

EXPLANATORY STATEMENT

Select Legislative Instrument No. , 2016

Issued by the authority of the Minister for Justice

Australian Crime Commission Act 2002

*Australian Crime Commission Amendment (National Policing Information) Regulation 2016
(No. 1)*

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* made amendments to the ACC Act to effectively merge CrimTrac and the ACC, by conferring on the ACC all the functions then performed by CrimTrac. The Act 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 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 either not represented on the ACC Board (a Board Agency) or a *body prescribed by the regulations* (emphasis added).

The *Australian Crime Commission Amendment (National Policing Information) Regulation 2016* was made on 5 May 2016 and amended the *Australian Crime Commission Regulations 2002* (ACC Regulations). It listed collecting bodies and types of information for the definition of ‘national policing information’, prescribed the Australian Criminal Intelligence Commission (ACIC) as another name for the merged agency and listed the bodies that are able to receive ‘national policing information’.

The provisions listed above commenced on 1 July 2016.

The purpose of the *Australian Crime Commission Amendment (National Policing Information) Regulation 2016 (No. 1)* (the Regulation) is to amend the ACC Regulations to better support the operations of the merged agency. It simplifies the list of bodies that collect national policing information, prescribes additional kinds of information that may be national policing information and provides an expanded list of bodies, other than Board agencies, that are able to receive national policing information.

The ACIC was consulted on the proposed Regulation.

Details of the proposed Regulation are set out in the Attachment.

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

The Regulations commence on the day after it is registered on the Federal Register of Legislation, except for proposed Schedule 1, items 3, 5 and 6 which commence retrospectively, immediately after Schedule 1 to the *Australian Crime Commission Amendment (National Policing Information) Act 2016* commences.

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 (No.1)* (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 kinds of information that can be 'national policing information' and prescribing collecting bodies for the purposes of the definition of 'national policing information'. It also prescribes additional bodies to whom the Australian Criminal Intelligence Commission (ACIC) CEO can disclose national policing information without first obtaining ACIC Board approval. The types of information that may be collected and disclosed under this regime could include personal information.

Assessment of compatibility with human rights

National policing information – prescribed bodies

The prescribed list of bodies that must have collected information if the ACIC is to be able to deal with it as national policing information is linked to the definition of an 'accredited body' in the *Australian Crime Commission Act 2002* (ACC Act). The Regulation replicates the list of bodies from which CrimTrac previously obtained information for the purpose of carrying out its functions. It is important that the ACIC continues to be able to deal with information collected by these bodies as national policing information, in order to effectively carry out its national policing information function.

National policing information – prescribed information

The kind of information prescribed by the Regulation captures additional information that the merged agency will require to perform its national policing information functions, defined in section 7A(fa) of the ACC Act. This information may include personal information. It prescribes additional systems that hold information previously operated by CrimTrac in

support of the services it delivers to police and the community. While the ACC Act allows for the exchange of information held in these systems between the ACIC and police forces, the regulation removes any doubt about appropriate access by requiring that the information be dealt with as national policing information. Prescribing this information as ‘national policing information’ allows the ACIC to continue to support Australian police forces and provide the additional systems relating to its 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 ACIC 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 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 specified in s59AA(1B) or prescribed by regulation.

The Regulation repeals the current list and substitutes it with a new list of bodies that are able to receive national policing information without ACIC Board approval. 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 and related 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.

Details of the proposed *Australian Crime Commission Amendment (National Policing Information) Regulation 2016 (No. 1)*

Section 1 - Name of Regulation

This section provides that the title of the Regulation is the *Australian Crime Commission Amendment (National Policing Information) Regulation 2016 (No.1)*.

Section 2 - Commencement

This section provides for the Regulation to commence on the day after the instrument is registered, except for proposed Schedule 1, items 3, 5 and 6, which would commence retrospectively, immediately after Schedule 1 to the *Australian Crime Commission Amendment (National Policing Information) Act 2016* commences. Further detail about commencement dates is provided at Schedule 1, Items 2-9.

Section 3 - Authority

This section would provide that the *Australian Crime Commission Amendment (National Policing Information) Regulation 2016 (No.1)* is made under the *Australian Crime Commission Act 2002*.

Section 4 - Schedules

Schedule 1, Item 1

Subregulation 2A(1) replaces the bodies currently prescribed in Schedule 1A of the ACC Regulations for the purposes of subparagraph (a)(iii) of the definition of ‘national policing information’ in section 4(1) of the ACC Act. The list of bodies includes ‘accredited bodies’, as defined in section 46A(5) of the ACC Act, individuals, organisations or bodies authorised to assist with victim identification, and bodies identified in Schedule 1A.

Section 46A(5) of the ACC Act provides that the CEO may approve in writing ‘accredited bodies’ for the purposes of receiving nationally coordinated criminal history checks.

Paragraph 2A(1)(a) allows the information collected by ‘accredited bodies’ to initiate a nationally coordinated criminal history check to be dealt with as national policing information. The list of accredited bodies is publicly available on the ACIC website.

Paragraph 2A(1)(b) allows information collected by bodies listed in Schedule 1A to be dealt with as national policing information. Subregulation 2A(1) ensures that the merged agency can continue to capture all information that was previously held and collected by CrimTrac in support of the services it delivers to police and the community.

Schedule 1, items 2-9

The paragraphs prescribe additional kinds of information for the purposes of paragraph (b) of the definition of ‘national policing information’ in section 4(1) of the ACC Act. These amendments add four systems to ensure that information held in the listed systems is captured in the definition of ‘national policing information’ and corrects the name of six systems to more accurately reflect the official title of the systems.

Paragraphs 2A(2) (ba), (fb) and (ga) will apply retrospectively from 1 July 2016, to ensure that these systems are captured in the definition of national policing information from the commencement of the merged agency. Although there are other mechanisms that allow the merged agency to disclose information in the additional systems to police forces under the ACC Act, applying the proposed amendments retrospectively removes any uncertainty about appropriate access to these systems. Paragraph 2A(2)(fa) commences the day after the instrument is registered as the External Agency Management System is a legacy system that is only used for historical purposes. The other amendments commence the day after the instrument is registered as they are minor and technical amendments only.

Subsection 12(2) of the Legislation Act 2003 would only limit the application of the retrospective provisions and is unlikely to be engaged by the relevant provisions operating retrospectively.

Schedule 1, item 10

This item repeals the current regulation 9A and replaces it with a regulation that provides a revised list of bodies that are able to receive national policing information. The merged agency is able to disclose national policing information to these bodies without obtaining Board approval. This list replicates the bodies to which CrimTrac could previously disclose information.

Schedule 1A, item 11

This item prescribes listed bodies, to allow information collected by these bodies to be dealt with as national policing information.