

# **Australian Crime Commission Amendment Regulations 2004 (No. 1)**

## **2004 No. 31**

### **EXPLANATORY STATEMENT**

#### Statutory Rules 2004 No. 31

Issued by the authority of the Minister for Justice and Customs

Subject: *Australian Crime Commission Act 2002*

*Australian Crime Commission Amendment Regulations 2004 (No. 1)*

Section 62 of the *Australian Crime Commission Act 2002* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that by the Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Australian Crime Commission Regulations 2002* (the Principal Regulations) set out the various matters necessary for carrying out or giving effect to the Act.

The *Australian Crime Commission Amendment Regulations 2004* (the Amending Regulations) amend the Principal Regulations to prescribe certain provisions of Victorian laws to allow certain persons or bodies of the Australian Crime Commission (ACC) and Judges of the Federal Court and Federal Magistrates to exercise certain duties, functions or powers conferred on them by those Victorian laws.

The Commonwealth Government established the ACC as a cooperative agency to strengthen the fight against nationally significant crime. The ACC has duties, functions and powers conferred on it by the Act and can also have duties, functions and powers conferred on it by corresponding State laws.

The conferral of duties, functions and powers by State laws is necessary to enable the ACC to conduct an intelligence operation or an investigation in relation to a State offence that does not have a federal aspect. Section 55A of the Act provides for the conferral of such duties, functions and powers.

In particular, subsections 55A(4) and (5) of the Act provide for a law of a State to confer a duty, function or power on the Board, the Chair of the Board, the CEO, an examiner or a member of the staff of the ACC, that relates to the investigation of a matter relating to a relevant criminal activity, or the undertaking of an intelligence operation, respectively. Under paragraphs 55A(4)(b) and (5)(b), such a duty, function or power must be of the same kind conferred by the Act or any other Commonwealth Act, or be of a kind specified in regulations.

Subsections 55A(5B) and (5C) of the Act provide for a law of a State to confer a duty, function or power on a Judge of the Federal Court or a Federal Magistrate, that relates to the investigation of a matter relating to a relevant criminal activity, or the undertaking of an

intelligence operation, respectively. Under paragraphs 55A(5B)(b) and (5C)(b), such a duty, function or power must be of the same kind conferred by the Act or any other Commonwealth Act, or be of a kind specified in the regulations.

Section 4 of the Act provides that a relevant criminal activity means any circumstances implying, or any allegations, that a serious and organised crime may have been, may be being, or may in future be, committed against a law of the Commonwealth, of a State or of a Territory. Subsection 55A(14) provides that an intelligence operation means the collection, correlation, analysis or dissemination of criminal information and intelligence relating to a relevant criminal activity.

The purpose of the Amending Regulations is to prescribe certain conferrals under provisions of Victorian laws which have been identified as requiring prescription by the Principal Regulations for the purposes of paragraphs 55A(4)(b), 55A(5)(b), 55A(5B)(b) and 55A(5C)(b) of the Act in order for those conferrals to be operative.

Victoria has enacted the **Australian Crime Commission (State Provisions) Act 2003** to provide for the operation of the ACC in relation to serious and organised crime that is, or includes, an offence against a law of Victoria. The Victorian legislation complements the Act and the Principal Regulations by enabling the ACC to undertake certain functions in relation to State offences, irrespective of whether those offences have a federal aspect. This complementary legislative framework ensures that the ACC can operate as effectively and seamlessly as possible on a national basis.

The Amending Regulations also make a minor technical amendment to the Principal Regulations by inserting a heading into Schedule 4 to clarify that the laws listed in that Schedule are laws of New South Wales.

Details of the Amending Regulations are set out in the [Attachment](#).

The Amending Regulations which authorise conferrals under the **Australian Crime Commission (State Provisions) Regulations 2004** (Vic) commence on 12 March 2004. This is the date on which the **Australian Crime Commission (State Provisions) Regulations 2004** (Vic) commence. The balance of the proposed Regulations commence on gazettal.

Authority: Section 62 and section 55A of the *Australian Crime Commission Act 2002*.

## **ATTACHMENT**

### **Details of the *Australian Crime Commission Amendment Regulations 2004 (No. 1)***

**Regulation 1** prescribes how the regulations are to be cited.

**Regulation 2** provides that Schedule 2, which authorises the conferrals on Judges of the Federal Court or Federal Magistrates under the **Australian Crime Commission (State Provisions) Regulations 2004** (Vic), commences on 12 March 2004. That is the date on which the **Australian Crime Commission (State Provisions) Regulations 2004** (Vic) commence. It provides that all other parts of the regulations commence on

gazetted. The provision of the **Surveillance Devices Act 1999** (Vic) that is referred to in Schedule 1 commenced prior to the Amending Regulations being made.

**Regulation 3** provides that the Principal Regulations are amended in accordance with Schedules 1 and 2 of the Amending Regulations.

**Schedule 1, Item 1** inserts a new item 206A into Part 2 of the table in Schedule 3 of the Principal Regulations to authorise, for the purposes of subparagraphs 55A(4)(b)(ii) and/or (5)(b)(ii) of the Act, the conferral of a power on the CEO or examiner to approve a member of the staff of the ACC applying for a warrant authorising the use of a surveillance device under subsection 15(1) of the **Surveillance Devices Act 1999** (Vic).

Subsection 15(1) of the **Surveillance Devices Act 1999** (Vic) provides that a member of the staff of the ACC, with the approval of the CEO or an examiner, may, in certain circumstances, apply to the Court for a warrant authorising the use of a surveillance device.

Subregulation 8A(2) of the Principal Regulations provides that, for subparagraphs 55A(4)(b)(ii) and (5)(b)(ii) of the Act, each kind of duty, function or power under a provision of a State law mentioned in an item in Schedule 3 may be conferred on the person or body mentioned in the item. Item 206 of Schedule 3 of the Principal Regulations refers to the power, conferred on a member of the staff of the ACC under section 15 of the **Surveillance Devices Act 1999** (Vic), to apply for a surveillance device warrant. Schedule 1, Item 1 is necessary to ensure that the conferrals authorised in the Principal Regulations are sufficiently broad to ensure that the powers conferred under subsection 15(1) of the **Surveillance Devices Act 1999** (Vic) can be validly utilised.

**Schedule 1, item 2** inserts a new heading "Part 1: Laws of New South Wales" into Schedule 4 of the Principal Regulations to make clear that the laws listed in Schedule 4 under that heading are laws of New South Wales.

**Schedule 2, item 1** inserts a new subregulation 8A(3) into the Principal Regulations. The purpose of subregulation 8A(3) is to allow the duties, functions and powers under a State law that are listed in new Schedule 5 to be conferred on a Judge of the Federal Court or a Federal Magistrate.

**Schedule 2, item 2** inserts a new Schedule 5 into the Principal Regulations which, for the purposes of the new subregulation 8A(3), lists the powers and duties under the **Australian Crime Commission (State Provisions) Regulations 2004** (Vic) that may be conferred on a Judge of the Federal Court or a Federal Magistrate. These powers and duties are as follows:

- the conferral of a power on a Judge of the Federal Court to give directions in relation to service of a summons under regulation 5 of the **Australian Crime Commission (State Provisions) Regulations 2004** (Vic);
- the conferral of a duty on a Judge of the Federal Court to use a prescribed form when issuing a warrant for the apprehension of a witness under regulation 6 of the **Australian Crime Commission (State Provisions) Regulations 2004** (Vic); and

- the conferral of a duty on a Judge of the Federal Court or a Federal Magistrate to use a prescribed form when issuing a search warrant under regulation 7 of the **Australian Crime Commission (State Provisions) Regulations 2004** (Vic).