

## **EXPLANATORY STATEMENT**

Minute No. 55 of 2018 – Assistant Minister for Home Affairs, Parliamentary Secretary to the Minister for Home Affairs

Subject - *Australian Crime Commission Act 2002*  
*Australian Crime Commission Regulations 2018*

The *Australian Crime Commission Act 2002* (the ACC Act) establishes the Australian Crime Commission (ACC), now known as the Australian Criminal Intelligence Commission (ACIC), and the functions and powers of the ACIC.

Section 62 of the ACC Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the ACC Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the ACC Act.

The ACC Act also provides other regulation-making powers, including (but not limited to) the power to make regulations:

- prescribing the manner in which a summons to appear before an examiner may be served (subsection 30(1))
- prescribing offences for the definition of ‘serious and organised crime’ (subsection 4(1))
- prescribing bodies and kinds of information for the definition of ‘national policing information’ (subsection 4(1))
- prescribing bodies with which ‘national policing information’ can be shared (section 59AA)
- prescribing allowances to which a person complying with a notice under section 21A is entitled to be paid (section 21F), and
- prescribing a scale for the payment of expenses of witnesses appearing before an examiner (section 26).

The ACIC operates as a cooperative agency to strengthen the fight against nationally significant crime. To enable the ACIC to operate as a cooperative agency, the ACC Act and corresponding State laws confer duties, functions and powers on the ACIC.

Section 7A of the ACC Act provides that the functions of the ACIC include (but are not limited to):

- collecting, correlating, analysing and disseminating criminal information and intelligence
- conducting intelligence operations, and
- conducting investigations into matters relating to federally relevant criminal activity.

The *Australian Crime Commission Regulations 2002* (the ACC Regulations 2002) are due to sunset on 1 April 2019. The *Australian Crime Commission Regulations 2018* (the Regulations) remake the ACC Regulations 2002 in their entirety, with some amendments to ensure that the Regulations remain relevant and fit for purpose, enabling the ACIC to perform its legislative functions under section 7A of the ACC Act.

In particular, the Regulations include amendments to:

- authorise the use of the acronym ‘ACIC’ in defined terms, in addition to the acronym ‘ACC’, to reflect the name change from the Australian Crime Commission to the Australian Criminal Intelligence Commission
- update references to State and Territory legislation which confer duties, functions and powers on the ACIC
- prescribe additional bodies, bodies corporate and international government agencies with whom the ACIC can share information, and
- extend the category of Judges to whom the ACIC may apply for a substituted service order to include Judges of the Federal Circuit Court.

Details of the Regulations are set out in the Attachment A.

A Statement of Compatibility with Human Rights prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

The ACC Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

The Regulations were informed by consultation with the ACIC, which supported the proposed changes.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

The Minute recommends that the Regulations be made in the form proposed.

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

**Details of the *Australian Crime Commission Regulations 2018***

**Part 1 – Preliminary**

**Section 1 – Name**

This section provides that the title of this instrument is the *Australian Crime Commission Regulations 2018* (the Regulations).

**Section 2 – Commencement**

This section provides that the whole of the instrument is to commence the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that this instrument is made under the *Australian Crime Commission Act 2002* (ACC Act).

**Section 4 – Schedule 10**

This section states that each instrument specified in Schedule 10 of this instrument is amended or repealed as set out in the applicable items in that Schedule, and that any other item in that Schedule has effect according to its terms. Schedule 10 repeals the *Australian Crime Commission Regulations 2002* (ACC Regulations 2002).

**Section 5 – Definitions**

The note to this section provides a non-exhaustive list of terms, defined in the ACC Act, and used for the purposes of the Regulations. The purpose of the note is to facilitate understanding of the terms used throughout the Regulations.

The section also provides that the term ‘Act’ is defined in the Regulations as the ACC Act.

**Part 2 – Matters prescribed for the purposes of Act**

**Section 6 – National policing information**

Paragraph 7A(fa) of the ACC Act sets out the ACIC’s national policing information functions – namely, to provide systems and services relating to national policing information, including the following:

- collecting, correlating and organising national policing information
- providing access to national policing information
- supporting and facilitating the exchange of national policing information, and
- providing nationally coordinated criminal history checks on payment of a charge imposed by the Charges Act.

‘National policing information’ is defined in subsection 4(1) of the ACC Act 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).

To be ‘national policing information’, particular information must both have been collected by an Australian police agency or a prescribed body and have been incorporated into a prescribed ACIC system. Much of the information collected by such bodies in the performance of their functions never becomes ‘national policing information’ because it is not incorporated into a prescribed system.

‘National policing information’ may include personal information. ‘National policing information’ is also ‘ACC information’ as defined in subsection 4(1) of the ACC Act as it is in the possession of the ACIC. However, disclosure of ‘national policing information’ by the ACIC is subject to additional restrictions set out in subsections 59AA(1A) and (1B) of the ACC Act.

#### *Bodies that collect national policing information*

Subsection 6(1) of the Regulations prescribes the bodies that collect national policing information for the purposes of subparagraph (a)(iii) of the definition of ‘national policing information’ in subsection 4(1) of the ACC Act. Subsection 6(1) ensures that the ACIC can receive information from prescribed bodies in support of the national policing information services it delivers to police and the community.

Paragraph 6(1)(a) of the Regulations prescribes a body or organisation approved by the ACIC CEO as an accredited body under subsection 46A(5) of the ACC Act as a body that collects national policing information.

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 6(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.

A nationally coordinated criminal history check is a service provided to the public for a fee. Applications for a check are submitted by persons who are typically applicants for any of the following:

- recruitment and job applications
- volunteer and not for profit positions
- working with children or vulnerable groups
- licencing or registration schemes applications
- work-related checks due to legislation or regulations
- Australian citizenship and visa applications, and
- adoption applications.

The police history checking service plays an important role in ensuring that bodies such as charities, educational institutions, government agencies and healthcare providers can ensure as far as possible that they do not employ or confer any benefits on unsuitable applicants.

Accredited bodies collect limited personal information from individuals to allow them to apply for national police history checks for employment and other vetting purposes. These bodies have access only to the results of police history checks conducted at their request. They are required to deal with the personal information in those results in accordance with the *Privacy Act 1988* (Cth) (Privacy Act) through contractual obligations with the ACIC.

Where a person seeks a nationally coordinated police history check, an accredited body will submit identifying details of the applicant to the National Police Checking Service Support System (NSS) to enable the check to be conducted. This information is treated as ‘national policing information’, being used in initial checks of the National Police Reference System (NPRS) and disclosed to police agencies in each jurisdiction (if any) in which the checks indicate the person may have a criminal record.

Before the ACIC CEO approves non-government bodies to be accredited bodies, they must be subject to police checks to ensure they are suitable bodies to deal with sensitive personal information. Approval is also dependent on their agreement to comply with the requirements of the Privacy Act in dealing with information for the purposes of the criminal record checking process.

Paragraph 6(1)(b) also prescribes a body listed in Schedule 1 to the Regulations as a body that collects national policing information. Prescribing these bodies in Schedule 1 is a necessary and reasonable measure to ensure that information needed for the effective performance of policing functions is available to all Australian police agencies.

#### *Kinds of national policing information*

Subsection 6(2) prescribes that information held under, or relating to the administration of, a system listed in Schedule 2 of the Regulations is national policing information for the purposes of paragraph (b) of the definition of national policing information in subsection 4(1) of the ACC Act. This captures all information that is collected and disseminated by the ACIC through these systems, to enable the ACIC to carry out its national policing information functions.

Subsection 6(2) removes the list of prescribed systems in subsection 2A(2) of the ACC Regulations 2002, and incorporates this content in Schedule 2 to the Regulations to assist readability.

#### **Section 7 – Serious and organised crime offences**

This section states that each offence mentioned in Division 272 (Child sex offences outside Australia) or 273 (Offences involving child pornography material or child abuse material outside Australia) of the *Criminal Code Act 1995* (Criminal Code) is prescribed for the purpose of paragraph (d) of the definition of ‘serious and organised crime’ in subsection 4(1) of the ACC Act.

Under section 7A of the ACC Act, the ACIC’s functions include undertaking intelligence operations or investigations into matters involving ‘federally relevant criminal activity’, which includes ‘serious and organised crime’. The offences listed in Division 272 or 273 of the Criminal Code are all serious offences with penalties ranging from five to 25 years’ imprisonment, and it is appropriate for the ACIC to collect criminal information and intelligence, and conduct investigations and intelligence operations, concerning these offences. This section ensures that the ACIC is able to do so.

## **Section 8 – Name or acronym specified for ACC**

This section prescribes the ‘Australian Criminal Intelligence Commission’, ‘ACIC’ and ‘ACC’ for the purposes of subsection 7(1A) of the ACC Act.

The Australian Parliament passed a package of reforms, the *Australian Crime Commission Amendment (National Policing Information) Act 2015* (NPI Act) and the *Australian Crime Commission (National Policing Information Charges) Act 2016*, which commenced on 1 July 2016, in order to implement the decision made by the Federal and State Attorneys-General, Police Ministers and Justice Ministers to merge the CrimTrac agency and the ACC. To enable the merged agency to adopt a new name, the NPI Act introduced section 7(1A) of the ACC Act, which provided that the ACC may also be known by a name specified in the Regulations. Under regulation 3A, which was inserted in the ACC Regulations 2002 with effect from 1 July 2016, the ACC may also be known as the ‘Australian Criminal Intelligence Commission’.

These provisions did not provide express authority for use of the acronym ‘ACIC’ in place of ‘ACC’, particularly in terms defined in the ACC Act that incorporate the acronym ‘ACC’. To clarify this issue, Schedule 10 to the *Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018*, commencing on 23 May 2018, amended subsection 7(1A) of the ACC Act to provide that the ACC may also be known by ‘one or more names or acronyms’ specified in the Regulations and made other amendments to facilitate the formal use of these names and acronyms. This section adds ‘ACIC’ and ‘ACC’ to the list of specified names or acronyms contained in section 3A of the ACC Regulations 2002. This clarifies that the name ‘Australian Criminal Intelligence Commission’ and the acronym ‘ACIC’ could be consistently and validly substituted for ‘Australian Crime Commission’ and ‘ACC’ on legal instruments, such as Board determinations and examinations summonses, without affecting the legal validity of these instruments.

## **Section 9 – Allowance for travelling and other expenses – complying with a notice under section 21A of the Act**

This section prescribes the types of expenses for which a person is to be reimbursed when complying with a notice under section 21A of the ACC Act.

Under the ACC Act, the ACIC has a range of information gathering powers that it may exercise in assisting investigations of, or in developing intelligence about, serious and organised crime. Under section 21A of the ACC Act, the ACIC may require a person to attend before an examiner or member of the staff of the ACC to produce a specified document or thing relevant to an ACC special operation or investigation.

Section 21F of the ACC Act provides that a person is entitled to be paid by the Commonwealth for expenses they incur when complying with a notice under section 21A to attend at a specified time and place, or to produce a document or thing, in accordance with the prescribed regulations.

Paragraph 9(a) provides that, if a person has been required by written notice under section 21A to attend, at a specified time and place, before an examiner or member of the staff of the ACC, the person is entitled to be paid a reasonable amount for travel to and from that place, including meals and accommodation if the person is required to be absent overnight from their usual place of residence.

Subparagraph 9(b)(i) of this item allows a person, who is remunerated by wages, salary or fees, to be reimbursed for the actual amount lost by their attendance before an examiner or member of staff of

the ACIC to produce a document or thing. A person who is not remunerated by wages, salary or fees is entitled to the hourly rate of \$25 prescribed in subparagraph 9(b)(ii).

This section ensures that persons complying with a notice are properly reimbursed for their expenses of attendance.

### **Section 10 – Search warrant**

This section provides that a warrant issued under section 22 of the ACC Act may be in accordance with Form 1 in Schedule 3 to the Regulations.

Section 22 of the ACC Act provides for the application for, and issue of, a search warrant, and outlines the circumstances in which a search warrant may be satisfactorily applied for and issued. The prescribed form contains all elements required by subsection 22(5) of the ACC Act.

This section removes the requirement contained in section 4 of the ACC Regulations 2002 that a warrant issued under section 22 of the ACC Act *must* be in accordance with the prescribed form (emphasis added). The authority to enact section 10 of the Regulations originates from the power under paragraph 62(b) of the ACC Act to make regulations prescribing all matters that that are ‘necessary or convenient’ to be prescribed for carrying out or giving effect to the Act.

### **Section 11 – Scale prescribed for payment of expenses of witnesses**

This section prescribes the scale for the reimbursement of expenses of witnesses appearing before an examiner.

Under the ACC Act, the ACIC has a range of information gathering powers that it may exercise in assisting investigations of, or in developing intelligence about, serious and organised crime. Section 21A of the ACC Act enables an examiner to conduct coercive examinations for the purposes of an ACIC special operation or investigation.

Section 26 of the ACC Act provides that witnesses appearing before an examiner shall be paid by the Commonwealth in respect of the expenses of their attendance in accordance with the prescribed scale.

This section specifies that the scale set out in the table is made for the purposes of section 26 of the ACC Act. This section incorporates the scale that was prescribed in Schedule 2 to the ACC Regulations 2002 for ease of reference.

Item 1 of the table in this section provides that a witness appearing before an examiner because of their professional, scientific or other special skill or knowledge is entitled to be paid in accordance with the amount provided in the *Royal Commissions Regulations 2001* in relation to expenses of witnesses possessing such skill or knowledge.

Item 2 of the table in this section provides a scale for payment for a witness not covered by item 1 of the table. For a witness who is remunerated by wages, salary or fee, item 2 provides that the witness is entitled to be reimbursed the actual amount lost by his or her attendance. For a witness who is not remunerated by wages, salary or fee, item 2 provides that the witness is entitled to be reimbursed in accordance with the amount provided in the *Royal Commissions Regulations 2001* in relation to expenses of witnesses generally.

Item 3 of the table provides that, in addition to items 1 and 2 of the table, a witness appearing before an examiner to give expert evidence is entitled to be reimbursed for a reasonable amount for qualifying to give that evidence.

Item 4 of the table provides that, in addition to items 1 and 2 of the table, any witness appearing before an examiner is entitled to such an amount as is reasonable to cover their travel to and from the place at which the witness attends the examination, including meals and accommodation if the person is required to be absent overnight from their usual place of residence.

For the purposes of this section, the *Royal Commission Regulations 2001* applies as in force from time to time. Incorporating the *Royal Commission Regulations 2001* in this section is permissible as the *Royal Commission Regulations 2001* may be subject to disallowance by Parliament. As at December 2018, a copy of the latest *Royal Commission Regulations 2001* is publicly available on the Federal Register of Legislation.

### **Section 12 – Service of summons to appear before an examiner**

This section outlines the process and requirements for serving a summons to appear before an examiner on a natural person or a body corporate. The section also sets out the circumstances in which a summons may be served to an electronic address, and in which a Judge can give a direction for the service of a summons on a natural person, as well as incorporating by reference certain options for service that are available under the *Federal Court Rules 2011*. Incorporating the Federal Court Rules 2011 in this section is permissible as the Federal Court Rules 2011 may be subject to disallowance by Parliament. As at December, a copy of the latest Federal Court Rules 2011 is publicly available on the Federal Register of Legislation.

Subsection 12(1) provides that this section prescribes the manner for serving a summons for the purposes of subsection 30(1) and paragraph 30(2)(c) of the ACC Act.

Subsection 30(1) of the ACC Act provides that a person served, as prescribed, with a summons to appear as a witness at an examination before an examiner shall not fail to attend as required by the summons unless excused, or released from further attendance, by the examiner. Paragraph 30(2)(c) of the ACC Act provides that a person appearing as a witness as an examination before an examiner must not refuse or fail to produce a document or thing that he or she was required to produce by a summons under this Act, which was served on him or her as prescribed.

#### *Service on a natural person*

Subsection 12(2) prescribes the process and requirements for serving a summons issued to a natural person. This subsection is subject to the operation of subsection 12(4), which relates to electronic service of a summons.

Paragraph 12(2)(a) provides that a summons issued to a natural person may be served by delivering a copy of the summons to the person personally.

Paragraph 12(2)(b) provides that a summons issued to a natural person may be served by putting it down in the presence of the person or leaving it at or upon the place or premises of the person if, upon delivery of the summons, the person refuses to accept it.

Subparagraph 12(2)(c)(i) provides that, should the manner of service set out at paragraphs (a) or (b) not be practicable, a summons issued to a natural person may be served by leaving the summons at the



person's last known or usual place of residence or business with a person reasonably believed to be over the age of 16 years and residing or employed at that place.

Subparagraph 12(2)(c)(ii) provides that, should the manner of service set out at paragraphs (a) or (b) not be practicable, a summons issued to a natural person may be served by sending a copy of the summons by registered post or certified mail to the person at the last known or usual place of residence or business of the person or the last known or usual postal address of the person.

Paragraph 12(2)(d) provides that if a Judge has, subject to subsection 12(5), given a direction in relation to the service of the summons issued to a natural person, the summons may be served by leaving a copy of the summons with a person identified in the direction by the Judge as a person likely to bring the contents of the summons to the person's attention. Alternatively, if a Judge has given a direction under subsection 12(5), the summons may be served by sending the summons by registered post or certified mail to a place specified in the direction that the Judge reasonably believes to be a place that the person frequents.

#### *Service on a body corporate*

Subsection 12(3) prescribes the process and requirements for serving a summons issued to a body corporate. This subsection is subject to the operation of subsection 12(4), which relates to electronic service of a summons.

Paragraph 12(3)(a) provides that a summons issued to a body corporate may be served by delivering a copy of the summons to a person at the head office, a registered office, a principal office or a principal place of business of the body corporate. The person to whom the summons is delivered must be reasonably believed to be an officer, or in the service of, the body corporate that is over the age of 16 years.

Paragraph 12(3)(b) provides that a summons issued to a body corporate may be served by leaving the summons at or upon the premises where the person is, if the person mentioned in paragraph (a) refuses to accept delivery of the summons.

Paragraph 12(3)(c) provides that a summons issued to a body corporate may be served by sending a copy of the summons by registered post or certified mail to the head office, a registered office, a principal office or a principal place of business of the body corporate or to a postal address of the body corporate.

#### *Service to an electronic address etc.*

Subsection 12(4) prescribes the process and requirements for serving a summons to an electronic address.

Paragraph 12(4)(a) provides that, if a person named in the summons has nominated an electronic address for service in a document given to the ACIC by the person, the summons may be served by sending it to the nominated electronic address.

Paragraph 12(4)(b) provides that a summons may be served in any manner required or permitted under rules 10.02, 10.03, 10.04, 10.05, 10.09 or 10.22 of the *Federal Court Rules 2011* as if the summons is a document of a kind to which the rule applies and the person named in the summons is a person of a kind to which the rule applies.

### *Directions by a Judge*

Subsection 12(5) prescribes the circumstances in which a Judge must be satisfied in order to give a direction in relation to a the service of a summons on a natural person, as mentioned in paragraph 12(2)(d).

Subsection 12(5)(a) provides that, in order to give a direction, a Judge must be satisfied upon information given in writing by an examiner that service of the summons in a manner prescribed under paragraphs 12(2)(a), (b) or (c) has not been, or is not likely to be, successful.

Subsection 12(5)(b) provides that, in order to give a direction, a Judge must be satisfied upon information given in writing by an examiner that there is a likelihood that service of the summons in the manner prescribed in paragraph 12(2)(d) would result in the summons coming to the notice of the person.

For the purposes of section 12, subsection 12(6) provides that a Judge means a Judge of the Federal Court, a Judge of the Federal Circuit Court or a Judge of a court of a State or Territory.

### **Section 13 – Warrant for arrest of witness**

This section provides that a warrant for the apprehension of a witness, issued under section 31 of the ACC Act, may be in accordance with Form 2 in Schedule 3 to the Regulations.

This section removes the requirement contained in section 8 of the ACC Regulations 2002 that a warrant issued under subsection 31(1) of the ACC Act must be in accordance with the prescribed form (*emphasis added*). The authority to enact section 13 originates from the power under paragraph 62(b) of the ACC Act to make regulations prescribing all matters that that are ‘necessary or convenient’ to be prescribed for carrying out or giving effect to the Act.

### **Section 14 –Duties, functions and powers conferred by State laws**

This section specifies the circumstances in which State laws may confer duties, functions and powers on the ACIC, prescribed ACIC bodies and members of ACIC staff, of a Judge of the Federal Court or Federal Circuit Court.

Subsection 14(1) provides that, for the purposes of subparagraphs 55A(2)(b)(ii) and (d)(ii) of the ACC Act, each duty, function or power under a provision of a State law specified in an item in Schedule 4 to the Regulations is a kind of duty, function or power that may be conferred on the ACIC.

Subparagraphs 55A(2)(b)(ii) and (d)(ii) of the ACC Act enable a State law to confer duties, functions or powers on the ACIC, of a kind specified in regulations, for the purposes of an investigation or intelligence operation, conducted under a law of the State and relating to an offence or offences against the law of the State.

Subsection 14(2) provides that, for the purposes of subparagraphs 55A(4)(b)(ii) and (5)(b)(ii) of the ACC Act, each duty, function or power under a provision of a State law specified in an item in Schedule 5 to the Regulations is a kind of duty, function or power that may be conferred on a person or body mentioned in the item.

Subparagraphs 55A(4)(b)(ii) and (5)(b)(ii) of the ACC Act enable a State law to confer on the Inter-Governmental Committee, the Board, the Chair or member of the Board, the CEO, or an examiner or

member of ACIC staff, duties, functions or powers of a kind specified in regulations, for the purposes of an investigation or intelligence operations relating to an offence or offences against the law of the State.

Subsection 14(3) provides that, for the purposes of subparagraphs 55A(5B)(b)(ii) and (5C)(b)(ii) of the ACC Act, each duty, function or power under a provision of a State law specified in an item of Schedule 6 to the Regulations is a kind of duty, function or power that may be conferred on a Judge of the Federal Court or a Judge of the Federal Circuit Court, as mentioned in the item.

Subparagraphs 55A(5B)(b)(ii) and (5C)(b)(ii) of the ACC Act enable a State law to confer duties, functions or powers on a Judge of the Federal Court or Federal Circuit Court, of a kind specified in regulations, for the purposes of an investigation or intelligence operations relating to an offence or offences against the law of the State.

The ACC Act can only confer duties, functions and powers on the ACIC and its constituent bodies to conduct intelligence operations or investigations in relation to offences of the Commonwealth or a Territory, or State offences that have a federal aspect. The conferral of duties, functions and powers by State laws is necessary to enable the ACIC to conduct an intelligence operation or an investigation in relation to a State offence that does not have a federal aspect and to facilitate the ACIC's conduct of intelligence operations and investigations in relation to State offences that have a federal aspect.

Each State has enacted its own ACC law conferring on the ACIC the function of conducting intelligence operations and investigations into relevant criminal activity that involves offences against State laws, together with associated powers and duties modelled on the ACC Act. Various other State laws confer particular functions, powers and duties on the ACIC and its staff in support of the conduct of its intelligence operations and investigations.

However, for Constitutional reasons, the Commonwealth must consent to the conferral of functions, duties and powers on a Commonwealth body by a State. This section, along with section 55A of the ACC Act, provides a mechanism for the Commonwealth to consent to the conferral of functions, duties and powers by a State on the ACIC, prescribed ACIC bodies and members of ACIC staff, and Judges of the Federal Court or Federal Circuit Court.

### **Section 15 – Disclosure of ACC information to certain international bodies**

This section provides that an international body mentioned in Schedule 7 to the Regulations is prescribed for the purposes of paragraph 59AA(1)(d) of the ACC Act. Schedule 7 prescribes the specific international bodies to which the ACIC CEO may disclose ACC information.

Under paragraph 59AA(1)(d) of the ACC Act, the ACIC CEO may disclose 'ACC information' to a prescribed international body with functions relating to law enforcement or gathering intelligence if the CEO considers it appropriate to do so, the CEO considers the information is relevant to a permissible purpose, and the disclosure is not contrary to a law of the Commonwealth, a State or a Territory that otherwise applies.

'National policing information' is also 'ACC information' as defined in subsection 4(1) of the ACC Act as it is in the possession of the ACIC. Subsection 59AA(1A) of the ACC Act requires the ACIC CEO to act in accordance with any policy determined, and any direction given, in writing by the ACIC Board in deciding whether to disclose 'national policing information'. Subsection 59AA(1B) requires the ACIC CEO to obtain the approval of the Board before disclosing national policing information to a body that is not specified in the subsection or prescribed under it. No international

bodies are specified in subsection 59AA(1B) and the Regulations do not prescribe any international bodies for this purpose.

### **Section 16 – Disclosure of national policing information to certain bodies**

This section provides that a body mentioned in Schedule 8 to the Regulations is prescribed for the purposes of paragraph 59AA(1B)(g) of the ACC Act.

This section removes the list of prescribed bodies contained in section 9A of the ACC Regulations, and incorporate this list in Schedule 8 to the Regulations, to assist readability. Schedule 8 prescribes the bodies (in addition to those specified in paragraphs 59AA(1B)(a) to (f)) to which the ACIC CEO may disclose ‘national policing information’ without approval of the Board.

Subsection 59AA(1B) of the ACC Act provides that the ACIC CEO must obtain the approval of the ACIC Board before disclosing ‘national policing information’ to a body that is not listed in subsection 59AA(1B) or prescribed by the regulations (paragraph 59AA(1B)(g)).

‘National policing information’ is also ‘ACC information’ as defined in subsection 4(1) of the ACC Act as it is in the possession of the ACIC. If Board approval is granted, the ACIC CEO may disclose ‘ACC information’ under subsection 59AA(1) of the Act to certain government bodies if the CEO considers it appropriate to do so, the disclosure is relevant to a permissible purpose and the disclosure is not contrary to a law of the Commonwealth, a State or a Territory that otherwise applies. Subsection 59AA(1A) of the Act also requires the CEO, in deciding whether to disclose ‘national policing information’, to act in accordance with any policy determined, and any direction given, in writing by the ACIC Board.

### **Section 17 – Disclosure of ACC information to certain bodies corporate and classes of bodies corporate**

This section provides that a body corporate or a class of bodies corporate mentioned in Schedule 9 to the Regulations, is prescribed for the purposes of subsection 59AB(1) of the ACC Act. Schedule 9 prescribes the bodies corporate and classes of bodies corporate to which the ACIC CEO may disclose ‘ACC information’ in certain circumstances.

Subsection 59AB(1) of the ACC Act outlines the requirements that must be met for the CEO to disclose ‘ACC information’ to private sector bodies. The ACIC CEO may disclose ACC information to a body corporate or a class of bodies corporate that is prescribed if the CEO considers it appropriate to do so, the disclosure is relevant to a permissible purpose, and the disclosure is not contrary to a law of the Commonwealth, State or Territory that otherwise applies.

Under subsection 59AB(1) of the ACC Act, the ACIC CEO must be satisfied that a number of other conditions have been met, including that the disclosure does not prejudice a person’s safety or a person’s fair trial. The recipient body must also enter into an undertaking, in writing, not to further use or disclose the information except as specified by the CEO or as required under an Australian law, and to comply with any conditions that the CEO has specified.

Subsection 59AB(2) of the ACC Act also specifies further limitations on disclosing ‘ACC information’ to private sector bodies, particularly in relation to personal information. For example, the ACIC may disclose ‘ACC information’ that is also personal information (within the meaning of the Privacy Act) only if the disclose is 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.

### **Schedule 1 – Bodies that collect national policing information**

The table within Schedule 1 lists the prescribed bodies that collect national policing information for the purposes of subparagraph (a)(iii) of the definition of ‘national policing information’ in subsection 4(1) of the ACC Act.

This allows the information collected by these prescribed bodies that is held in a system prescribed in Schedule 2 to be dealt with as national policing information and ensures that the ACIC can continue to receive and hold information collected by these bodies in support of the national policing information services it delivers to police and the community.

This Schedule adds the following bodies to the list of prescribed bodies that collect national policing information:

- Access Canberra (a unit within the Chief Minister, Treasury and Economic Development Directorate of the Australian Capital Territory)
- ASX Limited (ACN 008 624 691)
- AUSTRAC
- CoreLogic Australia Pty Limited (ACN 149 251 267)
- Court Services Victoria
- Geoscience Australia (a body within the Department of Industry, Innovation and Science)
- Queensland Corrective Services
- The Attorney-General’s Department of South Australia
- The Australian Communications and Media Authority
- The Australian Criminal Intelligence Commission (the agency known as)
- The Australian Electoral Commission
- The Australian Securities and Investments Commission
- The Australian Security Intelligence Organisation
- The Australian Taxation Office
- The Courts Administration Authority of South Australia
- The Department for Child Protection and Family Support of Western Australia
- The Department for Correctional Services of South Australia
- The Department of Communities and Social Inclusion of South Australia
- The Department of Foreign Affairs and Trade
- The Department of Health
- The Department of Human Services
- The Department of Home Affairs
- The Department of Justice and Attorney-General of Queensland
- The Department of Justice and Regulation of Victoria
- The Department of Justice of New South Wales
- The Department of Justice of Tasmania
- The Department of Justice of Western Australia
- The Department of the Attorney-General and Justice of the Northern Territory
- The Justice and Community Safety Directorate of the Australian Capital Territory, and
- The Office of the Children’s Guardian of New South Wales.

These bodies have been added because they will contribute information they collect to existing or new systems for the purposes of new information sharing schemes. The ability of the ACIC to receive and hold information collected by these bodies is important to ensure the success of these information sharing schemes and allow for the ACIC to develop a unified national picture of criminal activity.

These information sharing schemes include:

- The National Criminal Intelligence System
- The National Domestic Violence Order Scheme (including contribution of information to the NPRS)
- The end user declaration scheme to provide nationally accessible records of purchases of precursor chemicals and equipment to help prevent and detect diversion into the production of illicit drugs (the End User Declaration Online System), and
- A national alert system to prevent forum shopping by applicants for working with children checks and vulnerable person assessments.

This Schedule adds the Department of Home Affairs and remove the Department of Immigration and Border Protection as a prescribed body that collects national policing information. This reflects the Department's change of name following the Machinery of Government changes in December 2017.

## **Schedule 2 – Systems that hold national policing information**

The table in Schedule 2 prescribes the systems that hold national policing information for the purposes of paragraph (b) of the definition of 'national policing information' in subsection 4(1) of the ACC Act.

Information held in these systems relates directly to the day-to day operations of the ACIC's national policing information function. Each system is designed to meet a particular information need of Australian police agencies and contains information that is necessary to enable the system to operate or is otherwise of a type likely to be of significant value to police in connection with the purpose of the system. The information held on each of the prescribed systems does not go beyond what is reasonably necessary for the purposes of that system.

The purpose of prescribing these systems is to set clear limits around the concept of national policing information. This ensures that information held in, or relating to the administration of, these prescribed systems that is information collected by a body prescribed in Schedule 1 is required to be dealt with as national policing information, promoting consistency and clarity around the access to, and exchange of, the information.

This Schedule adds the following systems to the list of prescribed systems that collect national policing information:

- The End User Declaration Online System—a system designed to provide nation-wide police access to end user declarations made in relation to purchases of precursor chemicals and equipment to help prevent and detect diversion into the production of illicit drugs
- Any system that alerts a person conducting a Working With Children Check, or a vulnerable person assessment, on a person (the applicant) to a decision previously made by an Australian jurisdiction in respect of an application by the applicant for such a check or assessment in that jurisdiction, to detect forum shopping by unsuitable applicants, and
- The National Criminal Intelligence System, an enhanced system currently under development for the automated national integration of criminal information and intelligence and other relevant policing information in response to real-time requests.

This Schedule removes the following systems from the list of prescribed systems:

- The Biometrics at The Border Interface
- The National DNA Investigative Capability
- The National Firearms Interface
- The National Portable Biometric Interface, and
- The Australian Cybercrime Online Reporting Network.

The ACIC has determined that these bodies should be removed as either:

- they are not systems that contain national policing information but are a means to access other systems prescribed in this Schedule that do contain national policing information, or
- in the case of the National Firearms Interface, the system has been renamed and the new name has previously been added to the list of prescribed systems.

### **Schedule 3 – Forms of warrants**

This Schedule provides for forms that may be used for warrants issued under section 22 of the ACC Act in relation to a special ACIC investigation or operation, and section 31 of the Act in relation to the arrest of a witness.

It is not mandatory for an officer seeking a warrant under sections 22 or 31 of the ACC Act to use these forms.

#### **Form 1 – Search warrant under section 22 of the Act**

This Form may be used by a Judge of the Federal Court, Federal Circuit Court or a court of a State or Territory to issue a search warrant in accordance with section 22 of the ACC Act in relation to a special ACIC investigation or operation.

As outlined above, section 10 of the Regulations provides that a warrant issued by an issuing officer under section 22 of the ACC Act may be in accordance with Form 1 in Schedule 3.

Section 22 of the ACC Act sets out the circumstances in which an eligible person may apply for a warrant in relation to a special ACIC investigation or operation, and the process of applying for, issuing, and executing the warrant.

#### **Form 2 – Warrant under section 31 of the Act**

This Form may be used by a Judge of the Federal Court or of a Supreme Court of a State or Territory sitting in chambers to issue an arrest warrant for a witness in accordance with section 31 of the ACC Act.

As outlined above, section 13 of the Regulations provides that a warrant for the apprehension of a witness, issued under section 31 of the ACC Act, may be in accordance with Form 2 in Schedule 3 to the Regulations.

Section 31 of the ACC Act sets out the circumstances in which a Judge of the Federal Court or of a Supreme Court of a State or Territory may issue a warrant for the arrest of a witness, and the process of applying for, issuing, and executing the warrant.

## **Schedule 4 – Duties, functions and powers conferred on the ACC by State laws**

This Schedule sets out the duties, functions and powers conferred on the ACIC by State laws for the purposes of subparagraphs 55A(2)(b)(ii) and (d)(ii) of the ACC Act. These duties, functions and powers support the ACIC in carrying out investigations and intelligence operations under the ACC law of a State.

This Schedule provides for the legislative consent of the Commonwealth for these powers, duties and functions to be conferred by State laws upon the ACIC.

### **Part 1 – Laws of New South Wales**

This Part prescribes the duties, functions and powers that are conferred upon the ACIC under a provision of a New South Wales law, specifying the legislative instrument, provision, and duty, function or power being conferred.

### **Part 2 – Laws of Victoria**

This Part prescribes the duties, functions and powers that are conferred upon the ACIC under a provision of a Victorian law, specifying the legislative instrument, provision, and duty, function or power being conferred.

### **Part 3 – Laws of Queensland**

This Part prescribes the duties, functions and powers that are conferred upon the ACIC under a provision of a Queensland law, specifying the legislative instrument, provision, and duty, function or power being conferred.

### **Part 4 – Laws of Western Australia**

This Part prescribes the duties, functions and powers that are conferred upon the ACIC under a provision of a Western Australian law, specifying the legislative instrument, provision, and duty, function or power being conferred.

### **Part 5 – Laws of South Australia**

This Part prescribes the duties, functions and powers that are conferred upon the ACIC under a provision of a South Australian law, specifying the legislative instrument, provision, and duty, function or power being conferred.

### **Part 6 – Laws of Tasmania**

This Part prescribes the duties, functions and powers that are conferred upon the ACIC under a provision of a Tasmanian law, specifying the legislative instrument, provision, and duty, function or power being conferred.

### **Part 7 – Laws of the Australian Capital Territory**

This Part prescribes the duties, functions and powers that are conferred upon the ACIC under a provision of an Australian Capital Territory law, specifying the legislative instrument, provision, and duty, function or power being conferred.



## **Part 8 – Laws of the Northern Territory**

This Part prescribes the duties, functions and powers that are conferred upon the ACIC under a provision of a Northern Territory law, specifying the legislative instrument, provision, and duty, function or power being conferred.

## **Schedule 5 – Duties, functions and powers conferred on certain persons and bodies by State laws**

This Schedule sets out the duties, functions and powers conferred on certain bodies and persons by State laws for the purposes of subparagraphs 55A(4)(b)(ii) and (5)(b)(ii) of the ACC Act. These bodies and persons include the ACIC Inter-Governmental Committee, the ACIC Board, the Chair of the ACIC Board, the CEO of the ACIC, and an examiner or member of staff of the ACIC. The conferral of these duties, functions and powers support these bodies and persons in carrying out ACIC investigations and intelligence operations in relation to criminal activities that include an offence or offences against a law of the State.

This Schedule provides for the legislative consent of the Commonwealth for these powers, duties and functions to be conferred by State laws upon these bodies and persons.

## **Part 1 – Laws of New South Wales**

This Part prescribes the duties, functions and powers that are conferred upon certain bodies and persons under a provision of a New South Wales law, specifying the legislative instrument, provision, the duty, function or power being conferred, and the person or body upon whom the duty, function or power is conferred.

## **Part 2 – Laws of Victoria**

This Part prescribes the duties, functions and powers that are conferred upon certain bodies and persons under a provision of a Victorian law, specifying the legislative instrument, provision, the duty, function or power being conferred, and the person or body upon whom the duty, function or power is conferred.

## **Part 3 – Laws of Queensland**

This Part prescribes the duties, functions and powers that are conferred upon certain bodies and persons under a provision of a Queensland law, specifying the legislative instrument, provision, the duty, function or power being conferred, and the person or body upon whom the duty, function or power is conferred.

## **Part 4 – Laws of Western Australia**

This Part prescribes the duties, functions and powers that are conferred upon certain bodies and persons under a provision of a Western Australian law, specifying the legislative instrument, provision, the duty, function or power being conferred, and the person or body upon whom duty, function or the power is conferred.

## **Part 5 – Laws of South Australia**

This Part prescribes the duties, functions and powers that are conferred upon certain bodies and persons under a provision of a South Australian law, specifying the legislative instrument, provision, the duty, function or power being conferred, and the person or body upon whom the duty, function or power is conferred.

## **Part 6 – Laws of Tasmania**

This Part prescribes the duties, functions and powers that are conferred upon certain bodies and persons under a provision of a Tasmania law, specifying the legislative instrument, provision, the duty, function or power being conferred, and the person or body upon whom the duty, function or power is conferred.

## **Part 7 – Laws of the Australian Capital Territory**

This Part prescribes the duties, functions and powers that are conferred upon certain bodies and persons under a provision of an Australian Capital Territory law, specifying the legislative instrument, provision, the duty, function or power being conferred, and the person or body upon whom duty, function or the power is conferred.

## **Part 8 – Laws of the Northern Territory**

This Part prescribes the duties, functions and powers that are conferred upon certain bodies and persons under a provision of a Northern Territory law, specifying the legislative instrument, provision, the duty, function or power being conferred, and the person or body upon whom the duty, function or power is conferred.

## **Schedule 6 – Duties, functions and powers conferred on Federal Court Judges or Federal Circuit Court Judges by State laws**

This Schedule sets out the duties, functions and powers conferred on Judges of the Federal Court or Federal Circuit Court of Australia by State laws for the purposes of subparagraphs 55A(5B)(b)(ii) and (5C)(b)(ii) of the ACC Act. These duties, functions and powers relate to carrying out an ACIC investigation or intelligence operation in relation to criminal activities that include an offence or offences against a law of the State, such as conferring powers on Judges of the Federal Court or Federal Circuit Court of Australia to use prescribed forms for arrest warrants or give direction in relation to the service of a summons under State laws.

This Schedule provides for the legislative consent of the Commonwealth for these powers, duties and functions to be conferred by State laws upon Judges of the Federal Court or Federal Circuit Court of Australia.

## **Part 1 – Laws of Victoria**

This Part prescribes the duties, functions and powers that are conferred upon Federal Court Judges or Federal Circuit Court Judges under a provision of a Victorian law, specifying the legislative instrument, provision, the duty, function or power being conferred, and whether the duty, function or power is conferred upon a Judge of the Federal Court, a Judge of the Federal Circuit Court, or both.

## **Part 2 – Laws of Western Australia**

This Part prescribes the duties, functions and powers that are conferred upon Federal Court Judges or Federal Circuit Court Judges under a provision of a Western Australian law, specifying the legislative instrument, provision, the duty, function or power being conferred, and whether the duty, function or power is conferred upon a Judge of the Federal Court, a Judge of the Federal Circuit Court, or both.

### **Schedule 7 – Disclosure of ACC information to certain international bodies**

This Schedule sets out the prescribed international bodies to which the ACIC CEO may disclose ACC information for the purposes of paragraph 59AA(1)(d) of the ACC Act. An international body may only be prescribed if the body has functions relating to law enforcement or intelligence gathering.

Pursuant to subsection 4(1) of the ACC Act, ‘ACC information’ means information that is in the ACIC’s possession. The ACIC CEO may only disclose ACC information to a prescribed international body if the CEO considers that it is appropriate to do so and that the information is relevant to a permissible purpose and if the disclosure is not contrary to an Australian law.

‘Permissible purpose’ is defined under paragraphs 4(1)(a)-(j) of the ACC Act. Permissible purposes may include, but are not limited to, preventing, detecting or investigating threats to national security, preventing serious threats to public health or public safety, or performing functions of the ACIC under sections 7A or 7C of the ACC Act.

### **Schedule 8 – Disclosure of national policing information to certain bodies**

This Schedule sets out the prescribed bodies to which the ACIC CEO may disclose national policing information for the purposes of paragraph 59AA(1B)(g) of the ACC Act. If a body is prescribed pursuant to this paragraph, this removes the need for the ACIC CEO to obtain approval from the ACIC Board prior to disclosing national policing information to the body under subsection 59AA(1) of the ACC Act.

To disclose national policing information to a prescribed body under subsection 59AA(1) of the ACC Act, the disclosure must be relevant to a permissible purpose, as defined under paragraphs (a)-(j) of the definition of ‘permissible purpose’ in subsection 4(1) of the ACC Act. Permissible purposes may include, but are not limited to, preventing, detecting or investigating criminal offences, enforcing laws relating to proceeds of crime or unexplained wealth, or performing functions of the ACIC under sections 7A or 7C of the ACC Act. In making a decision to disclose national policing information the ACIC CEO is also required to act in accordance with any policy determined or direction given in writing by the ACIC Board.

### **Schedule 9 – Disclosure of ACC information to certain bodies corporate and classes of bodies corporate**

This Schedule sets out the prescribed bodies corporate and classes of bodies corporate to which the ACIC CEO may disclose ACC information for the purposes of subsection 59AB(1) of the ACC Act. To disclose ACC information to a prescribed body corporate or a member of a class of bodies corporate under subsection 59AB(1), the disclosure must be necessary for a permissible purpose, as defined under paragraphs (a)-(j) of the definition of ‘permissible purposes’ in subsection 4(1) of the ACC Act. Permissible purposes may include, but are not limited to, preventing, detecting or investigating a threat to national security, protecting public revenue, developing government policy or performing functions of the ACIC under sections 7A or 7C of the ACC Act.

Before ACC information may be disclosed to a body corporate, the CEO must also consider the proposed disclosure appropriate, the body corporate must have given certain undertakings, set out in paragraphs 59AB(1)(c) and (d) of the ACC Act, and the additional preconditions relating to safety, fair trial and lawfulness, set out in paragraphs 59AB(1)(e) and (f), must be met.

### **Part 1 – Bodies corporate to which ACC information may be disclosed**

This Part prescribes the bodies corporate to which the ACIC CEO may disclose ACC information, provided that the requirements for disclosing the information under section 59AB of the ACC Act have been met.

This Part adds the following prescribed bodies corporate to which, in certain circumstances, ACC information may be disclosed:

- Akamai Technologies Netherlands B.V. (ACN 115 435 955)
- Athletics Australia (ACN 006 447 294)
- Auscontact Association Limited (ACN 089 791 186)
- Australian Alliance for Data Leadership Ltd (ACN 002 909 800)
- Australian Cyber Security Growth Network Limited (ACN 616 231 4510)
- Australian Financial Crimes Exchange Ltd (ACN 604 942 618)
- Avira Australia Pty Ltd (ACN 614 610 990)
- BA Limited (ACN 072 484 998)
- Beyond Binary Pty Ltd (ACN 146 311 962)
- Blackberry Australia Pty Ltd (CAN 146 311 962)
- Chartered Accountants Australia and New Zealand (ABN 50 084 642 871)
- Chemistry Australia Ltd. (ACN 063 335 615)
- Confederation of Australian Motor Sport Ltd (ACN 069 045 665)
- Conflict Armament Research Ltd. (Incorporated in England with limited liability; Company number 07762809)
- Crowdstrike Australia Pty Ltd (ACN 613 865 295)
- Cycling Australia Ltd (ACN 600 984 576)
- DXC Technology Australia Pty Limited (ACN 008 476 944)
- Esports Games Association Australia Ltd (ACN 134 012 543)
- Fireeye Australia Pty Ltd (ACN 164 438 251)
- Fortinet International Inc (ACN 107 522 869)
- Golf Australia Limited (ACN 118 151 894)
- Hockey Australia Limited (ACN 088 988 836)
- Identity Care Australia and New Zealand Ltd. (ACN 164 038 966)
- Institute of Chemistry Australia Pty Ltd (ACN 608 962 063)
- Ionize Pty Ltd (ACN 132 569 941)
- Lockheed Martin Australia Pty Limited (ACN 008 425 509)
- Logrhythm Australia Pty Ltd (ACN 159 809 284)
- Macquarie Telecom Pty Limited (ACN 082 930 916)
- Maritime Industry Australia Ltd (ACN 006 627 934)
- Microsoft Mobile Australia Pty Ltd (ACN 007 366 949)
- National Rugby League Limited (ACN 082 088 962)
- NBN Co Limited (ACN 136 533 741)
- Netball Australia Limited (ACN 003 142 818)
- Optus Networks Pty Limited (ACN 008 570 330)

- Palo Alto Networks (Australia) Pty Ltd (ACN 160 218 379)
- Penington Institute (ACN 140 206 775)
- Racing Australia Pty Ltd (ACN 105 994 330)
- Rugby Australia Ltd (ACN 002 898 544)
- Rural Doctors Association of Australia (ACN 062 176 863)
- Science Industry Australia Limited (ACN 133 200 692)
- Secureworks Australia Pty. Ltd (ACN 605 421 583)
- Splunk Services Australia Pty. Ltd. (ACN 609 939 817)
- Surfing Australia Limited (ACN 828 043 399)
- Swimming Australia Limited (ACN 109 333 628)
- Symantec (Australia) Pty Ltd (ACN 085 397 100)
- Tabcorp Holdings Limited (ACN 063 780 709)
- Telstra Corporation Limited (CAN 051 775 556)
- Thales Australia Limited (ACN 008 642 751)
- Thomson Reuters (Australia) Pty Ltd (ACN 058 914 766)
- Trend Micro Australia Pty. Ltd. (ACN 077 055 817), and
- Vodafone Australia Pty Limited (ACN 056 161 043).

The addition of these bodies reflects the ACIC's growing role in relation to cyber security and other cyber crime and in relation to match-fixing and other corruption in sports, together with its continuing need to support community responses to emerging drugs and drug-use patterns and to help reinforce the financial sector in its response to large-scale organised fraud. Other changes reflect the fact that previously prescribed entities have restructured, rebranded or merged.

This Part removes the following prescribed bodies corporate to which, in certain circumstances, ACC information may be disclosed:

- Australian Telemarketing and Call Centre Association Incorporated (NSW Y1162006)
- Customer Contact Management Association Inc. (VIC A0033335W)
- Queensland Multimodal Freight Council Ltd (CAN 086 118 514)
- Racing Queensland Limited (CAN 142 786 874)
- Sea Freight Council of New South Wales Incorporated (NSW Y3045929)
- The Retail Traders' Associations of Australia Limited (CAN 003 586 623), and
- Victorian Freight and Logistics Council Ltd (ACN 091 962 751).

This Part removes these bodies corporate as they no longer exist, have been renamed (including due to changes in legislation), or have become a body of a State for the purposes of section 59AA of the ACC Act.

## **Part 2 – Classes of bodies corporate to which ACC information may be disclosed**

This Part prescribes the classes of bodies corporate to individual members of which the ACIC CEO may disclose ACC information, provided that the requirements for disclosing the information under section 59AB of the ACC Act have been met.

This Part adds the following prescribed classes of bodies corporate to which, in certain circumstances, ACC information may be disclosed:

- Bodies corporate that are any of the following, within the meaning of section 4 of the Australian Sports Anti Doping Authority Act 2006:
  - a foreign sporting organisation, or

- the International Olympic Committee, or
- an International Sporting Federation, or
- a national sporting organisation.
- Bodies corporate that operate a Primary Health Network mentioned in item 57 of the table in Part 4 of Schedule 1AB to the Financial Framework (Supplementary Powers) Regulations 1997
- Bodies corporate that are registered higher education providers within the meaning of section 5 of the Tertiary Education Quality and Standards Agency Act 2011
- Bodies corporate that are registered entities within the meaning of section 300 5 of the Australian Charities and Not for profits Commission Act 2012
- Bodies corporate that are members of Chemistry Australia Ltd (ACN 063 335 615), and
- Bodies corporate that are members of Science Industry Australia Limited (ACN 133 200 692).

The addition of these classes of bodies corporate reflects the ACIC's growing role in relation to cyber security and other cyber crime and in relation to match-fixing and other corruption in sports, together with its continuing need to support community responses to emerging drugs and drug-use patterns and to help reinforce the financial sector in its response to large-scale organised fraud. Further, the addition of these classes of bodies corporate facilitate the ACIC's role in protecting the community against organised criminal exploitation of the education sector and charities.

#### **Schedule 10 – Repeals**

This Schedule repeals the ACC Regulations 2002, which are replaced by the Regulations.

## Statement of Compatibility with Human Rights

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

### *Australian Crime Commission Regulations 2018*

This Legislative Instrument, entitled the *Australian Crime Commission Regulations 2018* (the Regulations), 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

The *Australian Crime Commission Regulations 2002* (the ACC Regulations 2002), enacted pursuant to section 62 of the *Australian Crime Commission Act 2002* (Cth) (the ACC Act), are due to sunset on 1 April 2019. The Regulations remake the ACC Regulations 2002, with minor amendments to ensure the continuing proper and appropriate administration of the ACC Act and to enable the Australian Criminal Intelligence Commission (ACIC) to continue to perform its functions, duties and powers.

The Regulations address the legitimate objective of ensuring that the ACIC can continue to combat serious and organised crime and threats to national security, to provide effective national policing information systems and services, to collect intelligence and perform special operations, and to work with domestic and international partners on investigations.

**Sections 1, 2, 3 and 5** of the Regulations provide the name of, commencement details, authority for enacting, and definitions used in, the Regulations.

**Section 4 and Schedule 10** of the Regulations repeal the ACC Regulations 2002.

**Subsection 6(1) and Schedule 1** of the Regulations prescribe the bodies and organisations that collect *national policing information* for the purposes of subparagraph 4(1)(a)(iii) of the ACC Act.

**Subsection 6(2) and Schedule 2** of the Regulations prescribe the systems that hold *national policing information* for the purposes of paragraph 4(1)(b) of the ACC Act.

**Section 7** of the Regulations defines *serious and organised crime offences* for the purposes of subsection 4(1) of the ACC Act.

**Section 8** of the Regulations specifies the names and acronyms for the ACC for the purposes of subsection 7(1A) of the ACC Act.

**Section 9** of the Regulations prescribes the travel expenses and allowances payable to a person complying with a notice to appear before an examiner or member of staff of the ACC, as issued under section 21A of the ACC Act, for the purposes of section 21F of the ACC Act.

**Sections 10, 13, and Schedule 3** of the Regulations provide forms that may be used in issuing a search warrant for the purposes of section 22 of the ACC Act, or an arrest warrant for a witness for the purposes of section 31 of the ACC Act.

**Section 11** of the Regulations prescribes the expenses payable to a witness appearing before an examiner for the purposes of section 26 of the ACC Act.

**Section 12** of the Regulations prescribes the manner of serving a summons requiring a person to appear before an examiner for the purposes of subsection 30(1) and paragraph 30(2)(c) of the ACC Act.

**Subsection 14(1)** and **Schedule 4** of the Regulations list the duties, functions and powers conferred on the ACC by State laws for the purposes of subparagraphs 55A(2)(b)(ii) and 55A(2)(d)(ii) of the ACC Act.

**Subsection 14(2)** and **Schedule 5** of the Regulations lists the duties, functions and powers conferred on persons and bodies by State laws for the purposes subparagraphs 55A(4)(b)(ii) and 55A(5)(b)(ii) of the ACC Act.

**Subsection 14(3)** and **Schedule 6** of the Regulations list the duties, functions and powers conferred by State laws on judges of the Federal Court of Australia and the Federal Circuit Court of Australia for the purposes of subparagraphs 55A(5B)(b)(ii) and 55A(5C)(b)(ii) of the ACC Act.

**Section 15** and **Schedule 7** of the Regulations prescribe the international bodies to which *ACC information* may be disclosed for the purposes of paragraph 59AA(1)(d) of the ACC Act.

**Section 16** and **Schedule 8** of the Regulations prescribe the bodies to which *national policing information* may be disclosed for the purposes of paragraph 59AA(1B)(g) of the ACC Act.

**Section 17** and **Schedule 9** of the Regulations prescribe the bodies corporate and classes of bodies corporate to which *ACC information* may be disclosed for the purposes of subsection 59AB(1) of the ACC Act.

### **Human rights implications**

The Regulations engage the following rights:

#### *Prohibition on Arbitrary or Unlawful Interference with Privacy*

1. Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that:
  - (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
  - (2) Everyone has the right to the protection of the law against such interference or attacks.
2. Although the United Nations Human Rights Committee (UNHRC) has not defined ‘privacy’, the term is broadly interpreted as encompassing freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. As set out below, the Regulations do not have the effect of intruding into privacy on an unwarranted or unreasonable basis.
3. The term ‘unlawful’ means that no interference can take place except as authorised under domestic law. As the Regulations constitute a domestic law, any impact they have on a person’s privacy will not be ‘unlawful’.



4. Additionally, the term ‘arbitrary’ means that any imposition on privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. In this context, the UNHRC has interpreted ‘reasonableness’ to imply that any interference with privacy must be proportionate to the end sought and be necessary in the particular circumstances of the case.
5. The measures in the Regulations are intended to assist the ACIC in achieving its key functions which, under section 7A of the ACC Act, include collecting criminal intelligence and information, conducting and participating in integrity operations and providing systems relating to national policing information. The Regulations are therefore made in accordance with the objectives of the ICCPR, including the legitimate objectives of protecting public order, national security and the rights and freedoms of citizens.
6. The Regulations are also reasonable in achieving these objectives. Form 1 in Schedule 3 of the Regulations provides a form that may be used to issue a search warrant in accordance with section 22 of the ACC Act. The Regulations do not alter the requirements for issuing a search warrant under section 22 of the ACC Act. Search warrants can only be issued if the legal requirements under section 22 of the ACC Act have been satisfied, therefore any interference with the right to privacy will not be unlawful.
7. Subsections 4(1) and 22(3) of the ACC Act provide that a search warrant may only be issued by a an issuing officer, being a Judge of the Federal Court, a Judge of the Federal Circuit Court or a Judge of a court of a State or Territory. The issuing officer must not issue a search warrant unless they have been furnished with an affidavit and any other requested information setting out the grounds on which the search warrant is being sought, and are satisfied that there are reasonable grounds for issuing the search warrant. These requirements ensure that a search warrant will only be issued when reasonable in the particular circumstances and that any interference with the right to privacy will not be arbitrary.
8. Schedules 7 and 9 of the Regulations prescribe the international bodies, bodies corporate and classes of bodies corporate to which *ACC information* may be disclosed for the purposes of paragraph 59AA(1)(d) and subsection 59AB(1) of the ACC Act. Schedule 8 of the Regulations prescribes the bodies to which *national policing information* may be disclosed for the purposes of paragraph 59AA(1B)(g) of the ACC Act.
9. The Regulations do not otherwise alter the requirements for the disclosure of *national policing information* or *ACC information* under sections 59AA or 59AB of the ACC Act. Disclosures under the ACC Act can only occur if the legal requirements in the relevant provisions have been satisfied, therefore any interference with the right to privacy will not be unlawful.
10. Most information defined as *national policing information* is collected by Australian police services. Access to, and use of, that information is strictly limited by the ACC Act to police services, ACIC Board agencies and a limited number of law enforcement agencies prescribed in the regulations or approved by the ACIC Board.
11. Paragraphs 59AA(1)(f)-(h) of the ACC Act provides that the CEO of the ACC may only disclose *ACC information* to prescribed bodies and international bodies if:
  - the CEO considers it is appropriate to do so
  - the information is relevant to a permissible purpose, and

- the disclosure would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.
12. Permissible purposes are defined under paragraphs 4(1)(a)-(j) of the ACC Act and may include, but are not limited to, preventing, detecting or investigating a threat to national security, preventing, detecting or investigating criminal offences, enforcing laws relating to proceeds of crime or unexplained wealth, or performing the functions of the ACIC under sections 7A or 7C of the ACC Act.
  13. If the *ACC information* is also *national policing information*, subsection 59AA(1A) of the ACC Act requires the CEO to act in accordance with any policy determined, and direction given, in writing by the Board of the ACIC. Members of the ACIC Board are representatives from the ACIC's partner agencies, including the Commissioners or Chief Police Officers of Commonwealth, State and Territory policing agencies, the Secretary of the Department of Home Affairs, the Commissioner of the Australian Border Force, the Commissioner of Taxation of the Australian Taxation Office, the Chairperson of the Australian Securities and Investment Commission, and the Director General of Security of the Australian Security Intelligence Organisation.
  14. Subsection 59AB(1) of the ACC Act provides that the CEO may only disclose *ACC information* to prescribed bodies corporate and classes of bodies corporate if:
    - the CEO considers it is appropriate to do so
    - the information is necessary for a permissible purpose (as outlined above)
    - the body has undertaken not to use or further disclose the information except as authorised by the CEO or as required by a law of the Commonwealth, a State or a Territory
    - the body has undertaken to comply with any conditions specified by the CEO
    - the disclosure would not prejudice a person's safety or right to fair trial, and
    - the disclosure would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.
  15. Subsection 59AB(2) of the ACC Act further states that, if the *ACC information* is also *personal information* within the meaning of the *Privacy Act 1988* (Cth) (Privacy Act), the CEO may only disclose the information if the disclosure is necessary for the purposes of preventing, detecting, or facilitating the collection of criminal information and intelligence in relation to, criminal offences or activities that might constitute criminal offences.
  16. Section 59AAA of the ACC Act also provides rules that apply to the disclosure of information from a nationally coordinated criminal history check. This information may be disclosed to the person to whom it relates and to an 'accredited body', being a body approved by the CEO of the ACIC under subsection 46A(5) of the ACC Act to apply on behalf of individuals for police checks of those individuals. These rules reflect the fact that, unlike other national policing information services provided by the ACIC, the criminal history check is a service provided to members of the public for a fee.
  17. The requirements that must be satisfied prior to disclosing *ACC information* and *national policing information* under sections 59AA and 59AB of the ACC Act ensure that any interference with the right to privacy will not be arbitrary.

18. Using or disclosing information in the ACIC's possession in breach of these provisions is an offence punishable by up to 2 years imprisonment.
19. The ACIC is also subject to a robust accountability framework. Should an individual have a complaint about how the ACIC deals with their personal information, depending on the nature of that complaint, the ACIC's conduct can be examined by:
  - the Commonwealth Ombudsman – who can investigate complaints about the ACIC's actions and decisions to see if they are wrong, unjust, unlawful, discriminatory or just plain unfair
  - the Integrity Commissioner – who can investigate allegations of corrupt activity by current and former staff of the ACIC, and
  - the Parliamentary Joint Committee on Law Enforcement – whose role is to monitor and review the ACIC's performance.
20. While the ACIC is not subject to the Privacy Act, it is an agency that deals with a diverse range of sensitive information as part of its core business and is very experienced in ensuring information is appropriately handled and secured. The ACIC is also subject to the *Freedom of Information Act 1982* (Cth) and individuals have a right to seek access to and correction of their personal information where held by the ACIC.
21. As with the other types of sensitive information it holds, the ACIC has also put technical and administrative mechanisms in place to ensure that national policing information continues to be collected, used and stored securely.
22. The Regulations are reasonable, necessary and proportionate, as they do not unlawfully or arbitrarily interfere with the right to privacy and are consistent with Australia's obligations under Article 17 of the ICCPR.

*Right to Personal Liberty: Prohibition on Arbitrary or Unlawful Arrest*

23. Article 9(1) of the ICCPR provides that “no one shall be subjected to arbitrary arrest” and “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.
24. The UNHRC has stated that ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted broadly to include inappropriateness, injustice and a lack of predictability. Arbitrariness may occur if a law is too vague or permits powers to be exercised in ill-defined, broad circumstances. An arrest may be arbitrary if it is not reasonable and necessary in all circumstances, such as to prevent flight, interference with evidence or the recurrence of criminal conduct.
25. Form 2 in Schedule 3 of the Regulations provides a form that may be used to issue an arrest warrant for a witness in accordance with section 31 of the ACC Act. The Regulations do not alter the requirements for issuing an arrest warrant for a witness under section 31 of the ACC Act. Arrest warrants for witnesses can only be issued if the legal requirements under section 31 of the ACC Act have been satisfied, therefore any interference with the right to personal liberty will not be unlawful.
26. Section 31 of the ACC Act provides that an arrest warrant for a witness may only be issued by a Judge of the Federal Court or of the Supreme Court of a State or Territory sitting in chambers if, on the basis of evidence given under oath, there are reasonable grounds to believe that:

- the person has or is likely to commit an offence under section 30 of the ACC Act, or
  - the person has been summonsed under subsection 28(1) of the ACC Act and has, or is likely to abscond, or is attempting or likely to attempt to evade service of the summons, or
  - the person has been ordered to deliver a travel document to an examiner under section 24 of the ACC Act and is likely to leave Australia for the purpose of avoiding giving evidence before the examiner.
27. These requirements that must be satisfied under section 31 of the ACC Act ensure that an arrest warrant for a witness will only be issued when reasonable in the particular circumstances and that any interference with the right to personal liberty will not be arbitrary.
28. The Regulations are reasonable, necessary and proportionate, as they do not unlawfully or arbitrarily interfere with the right to personal liberty and are consistent with Australia's obligations under Article 9(1) of the ICCPR.

### **Conclusion**

29. The Regulations are compatible with human rights and are consistent with Australian's international obligations. To the extent that the Regulations may limit human rights, these limitations are reasonable, proportionate and lawful.

**Senator the Hon Linda Reynolds CSC, Assistant Minister for Home Affairs,  
Parliamentary Secretary to the Minister for Home Affairs**