



Australian Crime Commission (Criminal Intelligence Assessment) Instrument 2023

I, Anne Brown, Acting Chief Executive Officer of the Australian Criminal Intelligence Commission, having consulted with the Minister, make the following instrument under subsection 36B(2) of the *Australian Crime Commission Act 2002*.

Dated 19 July 2023

Anne Brown
Acting CEO of the Australian Criminal Intelligence Commission

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Definitions	1
5	Instrument application.....	2
6	Matters to be taken into account	2
7	Manner in which matters in paragraph 6 are to be taken into account	3
8	Matters not to be taken into account	3

1 Name

This instrument is the *Australian Crime Commission (Criminal Intelligence Assessment) Instrument 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	On the day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 36B(2) of the *Australian Crime Commission Act 2002*.

4 Definitions

In this instrument:

Act means the *Australian Crime Commission Act 2002*.

ACIC means the Australian Criminal Intelligence Commission, by which name and acronym the Australian Crime Commission may also be known¹.

adverse criminal intelligence assessment has the same meaning as contained within the Act.

assessment subject means the person who is the subject of a criminal intelligence assessment.

criminal intelligence assessment has the same meaning as contained within the Act.

¹ Subsection 7(1A) of the Act and section 8 of the *Australian Crime Commission Regulations 2018* provide that the Australian Crime Commission may also be known as the Australian Criminal Intelligence Commission and by the acronyms ACC and ACIC. In this document the acronym ACIC is used, as permitted by subsection 4(1A) of the Act.

prescribed administrative action has the same meaning as contained within the Act.

serious and organised crime has the same meaning as contained within the Act.

transport security card means:

- (a) an ASIC as defined in the *Aviation Transport Security Regulations 2005*;
or
- (b) an MSIC as defined in the *Maritime Transport and Offshore Facilities Security Regulations 2003*.

5 Instrument application

This instrument applies where the ACIC has intelligence or information which raises the question of whether it is necessary or desirable for prescribed administrative action to be taken in respect of the assessment subject.

6 Matters to be taken into account

- (1) In conducting a criminal intelligence assessment, the matters to be taken into account include:
 - (a) the nature of the relevant prescribed administrative action;
 - (b) intelligence or information available to the ACIC relevant to whether the assessment subject may commit, or assist another person to commit a serious and organised crime; and
 - (c) the extent to which the criminal intelligence assessment would prevent the use of aviation or maritime transport or offshore facilities in connection with serious crime.
- (2) In relation to subparagraph (1)(b):
 - (a) intelligence or information should be directly, indirectly or circumstantially relevant to the assessment subject and to the use of aviation, or maritime or offshore facilities, in connection with serious and organised crime.
 - (b) the nature and origin of the information relied on should be considered carefully. In particular, frivolous or vexatious complaints are not sufficient to suggest the assessment subject may commit, or assist another person to commit a serious and organised crime.
 - (c) incidental contact, or a passive association based on family connections to individuals suspected of being involved in serious and organised crime is not, of itself, sufficient to conclude the assessment subject may commit, or assist another person to commit a serious and organised crime.
 - (d) close or regular contact with individuals suspected of being involved in serious and organised crime may be sufficient in some cases to suggest that the assessment subject may commit, or assist another person to commit a serious and organised crime.

7 Manner in which matters in paragraph 6 are to be taken into account

- (1) When making an assessment, regard should be had to:
 - (a) the requirements of procedural fairness; and
 - (b) the reliability of information available about the assessment subject.
- (2) In regards to subparagraph 7(1)(a):
 - (a) adverse criminal intelligence assessments are to be made in good faith, and without bias.
 - (b) the reasons for the adverse criminal intelligence assessment are to be recorded in a statement of grounds.
 - (c) the criminal intelligence assessment process is to be as fair and transparent as the proper protection of law enforcement and security interests allow and taking account of the protective elements of Division 2A of Part II of the Act.
- (3) In regards to subparagraph 7(1)(b), matters affecting the reliability of information available about the assessment subject include:
 - (a) the credibility, nature and authenticity of the relevant facts, information and sources; and
 - (b) the currency of information; and
 - (c) whether or not information has been corroborated.

8 Matters not to be taken into account

- (1) The following matters are not to be taken into account when conducting a criminal intelligence assessment:
 - (a) information containing a legislative restriction preventing its use in a criminal intelligence assessment.
 - (b) in relation to transport security cards, the access level signified by the colour or different type of transport security card the assessment subject holds or has applied for.

Note: This is because transport security cards are evidence of a successful background check, regardless of the different type or colour of card.