



Western Australia

National Crime Authority (State Provisions) Act 1985

This Act was repealed by the *Australian Crime Commission (Western Australia) Act 2004* s. 67 (No. 74 of 2004) as at 1 Feb 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130).

National Crime Authority (State Provisions) Act 1985

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National Crime Authority (State Provisions) Act 1985

An Act to make provision for the operation of the National Crime Authority in Western Australia.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

1. Short title

This Act may be cited as the *National Crime Authority (State Provisions) Act 1985*.

2. Commencement

This Act shall commence on the day on which it is assented to by the Governor.

3. Interpretation

(1) In this Act, unless the contrary intention appears —

“**Attorney General**” means the Attorney General of the State;

“**Commonwealth Act**” means the *National Crime Authority Act 1984* of the Commonwealth;

“**Commonwealth Minister**” means the Minister of State of the Commonwealth administering the Commonwealth Act;

“hearing” means a hearing for the purposes of a special investigation;

“Minister” means the Minister of the Crown of the State administering this Act;

“prescribed” means prescribed by this Act or by regulations made under this Act;

“Registrar”, in relation to a court, means the proper officer, however described, of that court;

“special function” means a special function referred to in section 5 (4);

“special investigation” means an investigation that the Authority is conducting in the performance of its special functions.

- (2) Expressions used in this Act that are also used in the Commonwealth Act have in this Act, unless the contrary intention appears, the same respective meanings as those expressions have in the Commonwealth Act.
- (3) Where the Authority suspects that an offence that is not a relevant offence as defined in section 4 (1) of the Commonwealth Act may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a relevant offence as so defined, whether or not the Authority has identified the nature of that relevant offence, the first-mentioned offence shall, for so long only as the Authority so suspects, be deemed, for the purposes of this Act, to be a relevant offence.

4. Act to bind the Crown

This Act binds the Crown in right of the State.

5. Functions under laws of the State

- (1) The Minister may, with the approval of the Inter-Governmental Committee, by notice in writing to the Authority, refer a matter relating to a relevant criminal activity to the Authority for

investigation in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the State.

- (2) Where a matter has so been referred to the Authority, the Authority is not precluded by any law of the State from investigating that matter.
- (3) A notice referred to in subsection (1) referring a matter to the Authority —
 - (a) shall describe the general nature of the circumstances or allegations constituting the relevant criminal activity;
 - (b) shall state that the relevant offence is, or the relevant offences are or include; an offence or offences against a law of the State but need not specify the particular offence or offences; and
 - (c) shall set out the purpose of the investigation.
- (3a) 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.
- (4) Where a reference to the Authority made by the Minister under subsection (1) is in force in respect of a matter relating to a relevant criminal activity, it is a special function of the Authority to investigate the matter in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the State.
- (5) Where a matter has been referred to the Authority in accordance with subsection (1), the Minister may at any time, by notice in writing to the Authority, withdraw the reference.

[Section 5 amended by No. 13 of 1995 s.4.]

6. Performance of functions

- (1) The Authority shall, in performing a special function, assemble any evidence of an offence against a law of the Commonwealth or of a Territory, or of an offence against a law of a State, that it obtains in the course of its investigations, being evidence that would be admissible in the prosecution of a person for that offence, and furnish that evidence to —
 - (a) the Attorney-General of the Commonwealth or of the State;
 - (b) the relevant law enforcement agency; or
 - (c) any person or authority (other than a law enforcement agency) who is authorized by or under a law of the Commonwealth or of the State to prosecute the offence.
- (2) The Authority shall, in performing a special function, co-operate and consult with the Australian Bureau of Criminal Intelligence.
- (3) Where, as a result of the performance of a special function, the Authority considers that a recommendation should be made to the Minister, to the Commonwealth Minister or to the appropriate Minister of the Crown of another participating State, being a recommendation —
 - (a) for reform of the law relating to relevant offences, including —
 - (i) evidence and procedure applicable to the trials of relevant offences;
 - (ii) relevant offences in relation to, or involving, corporations;
 - (iii) taxation, banking and financial frauds;
 - (iv) reception by Australian courts of evidence obtained in foreign countries as to relevant offences; and

- (v) maintenance and preservation of taxation, banking and financial records;
- (b) for reform of administrative practices; or
- (c) for reform of administration of the courts in relation to trials of relevant offences,

the Authority may make the recommendation to the Minister, to the Commonwealth Minister or to that Minister of the Crown of that other participating State, as the case may be.

- (4) In relation to the performance by the Authority of a special function, nothing in this Act (other than section 17) —
 - (a) shall be taken to confer on a member, or on a member of the staff of the Authority (other than a member of the Australian Federal Police or a member of the Police Force of a State), a power to interview a person in relation to an offence that the person is suspected of having committed, except in a case where the person has been served, as prescribed, with a summons to appear as a witness at a hearing before the Authority and has not yet so appeared; or
 - (b) shall be taken to confer on a member of the staff of the Authority who is a member of the Australian Federal Police or of the Police Force of a State a power to interview a person that the member of the staff of the Authority does not have in the member's capacity as a member of the Australian Federal Police or of the Police Force of that State, as the case may be.
- (5) Nothing in subsection (4) (a) shall be taken to affect a power of a member, or of a member of the staff of the Authority, to interview a person otherwise than in relation to an offence that the person is suspected of having committed.
- (6) Where the Authority has obtained particular information or intelligence in the course of performing a special function, nothing in this Act shall be taken to prevent the Authority from

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making use of the information or intelligence in the performance of any of its other functions.

[Section 6 amended by No. 13 of 1995 s.5.]

7. Members may have concurrent functions and powers under laws of the State

If —

- (a) with the consent of the Inter-Governmental Committee, any functions or powers in relation to the investigation of matters relating to relevant criminal activities are conferred on a member or members by the Governor or a Minister; and
- (b) the Commonwealth Minister informs the member or members in writing that the Commonwealth Minister is satisfied that those functions or powers may conveniently be performed or exercised in conjunction with the performance or exercise by the Authority of its functions or powers under the Commonwealth Act,

then, notwithstanding anything contained in any other provision of this Act, the member or members referred to in paragraph (a) shall perform the functions, or may exercise the powers, referred to in that paragraph in conjunction with the performance or exercise by the Authority of its functions or powers under the Commonwealth Act, this Act or any corresponding Act of another State, and the members of the staff of the Authority may be employed by the Authority in assisting the member or members referred to in paragraph (a) in the performance of the functions or the exercise of the powers referred to in that paragraph.

8. Limitation on challenges to validity of references

Where, with the approval of the Inter-Governmental Committee, the Minister refers a matter to the Authority for investigation, then, except in a proceeding instituted by the Attorney-General of the Commonwealth or the Attorney-General of a State, any

act or thing done by the Authority in pursuance of the reference shall not be challenged, reviewed, quashed or called in question in any court of the State on the ground that any necessary approval of the Inter-Governmental Committee or consent of the Commonwealth Minister has not been obtained or was not lawfully given.

9. Co-operation with law enforcement agencies

- (1) In performing its special functions, the Authority shall, so far as is practicable, work in co-operation with law enforcement agencies.
- (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 9 amended by No. 13 of 1995 s.6.]

10. Incidental powers of Authority

The Authority has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the performance of its special functions, and any specific powers conferred on the Authority by this Act shall not be taken to limit by implication the generality of this section.

11. Arrangements for Authority to obtain information or intelligence

The Minister may make an arrangement with the Commonwealth Minister for the Authority to be given by the State, or by an authority of the State, information or intelligence relating to relevant criminal activities.

12. Search warrants

- (1) A member may apply to a Judge of a prescribed court for the issue of a warrant under subsection (2) if —

- (a) the member has reasonable grounds for suspecting that, on a particular day (in this section referred to as the “relevant day”), being the day on which, or a particular day within one month after the day on which, the application is made, there may be, upon any land or upon or in any premises, vessel, aircraft or vehicle, a thing or things of a particular kind connected with a matter relating to a relevant criminal activity, being a matter into which the Authority is conducting a special investigation (in this section referred to as “things of the relevant kind”); and
 - (b) the member believes on reasonable grounds that, if a summons were issued for the production of the thing or things, the thing or things might be concealed, lost, mutilated or destroyed.
- (2) Where an application under subsection (1) is made to a Judge of a prescribed court, the Judge may issue a warrant authorizing a member of the Australian Federal Police or of the Police Force of a State, or any other person, named in the warrant, with such assistance as the member or person thinks necessary and if necessary by force —
 - (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
 - (b) to search the land, premises, vessel, aircraft or vehicle for things of the relevant kind;and
 - (c) to seize any things of the relevant kind found upon the land or upon or in the premises, vessel, aircraft or vehicle and deliver things so seized to the Authority.
- (3) A Judge shall not issue a warrant under subsection (2) unless —
 - (a) an affidavit has been furnished to the Judge setting out the grounds on which the issue of the warrant is being sought;

- (b) the applicant (or some other person) has given to the Judge, either orally or by affidavit, such further information (if any) as the Judge requires concerning the grounds on which the issue of the warrant is being sought; and
 - (c) the Judge is satisfied that there are reasonable grounds for issuing the warrant.
- (4) Where a Judge issues a warrant under subsection (2), the Judge shall state on the affidavit furnished as mentioned in subsection (3) (a) which of the grounds specified in that affidavit has or have been relied on to justify the issue of the warrant and particulars of any other grounds relied on to justify the issue of the warrant.
- (5) A warrant issued under this section shall —
 - (a) include a statement of the purpose for which the warrant is issued, which shall include a reference to the matter relating to a relevant criminal activity into which the Authority is conducting a special investigation and with which the things of the relevant kind are connected;
 - (b) state whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
 - (c) include a description of the kind of things authorized to be seized; and
 - (d) specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.
- (6) A warrant issued under this section may be executed, in accordance with its terms, at any time during the period commencing on the relevant day and ending on the date specified in the warrant as the date upon which the warrant ceases to have effect.

- (7) Where, in the course of searching, in accordance with the terms of a warrant issued under this section, for things of the relevant kind, the person executing the warrant finds a thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an offence against a law of the Commonwealth, of a State or of a Territory, and the first-mentioned person believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, that person may seize the thing and, if the thing is so seized, it shall be deemed, for the purposes of this Act, to have been seized pursuant to the warrant.
- (8) Where a thing is seized pursuant to a warrant issued under this section —
- (a) the Authority may retain the thing if, and for so long as, retention of the thing by the Authority is reasonably necessary for the purposes of a special investigation to which the thing is relevant; and
 - (b) if the retention of the thing by the Authority is not, or ceases to be, reasonably necessary for such purposes, a member shall cause the thing to be delivered to —
 - (i) if the thing may be used in evidence in proceedings of a kind referred to in subsection (13) — the authority or person responsible for taking the proceedings; or
 - (ii) if subparagraph (i) does not apply — the person who appears to the member to be entitled to the possession of the thing,unless the Authority has furnished the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement agency, in accordance with the Commonwealth Act, this Act or an Act of another State.
- (9) A member may, instead of delivering a thing in accordance with subsection (8) (b) (ii), deliver the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement

agency, for the purpose of assisting in the investigation of criminal offences, where the member is satisfied that the thing is likely to be useful for that purpose.

- (10) Nothing in this section affects a right of a person to apply for, or the power of a person to issue, a warrant, being a right or power existing otherwise than by virtue of this section.
- (11) A reference in this section to a Judge of a prescribed court shall be construed as a reference to a Judge of a court of the State.
- (12) In this section, “**thing**” includes a document.
- (13) Without limiting the generality of subsection (1) (a), a reference in this section to a thing connected with a matter relating to a relevant criminal activity, being a matter into which the Authority is conducting a special investigation, includes a reference to a thing that may be used in evidence in proceedings for the taking, by or on behalf of the Crown in right of the State, of civil remedies in respect of a matter connected with, or arising out of, an offence to which the relevant criminal activity relates.

[Section 12 amended by No. 13 of 1995 s.7; No. 32 of 2001 s.31.]

13. Application by telephone for search warrants

- (1) Where, by reason of circumstances of urgency, a member considers it necessary to do so, the member may make application by telephone for a warrant under section 12.
- (2) Before so making application, the member shall prepare an affidavit that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the affidavit has been sworn.
- (3) Where a Judge issues a warrant under section 12 upon an application made by telephone, the Judge shall —
 - (a) complete and sign the warrant;

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- (b) inform the member who made the application of the terms of the warrant and the date on which and the time at which it was signed;
 - (c) record on the warrant the reasons for issuing the warrant; and
 - (d) send a copy of the warrant to the Authority.
- (4) Where a warrant is issued under section 12 upon an application made by telephone, a member of the staff of the Authority or a member of the Australian Federal Police or of the Police Force of a State may complete a form of warrant in the terms indicated by the Judge under subsection (3) and, where a form of warrant is so completed, shall write on it the name of the Judge who issued the warrant and the date on which and the time at which it was signed.
- (5) Where a person completes a form of warrant in accordance with subsection (4), the person shall, not later than the day next following the date of expiry of the warrant, send to the Judge who signed the warrant the form of warrant completed by the person and the affidavit duly sworn in connection with the warrant.
- (6) Upon receipt of the documents referred to in subsection (5), the Judge shall attach them to the warrant signed by the Judge and shall deal with the documents in the manner in which the Judge would have dealt with the affidavit if the application for the warrant had been made to the Judge in accordance with section 12.
- (7) A form of warrant duly completed in accordance with subsection (4) shall be deemed to be a warrant issued under section 12.

[Section 13 amended by No. 13 of 1995 s.8.]

14. Judges to perform functions under Commonwealth Act

A Judge of a court of the State may perform functions conferred on the Judge by section 22 or 23 of the Commonwealth Act.

[15. Repealed by No. 32 of 2001 s.32.]

16. Hearings

- (1) For the purposes of a special investigation the Authority may hold hearings.
- (2) At a hearing, the Authority may be constituted by one or more members.
- (3) The Chairperson shall 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 shall elect one of their number to preside at that hearing.
- (3b) Questions arising at a hearing shall 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.
- (4) At a hearing before the Authority —
 - (a) a person giving evidence may be represented by a legal practitioner; and
 - (b) if, by reason of the existence of special circumstances, the Authority consents to a person who is not giving evidence being represented by a legal practitioner — the person may be so represented.
- (5) A hearing before the Authority shall be held in private and the Authority may give directions as to the persons who may be present during the hearing or a part of the hearing.
- (6) Nothing in a direction given by the Authority under subsection (5) prevents the presence, when evidence is being taken at a hearing before the Authority, of —

- (a) a person representing the person giving evidence; or
 - (b) a person representing, pursuant to subsection (4), a person who, by reason of a direction given by the Authority under subsection (5), is entitled to be present.
- (7) Where a hearing before the Authority is being held, a person (other than a member or a member of the staff of the Authority approved by the Authority) shall not be present at the hearing unless the person is entitled to be present by reason of a direction given by the Authority under subsection (5) or by reason of subsection (6).
- (8) At a hearing before the Authority for the purposes of a special investigation —
- (a) counsel assisting the Authority generally or in relation to the matter to which the investigation relates;
 - (b) any person authorized by the Authority to appear before it at the hearing; or
 - (c) any legal practitioner representing a person at the hearing pursuant to subsection (4),

may, so far as the Authority thinks appropriate, examine or cross-examine any witness on any matter that the Authority considers relevant to the special investigation.

- (9) The Authority may direct that —
- (a) any evidence given before it;
 - (b) the contents of any document, or a description of any thing, produced to the Authority or seized pursuant to a warrant issued under section 12;
 - (c) any information that might enable a person who has given evidence before the Authority to be identified; or
 - (d) the fact that any person has given or may be about to give evidence at a hearing,

shall not be published, or shall not be published except in such manner, and to such persons, as the Authority specifies, and the

Authority shall give such a direction if the failure 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.

- (9a) Subject to subsection (9b), the Chairperson may, in writing, vary or revoke a direction under subsection (9).
- (9b) The Chairperson shall 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.
- (10) Where —
 - (a) a person has been charged with an offence before a court of the State; and
 - (b) the court considers that it may be desirable in the interests of justice that particular evidence given before the Authority, being evidence in relation to which the Authority has given a direction under subsection (9), be made available to the person or to a legal practitioner representing the person,

the court may give to the Authority a certificate to that effect and, if the court does so, the Authority shall make the evidence available to the Court.

- (11) Where —
 - (a) the Authority makes evidence available to a court in accordance with subsection (10);
and
 - (b) the court, after examining the evidence, is satisfied that the interests of justice so require,

the court may make the evidence available to the person charged with the offence concerned or to a legal practitioner representing the person.

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- (12) A person who —
- (a) is present at a hearing in contravention of subsection (7);
or
 - (b) makes a publication in contravention of a direction given under subsection (9),

is guilty of an offence punishable, upon conviction, by a fine not exceeding \$2 000 or imprisonment for a period not exceeding one year.

[Section 16 amended by No. 60 of 1988 s.4; No. 13 of 1995 s.10.]

17. Power to summon witnesses and take evidence

- (1) A member may summon a person to appear before the Authority at a hearing to give evidence and to produce such documents or other things (if any) as are referred to in the summons.
- (2) A summons under subsection (1) requiring a person to appear before the Authority at a hearing shall be accompanied by a copy of the notice, or of each of the notices, by which the matter or matters to which the hearing relates was or were referred to the Authority under section 5, under the Commonwealth Act or under an Act of another State.
- (3) A summons under subsection (1) requiring a person to appear before the Authority at a hearing shall, unless the member issuing the summons is satisfied that, in the particular circumstances of a special investigation to which the hearing relates, it would prejudice the effectiveness of the special investigation for the summons to do so, set out, so far as is reasonably practicable, the general nature of the matters in relation to which the Authority intends to question the person, but nothing in this subsection prevents the Authority from questioning the person in relation to any matter that relates to a special investigation.

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- (4) The member presiding at a hearing before the Authority may require a person appearing at the hearing to produce a document or other thing.
 - (5) The Authority may, at a hearing, take evidence on oath or affirmation and for that purpose —
 - (a) a member may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member presiding at the hearing; and
 - (b) a member, or a person who is an authorized person in relation to the Authority, may administer an oath or affirmation to a person so appearing at the hearing.
 - (6) In this section, a reference to a person who is an authorized person in relation to the Authority is a reference to a person authorized in writing, or a person included in a class of persons authorized in writing, for the purposes of this section by the Chairperson.

[Section 17 amended by No. 13 of 1995 s.11.]

18. Power to obtain documents

- (1) A member may, by notice in writing served on a person, require the person —
 - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Authority or a member of the staff of the Authority; and
 - (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that is relevant to a special investigation.
- (2) A notice may be issued under this section in relation to a special investigation whether or not a hearing before the Authority is being held for the purposes of the investigation.

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- (3) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.
Penalty: \$1 000 or imprisonment for 6 months.
- (4) The provisions of section 19 (3) to (12), inclusive, apply in relation to a person who is required to produce a document or thing by a notice served on the person under this section in the same manner as they apply in relation to a person who is required to produce a document or thing at a hearing before the Authority and so apply as if a reference in those provisions to section 19 (2) were a reference to subsection (3) of this section.
- (5) If a person who is required to produce a document or thing by a notice served on the person under this section claims to the person (in this subsection referred to as the “relevant person”) to whom the claimant is required to produce it that the claimant is entitled to refuse to produce the document or thing, the relevant person shall —
- (a) if satisfied that the claim is justified — inform the claimant that the requirement will not be insisted upon; or
 - (b) in any other case — inform the claimant that the relevant person is not so satisfied and, if the document or thing is not produced forthwith, refer the claim to the Authority for decision under section 21.

[Section 18 amended by No. 13 of 1995 s.12.]

18A. Disclosure of summons or notice may be prohibited

- (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;
 - (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;
 - (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);
 - (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;
 - (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

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- (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 no 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.

[Section 18A inserted by No. 13 of 1995 s.13.]

18B. Offences of disclosure

- (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: \$2 000 or imprisonment for one year.

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

- (a) in accordance with the circumstances, if any, specified in the notation;
 - (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter;
 - (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;
 - (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: \$2 000 or imprisonment for one year.

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- (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;
 - (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;
 - (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 member of staff, of a legal aid commission within the meaning of the *Commonwealth Legal Aid Act 1977* of the Commonwealth; or
- (b) the person to whom the Commonwealth Attorney-General 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; or
- (d) court proceedings.

[Section 18B inserted by No. 13 of 1995 s.13.]

19. Failure of witnesses to attend and answer questions

- (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before the Authority shall not, without reasonable excuse —
 - (a) fail to attend as required by the summons; or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by a member.
- (2) A person appearing as a witness at a hearing before the Authority shall not, without reasonable excuse —
 - (a) when required pursuant to section 17 either to take an oath or make an affirmation — refuse or fail to comply with the requirement;
 - (b) refuse or fail to answer a question that the person is required to answer by the member presiding at the hearing;or

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- (c) refuse or fail to produce a document or thing that the person was required to produce by a summons under this Act served as prescribed.

(3) Where —

- (a) a legal practitioner is required to answer a question or produce a document at a hearing before the Authority; and
- (b) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in the capacity of a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner refuses to comply with the requirement, the legal practitioner shall, if so required by the member presiding at the hearing, furnish to the Authority the name and address of the person to whom or by whom the communication was made.

(4) Subject to subsections (5), (7), (9) and (11), it is a reasonable excuse for the purposes of subsection (2) for a natural person —

- (a) to refuse or fail to answer a question put to the person at a hearing before the Authority; or
- (b) to refuse or fail to produce a document or thing that the person was required to produce at a hearing before the Authority,

that the answer to the question, or the production of the document or thing, as the case may be, might tend to incriminate the person.

(5) It is not a reasonable excuse for the purposes of subsection (2) for a person —

- (a) to refuse or fail to answer a question put to the person at a hearing before the Authority; or
- (b) to refuse or fail to produce a document or thing that the person was required to produce at a hearing before the Authority,

that the answer to the question or the production of the document or thing might tend to prove the person's guilt of an offence against a law of the State if the Attorney General, or a person authorized by the Attorney General, being the person holding a prescribed office, has given to the first-mentioned person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against that person for an offence against a law of the State other than proceedings in respect of the falsity of evidence given by that person and the Attorney General, or the person so authorized, states in the undertaking —

- (c) that, in his or her opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by the first-mentioned person; and
 - (d) the general nature of those grounds.
- (6) The Authority may recommend to the Attorney General that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hearing before the Authority be given an undertaking in accordance with subsection (5).
- (7) It is not a reasonable excuse for the purposes of subsection (2) for a person —
- (a) to refuse or fail to answer a question put to the person at a hearing before the Authority; or

- (b) to refuse or fail to produce a document or thing that the person was required to produce at a hearing before the Authority,

that the answer to the question or the production of the document or thing might tend to prove the person's guilt of an offence against a law of the Commonwealth or of a Territory if the Director of Public Prosecutions of the Commonwealth has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against the person for an offence against a law of the Commonwealth or of a Territory other than proceedings in respect of the falsity of evidence given by the person and the Director of Public Prosecutions states in the undertaking —

- (c) that, in his or her opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by the person; and
 - (d) the general nature of those grounds.
- (8) The Authority may recommend to the Director of Public Prosecutions of the Commonwealth that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hearing before the Authority be given an undertaking in accordance with subsection (7).
 - (9) It is not a reasonable excuse for the purposes of subsection (2) for a person —
 - (a) to refuse or fail to answer a question put to the person at a hearing before the Authority; or
 - (b) to refuse or fail to produce a document or thing that the person was required to produce at a hearing before the Authority,

that the answer to the question or the production of the document or thing might tend to prove the person's guilt of an offence against a law of another State if the Attorney-General of that State, or a person authorized by that Attorney-General, being the person holding the office of Director of Public Prosecutions, or a similar office, of that State, has given to the first-mentioned person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against that person for an offence against a law of that State other than proceedings in respect of the falsity of evidence given by that person and the Attorney-General of that State, or the person so authorized, states in the undertaking —

- (c) that, in his or her opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by the first-mentioned person; and
 - (d) the general nature of those grounds.
- (10) The Authority may recommend to the Attorney-General of another State that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hearing before the Authority be given an undertaking in accordance with subsection (9).
- (11) For the purposes of subsection (2) —
- (a) it is not a reasonable excuse for a corporation to refuse or fail to produce a document or thing that the production of the document or thing might tend to incriminate the corporation; and
 - (b) it is not a reasonable excuse for a natural person to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not

being, in the case of a person who is or has been an employee, a document that sets out details of earnings received by the person in respect of the person's employment and does not set out any other information) that the production of the document might tend to incriminate the person.

- (12) Subsections (5), (7), (9) and (11) do not apply where the offence in respect of which the answer to a question or the production of a document or thing, as the case requires, might tend to incriminate a person is an offence with which the person has been charged and the charge has not been finally dealt with by a court or otherwise disposed of.
- (13) A person who contravenes subsection (1), (2) or (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1 000 or imprisonment for a period not exceeding 6 months.

[Section 19 amended by No. 13 of 1995 s.14.]

20. Warrant for arrest of witness

- (1) Where, upon application by or on behalf of the Authority, a Judge of the Supreme Court sitting in chambers is satisfied by evidence on oath that there are reasonable grounds to believe —
- (a) that a person who has been ordered, under section 24 of the Commonwealth Act, to deliver his or her 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;
 - (b) that 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 may issue a warrant for the apprehension of the person.

- (1a) The warrant may be executed notwithstanding that the warrant is not at the time in the possession of the person executing it.
- (2) The warrant may be executed by any member of the Australian Federal Police or of the Police Force of a State or Territory, or by any person to whom it is addressed, and the person executing it has power to break and enter any premises, vessel, aircraft or vehicle for the purpose of executing it.
- (3) Where a person is apprehended pursuant to a warrant under this section, the person shall be brought, as soon as practicable, before a Judge of the Supreme Court and the Judge may —
 - (a) admit the person to bail, with such security as the Judge thinks fit, on such conditions as the Judge thinks necessary to ensure the appearance of the person as a witness before the Authority;
 - (b) order the continued detention of the person for the purpose of ensuring the appearance of the person as such a witness; or
 - (c) order the release of the person.
- (4) Where a person is under detention pursuant to this section, the person shall, within 14 days after the person was brought, or last brought, before a Judge of the Supreme Court in accordance with this section, or within such shorter or longer time as a Judge has fixed upon the last previous appearance of the person before a Judge under this section, be again brought before a Judge and the Judge may thereupon exercise any of the powers of a Judge under subsection (3).
- (5) In this section, “**Australia**” includes the external Territories.

[Section 20 amended by No. 60 of 1988 s.5; No. 13 of 1995 s.15; No. 32 of 2001 s.33.]

21. Refusing to produce documents or answer questions

- (1) Where —
- (a) a person claims to be entitled to refuse to produce a document that the person is required to produce pursuant to a notice under section 18; or
 - (b) a person claims to be entitled to refuse to answer a question put to the person, or to produce a document that the person was required to produce, at a hearing before the Authority,

the Authority shall decide as soon as practicable whether in its opinion the claim is justified and notify the person of its decision.

[(2) to (5) repealed]

- (6) A prosecution for an offence under section 18 or 19 shall not be commenced in respect of a refusal or failure by a person to produce a document or answer a question —
- (a) if the person has claimed to be entitled to refuse to produce the document or answer the question, as the case may be, and the Authority decides that, in its opinion, the claim is not justified — until the expiration of the period of 5 days (excluding days on which the Registry of the Federal Court is closed) immediately after the relevant day in relation to the decision; or
 - (b) if the person has made an application to the Federal Court under section 32(2) of the Commonwealth Act (as it has effect because of section 32B of that Act) for an order of review in respect of a decision by the Authority that, in its opinion, a claim by the person to be entitled to refuse to produce the document or answer the question is not justified — until the application, and any appeal from an order made by the Federal Court on the application, have been determined or otherwise disposed of.

[(7) to (11) repealed]

- (12) A prosecution for an offence under section 18 or 19 shall not be commenced in respect of a refusal or failure by a person to produce a document —
- (a) if the person has given to the Authority in accordance with section 32(8A) of the Commonwealth Act (as it has effect because of section 32B of that Act) a notice relating to the document —until the expiration of the period of 5 days (excluding days on which the Registry of the Federal Court is closed) immediately after the relevant day in relation to the notice; or
 - (b) if the person has made an application under section 32(8) of the Commonwealth Act (as it has effect because of section 32B of that Act) in relation to the document — until the application, and any appeal from an order made by the Federal Court on the application, have been determined or otherwise disposed of.

[(13), (14) repealed]

- (15) In this section, unless the contrary intention appears —

“document” includes any thing;

“prescribed notice” means a notice stating as mentioned in section 22 (2) (c);

“relevant day”, in relation to a decision of the Authority under subsection (1), means the day on which the Authority gives to the person to whom the decision relates a prescribed notice relating to the decision.

[(16), (17) repealed]

[Section 21 amended by No. 13 of 1995 s.16; No. 32 of 2001 s.34.]

[22. Repealed by No. 32 of 2001 s.35.]

23. False or misleading evidence

- (1) A person shall not, at a hearing before the Authority, give evidence that is, to the knowledge of the person, false or misleading in a material particular.
- (2) A contravention of subsection (1) is a crime and is punishable by a fine not exceeding \$20 000 or by imprisonment for a period not exceeding 5 years.

Summary conviction penalty: imprisonment for one year or a fine of \$2 000.

[(3), (4) repealed]

[Section 23 amended by No. 4 of 2004 s. 58.]

24. Protection of witnesses, etc.

Where it appears to a member that, by reason of the fact that a person —

- (a) is to appear, is appearing or has appeared at a hearing before the Authority to give evidence or to produce a document or thing; or
- (b) proposes to produce or has produced a document or thing to the Authority pursuant to this Act otherwise than at a hearing before the Authority,

the safety of the person may be prejudiced or the person may be subjected to intimidation or harassment, the member may make such arrangements (including arrangements with the Minister or with members of the Police Force of the State) as are necessary to avoid prejudice to the safety of the person, or to protect the person from intimidation or harassment.

[Section 24 amended by No. 13 of 1995 s.17.]

25. Contempt of Authority

A person shall not —

- (a) obstruct or hinder the Authority or a member in the performance of the special functions of the Authority; or
- (b) disrupt a hearing before the Authority.

Penalty: \$2 000 or imprisonment for one year.

[Section 25 amended by No. 13 of 1995 s.18.]

26. Double jeopardy

Where an act or omission by a person is an offence against this Act and is also an offence against the Commonwealth Act, the person may be prosecuted and convicted under this Act in respect of that act or omission notwithstanding that the person has been or is being prosecuted, or has been convicted, in respect of that act or omission under the Commonwealth Act, but nothing in this Act renders a person liable to be punished twice in respect of the same act or omission.

27. Powers of acting members of the Authority

- (1) While a person is acting as Chairperson, the person has, and may exercise, all the powers, and shall perform all the functions, of the Chairperson under this Act.
- (2) While a person is acting as a member, the person has, and may exercise, all the powers, and shall perform all the functions, of a member under this Act.
- (3) The validity of anything done by or in relation to a person purporting to act as Chairperson or as a member shall not be called in question on the ground that the occasion for the appointment of the person had not arisen, that there is a defect or irregularity in or in connection with that appointment, that that appointment had ceased to have effect or that the occasion for the person to act had not arisen or had passed.

[Section 27 amended by No. 13 of 1995 s.19.]

28. Administrative arrangements with Commonwealth

The Minister may make an arrangement with the Commonwealth Minister under which the State will, from time to time as agreed upon under the arrangement, do either or both of the following —

- (a) make available a person who is the holder of a judicial or other office, or persons who are the holders of judicial or other offices, of the State to hold office as a member or members;
- (b) make available a person who is an officer or employee of the State or of an authority of the State or a member of the Police Force of the State, or persons who are such officers, employees or members, to perform services for the Authority.

29. Protection of members, etc.

- (1) A member has, in the performance of functions, or the exercise of powers, as a member in relation to a hearing before the Authority, the same protection and immunity as a Justice of the High Court.
- (2) A legal practitioner assisting the Authority or representing a person at a hearing before the Authority has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) Subject to this Act, a person summoned to attend or appearing before the Authority as a witness has the same protection as a witness in proceedings in the High Court.

[Section 29 amended by No. 13 of 1995 s.20.]

30. Appointment of Judge as member not to affect tenure, etc.

- (1) The appointment of the holder of a judicial office as a member, or service by the holder of a judicial office as a member, does not affect the holder's tenure of that judicial office or the holder's rank, title, status, precedence, salary, annual or other

allowances or other rights or privileges as the holder of that judicial office and, for all purposes, the holder's service as a member shall be taken to be service as the holder of that judicial office.

- (2) In this section, “**judicial office**” means —
- (a) an office of Judge of a court of the State; or
 - (b) an office the holder of which has, by virtue of holding that office, the same status as a Judge of a court of the State.

[Section 30 amended by No. 13 of 1995 s.21.]

31. Secrecy

- (1) This section applies to —
- (a) a member of the Authority; and
 - (b) a member of the staff of the Authority.
- (2) A person to whom this section applies who, either directly or indirectly, except for the purposes of a relevant Act or otherwise in connection with the performance of the person's duties under a relevant Act, and either while the person is or after the person ceases to be a person to whom this section applies
- (a) makes a record of any information; or
 - (b) divulges or communicates to any person any information,

being information acquired by the person by reason of, or in the course of, the performance of duties under this Act, is guilty of an offence punishable, on conviction by a fine not exceeding \$5 000 or imprisonment for a period not exceeding one year, or both.

- (3) A person to whom this section applies shall not be required to produce in any court any document that has come into the person's custody or control in the course of, or by reason of, the performance of duties under this Act, or to divulge or

communicate to a court a matter or thing that has come to the person's notice in the performance of duties under this Act, except where the Authority, or a member or acting member in the member's or acting member's official capacity, is a party to the relevant proceedings or it is necessary to do so —

- (a) for the purpose of carrying into effect the provisions of a relevant Act; or
- (b) for the purposes of a prosecution instituted as a result of an investigation carried out by the Authority in the performance of its functions.

(4) In this section —

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to, and **“production”** has a corresponding meaning;

“relevant Act” means the Commonwealth Act, this Act or any corresponding Act of another State.

[Section 31 amended by No. 13 of 1995 s.22.]

32. Report to be laid before Parliament

The Minister shall cause a copy of —

- (a) each annual report of the Authority that is received by the Minister;
and
- (b) any comments made on the report by the Inter-Governmental Committee, being comments that accompanied the report,

to be laid before each House of Parliament within 15 sitting days of that House after the report is received by the Minister.

33. Regulations

The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[34. *Repealed by No. 60 of 1988 s.6.*]

Notes

- ¹ This is a compilation of the *National Crime Authority (State Provisions) Act 1985* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

| Short title | Number and Year | Assent | Commencement |
|---|-----------------|-------------|---|
| <i>National Crime Authority (State Provisions) Act 1985</i> | 4 of 1985 | 25 Mar 1985 | 25 Mar 1985 |
| <i>National Crime Authority (State Provisions) Amendment Act 1988</i> | 60 of 1988 | 8 Dec 1988 | 2 Jun 1989 (see <i>Gazette</i> 2 Jun 1989 p.1599) |
| <i>National Crime Authority (State Provisions) Amendment Act 1995</i> | 13 of 1995 | 30 Jun 1995 | 30 Jun 1995 |
| <i>Acts Amendment (Federal Courts and Tribunals) Act 2001, Part 7</i> | 32 of 2001 | 21 Dec 2001 | 21 Dec 2001 (see s. 2(1)) |
| <i>Criminal Code Amendment Act 2004 s. 58</i> | 4 of 2004 | 23 Apr 2004 | 21 May 2004 (see s. 2) |

This Act was repealed by the *Australian Crime Commission (Western Australia) Act 2004 s. 67 (No. 74 of 2004)* as at 1 Feb 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

| Defined term | Provision(s) |
|-----------------------------|---------------------|
| Attorney General..... | 3(1) |
| Commonwealth Act | 3(1) |
| Commonwealth Minister | 3(1) |
| court | 31(4) |
| document..... | 21(15) |
| hearing | 3(1) |
| judicial office | 30(2) |
| legal aid officer | 18B(7) |
| Minister..... | 3(1) |
| official matter..... | 18B(7) |
| prescribed..... | 3(1) |
| prescribed notice | 21(15) |
| produce | 31(4) |
| production | 31(4) |
| Registrar..... | 3(1) |
| relevant Act..... | 31(4) |
| relevant day..... | 21(15) |
| special function | 3(1) |
| special investigation..... | 3(1) |