

**NATIONAL CRIME AUTHORITY (STATE PROVISIONS)
AMENDMENT ACT 1994 No. 62**

NEW SOUTH WALES



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**NATIONAL CRIME AUTHORITY (STATE PROVISIONS)
AMENDMENT ACT 1994 No. 62**

NEW SOUTH WALES



Act No. 62, 1994

An Act to amend the National Crime Authority (State Provisions) Act 1984 to ensure that that Act conforms with the National Crime Authority Act 1984 of the Commonwealth. [Assented to 23 November 1994]

The Legislature of New South Wales enacts:**Short title**

1 This Act may be cited as the National Crime Authority (State Provisions) Amendment Act 1994.

Commencement

2 This Act commences on a day or days to be appointed by proclamation.

Amendment of National Crime Authority (State Provisions) Act 1984 No. 157

3. The National Crime Authority (State Provisions) Act 1984 is amended as set out in Schedule 1.

Transitional provision

4. Section 6 of the National Crime Authority (State Provisions) Act 1984 (as amended by Schedule 1 (2) to this Act) applies to investigations started before the commencement of that amendment as well as to investigations started after that commencement.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 5 (Functions under laws of the State):

After section 5 (5), insert:

(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.

SCHEDULE 1—AMENDMENTS—*continued***(2) Section 6 (Performance of functions):**

Omit section 6 (1), insert instead:

(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.

(3) Section 12 (Search warrants):

From section 12 (8) (b) (ii), omit “the Authority”, insert instead “the member”.

(4) Section 16 (Hearings):

Omit “Chairman” wherever occurring, insert instead “Chairperson”.

(5) Section 17 (Power to summon witnesses and take evidence):

From section 17 (6), omit “Chairman”, insert instead “Chairperson”.

(6) Sections 18A and 18B:

After section 18, insert:

Disclosure of summons or notice etc. 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.

SCHEDULE 1 — AMENDMENTS — *continued*

(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

SCHEDULE 1—AMENDMENTS—*continued*

(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), a 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: 20 penalty units or imprisonment for 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

SCHEDULE 1—AMENDMENTS—*continued*

- (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: 20 penalty units or imprisonment for 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):

SCHEDULE 1—AMENDMENTS—*continued*

- (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

SCHEDULE 1—AMENDMENTS—*continued*

- (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.

(7) Section 20 (**Warrant for arrest of witness**):

After section 20 (1) (b), insert:

; or

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

(8) Section 27 (**Powers of acting members of the Authority**):

Omit “Chairman” wherever occurring, insert instead “Chairperson”.

*[Minister's second reading speech made in—
Legislative Council on 13 October 1994
Legislative Assembly on 26 October 1994]*