Instrument, the CEO of the ACC will be required to set conditions which the recipient body must meet before the information is shared and once the information has been shared. Failure to comply with these conditions is a criminal offence punishable by up to 12 months imprisonment.

To the extent that the principal legislation and, by extension, this Legislative Instrument, may affect relevant rights, such limitation is aimed at disrupting and combating serious and organised crime.

Any limitations are necessary to achieve, and are reasonable in achieving, the aim of disrupting criminal activity and combating serious and organised crime.

Conclusion

This Legislative Instrument is compatible with human rights because, to the extent that the principal legislation to which it provides scope may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Jason Clare MP
Minister for Justice