





# **Australian Crime Commission Amendment (National Policing Information) Act 2016**

**No. 45, 2016**

**An Act to amend the *Australian Crime Commission Act 2002*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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## **An Act to amend the *Australian Crime Commission Act 2002*, and for related purposes**

[Assented to 5 May 2016]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Australian Crime Commission Amendment (National Policing Information) Act 2016*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence before 1 July 2016, they commence on that day.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Australian Crime Commission Act 2002**

### ***Australian Crime Commission Act 2002***

#### **1 Subsection 4(1)**

Insert:

***accredited body***: see subsection 46A(5).

***Charges Act*** means the *Australian Crime Commission (National Policing Information Charges) Act 2016*.

***Finance Minister*** means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

***national policing information*** means information that:

- (a) is collected by any of the following in the performance or exercise of its functions or powers:
  - (i) the Australian Federal Police;
  - (ii) the police force of a State;
  - (iii) a body prescribed by the regulations; and
- (b) is of a kind prescribed by the regulations;

but does not include the following:

- (c) any further information, opinion, interpretation or conclusion derived by the ACC from collected information;
- (d) any collected information included in an analysis, report or other presentation by the ACC of material referred to in paragraph (c).

***national policing information functions*** means the ACC's functions set out in paragraph 7A(fa).

#### **2 After subsection 7(1)**

Insert:

- (1A) The ACC may also be known by a name specified in the regulations.

### **3 After paragraph 7A(f)**

Insert:

- (fa) to provide systems and services relating to national policing information, including the following:
  - (i) collecting, correlating and organising national policing information;
  - (ii) providing access to national policing information;
  - (iii) supporting and facilitating the exchange of national policing information;
  - (iv) providing nationally coordinated criminal history checks on payment of a charge imposed by the Charges Act;

### **4 After paragraph 7C(1)(a)**

Insert:

- (aa) to determine priorities in relation to national policing information systems and services;

### **5 After paragraph 7C(1)(g)**

Insert:

- (ga) to make recommendations to the Minister about expenditure from the National Policing Information Systems and Services Special Account;
- (gb) to make recommendations to the Minister about charges for national policing information services (including criminal history checks);
- (gc) to determine, in writing, policies and give directions to the CEO in relation to the following:
  - (i) disclosing national policing information;
  - (ii) approving a body as an accredited body;
- (gd) to determine, in writing, any conditions or restrictions in relation to providing nationally coordinated criminal history checks;

### **6 At the end of section 7C**

Add:

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*Recommendations about charges for national policing information services*

- (7) Before the end of each financial year, the Board must recommend to the Minister in writing that the Minister either:
  - (a) vary the legislative instrument under section 7 of the Charges Act in accordance with the recommendation; or
  - (b) not vary the legislative instrument made under section 7 of the Charges Act.
- (8) In making the recommendation, the Board:
  - (a) must have regard to the principle that the charges and other fees imposed for national policing information services should cover the costs to the ACC of providing national policing information systems and services; and
  - (b) may have regard to any other matter the Board considers relevant.
- (9) If the Board recommends that the Minister vary the instrument, the recommendation must set out the matters considered by the Board.

**7 Section 7F**

Omit “7”, substitute “9”.

**8 At the end of Subdivision B of Division 1 of Part II**

Add:

**7L Recommendations to Inter-Governmental Committee in relation to Board**

- (1) The Board may make recommendations to the Inter-Governmental Committee in relation to the composition and functioning of the Board.
- (2) If the Board recommends that the composition of the Board be changed, the Board must also recommend what changes (if any) should be made to section 7F (quorum at Board meetings), section 7G (voting at Board meetings) and section 7J (resolutions outside of Board meetings).

## **9 Section 12 (heading)**

Repeal the heading, substitute:

## **12 Performance of operations/investigations functions**

## **10 After subsection 12(2)**

Insert:

## **13 Performance of national policing information functions**

- (1) The ACC must not perform its national policing information functions other than:
- (a) for purposes related to matters that are peculiarly adapted to the government of a nation and that cannot otherwise be carried on for the benefit of the nation; or
  - (b) for purposes involving, or for purposes related to, the collection and transmission of information by a communication using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
  - (c) in, or for purposes related to, a Territory; or
  - (d) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
  - (e) for purposes related to trade or commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) within a Territory, between a State and a Territory, or between 2 Territories; or
  - (f) for purposes related to external affairs, including:
    - (i) giving effect to an international agreement to which Australia is a party; or
    - (ii) addressing matters of international concern; or
    - (iii) by way of the performance of its functions in a place outside Australia; or
  - (g) for purposes related to preventing the influx of criminals into Australia; or

- (h) for purposes related to the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States; or
  - (i) by way of the provision of a service, for a purpose of the Commonwealth, to:
    - (i) the Commonwealth; or
    - (ii) an authority of the Commonwealth; or
  - (j) for purposes related to the executive power of the Commonwealth; or
  - (k) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.
- (2) In providing a nationally coordinated criminal history check, the ACC must comply with any condition or restriction determined by the Board.
- (3) In this section:
- Territory* means a Territory referred to in section 122 of the Constitution.

**11 Before subsection 12(3)**

Insert:

**14 Performance of functions—general**

**12 Subsection 12(3)**

Omit “(3)”, insert “(1)”.

**13 Subsection 12(6)**

Omit “(6)”, insert “(2)”.

**14 After section 12**

Insert:

## 15 Fees in relation to national policing information functions

- (1) The ACC may charge a fee for goods or services that are provided by the ACC in the course of performing its national policing information functions.
- (2) A fee charged under subsection (1) must not be such as to amount to taxation.
- (3) A fee charged under subsection (1):
  - (a) is a debt due to the Commonwealth; and
  - (b) is recoverable by the ACC, on behalf of the Commonwealth, in a court of competent jurisdiction.

### 15A National policing information charges

#### *Payment of charge*

- (1) Charge imposed by the Charges Act on an application for, or the provision of, a kind of national policing information service is payable to the ACC, on behalf of the Commonwealth.
- (2) If charge is imposed by the Charges Act on an application for, or the provision of, a kind of national policing information service, the amount of the charge:
  - (a) is a debt due to the Commonwealth; and
  - (b) is recoverable by the ACC, on behalf of the Commonwealth, in a court of competent jurisdiction.

#### *Waiver etc. of charge*

- (3) The ACC may, on behalf of the Commonwealth:
  - (a) waive or reduce, in a particular case or in particular cases, charge imposed by the Charges Act on an application for, or the provision of, a kind of national policing information service; or
  - (b) refund, in whole or in part, in a particular case or in particular cases, charge imposed by the Charges Act on an application for, or the provision of, a kind of national policing information service.

*Commonwealth liability for charge*

- (4) The Commonwealth is not liable to pay charge imposed by the Charges Act. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such a charge.
- (5) The Finance Minister may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (4) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.
- (6) Directions under subsection (5) have effect, and must be complied with, despite any other Commonwealth law.
- (7) Directions under subsection (5) are not legislative instruments.
- (8) In subsections (4) and (5):

*Commonwealth* includes a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that cannot be made liable to taxation by a Commonwealth law.

**15 Subsection 18(2)**

Omit all the words after “subsection (1)”, substitute:

with respect to:

- (a) particular ACC operations/investigations; or
- (b) a matter related to national policing information systems and services (including expenditure from the National Policing Information Systems and Services Special Account).

**16 Before subsection 46A(2)**

Insert:

*ACC operations/investigations*

**17 At the end of section 46A**

Add:

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*Accredited bodies*

- (5) The CEO may, in writing, approve any of the following as an **accredited body** for the purposes of receiving nationally coordinated criminal history checks:
  - (a) a body of the Commonwealth, a State or a Territory;
  - (b) any other body or organisation however described (including bodies or organisations outside Australia).
- (6) In deciding whether to approve a body or organisation, the CEO must act in accordance with any policy determined, and any direction given, in writing by the Board.
- (7) An instrument approving a body or organisation as an accredited body is not a legislative instrument.

**18 Section 55A (heading)**

Repeal the heading, substitute:

**55A Operation of State laws**

**19 At the end of subsection 55A(2)**

Add:

- ; (e) a duty, function or power relating to national policing information.

**20 After paragraph 55A(3)(b)**

Insert:

- ; or (c) perform a duty or function, or exercise a power, relating to national policing information;

**21 After subsection 55A(5)**

Insert:

- (5AA) A law of a State may confer on the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC a duty, function or power that relates to national policing information.

**22 After paragraph 55A(5A)(b)**

Insert:

; or (c) relating to national policing information;

**23 Subsections 55A(6) and (7)**

After “(5),” insert “(5AA),”.

**24 Subsection 55A(9)**

Omit “activities or to the undertaking of an intelligence operation”, substitute “activities, to the undertaking of an intelligence operation or to national policing information”.

**25 Section 55B**

Before “If:”, insert “(1)”.

**26 At the end of section 55B**

Add:

(2) If:

- (a) the ACC, the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC is performing a duty or function, or exercising a power, relating to national policing information; and
- (b) the body or person has a choice between exercising powers conferred by this Act or any other Act, and exercising powers conferred by a law of a State;

this Act or that other Act does not require the body or person to favour exercising the powers conferred by this Act or that other Act.

**27 Section 55C (heading)**

Repeal the heading, substitute:

**55C No obligation to perform duties etc.**

**28 After subsection 55C(2)**

Insert:

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- (2A) To avoid doubt, neither this Act nor any other law of the Commonwealth imposes any obligation on:
- (a) the ACC; or
  - (b) the Inter-Governmental Committee, the Board, the Chair of the Board, a member of the Board, the CEO, an examiner or a member of the staff of the ACC;
- to perform a duty or function, or exercise a power, that relates to national policing information if the imposition of the obligation is in contravention of any constitutional doctrine restricting the duties that may be conferred on authorities of the Commonwealth or members of authorities of the Commonwealth.

## 29 After subsection 59AA(1)

Insert:

- (1A) In deciding whether to disclose national policing information under subsection (1), the CEO must act in accordance with any policy determined, and any direction given, in writing by the Board.
- (1B) The CEO must obtain the approval of the Board before disclosing national policing information under subsection (1) to a body that is not one of the following:
- (a) the Australian Federal Police;
  - (b) a Police Force of a State;
  - (c) the Department administered by the Minister who administers the *Australian Border Force Act 2015*;
  - (d) the Australian Securities and Investments Commission;
  - (e) the Australian Security Intelligence Organisation;
  - (f) the Australian Taxation Office;
  - (g) a body prescribed by the regulations.

## 30 After section 59AA

Insert:

### 59AAA Disclosure of information from criminal history checks

The CEO may disclose information from a nationally coordinated criminal history check to an accredited body, or to the person to whom the check relates, if:

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- (a) disclosing the information would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply; and
- (b) disclosing the information would not be contrary to any conditions or restrictions determined by the Board in relation to providing nationally coordinated criminal history checks.

### **31 After subsection 59AB(2)**

Insert:

- (2A) In deciding whether to disclose national policing information under subsection (1), the CEO must act in accordance with any policy determined, and any direction given, in writing by the Board.
- (2B) The CEO must obtain the approval of the Board before disclosing national policing information under subsection (1).

### **32 After section 59B**

Insert:

#### **59C National Policing Information Systems and Services Special Account**

- (1) The National Policing Information Systems and Services Special Account is continued in existence.

Note: The Account was established by *Financial Management and Accountability Determination 2006/07 — National Policing Information Systems and Services Special Account Establishment 2006*.

- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

#### **59D Credits to the Account**

There must be credited to the Account amounts equal to the following:

- (a) amounts paid to the ACC by way of charge imposed by the Charges Act;
- (b) amounts received by way of fees referred to in section 15 of this Act;

- (c) any other amounts received by the ACC in connection with the performance of national policing information functions.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

### **59E Purposes of the Account**

The purposes of the Account are as follows:

- (a) paying for scoping, developing, procuring, implementing and operating information technology systems and services in connection with the national policing information functions;
- (b) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the national policing information functions;
- (c) paying any remuneration and allowances payable to any person under this Act in relation to the national policing information functions;
- (d) meeting the expenses of administering the Account;
- (e) repaying to a State all or part of an amount received from the State in connection with the performance of national policing information functions, if it is not required for a purpose for which it was paid;
- (f) paying refunds in accordance with section 15A;
- (g) reducing the balance of the Account (and therefore the available appropriation for the Account) without making a real or notional payment.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

## **Schedule 2—Amendments of other Acts**

### **Part 1—Amendments**

#### *Crimes Act 1914*

**1 Subsection 23YUD(1A)**

Omit “CrimTrac”, substitute “The ACC”.

**2 Subsection 23YUD(1AA)**

Omit “CrimTrac” (wherever occurring), substitute “the ACC”.

**3 Subsection 23YUD(3) (definition of *CrimTrac*)**

Repeal the definition.

**4 Section 85ZL (paragraph (e) of the definition of *law enforcement agency*)**

Repeal the paragraph.

#### *Law Enforcement Integrity Commissioner Act 2006*

**5 Subsection 5(1) (paragraph (bc) of the definition of *head*)**

Repeal the paragraph.

**6 Subsection 5(1) (paragraph (bc) of the definition of *law enforcement agency*)**

Repeal the paragraph.

**7 Subsection 10(2D)**

Repeal the subsection.

**8 Paragraph 10(5)(bc)**

Repeal the paragraph.

*Privacy Act 1988*

**9 Subsection 6(1) (paragraph (ba) of the definition of  
*enforcement body*)**

Repeal the paragraph.

## **Part 2—Transitional provisions**

### **10 Arrangement in relation to database information**

An arrangement under subsection 23YUD(1A) of the *Crimes Act 1914* between CrimTrac and a participating jurisdiction that is in effect immediately before the commencement of this Schedule is taken, immediately after that commencement, to be an arrangement between the ACC and the participating jurisdiction.

### **11 Law enforcement integrity**

- (1) The *Law Enforcement Integrity Commissioner Act 2006*, as in force immediately before the commencement of this Schedule, continues to apply in relation to conduct engaged in before that commencement by a staff member of the CrimTrac Agency.
- (2) Without limiting subitem (1), if any process under that Act in relation to such conduct had begun but had not concluded before the commencement of this Schedule, then the process may be completed under that Act after that commencement.
- (3) For the purposes of the continued application of the *Law Enforcement Integrity Commissioner Act 2006* in relation to such conduct:
  - (a) the law enforcement agency concerned is taken to be the ACC; and
  - (b) the head of that law enforcement agency is taken to be the CEO of the ACC.

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[*Minister's second reading speech made in—  
House of Representatives on 3 December 2015  
Senate on 4 May 2016*]

(222/15)

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