

# Crime and Corruption Regulation 2015

Explanatory notes for SL 2015 No. 80

made under the

*Crime and Corruption Act 2001*

## General Outline

### Short title

*Crime and Corruption Regulation 2015*

### Authorising law

Sections 86(4)(c), 112(2), 119C(2)(b)(ii), 119I(2)(b)(ii), 121(4)(c), 148(3)(d), 156(1), 166(6), 348 and schedule 2 of the *Crime and Corruption Act 2001*

### Policy objectives and the reasons for them

The *Crime and Corruption Regulation 2005* (the 2005 Regulation) supports the effective operation of the *Crime and Corruption Act 2001* (the CC Act). The main purposes of the CC Act are:

- (a) to combat and reduce the incidence of major crime; and
- (b) to reduce the incidence of corruption in the public sector.

The CC Act also has the purpose to facilitate the Crime and Corruption Commission's (CCC) involvement in a confiscation related investigation.

Section 348(1) of the CC Act provides the Governor in Council may make regulations under the CC Act. Without limiting this power, section 348(2) states that such a regulation may provide for procedures to be followed in proceedings before the CCC or procedures to be observed by CCC officers and other persons performing the CCC's functions or exercising the CCC's power, or declare an entity to be a criminal organisation.

The 2005 Regulation currently prescribes:

- (a) information that must be included in applications for certain warrants, including search warrants, surveillance warrants and covert search warrants pursuant to sections 86(4)(c), 121(4)(c) and 148(3)(d) of the CC Act;
- (b) information that must be included in monitoring or suspension order applications pursuant to sections 119C(2)(b)(ii) and 119I(2)(b)(ii) of the CC Act;

- (c) information about certain CCC activities that must be included in a report to the Supreme Court judge or Public Interest Monitor (PIM) in relation to covert search warrants pursuant to section 156(1) of the CC Act;
- (d) information about warrant applications and disclosure of information obtained under search, surveillance and covert search warrants that must be kept on the CCC's register of prescribed information pursuant to section 166(6) of the CC Act;
- (e) information that must be included in a receipt for seized property pursuant to section 112(2) of the CC Act;
- (f) declared agencies (that is, an agency to whom the CCC may provide certain information and who may assist the CCC in controlled operations and activities when performing its corruption function) under schedule 2 to the CC Act;
- (g) appointments and units of public administration for the purposes of identifying prescribed persons against whom the CCC may bring disciplinary proceedings in the Queensland Civil and Administrative Tribunal following a corruption investigation pursuant to section 50(4) of the CC Act;
- (h) entities prescribed as units of public administration (which are subject to the CCC's corruption jurisdiction) pursuant to section 20(1)(h) of the CC Act; and
- (i) entities declared to be criminal organisations pursuant to section 348 and schedule 2 to the CC Act.

Under section 54 of the *Statutory Instruments Act 1992*, the 2005 Regulation will expire on 1 September 2015.

The *Crime and Corruption Regulation 2015* (2015 Regulation) remakes the 2005 Regulation as it is essential to support the effective operation of the CCC. The 2015 Regulation provides for the same matters as the 2005 Regulation with some changes.

The 2015 Regulation removes provisions from the 2005 Regulation that are no longer required (schedules 2 and 3 in the 2005 Regulation); corrects incorrect references to CC Act provisions; updates and corrects references to, and the associated legislation for, interstate and Commonwealth integrity bodies that are declared agencies (including insertion of additional interstate integrity bodies established since the 2005 Regulation); redrafts some provisions to clarify their operation and provide consistency between similar provisions; and makes limited changes to reflect contemporary drafting practices.

Section 34A(1) of the CC Act provides that when deciding whether to recommend an amendment to the 2005 Regulation to declare an entity a criminal organisation, the Minister may have regard to certain matters listed in that section. The Taskforce into Organised Crime Legislation 2015 (Taskforce) is to review the former Government's organised crime legislation introduced in 2013, which will include the prescription of criminal organisations in the 2005 Regulation. Given the requirement in section 348A is not mandatory and the Taskforce is to report on this matter, no changes to the list of criminal organisations is proposed as this will be considered as part of the Government's response to the report by the Taskforce.

The 2015 Regulation will commence on 1 September 2015.

---

## **Achievement of policy objectives**

The objective of the 2015 Regulation is achieved by the remaking of the 2005 Regulation with necessary amendments, and setting a commencement date of 1 September 2015.

## **Consistency with policy objectives of authorising law**

The 2015 Regulation is consistent with the policy objectives of the CC Act.

## **Inconsistency with policy objectives of other legislation**

The 2015 Regulation is not inconsistent with policy objectives of other legislation.

## **Benefits and costs of implementation**

The 2015 Regulation will ensure that regulations remain in place which are essential to support the effective operation of the CCC.

There are no anticipated costs associated with the implementation of the 2015 Regulation.

## **Consistency with fundamental legislative principles**

The 2015 Regulation does not conflict with the fundamental legislative principles.

## **Consultation**

The then Chief Justice, Chief Magistrate, the CCC, the Parliamentary Crime and Corruption Committee (PCCC), the Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner), the PIM, the Queensland Law Society (QLS), the Bar Association of Queensland (BAQ), the Queensland Council of Civil Liberties (QCCL) and the Office of Best Practice Regulation (OBPR) were consulted about the making of the 2015 Regulation.

The CCC supports the making of the 2015 Regulation and the changes that have been made from the 2005 Regulation. The then Chief Justice, Chief Magistrate and the QLS raised no issues with the 2005 Regulation.

The PCCC and Parliamentary Commissioner identified an incorrect reference to the CC Act, which is corrected in the 2015 Regulation. The Parliamentary Commissioner queried why the register requiring information about certain disclosures of information under section 130 of the CC Act did not also apply to corruption investigations and a proceeding in which the information is evidence. This cannot occur without amendments to the CC Act; and consideration will be given to such amendments when the CC Act is next reviewed.

The BAQ queried why the Special Air Services (SAS) of the Australian Defence Force and the general prescription of Royal Commissions or commissions of inquiry established under Commonwealth or State laws for inquiring into allegations involving the commission of criminal offences are prescribed as declared agencies. It is in the public interest that the CCC is able to provide certain information to the SAS in the limited circumstances specified in the regulation (namely to reduce the risk of serious injury to a person). The general prescription of Royal Commissions and commissions of inquiry established under Commonwealth or State laws for inquiring into allegations involving the commission of criminal offences enables the CCC to urgently communicate, where appropriate, information to any newly established Royal Commission or commission of inquiry without the delay associated with amending the regulations to prescribe the newly established commission as a declared agency.

The BAQ also expressed the view that section 18 of the 2005 Regulation, which declares entities to be criminal organisations, should not be remade. As noted above any changes to the list of criminal organisations will be considered as part of the Government's response to the report by the Taskforce into Organised Crime Legislation 2015.

The OBPR advised that the provisions in the 2015 Regulation are either excluded from the Regulatory Impact Statement (RIS) system or are otherwise unlikely to result in significant adverse impacts so further analysis under the RIS system is not required.