

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 92**

Issued by the authority of the Attorney-General

*Public Order (Protection of Persons and Property) Act 1971*

*Public Order (Protection of Persons and Property) Amendment Regulations 2008 (No. 1)*

Part IIA of the *Public Order (Protection of Persons and Property) Act 1971* (the Act) sets out provisions for the protective security of prescribed federal courts, tribunals and other bodies having the power under Commonwealth law to require the production of documents or the answering of questions.

Section 13H of the Act provides that the Governor-General may make Regulations prescribing matters for the purposes of Part IIA or necessary or convenient to be prescribed for carrying out or giving effect to Part IIA. Section 13B of the Act allows the regulations to prescribe the bodies to which Part IIA applies.

The *Public Order (Protection of Persons and Property) Regulations 1999* (the Principal Regulations) currently prescribe six bodies to which Part IIA of the Act applies: the Federal Court of Australia; the Family Court of Australia; the Federal Magistrates Court; the Administrative Appeals Tribunal; the Australian Crime Commission; and the High Court of Australia.

The purpose of the Regulations is to amend the Principal Regulations to include the Integrity Commissioner as a prescribed court for the purposes of Part IIA of the Act. This enables police and other authorised officers to take protective security measures in relation to hearings under the *Law Enforcement Integrity Commission Act 2006*.

The Regulations also enable an authorised officer to disclose information obtained under the Act to the Integrity Commissioner if necessary in the interests of security. They also refer the reader to the relevant provisions of the *Privacy Act 1988*.

Background on the scope of Part IIA of the Act and on the Integrity Commissioner is at [Attachment A](#), and details of the Regulations are at [Attachment B](#).

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

The Regulations have been prepared in consultation with the Australian Commission for Law Enforcement Integrity to ensure they meet their requirements. Other Commonwealth courts and tribunals have been made aware of the amendment to the Regulations and given the opportunity to provide comments on the proposal.

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

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

**ATTACHMENT A****Background on the scope of Part IIA of the Act**

Part IIA of the Act provides for court administrators to authorise officers who may, when it is in the interests of security to do so, require persons to provide their name, address of their place of residence, their reason for being on court premises and evidence of their identity. Failing to provide such information on request or providing false information, without reasonable excuse, is an offence. The Act also provides authorised officers with the power to search a person, by frisk or screen search, to search a person's personal effects or to have the person deposit their personal effects when it is in the interests of security to do so. Where weapons are found during such searches, authorised officers may take and retain possession of such items for such time as it is necessary for the purposes of Part IIA. Where a person has refused to comply with these requirements or has no proper reason for being on court premises, an authorised officer may direct them to leave the court premises.

The Principal Regulations provide a scheme for identification of authorised officers (regulation 5) and provide procedures to be followed in the event of a frisk search being conducted on court premises (regulation 6). Each authorised officer, who is not a police officer, is to be issued with an identity card, which is to display a recent photograph and state that the holder of the card is an authorised officer for the purposes of Part IIA of the Act. If a frisk search is to be conducted the authorised officer must inform the person to be searched of the procedure that is to occur and the effect of the provisions of subsections 13D(4), (5) and (7) of the Act, which set out certain safeguards.

Regulation 8 of the Principal Regulations provides that, where information is obtained under section 13C of the Act, it may be disclosed to the Australian Protective Service, the Australian Federal Police or the police force of a State or Territory. An authorised officer may also disclose the information to specified officers of the court of which he or she is an authorised officer. An authorised officer will only be able to disclose the information if the officer believes on reasonable grounds that it is necessary in the interests of security to do so.

**Background on the Integrity Commissioner**

The Integrity Commissioner is an independent statutory authority established by the *Law Enforcement Integrity Commission Act 2006*. The Integrity Commissioner has power to investigate, report and conduct inquiries on corruption issues in relation to law enforcement agencies. The Integrity Commissioner is supported by the Australian Commission for Law Enforcement Integrity, which consists of the Integrity Commissioner, any Assistant Integrity Commissioner and staff employed under the *Public Service Act 1999*.

**ATTACHMENT B****Details of the proposed *Public Order (Protection of Persons and Property) Amendment Regulations 2008 (No. 1)*****Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Public Order (Protection of Persons and Property) Amendment Regulations 2008 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3 – Amendment of *Public Order (Protection of Persons and Property) Regulations 1999***

This regulation provides that the *Public Order (Protection of Persons and Property) Regulations 1999* are amended as set out in the Schedule.

**Schedule – Amendments****Item [1]**

This item defines the Integrity Commissioner for the purposes of the Regulations.

**Item [2]**

This item lists the Integrity Commissioner as a prescribed court for the purposes of Part IIA of the Act.

**Item [3]**

This item allows an authorised officer in relation to the Integrity Commissioner to disclose information obtained under section 13C of the Act to the Integrity Commissioner if necessary in the interests of security.

**Item [4]**

This item updates and consolidates the note following Regulation 8 to include the Integrity Commissioner. The note refers the reader to relevant parts of the *Privacy Act 1988* in relation to the prescribed courts.