

EXPLANATORY STATEMENT

Select Legislative Instrument No. , 2016

Issued by the authority of the Minister for Justice

Crimes Act 1914

Crimes Amendment (Corresponding Laws) Regulation 2016

The *Crimes Act 1914* (Crimes Act), among other matters, establishes the Commonwealth's controlled operation, assumed identity and witness identity protection regimes.

Section 91 of the Crimes Act provides that the Governor-General may make regulations, not inconsistent with the Crimes Act, prescribing all matters required or permitted by the Crimes Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Crimes Act.

National model laws on controlled operations, assumed identities and witness identity protection were developed in 2003 by a Joint Working Group of the then Standing Committee of Attorneys-General. To ensure the effective cross-border operation of these powers, the model laws include provisions for the mutual recognition of laws in other jurisdictions. These mutual recognition arrangements apply where a jurisdiction recognises another jurisdiction's law as a corresponding law.

The purpose of the *Crimes Amendment (Corresponding Laws) Regulation 2016* is to amend the *Crimes Regulations 1990* to prescribe the *Police (Special Investigative and Other Powers) Act* (NT) (NT Act) as a corresponding law on controlled operations, assumed identities and witness identity protection for the purposes of the Crimes Act.

A controlled operation is a law enforcement operation in which a person is authorised to engage in unlawful conduct in order to obtain evidence of a serious criminal offence. Controlled operations are a valuable tool for investigating organised criminal activity as they enable law enforcement officers to infiltrate criminal organisations and to target those in the higher echelons of those organisations.

Commonwealth recognition of the NT Act will ensure that officers participating in operations that have been validly authorised under Northern Territory (NT) laws are protected against liability for Commonwealth offences, without requiring a separate Commonwealth authority to be sought for the controlled operation.

An assumed identity is a false identity used for the purpose of investigating or gathering intelligence on criminal activity, or conducting other intelligence or security activities. Undercover operatives need to be able to substantiate their assumed identities with proper identification documents. Such documents include birth certificates, drivers' licences, passports and credit cards. In the absence of a verifiable identity, the safety of undercover operatives can be jeopardised.

Commonwealth recognition of the NT Act will:

- allow the chief officer of a Commonwealth law enforcement agency or an intelligence agency to request a NT issuing agency to produce evidence to support an assumed identity validly authorised under the Commonwealth

assumed identity provisions (under section 15KX of the Crimes Act). For example, the NT Department of Transport could be requested to produce a driver license to support an assumed identity issued under the Crimes Act;

- allow an authority issued under the NT Act to authorise the production of evidence of the assumed identity from a Commonwealth government issuing agency (under section 15KY of the Crimes Act). For example, Medicare could be requested to produce a Medicare card to support an assumed identity issued under the NT Act; and
- ensure that officers who are authorised under the NT Act to acquire and use an assumed identity would be protected from criminal liability under Commonwealth law when using that identity, to the extent that the conduct would not be criminal if the identity was their real identity (under section 15LA of the Crimes Act). For example, in order to substantiate an assumed identity, a NT officer may be authorised to claim government unemployment benefits although doing so without being unemployed is a Commonwealth offence. The officer would be protected from criminal liability for this offence under section 15LA of the Crimes Act.

Witness identity protection certificates allow undercover operatives (those engaged in a controlled operation or using an assumed identity) to give evidence without disclosing their true identities. Under such provisions, undercover operatives can apply to an authorising officer of their agency for a witness identity protection certificate if they need to give evidence in civil or criminal proceedings. The issuing of such a certificate may be necessary to protect the true identity of the operative to ensure that operative's safety (or that of the operative's family). In other cases, it may be necessary to conceal the operative's real identity to avoid prejudicing current or future investigations.

Commonwealth recognition of the NT Act will ensure that a witness identity protection certificate issued under NT law would be treated as if it had been given under the Crimes Act, thereby providing protection for state operatives in proceedings held in federal courts and federal matters heard in state courts.

Statement of Compatibility with Human Rights

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

Crimes Amendment (Corresponding Laws) Regulation 2016

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*.

Overview of the Legislative Instrument

In 2010, the Commonwealth implemented model laws on controlled operations (Part IAB of the Crimes Act), assumed identities (Part IAC) and witness identity protection (Part IACA).

A controlled operation is a law enforcement operation in which a person is authorised to engage in unlawful conduct in order to obtain evidence of a serious criminal offence. An assumed identity is a false identity used by a law enforcement officer or another person for the purposes of investigating an offence or gathering intelligence. Witness identity protection certificates allow undercover operatives (those engaged in a controlled operation or using an assumed identity) to give evidence without disclosing their true identity or location.

To ensure the effective cross-border operation of these powers, the model laws include provisions for the mutual recognition of laws in other jurisdictions. These mutual recognition arrangements apply where a jurisdiction recognises another jurisdiction's law as a corresponding law.

This legislative instrument prescribes Northern Territory provisions on controlled operations, assumed identities and witness identity protection (contained in the NT Act) as corresponding laws for the purposes of the Crimes Act. It does not make any substantive amendments to Commonwealth law or policy.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

[The Hon Michael Keenan MP, Minister for Justice and the Minister assisting the Prime Minister for Counter-Terrorism]

Details of the Regulation are set out in the Attachment.

The Crimes Act does not specify any conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

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

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Relevant agencies were consulted on the development of these Regulations. These regulations are not likely to impact on business or restrict competition.

Authority: Section 91 of the *Crimes Act 1914*

Details of the Crimes Amendment (Corresponding Laws) Regulations 2016

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Crimes Amendment (Corresponding Laws) Regulation 2016*.

Section 2 – Commencement

This section provides that the Regulation will commence on the day after it is registered.

Section 3 – Authority

This section identifies the *Crimes Act 1914* as the authority for the Regulation.

Section 4 – Schedule

This section provides that the *Crimes Regulations 1990* are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – regulation 4A

Existing regulation 4A prescribes corresponding controlled operations laws, as defined in subsection 15GC of the Crimes Act.

Item 1 inserts the *Police (Special Investigative and Other Powers) Act (NT)* into the existing table of corresponding controlled operations laws. Part 2 of this Act is prescribed as corresponding.

Item [2] – regulation 4BAB

Existing regulation 4BAB prescribes corresponding assumed identities laws, as defined in subsection 15K of the Crimes Act.

Item 2 inserts the *Police (Special Investigative and Other Powers) Act (NT)* into the existing table of corresponding assumed identities laws. Part 3 of this Act is prescribed as corresponding.

Item [3] – regulation 4D

Existing regulation 4D prescribes corresponding witness identity protection laws, as defined in subsection 15M(1) of the Crimes Act.

Item 3 inserts the *Police (Special Investigative and Other Powers) Act (NT)* into the table of corresponding witness identity protection laws. Part 4 of this Act is prescribed as corresponding.