

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. x, 2016**

Issued by the authority of the Minister for Justice

*Australian Crime Commission Act 2002*

*Australian Crime Commission Amendment (National Policing Information) Regulation 2016*

The *Australian Crime Commission Act 2002* (the ACC Act) establishes the Australian Crime Commission (ACC) and prescribes the functions and powers of the ACC.

Section 62 of the ACC Act provides that the Governor-General may make regulations for all matters required or permitted by the ACC Act to be prescribed.

The *Australian Crime Commission Amendment (National Policing Information) Act 2016* and the *Australian Crime Commission (National Policing Information Charges) Act 2016* made amendments to the ACC Act to merge CrimTrac and the ACC, to allow the merged agency to continue to carry out all of CrimTrac's functions and to allow the merged agency to continue CrimTrac's existing charging model. These Acts inserted a range of provisions into the ACC Act which stipulate matters that are to be prescribed in regulations.

Subsection 4(1) of the ACC Act defines 'national policing information' as information that is collected by the Australian Federal Police, the police force of a State or a *body prescribed by the regulations* in the performance or exercise of its functions or powers and *of a kind prescribed by the regulations* (emphasis added).

Subsection 7(1A) of the ACC Act provides that the ACC may also be known by a name specified in the regulations.

Subsection 59AA(1B) of the ACC Act provides that the CEO of the ACC must obtain Board approval before disclosing national policing information to a body that is not already a member of the ACC Board or a *body prescribed by the regulations* (emphasis added).

The provisions listed above commenced on 1 July 2016. The purpose of the *Australian Crime Commission Amendment (National Policing Information) Regulation 2016* (the Regulation) is to amend the Australian Crime Commission Regulations 2002 (ACC Regulations) to prescribe the matters in these provisions, as outlined in Schedule 1 to the Regulation.

New subregulation 2A(1) provides that the bodies listed in new Schedule 1A of the ACC Regulations are bodies that collect national policing information for the purposes of the definition in subparagraph (a)(iii) of subsection 4(1) of the ACC Act. New Schedule 1A lists the bodies that currently collect this information under the CrimTrac scheme (these bodies were categorised as accredited organisations and accredited 'broker' organisations).

New subregulation 2A(2) prescribes information for the purposes of paragraph (b) of the definition of 'national policing information' in subsection 4(1) of the ACC Act.

Subregulation 2A(2) provides that information that is held in, or that relates to the administration of, the list of systems, is prescribed. This captures all information that is

collected and disseminated by the ACC through the former CrimTrac systems, to enable the ACC to carry out its national policing information function.

New regulation 3A specifies that, for the purposes of subsection 7(1A) of the ACC Act, the ACC can also be known as the ‘Australian Criminal Intelligence Commission’. The new name reflects the focus of the merged agency, which brings together intelligence and information. References to the ACC, including in the state and territory laws that support the ACC’s establishment as a national intelligence agency with special investigatory powers, remain legally valid.

New regulation 9A prescribes additional bodies for the purposes of paragraph 59AA(1B)(g) of the Act, being bodies to whom the CEO can disclose national policing information without first obtaining Board approval. The bodies listed by this regulation reflect those bodies to which CrimTrac disclosed information.

The ACC and CrimTrac were consulted on the Regulation.

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

The Regulation commences at the same time as Schedule 1 to the *Australian Crime Commission Amendment (National Policing Information) Act 2016*.

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*.

#### Human rights implications

The *Australian Crime Commission Amendment (National Policing Information) Regulation 2016* (the Regulation) engages the right to freedom from unlawful or arbitrary interferences with a person’s privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

#### The right to privacy

The Regulation engages the right to privacy by prescribing information that can be ‘national policing information’ and prescribing bodies that can collect national policing information. It also prescribes additional bodies to whom the ACC CEO can disclose national policing information without first obtaining ACC Board approval. The types of information that may be disclosed under this regime could include personal information.

## Assessment of compatibility with human rights

### *National policing information – prescribed bodies*

The prescribed list of bodies from which the ACC can collect national policing information replicates the list of bodies from which CrimTrac can currently obtain information for the purpose of carrying out its functions. It is important that the ACC continues to be able to collect information from these bodies, in order to carry out its new national policing information function.

### *National policing information – prescribed information*

The kind of information prescribed by the Regulation captures all information that the merged agency will require to perform its new national policing information functions, defined in section 7A(fa) of the ACC Act 2002. This information may include personal information. It prescribes all the information that is held in systems currently operated by CrimTrac in support of the services it delivers to police and the community. Prescribing this information as ‘national policing information’ allows the ACC to continue to support Australian police forces and provide systems and services relating to its new national policing information function, as CrimTrac previously did.

### *National policing information – disclosure*

The *Australian Crime Commission Amendment (National Policing Information) Act 2016* amended the ACC’s existing information disclosure regime to provide the merged agency Board with a role in the disclosure of ‘national policing information’ to government agencies and the private sector. National policing information may contain personal information. Under the new regime, when deciding whether to disclose national policing information, the merged agency Board must agree to the CEO disclosing national policing information to a body that is not currently on the ACC Board. This body must then be prescribed by regulation.

The Regulation prescribes the New South Wales Independent Commission Against Corruption and the Queensland Crime and Corruption Commission as bodies that are able to receive ‘national policing information’. CrimTrac previously disclosed particular classes of information to these agencies, and they have met stringent law enforcement requirements. It is appropriate that these bodies continue to be able to receive national policing information to carry out law enforcement activities.

In these circumstances, the Regulation creates permissible limitations on the right to privacy.

## Conclusion

The measures in the Regulation are compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. To the extent that these measures may limit those rights and freedoms, such limitations are reasonable, necessary and proportionate.