

WESTERN AUSTRALIA

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

No. 13 of 1995

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

[Assented to 30 June 1995.]

The Parliament of Western Australia enacts as follows:

Short title

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

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Principal Act

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

[* Act No. 4 of 1985.

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 145.]*

Section 5 amended

4. Section 5 of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(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.

”.

Section 6 amended

5. Section 6 (1) of the principal Act is amended by deleting from “evidence to” to the end of the subsection and substituting the following —

“

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.

”.

Section 9 amended

6. Section 9 of the principal Act is amended —

- (a) by inserting after the section designation “9.” the subsection designation “(1)”; and
- (b) by inserting 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

7. Section 12 of the principal Act is amended —

(a) in subsection (1) —

- (i) by deleting “of the Authority”;
- (ii) in paragraph (a), by deleting “Authority has” and substituting the following —

“ member has ”; and

- (iii) in paragraph (b), by deleting “Authority” and substituting the following —

“ member ”;

(b) in subsection (8) (b) —

- (i) by deleting “the Authority shall” and substituting the following —

“ a member shall ”; and

- (ii) in subsection (ii), by deleting “Authority” and substituting the following —

“ member ”;

and

(c) in subsection (9) —

- (i) by deleting “The Authority” and substituting the following —

“ A member ”; and

- (ii) by deleting “the Authority” and substituting the following —

“ the member ”.

Section 13 amended

8. Section 13 (1) of the principal Act is amended —

- (a) by deleting “the Authority considers” and substituting the following —

“ a member considers ”; and

- (b) by deleting “a member of the Authority” and substituting the following —

“ the member ”.

Section 15 amended

9. Section 15 of the principal Act is amended —

- (a) in subsection (1), by deleting “of the Authority”;

- (b) in subsection (3), by deleting “by the Authority” and substituting the following —

“ by a member ”; and

- (c) in subsection (4), by deleting “the Authority shall” and substituting the following —

“ a member shall ”.

Section 16 amended

10. Section 16 of the principal Act is amended —

- (a) in subsection (2), by deleting “or acting members”;

- (b) by repealing subsection (3) and substituting the following subsections —

“

(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.

”;

- (c) in subsection (7), by deleting “or an acting member,”; and
- (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 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.

”.

Section 17 amended

11. Section 17 of the principal Act is amended —

- (a) in subsection (1), by deleting “or an acting member”;
- (b) in subsection (3), by deleting “unless the Authority” and substituting the following —

“ unless the member issuing the summons ”;

- (c) in subsections (4) and (5), by deleting “or acting member” in the 4 places where it occurs; and
- (d) in subsection (6), by deleting “Chairman or by a person acting as Chairman” and substituting the following —

“ Chairperson ”.

Section 18 amended

12. Section 18 (1) of the principal Act is amended by deleting “or acting member” in both places where it occurs.

Sections 18A and 18B inserted

13. After section 18 of the principal Act the following sections are inserted —

“

Disclosure of summons or notice 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;
 - (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
- (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.

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: \$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.

(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 19 amended

14. Section 19 of the principal Act is amended —

- (a) in subsection (1) (b), by deleting “or an acting member”; and
- (b) in subsections (2) (b) and (3), by deleting “or acting member” in both places where it occurs.

Section 20 amended

15. Section 20 of the principal Act is amended —

(a) in subsection (1) —

(i) by inserting after “Federal Court” the following —

“ or of the Supreme Court ”;

(ii) by deleting “or” at the end of paragraph (a); and

(iii) in paragraph (b), by deleting “summons,” and substituting the following —

“

summons; or

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

”;

and

(b) in subsections (3) and (4) by inserting after “Federal Court” in both places where it occurs, the following —

“ or of the Supreme Court ”.

Section 21 amended

16. Section 21 (9) of the principal Act is amended by deleting “as the Authority” and substituting the following —

“ as a member ”.

Section 24 amended

17. Section 24 of the principal Act is amended by deleting “or acting member” in both places where it occurs.

Section 25 amended

18. Section 25 (a) of the principal Act is amended by deleting “or an acting member”.

Section 27 amended

19. Section 27 of the principal Act is amended in subsections (1) and (3) by deleting “Chairman” in the 3 places where it occurs and substituting in each place the following —

“ Chairperson ”.

Section 29 amended

20. Section 29 (1) of the principal Act is amended —

- (a) by deleting “or an acting member”; and
- (b) by deleting “or acting member”.

Section 30 amended

21. Section 30 (1) of the principal Act is amended by deleting “or acting member” in the 3 places where it occurs.

Section 31 amended

22. Section 31 (1) (a) of the principal Act is amended by deleting “or acting member”.