**EXPLANATORY STATEMENT**

###### **Select Legislative Instrument 2013 No. 138**

Subject - *Law Enforcement Integrity Commissioner Act 2006*

 *Law Enforcement Integrity Commissioner Amendment (Integrity Agencies and Staff Members) Regulation 2013*

Under section 224 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act), the Governor‑General may make regulations on matters required or permitted by that Act to be prescribed.

This Regulation amends the provisions of the *Law Enforcement Integrity Commissioner Regulations 2006* (the LEIC Regulations)which prescribe what is an ‘integrity agency’ for the purposes of the LEIC Act and who is a ‘staff member’ of a law enforcement agency for the purposes of the LEIC Act.

The LEIC Act establishes the Australian Commission for Law Enforcement Integrity (ACLEI), which is responsible for preventing, detecting and investigating corruption within the law enforcement agencies within its jurisdiction. The LEIC Act contains mechanisms to enhance cooperation between ACLEI and State and Territory agencies with similar functions. Such agencies are referred to in the LEIC Act by the term ‘integrity agency’ which is defined in section 5 of the LEIC Act to means an agency that is established for purposes that include the purpose of investigating corruption in the police force of the State or Territory and is prescribed for the purposes of this definition.

A number of State and Territory agencies are prescribed for the purposes of this definition under Regulation 8 of the *Law Enforcement Integrity Commissioner Regulations 2006*. This Regulation updates the list contained in Regulation 8 by removing from the list agencies that no longer exist and adding agencies that have been recently established. This Regulation adds the Victorian Independent Broad-based Anti-corruption Commission, as well as the South Australian Police Ombudsman, the South Australian Independent Commissioner Against Corruption, the Tasmanian Ombudsman and the Tasmanian Integrity Commission as ‘integrity agency’ for the purposes of the LEIC Act.

The jurisdiction of ACLEI is limited to staff members of any agency defined as a ‘law enforcement agency’ by section 5 of the LEIC Act. Currently, this definition includes the Australian Federal Police, the Australian Crime Commission and the Australian Customs and Border Protection Service. ACLEI’s jurisdiction is limited to staff members of these agencies who meet the definition of ‘staff member’ found in section 10 of the LEIC Act.

The *Law Enforcement Integrity Legislation Amendment Act 2012* (the LEILA Act), which received Royal Assent on 12 December 2012, contains amendments to the LEIC Act to expand its jurisdiction to include all staff in the Australian Transaction Reports and Analysis Centre (commonly known as AUSTRAC), the CrimTrac Agency, and certain staff members of the Department of Agriculture, Fisheries and Forestry (DAFF). These amendments commence on 1 July 2013.

The amendments in the LEILA Act will add these three agencies to the definition of ‘law enforcement agency’ found in the LEIC Act and insert definitions of ‘staff member’ in relation to each of these agencies. In relation to AUSTRAC and CrimTrac, the definition of staff member seeks to encompass all persons who may be considered staff members of the agency. In relation to DAFF, the definition (to be included in subsection 10(2E) of the LEIC Act) includes the Secretary of DAFF and a person in a class of persons prescribed by Regulation for the purposes of this subsection.

This Regulation amends the LEIC Regulations to prescribe a class of persons for the purposes of the definition of staff member in the LEIC Act. The effect of this will be to bring persons within that class of persons with the jurisdiction of ACLEI. The Regulation prescribes staff of DAFF whose duties include the assessment, control and clearance of vessels and cargo imported into Australia, and members of staff of DAFF who have access to the Integrated Cargo System as ‘staff members’ for the purposes of subsection 10(2E) of the LEIC Act. The Regulation also prescribe a person holding, or acting in, the position of Regional Manager of DAFF as a ‘staff member’.

Further detail on the Regulation is contained in the Attachment.

The Office of Best Practice was consulted in the drafting of the Regulation and advised no Regulation Impact Statement was required.

This Regulation was developed by the Attorney-General’s Department in consultation with ACLEI and DAFF.

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

The Regulation commences on 1 July 2013.

Authority: Section 224 of the *Law Enforcement Integrity Commissioner Act 2006*

**Statement of Compatibility with Human Rights**

This Regulation 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.*

This Regulation updates the list of State and Territory agencies prescribed as ‘integrity agencies’ for the purposes of the LEIC Act, and prescribes staff members of DAFF for the purposes of the LEIC Act. Prescription of staff members brings these staff members within the jurisdiction of ACLEI.

This measure engages the right to privacy because the LEIC Act provides that person can be required to provide information to ACLEI or to answer questions. A failure to provide the information or answer a question is an offence. As such, this measure impacts the right to privacy of employees of DAFF being brought into ACLEI’s jurisdiction by the Regulation.

The ability to require an individual to provide information or answer questions is limited to situations where it will be relevant to an investigation of a corruption issue or the conduct of a public inquiry into corruption. The LEIC Act also prescribes how information that is provided by individuals to ACLEI is able to be used and disclosed. Disclosure is generally only permitted for the purposes of investigating a corruption issue or other purposes connected with the exercise of the functions of the Integrity Commissioner.

A persons privacy is also protected by the provision of a ’use immunity’ in relation to self-incriminatory evidence given by them at a hearing. This means that self‑incriminatory evidence is not admissible in evidence against the person in criminal proceedings.

The immunity protection does not apply to a small number of offences including providing false and misleading information or obstruction of a Commonwealth official.

As such, although the right to privacy is limited by this measure, it is appropriate and reasonable in the circumstances and includes protections to limit information from inappropriate use or disclosure.

**ATTACHMENT**

**Details of the *Law Enforcement Integrity Commissioner Amendment (Integrity Agencies and Staff Members) Regulation 2013***

**Section 1 – Name of Regulation**

This clause provides that the name of the Regulation is the *Law Enforcement Integrity Commissioner Amendment (Integrity Agencies and Staff Members) Regulation 2013*.

**Section 2 – Commencement**

The clause provides that the Regulation is to commence on 1 July 2013.

**Section 3 – Authority**

This is a formal clause that outlines that the Regulation is being made under the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act). Section 224 of the LEIC Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the LEIC Act.

**Section 4 – Schedule(s)**

This is the formal clause that identifies that the Regulation amends the *Law Enforcement Integrity Commissioner Regulations 2006* (the LEIC Regulations)*,* which is the instrument specified in Schedule 1.

**Schedule 1 – Amendments**

This schedule contains amendments to the LEIC Regulations.

**Item 1 – Paragraph 5(b)**

Regulation 5 of the LEIC Regulations prescribes, for the purposes of the definition of ‘integrity agency’ in subsection 5(1) of the LEIC Act, a number of State and Territory integrity agencies. These are State and Territory agencies which have similar functions to the Australian Commission for Law Enforcement Integrity (ACLEI). The LEIC Act allows ACLEI to share information and conduct joint investigations with agencies prescribed for this purpose.

Paragraph 5(b) of the LEIC Regulations prescribes the Victorian Office of Police Integrity (OPI). This agency no longer exists and its functions are performed by the Victorian Independent Broad-based Anti-corruption Commission (IBAC). This item will remove OPI from the list of prescribed integrity agencies and replace it with IBAC.

**Item 2 – Paragraph 5(e) and 5(f)**

Paragraph 5(e) of the LEIC Regulations prescribes the South Australian Police Complaints Authority as an integrity agency. Paragraph 5(f) prescribes the Tasmanian Ombudsman as an integrity agency.

The South Australian Police Complaints Authority is now known as the Police Ombudsman. South Australia has now also established the Independent Commissioner Against Corruption, the functions of which include investigating corruption. Furthermore, Tasmania has recently established an agency known as the Integrity Commission, the functions of which include investigating corruption.

This item will repeal current paragraphs 5(e) and 5(f) and replace with new paragraphs 5(e) and 5(f) which prescribe the South Australian Police Ombudsman, the South Australian Independent Commissioner Against Corruption, the Tasmanian Ombudsman and the Tasmanian Integrity Commission as integrity agencies.

**Item 3 – Regulation 8**

Regulation 8 of the LEIC Regulations currently prescribes a number of staff members of the Australian Customs and Border Protection Service(Customs) for the purposes of subsection 10(4) of the LEIC Act. The purpose of this regulation was to include the prescribed staff members within the jurisdiction of ACLEI. This regulation is now redundant, as following amendments to the LEIC Act contained in the *Crimes Legislation Amendment Act (No 2) 2011*, subsection 10(2A) of the LEIC Act places all Customs staff within ACLEI’s jurisdiction.

This item repeals Regulation 8 and replaces it with a new Regulation 8 which prescribes staff members of the Department of Agriculture, Fisheries and Forestry (DAFF) for the purposes of the LEIC Act. Amendments to the LEIC Act contained in the *Law Enforcement Integrity Legislation Amendment Act 2012* (the LEILA Act), which commence on 1 July 2013, will expand the jurisdiction of ACLEI to include certain staff members of DAFF. The LEILA Act will insert a new subsection 10(2E) into the LEIC Act which provides that the Secretary of DAFF, and staff members prescribed by Regulation for the purposes of the subsection are within ACLEI’s jurisdiction.

This item will insert a new subregulation 8(1) which prescribes, for the purposes of subsection 10(2E) of the LEIC Act, the following persons:

(a) persons holding, or acting in, the position of Regional Manager of the Agriculture Department

(b) members of staff of the Agriculture Department whose duties include undertaking assessment, control and clearance of vessels and cargo imported into Australia, and

(c) members of staff of the Agriculture Department who have access to the Integrated Cargo System.

‘Agriculture Department’ is the term used in the LEIC Act, as amended by the LEILA Act, to refer to DAFF.

The DAFF staff members being brought within ACLEI’s jurisdiction support or undertake frontline law enforcement and regulatory functions. The undertaking of these responsibilities mean that they pose an attractive target for criminal infiltration and compromise by organised crime.

The prescription of the above staff members of DAFF is limited to those staff who work within cargo operations business activities of the department – including desk based staff with access to the Integrated Cargo System and those who undertake inspection of cargo at ports or registered Quarantine Approved Premises for the purpose of releasing cargo into Australia. The inclusion of these staff is on the basis that these officers either work within a high risk environment – the waterfront and cargo environment – or they make decisions or have access to information about proposed importation.

Subregulation 8(1) is drafted by reference to the functions performed by staff, rather than the work areas, to ensure the Regulations remain current if DAFF undergoes organisational change. Based on DAFF’s current organisational structure, those staff within scope of this legislation include:

* persons holding, or acting in, the position of Regional Manager of the Agriculture Department
* members of staff of the Agriculture Department holding, or acting in, positions within the Branch responsible for cargo operations (currently known as the Cargo and Shipping Branch)
* members of staff of the Agriculture Department holding, or acting in, positions with responsibility for inspection and release of cargo within the branch responsible for managing industry arrangements (currently the Industry Arrangements and Performance Branch), and
* any staff member of the Agriculture Department who has access to the Integrated Cargo System.

Subregulation 8(2) clarifies that the Integrated Cargo System is a system managed by Customs.