

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 274

Issued by the authority of the Attorney-General

Crimes Act 1914
Crimes Amendment Regulation 2012 (No. 3)

Section 91 of the *Crimes Act 1914* (the Crimes Act) provides that the Governor-General may make regulations, not inconsistent with the Crimes Act, prescribing all matters required or permitted by the Crimes Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Crimes Act.

The purpose of this Regulation is to amend the *Crimes Regulations 1990* (the Principal Regulations) to prescribe the *Law Enforcement and National Security (Assumed Identities) Act 2010* (NSW) (the LENS Act) as a corresponding assumed identity law, for the purposes of the definition in section 15K of the Crimes Act.

Recognising the LENS Act as a corresponding assumed identity law would:

- allow the chief officer of a Commonwealth law enforcement agency or an intelligence agency to request a New South Wales issuing agency to produce evidence to support an assumed identity validly authorised under the Commonwealth assumed identity provisions (under section 15KX of the Crimes Act). For example, the New South Wales Roads and Traffic Authority could be requested to produce a drivers' license to support an assumed identity issued under the Crimes Act;
- allow an authority issued under the LENS Act to authorise the production of evidence of the assumed identity from a Commonwealth government issuing agency (under section 15KY of the Crimes Act). For example, Medicare could be requested to produce a Medicare card to support an assumed identity issued under the LENS Act; and
- ensure that officers who are authorised under the LENS Act to acquire and use an assumed identity would be protected from criminal liability under Commonwealth law when using that identity, to the extent that the conduct would not be criminal if the identity was their real identity (under section 15LA of the Crimes Act). For example, in order to substantiate an assumed identity, a New South Wales officer may be authorised to claim government unemployment benefits. While it is an offence for a person to receive an unemployment benefit if they are not unemployed, this would ensure that the officer is protected from criminal liability.

This Regulation also amends references in the Principal Regulations to renamed, restructured and repealed Acts.

Statement of Compatibility with Human Rights

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

Crimes Amendment Regulation 2012 (No. 3)

This legislative instrument 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 Crimes Act sets out the provisions for the issuing and use of assumed identities by Commonwealth law enforcement and intelligence agencies. An assumed identity is a false identity to investigate or gather intelligence on criminal activity, or to conduct other intelligence or security activities. Undercover operatives need to be able to substantiate their assumed identity with proper identification documents. Such documents include birth certificates, drivers' licences, passports and credit cards. In the absence of a verifiable identity the safety of undercover operatives can be jeopardised.

A national model law on assumed identities was developed in 2003 by a Joint Working Group of the then Standing Committee of Attorneys-General, as part of a broader set of nationally consistent cross-border investigative powers. The model law contains mutual recognition provisions, which means that an authority to acquire and use an assumed identity issued in one jurisdiction will be recognised and will have effect in all other jurisdictions which have enacted the model law. This assists in acquiring evidence to support an assumed identity from agencies in other jurisdictions. These mutual recognition arrangements apply where one jurisdiction recognises another jurisdiction's law as a corresponding assumed identities law.

Section 15K of the Crimes Act contains definitions for the provisions in Part IAC. This section defines a "corresponding assumed identities law" as a law (or provisions of a law) of a State or Territory which is prescribed by regulations.

This legislative instrument prescribes the New South Wales assumed identity law (contained in the LENS Act) as a corresponding assumed identity law for the purposes of the Crimes Act. It does not make any substantive amendments to Commonwealth law or policy.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

[The Hon Nicola Roxon MP, Attorney-General]

Details of the Regulation are set out in the Attachment.

The Crimes Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Relevant enforcement agencies and intelligence agencies were consulted on the development of these Regulations. These regulations are not likely to impact on business or restrict competition.

Authority: Section 91 of the *Crimes Act 1914*

Details of the Crimes Amendment Regulation 2012 (No. 3)

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Crimes Amendment Regulation 2012 (No. 3)*.

Section 2 – Commencement

This section provides that the Regulation will commence on the day after it is registered.

Section 3 – Amendment of Crimes Regulations 1990

This section provides that the *Crimes Regulations 1990* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – regulation 4BAB

Item 1 inserts the *Law Enforcement and National Security (Assumed Identities) Act 2010* (NSW) into the table of acts and provisions prescribed as corresponding assumed identity laws, as defined in section 15K of the Crimes Act. All provisions of this Act are prescribed.

Items [2] – regulation 4D

Existing regulation 4D prescribes corresponding witness identity protection laws, as defined in subsection 15M(1) of the Crimes Act.

Item 2 updates the reference to the Victorian witness identity protection provisions. These were previously contained within the *Evidence Act 1958* (Vic). With the passage of the *Evidence Act 2008* (Vic), the relevant provisions are now contained in the *Evidence (Miscellaneous Provisions) Act 1958* (Vic).

Item [3] – paragraph 6E(1)(ba)

Item 3 updates the reference to Queensland's forensics procedures provisions in the *Police Powers and Responsibilities Act 2000* (Qld). This Act has been restructured and the relevant provisions moved to a different chapter. The endnotes to the Act contain a table of renumbered provisions.

Items [4] to [6] – Schedule 5, clause 3.01, regulation 4BB

Schedule 5 of the Principal Regulations sets out transitional matters relating to the passage of the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*. Among other things, this Act replaced the existing provisions on assumed identities with the model law. The Act also provided that the repealed assumed identities provisions would continue to have transitional effect in relation to those jurisdictions which have not yet implemented the model law.

Existing regulation 4BB preserves the prescribed classes of person for the definition of authorising person under section 15XA of the repealed assumed identities provisions. With the recognition of the New South Wales assumed identities law, Western Australia and the Northern Territory are the only jurisdictions which are not participating jurisdictions. As such, the references to prescribed classes of person for New South Wales, Victoria, Queensland, South Australia and Tasmanian are no longer required. Items 4 to 6 remove the paragraphs which refer to these jurisdictions.

The references in paragraph (j) are no longer required as the Western Australian Anti-Corruption Commission was replaced in 2003 by the Corruption and Crime Commission.

Item [7] – Schedule 5, clause 3.01, regulation 4BC

Existing regulation 4BC preserves the prescribed bodies for the definition of State or Territory participating agency under section 15XA of the repealed assumed identities provisions. As Western Australia and the Northern Territory are the only jurisdictions which are not participating jurisdictions, the reference to the Victorian Office of Police Integrity is no longer required. Item 7 removes this reference.