



**NATIONAL CRIME AUTHORITY (STATE PROVISIONS)
AMENDMENT ACT 1995**

No. 79 of 1995

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**NATIONAL CRIME AUTHORITY (STATE PROVISIONS)
AMENDMENT ACT 1995**

No. 79 of 1995

AN ACT to amend the *National Crime Authority (State Provisions) Act 1985*

[Royal Assent 14 November 1995]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *National Crime Authority (State Provisions) Amendment Act 1995*.

Commencement

2—This Act commences on a day or days to be proclaimed.

Principal Act

3—In this Act, the *National Crime Authority (State Provisions) Act 1985** is referred to as the Principal Act.

Section 5 amended (Functions under laws of the State)

4—Section 5 of the Principal Act is amended by inserting after subsection (5) the following subsection:—

(6) The Minister may, with the approval of the Inter-Governmental Committee—

- (a) in a notice under subsection (1) referring a matter to the Authority, state that the reference is related to another reference; or
- (b) in a notice in writing to the Authority, state that a reference already made to the Authority by the Minister is related to another reference.

Section 6 amended (Performance of functions)

5—Section 6 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) Where, in carrying out an investigation under section 5 (4), the Authority obtains evidence of an offence against a law of the Commonwealth or of a State or Territory, being evidence that would be admissible in a prosecution for the offence, the Authority must assemble the evidence and give it to—

- (a) the Attorney-General of the Commonwealth or of the State, as the case requires; or
- (b) the relevant law enforcement agency; or
- (c) any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of the State or Territory to prosecute the offence.

* No. 50 of 1985. Amended by No. 22 of 1989, No. 6 of 1992 and No. 67 of 1994.

Section 9 amended (Co-operation with law enforcement agencies)

6—Section 9 of the Principal Act is amended as follows:—

- (a) by inserting “(1)” before “In performing”;
- (b) by adding the following subsection:—

(2) In performing its special functions, the Authority may co-ordinate its activities with the activities of authorities and persons in other countries performing functions similar to the functions of the Authority.

Section 12 amended (Search warrants)

7—Section 12 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “of the Authority”;
- (b) by omitting from subsection (1) (a) “Authority” (first occurring) and substituting “member”;
- (c) by omitting from subsection (1) (b) “Authority” and substituting “member”;
- (d) by omitting from subsection (8) (b) “the Authority” (second occurring) and substituting “a member”;
- (e) by omitting from subsection (8) (b) (i) “authority” and substituting “member”;
- (f) by omitting from subsection (8) (b) (ii) “Authority” and substituting “member”;
- (g) by omitting from subsection (9) “Authority” (twice occurring) and substituting “member”.

Section 13 amended (Application by telephone for search warrants)

8—Section 13 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “the Authority” (first occurring) and substituting “a member”;
- (b) by omitting from subsection (1) “a member of the Authority” and substituting “the member”.

Section 15 amended (Order for delivery to Authority of passport of witness)

9—Section 15 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “of the Authority”;
- (b) by omitting from subsection (3) “the Authority” (first occurring) and substituting “a member”;
- (c) by omitting from subsection (4) “the Authority” (second occurring) and substituting “a member”.

Section 16 amended (Hearings)

10—Section 16 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (2) “or acting members”;
- (b) by omitting subsection (3) and substituting the following subsections:—

(3) The Chairperson is to preside at all hearings at which the Chairperson is present.

(3A) If the Chairperson is not present at a hearing at which there are 2 or more members, the members present are to elect one of their number to preside at that hearing.

(3B) Questions arising at a hearing are to be determined by a majority of the votes of the members present.

(3C) The person presiding at a hearing has a deliberative vote and, if necessary, also has a casting vote.

(3D) The Authority may regulate the conduct of proceedings at a hearing as it thinks fit.

- (c) by omitting from subsection (7) “or an acting member, counsel assisting the Authority in relation to the matter that is the subject of the hearing”;
- (d) by inserting after subsection (9) the following subsections:—

(9A) Subject to subsection (9B), the Chairperson may, in writing, vary or revoke a direction under subsection (9).

(9B) The Chairperson must not vary or revoke a direction if to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

Section 17 amended (Power to summon witness and take evidence)

11—Section 17 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “or an acting member”;
- (b) by omitting from subsection (3) “unless the Authority” and substituting “unless the member issuing the summons”;
- (c) by omitting from subsection (4) “or acting member”;
- (d) by omitting from subsection (5) “or acting member” (wherever occurring);
- (e) by omitting from subsection (6) “Chairman or by a person acting as Chairman” and substituting “Chairperson”.

Section 18 amended (Power to obtain documents)

12—Section 18 (1) of the Principal Act is amended by omitting from subsection (1) “or acting member” (wherever occurring).

Sections 18A and 18B inserted

13—After section 18 of the Principal Act, the following section is inserted:—

Disclosure of summons or notice, &c., may be prohibited

18A—(1) The member issuing a summons under section 17 or a notice under section 18 must, or may, as provided in subsection (2), include in it a notation to the effect that disclosure of information about the summons or notice, or any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation.

(2) A notation must not be included in the summons or notice except as follows:—

(a) the member must include the notation if satisfied that failure to do so would reasonably be expected to prejudice—

- (i) the safety or reputation of a person; or
- (ii) the fair trial of a person who has been or may be charged with an offence; or
- (iii) the effectiveness of an investigation;

(b) the member may include the notation if satisfied that failure to do so might prejudice—

- (i) the safety or reputation of a person; or
- (ii) the fair trial of a person who has been or may be charged with an offence; or
- (iii) the effectiveness of an investigation;

(c) the member may include the notation if satisfied that failure to do so might otherwise be contrary to the public interest.

(3) If a notation is included in the summons or notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 18B on the person who was served with, or otherwise given, the summons or notice.

(4) If, after the Authority has concluded the investigation concerned—

(a) no evidence of an offence has been obtained as described in section 6 (1); or

(b) evidence of an offence or offences has been assembled and given as required by section 6 (1) and the Authority has been advised that no person will be prosecuted; or

(c) evidence of an offence or offences committed by only one person has been assembled and given as required by section 6 (1) and criminal proceedings have begun against that person; or

(d) evidence of an offence or offences committed by 2 or more persons has been assembled and given as required by section 6 (1) and—

- (i) criminal proceedings have begun against all those persons; or
- (ii) criminal proceedings have begun against one or more of those persons and the Authority has been advised that none of the other of those persons will be prosecuted—

all the notations that were included under this section in any summonses or notices relating to the investigation are cancelled by this subsection.

(5) If a notation is cancelled by subsection (4), the Authority must serve a written notice of that fact on each person who was served with, or otherwise given, the summons or notice containing the notation.

(6) If a notation made under subsection (1) is inconsistent with a direction given under section 16 (9), the notation has no effect to the extent of the inconsistency.

Offences of disclosure

18B—(1) A person who is served with, or otherwise given, a summons or notice containing a notation made under section 18A must not disclose—

- (a) the existence of the summons or notice or any information about it; or
- (b) the existence of, or any information about, any official matter connected with the summons or notice.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months.

(2) Subsection (1) does not prevent the person from making a disclosure—

- (a) in accordance with the circumstances, if any, specified in the notation; or

- (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
 - (c) to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or
 - (d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
 - (e) if the person is a legal practitioner—
 - (i) for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client; or
 - (ii) for the purpose of obtaining the agreement of another person under section 19 (3) to the legal practitioner answering a question or producing a document at a hearing before the Authority.
- (3) If a disclosure is made to a person as permitted by subsection (2) or (4), the following provisions apply:—
- (a) while he or she is a person of a kind to whom a disclosure is so permitted to be made, he or she must not disclose the existence of, or any information about, the summons or notice, or any official matter connected with it, except as permitted by subsection (4);
 - (b) while he or she is no longer such a person, he or she must not, in any circumstances, make a record of, or disclose the existence of, the summons, notice or matter, or disclose any information about any of them.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months.

(4) A person to whom information has been disclosed, as permitted by subsection (2) or this subsection, may disclose that information—

(a) if the person is an officer or agent of a body corporate referred to in subsection (2) (*d*)—

(i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or

(ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or

(iii) to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or

(b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or obtaining assistance under section 27 of the Commonwealth Act, relating to the summons, notice or matter; or

(c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation relating to the summons, notice or matter.

(5) This section ceases to apply to a summons or notice after—

(a) the notation contained in the summons or notice is cancelled by section 18A (4); or

(b) 5 years elapse after the issue of the summons or notice—

whichever is sooner.

(6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

(7) In this section—

“legal aid officer” means—

- (a) a member, or a member of staff, of a legal aid commission within the meaning of the *Commonwealth Legal Aid Act 1977* of the Commonwealth; or
- (b) a person to whom the Attorney-General of the Commonwealth has delegated his or her powers and functions under section 27 of the Commonwealth Act;

“official matter” means any of the following (whether past, present or contingent):—

- (a) a reference under section 13 or 14 of the Commonwealth Act;
- (b) an investigation conducted or co-ordinated by the Authority;
- (c) a hearing held by the Authority;
- (d) court proceedings.

Section 19 amended (Failure of witnesses to attend and answer questions)

14—Section 19 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) (b) “or an acting member”;
- (b) by omitting from subsection (2) (b) “or acting member”;
- (c) by omitting from subsection (3) “or acting member”.

Section 20 amended (Warrant for arrest of witness)

15—Section 20 of the Principal Act is amended as follows:—

(a) by omitting subsection (1) and substituting the following subsection:—

(1) Where, upon application by or on behalf of the Authority, a Judge of the Federal Court sitting in chambers or the Supreme Court is satisfied by evidence on oath that there are reasonable grounds to believe—

(a) that a person who has been ordered, under section 15, to deliver the person's passport to the Authority, whether or not the person has complied with the order, is nevertheless likely to leave Australia for the purpose of avoiding giving evidence before the Authority; or

(b) that a person in relation to whom a summons has been issued under section 17 (1)—

(i) has absconded or is likely to abscond; or

(ii) is otherwise attempting, or is otherwise likely to attempt, to evade service of the summons; or

(c) that a person has committed an offence under section 19(1) or is likely to do so—

the Judge or the Supreme Court may issue a warrant for the apprehension of the person.

(b) by inserting after subsection (2) the following subsection:—

(2A) The warrant may be executed notwithstanding that the warrant is not at the time in the possession of the person executing it.

Section 24 amended (Protection of witnesses)

16—Section 24 of the Principal Act is amended by omitting “or acting member” (wherever occurring).

Section 25 amended (Contempt of Authority)

17—Section 25 (a) of the Principal Act is amended by omitting “or an acting member”.

Section 27 amended (Powers of acting members of the Authority)

18—Section 27 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “Chairman” (twice occurring) and substituting “Chairperson”;
- (b) by omitting from subsection (3) “Chairman” and substituting “Chairperson”.

Section 29 amended (Protection of members, &c.)

19—Section 29 (1) of the Principal Act is amended by omitting “or an acting member” and “or acting member”.

Section 30 amended (Appointment of Judge as member not to affect tenure, &c.)

20—Section 30 (1) of the Principal Act is amended by omitting “or acting member” (wherever occurring).

Section 31 amended (Secrecy)

21—Section 31 (1) (a) of the Principal Act is amended by omitting “or acting member”.

Transitional provision

22—Section 6 of the Principal Act, as amended by section 5 of this Act, applies to investigations started before the commencement of section 5 of this Act as well as to investigations started after that commencement.

*[Second reading presentation speech made in:—
House of Assembly on 27 October 1995
Legislative Council on 18 October 1995]*

