

EXPLANATORY STATEMENT

Select Legislative instrument 2012 No. 269

Issued by the authority of the Minister for Justice

Australian Crime Commission Act 2002

Australian Crime Commission Amendment Regulation 2012 (No. 2)

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. 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 Power and Offences Act), before information can be shared.

Section 59AA of the ACC Act provides for the ACC to share information with government bodies, including international bodies prescribed by regulations.

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 of private sector bodies corporate, and classes of bodies corporate, by regulations.

The *Australian Crime Commission Amendment Regulation 2012 (No. 1)* was registered on the Federal Register of Legislative Instruments on 2 July 2012. This Regulation prescribed several private sector bodies corporate, and classes of bodies corporate, for the purpose of section 59AB of the ACC Act, including bodies from the finance, aviation, maritime, gaming and leads brokerage and direct marketing industries.

The Regulation prescribes additional private sector bodies corporate for the purposes of section 59AB in a number of industries, as well as international bodies for the purposes of section 59AA.

The list of private sector bodies corporate includes an additional body from the maritime industry as well as bodies from the following industries: racing and gaming; telecommunications and information and communications technology; financial services, securities and investments; superannuation; insurance; health, medical and pharmaceutical; chemical; oil, gas, energy and mining; building and construction; private security; real estate agents, conveyancers, auctioneers and valuers; self storage; postal and courier services; holders of emissions units; education industry; retail; sporting organisations; accounting and taxation advice and non-government organisations supporting indigenous welfare.

The list of international bodies includes: European Monitoring Centre for Drugs and Drug Addiction; International Criminal Police Organisation; European Police Office; The Egmont Group of Financial Intelligence Agencies and the Financial Action Task Force.

The list of bodies corporate with which the ACC proposes to share information is based on identified need to communicate intelligence to address organised crime vulnerabilities. The list of international bodies is based on identified law enforcement functions and in the interest of improved law enforcement outcomes, in accordance with paragraph 59AA(1)(d) of the ACC Act.

Disclosing selected ACC information to these bodies will enhance the effectiveness of the ACC's work by improving the prevention and detection of serious and organised criminal activity and yielding an intelligence dividend to the ACC and law enforcement generally.

The ACC was consulted on the Regulation. Earlier, in the course of developing the amendments to the ACC Act found in the Powers and Offences Act, the Attorney-General's Department undertook consultation regarding possible privacy considerations with officers in the Privacy and Freedom of Information Branch in the Department of the Prime Minister and Cabinet and the International Human Rights and Anti-Discrimination Branch located in the Attorney-General's Department.

The ACC 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. 2)

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

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.

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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 and international bodies prescribed by this Legislative Instrument, is subject to conditions which ensure that the disclosure is proportionate, appropriate and necessary.

Sections 59AA and 59AB of the ACC Act provide that the ACC may only give information to an international or private sector body, as prescribed by this Legislative Instrument, where the CEO considers that it is appropriate to do so and necessary for a permissible purpose.

In addition, private sector bodies are required to provide an undertaking not to further use or disclose the information and to comply with any conditions the ACC specifies, and 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 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