

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 296

Issued by the Authority of the Minister for Justice and Customs

Australian Crime Commission Act 2002

Australian Crime Commission Amendment Regulations 2005 (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 required or permitted by the Act to be prescribed, or 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.

Section 7A of the Act provides that the functions of the Australian Crime Commission (ACC) includes, among other things:

- (a) the collection, correlation, analysis and dissemination of criminal information and intelligence
- (b) intelligence operations, and
- (c) investigations of matters relating to federally relevant criminal activity.

The Act provides for the ACC to disseminate information with the approval of the Board or the CEO. Paragraph 59(7)(a) authorises the CEO of the ACC to disseminate information in the ACC's possession to a 'law enforcement agency'. Paragraph 59(7)(c) provides for the ACC to disseminate information to an agency or body of the Commonwealth prescribed by the Regulations. Section 19 provides that the ACC has the power to do all things necessary or reasonably incidental to the performance of its functions.

A recent Federal Court decision in *AA Pty Ltd v Australian Crime Commission* [2005] FCA 1178 (*AA v ACC*) has impacted on the ACC's ability to disseminate information under paragraph 59(7)(a) and 19 of the Act. The decision indicates that the ACC should not disseminate information under its section 19 'incidental power', because to do so circumvents the requirement for the CEO or the Board to approve the dissemination. The decision also indicates that information should not be disseminated to agencies that perform an 'ancillary' law enforcement role under paragraph 59(7)(a). Agencies are considered to perform an 'ancillary' law enforcement role where they only enforce a law or class of laws, rather than all the laws of a jurisdiction.

The decision in *AA v ACC* is under appeal.

Schedule 6 of the Regulations prescribes a range of Commonwealth, State and Territory agencies for the purposes of paragraph 59(7)(c) of the Act. The bodies and agencies listed in the proposed Schedule 6 are bodies and agencies that perform an ancillary or incidental law enforcement role. That is, Schedule 6 prescribes bodies and agencies that the ACC would have disseminated information to under paragraph 59(7)(a) or section 19 of the Act, but for the decision in *AA v ACC*. The

Regulations are for the avoidance of doubt and ensure the ACC can disseminate information in the performance of its functions.

The Regulations remove the reference to the Royal Commission into whether there has been Corrupt Criminal Conduct by any Western Australian police officer, appointed by the Governor of Western Australia under the *Royal Commissions Act 1968* (WA) on 12 December 2001, which no longer operates.

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

The Regulations commence the day after they are registered.

Consultation was unnecessary for this legislative instrument as this instrument is of a minor or machinery nature and does not substantially alter existing arrangements. It has no direct or substantial indirect effect on business.