

NATIONAL CRIME AUTHORITY (STATE PROVISIONS) ACT 1985.

(No. 4 of 1985).

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NATIONAL
CRIME AUTHORITY
(STATE PROVISIONS).

No. 4 of 1985.

**AN ACT to make provision for the operation of the
National Crime Authority in Western Australia.**

[Assented to 25 March 1985.]

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

2. This Act shall commence on the day on which it is assented to by the Governor. Commence-
ment.

Interpreta-
tion.

3. (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. This Act binds the Crown in right of the State. Act to bind the Crown.

5. (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. Functions under laws 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.

(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.

- (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.

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. In performing its special functions, the Authority shall, so far as is practicable, work in co-operation with law enforcement agencies.

Co-operation
with law
enforce-
ment
agencies.

10. 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.

Incidental
powers of
Authority.

11. 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.

Arrange-
ments for
Authority
to obtain
information
or
intelligence.

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

Search
warrants.

- (a) the Authority 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 Authority 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, the Authority 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 Authority 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) The Authority 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 Authority 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) a Judge of the Federal Court; or
- (b) 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.

13. (1) Where, by reason of circumstances of urgency, the Authority considers it necessary to do so, a member of the Authority may make application by telephone for a warrant under section 12.

Application
by telephone
for search
warrants.

(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;
- (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.

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

Judges to perform functions under Commonwealth Act.

15. (1) Where, upon application by a member of the Authority, a Judge of the Federal Court sitting in chambers is satisfied by evidence on oath that—

Order for delivery to Authority of passport of witness.

- (a) in connection with a special investigation, a summons has been issued under this Act requiring a person to appear before the Authority at a hearing (whether or not the summons has been served), or a person has appeared before the Authority at a hearing to give evidence or to produce documents or other things;
- (b) there are reasonable grounds for believing that the person may be able to give to the Authority evidence or further evidence that is, or to produce to the Authority documents or other things or further documents or other things that are, relevant to the matter in respect of which the Authority is conducting the investigation and could be of particular significance to the investigation; and
- (c) there are reasonable grounds for suspecting that the person intends to leave Australia and has possession, custody or control of a passport issued to the person,

the Judge may make an order requiring the person to appear before the Federal Court on a day, and at a time and place, specified in the order to show cause why the person should not be ordered to deliver the passport to the Authority.

(3) Subject to subsection (2), section 46 of the Commonwealth Act applies, so far as it is capable of application, at a hearing before the Authority as if the hearing were a meeting of the Authority.

(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 an acting member, counsel assisting the Authority in relation to the matter that is the subject of the hearing 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).

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.

(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.

17. (1) A member or an acting 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.

Power to
summon
witnesses
and take
evidence.

(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

18. (1) A member or acting member may, by notice in writing served on a person, require the person—

Power to
obtain
documents.

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member or acting 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.

(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.

Failure of
witnesses
to attend
and answer
questions.

19. (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 or an acting 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 or acting member presiding at the hearing;
or
- (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 or acting 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.

20. (1) Where, upon application by or on behalf of the Authority, a Judge of the Federal Court sitting in chambers is satisfied by evidence on oath that there are reasonable grounds to believe 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, the Judge may issue a warrant for the apprehension of the person.

Warrant
for arrest
of witness.

(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.

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

(2) If the person is dissatisfied with the decision, the person may apply to the Federal Court for an order of review in respect of the decision.

(3) Where the Authority decides that a claim by a person that the person is entitled to refuse to produce a document is not justified, the person is not entitled to make an application to the Federal Court under subsection (2) in respect of the decision unless the person has produced the document to the Authority or placed the document in the custody of the Registrar of that Court, and, where the person has so produced the document and makes such an application, the Authority shall cause the document to be placed in the custody of the Registrar of that Court.

(4) On an application for an order of review in respect of a decision of the Authority under subsection (1), the Federal Court may, in its discretion, make an order—

(a) affirming the decision; or

(b) setting aside the decision.

(5) Where the Federal Court makes an order under subsection (4) setting aside a decision by the Authority that a claim by a person that the person was entitled to refuse to produce a document is not justified—

(a) unless paragraph (b) applies—the Federal Court shall make a further order directing that the document be delivered to the person;

(b) if the Federal Court—

(i) makes the first-mentioned order for the reason that the person was entitled, on the ground that produc-

tion of the document might tend to incriminate the person, to refuse to produce the document;

- (ii) is satisfied that the person was not entitled on any other ground to refuse to produce the document; and
- (iii) is satisfied that an undertaking of a kind referred to in section 19 (5), (7) or (9) has, or 2 or more such undertakings have, been given to the person and that the person, if now required to produce the document at a hearing before the Authority, would not be entitled to refuse so to produce it,

the Federal Court shall make a further order directing that the document be delivered to the Authority; and

(c) if the Federal Court—

- (i) makes the first-mentioned order for the reason that, or for reasons including the reason that, the person was entitled, on the ground that production of the document might tend to incriminate the person, to refuse to produce the document; and
- (ii) makes a further order directing that the document be delivered to the person,

evidence of production of the document by the person to the Authority, or of the placing of the document by the person in the custody of the Registrar of the Federal Court, as the case may be, for the purposes of the application on which the orders were made is not admissible in proceedings against the person for an offence against a law of the State, other than proceedings in respect of the falsity of evidence given by the person.

(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 subsection (2) 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) An order of the Federal Court under subsection (4) is, subject to any appeal from that order, conclusive for the purposes of any other proceedings.

(8) Where a person who is required to produce a document pursuant to a notice under section 18, or is required to produce a document at a hearing before the Authority, claims that—

- (a) the document contains—
 - (i) particular matter (in this subsection referred to as the “relevant matter”) relating to the personal affairs of the person, not being matter relating to the activities of an existing or past business; or
 - (ii) in the case of a person who is or has been an employee—particular matter (in this subsection also referred to as the “relevant matter”), being

details of earnings received by the person in respect of the person's employment; and

- (b) the person would, if the document had contained only the relevant matter, have been entitled, on the ground that production of the document might tend to incriminate the person, to refuse so to produce the document,

the person may, whether or not the person has made an application to the Federal Court under subsection (2) in respect of a decision by the Authority in relation to the document, make an application to the Federal Court for an order under this subsection and, if such an application is made and the document is produced to that Court, then, subject to subsection (5) (a), that Court—

- (c) if it is satisfied that the claim is justified—may, subject to paragraph (d), make such order as it thinks fit for the excision or concealment of the part of the document that contains the relevant matter and shall, if it makes such an order, make a further order directing that the document be delivered to the Authority after the first-mentioned order has been complied with;
- (d) if it is satisfied that an undertaking of a kind referred to in section 19 (5), (7) or (9) has, or 2 or more such undertakings have, been given to the person and that the person would not, if the document contained only the relevant matter and the person were now required to produce the document to the Authority, be entitled, on the ground that production of the document might tend to incriminate the person, to refuse so to produce it—shall make an order directing that the document be delivered to the Authority;

and

- (e) if paragraph (d) does not apply and that Court does not make an order of the kind first referred to in paragraph (c)—shall make an order directing that the document be delivered to the Authority.

(9) A person is not entitled to make an application under subsection (8) in relation to a document unless the person has, on the day on which the document was to be produced to the Authority or on such later day as the Authority (whether on or after the first-mentioned day) allows, given to the Authority a notice in writing stating that the person proposes to make an application for an excision or concealment order in relation to the document.

(10) A person is not entitled to make an application to the Federal Court under subsection (8) in relation to a document unless the person has produced the document to the Authority or placed the document in the custody of the Registrar of that Court, and, where the person has so produced the document and makes such an application, the Authority shall cause the document to be placed in the custody of the Registrar of that Court.

(11) Where—

- (a) a person makes a claim as mentioned in subsection (8) in relation to particular matter (in this subsection referred to as the “relevant matter”) contained in a document; and
- (b) the Federal Court, being satisfied that the claim is justified, makes in relation to the document an order of the kind first referred to in subsection (8) (c),

evidence of production of the document by the person to the Authority, or of the placing of the document by the person in the custody of the Registrar of that Court, as the case may be, for the purposes of the application on which the order is made is, in so far as the document contains the relevant matter, not admissible in any proceedings

(ii) in the case of an application under subsection (8)—the relevant day in relation to the notice given in accordance with subsection (9) in relation to the application,

or within such further period as that Court (whether before or after the expiration of the first-mentioned period) allows.

(14) The Federal Court has jurisdiction with respect to matters arising under this section.

(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” means—

(a) in relation to a decision of the Authority under subsection (1)—the day on which the Authority gives to the person to whom the decision relates a prescribed notice relating to the decision; or

(b) in relation to a notice given by a person in accordance with subsection (9)—the day on which the Authority gives to the person a prescribed notice relating to the notice so given by the person.

(16) Where a decision of the Authority under subsection (1) relates to 2 or more questions, or to 2 or more documents, the decision shall, to the extent to which it relates to a particular question or document, be deemed, for the purposes of this Act, to constitute a separate decision relating to that question or document only.

(17) Where a person gives to the Authority in accordance with subsection (9) a notice relating to 2 or more documents, the notice shall, to the extent to which it relates to a particular document, be deemed, for the purposes of this Act, to constitute a separate notice relating to that document only.

Applications
to Supreme
Court of
State.

22. (1) Where—

(a) a person is required—

(i) to answer a question, or to produce a document, at a hearing before the Authority; or

(ii) to produce a document pursuant to a notice under section 18;

(b) the Authority, at a particular time (in this subsection referred to as the “relevant time”)—

(i) decides under section 21 (1) that a claim by the person to be entitled to refuse to answer the question, or to produce the document, as the case may be, is not justified; or

(ii) in a case where the person is required to produce a document—receives from the person a notice given in accordance with section 21 (9) relating to the document; and

(c) the Authority, at the relevant time—

(i) in a case where paragraph (a) (i) applies—is holding the hearing for the purposes of a special investigation, or of 2 or more special investigations; or

(ii) in a case where paragraph (a) (ii) applies—considers the document to be relevant to a special investigation, or to 2 or more special investigations,

then, for the purposes of this section—

(d) if a reference to the Authority made by the Commonwealth Minister is at the relevant time in force in respect of a matter to which

the special investigation, or any of the special investigations, relates—prescribed circumstances shall be taken not to apply;

- (e) if a reference to the Authority made by a Minister of the Crown of a State is at the relevant time in force in respect of a matter to which the special investigation, or any of the special investigations, relates and a reference to the Authority made by a Minister of the Crown of another State is at the relevant time in force in respect of such a matter—prescribed circumstances shall be taken not to apply; or
- (f) if a reference to the Authority made by a Minister of the Crown of a State is at the relevant time in force in respect of a matter to which the special investigation, or any of the special investigations, relates and neither paragraph (d) nor (e) applies—prescribed circumstances shall be taken to apply, in relation to the last-mentioned State,

in relation to the decision of the Authority, or in relation to the notice given by the person in accordance with section 21 (9), as the case may be.

(2) Where the Authority—

- (a) decides under section 21 (1) that a claim by a person to be entitled to refuse to answer a question, or to produce a document, is not justified; or
- (b) receives from a person a notice given in accordance with section 21 (9),

the Authority shall give to the person a notice—

- (c) stating that prescribed circumstances—
 - (i) do not apply; or

(ii) apply in relation to a specified State, as the case requires, in relation to the decision of the Authority, or in relation to the notice given by the person in accordance with section 21 (9), as the case may be; and

(d) stating—

(i) in a case where paragraph (c) (i) applies—that the effect of prescribed circumstances not so applying is that the Federal Court has jurisdiction; or

(ii) in a case where paragraph (c) (ii) applies—that the effect of prescribed circumstances so applying in relation to that State is that the Supreme Court of that State has jurisdiction,

with respect to—

(iii) an application for an order of review in respect of the decision of the Authority; or

(iv) an application in relation to the claim to which the notice given by the person in accordance with section 21 (9) relates,

as the case may be,

but failure of a notice to state as mentioned in paragraph (d) does not affect the validity of the notice.

(3) A notice that is given by the Authority to a person and that states as mentioned in subsection (2) (c) is *prima facie* evidence of the matter so stated.

(4) Subject to subsection (5), where prescribed circumstances apply, in relation to the State, in relation to—

(a) a decision of the Authority under section 21 (1); or

- (b) a notice given in accordance with section 21 (9),

section 21 has effect in relation to the decision, or in relation to the claim to which the notice relates, as the case may be, subject to the following modifications—

- (c) a reference in section 21 to the Federal Court shall be taken to be a reference to the Supreme Court;
- (d) a reference in section 21 to the Registrar of the Federal Court shall be taken to be a reference to the Principal Registrar of the Supreme Court;
- (e) a reference in section 21 to a Registry of the Federal Court shall be taken to be a reference to a Registry of the Supreme Court; and
- (f) the words “made under the *Federal Court of Australia Act* 1976 of the Commonwealth” shall be deemed to be omitted from section 21 (13) (a).

(5) Where an application is made to the Supreme Court of the State under section 21 as that section has effect by virtue of subsection (4) of this section and it appears to that Court that it would be more appropriate for the application to be heard and determined by the Federal Court, the Supreme Court may transfer the application to the Federal Court and, upon an application being so transferred—

- (a) the modifications of section 21 mentioned in subsection (4) of this section cease to have effect in relation to the application;
- (b) the Federal Court may hear and determine the application as if the application had been duly made to the Federal Court under section 21; and

“special investigation” means an investigation conducted by the Authority in relation to a matter in respect of which a reference made under the Commonwealth Act by the Commonwealth Minister, or under an Act of a State by a Minister of the Crown of that State, is in force.

23. (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.

False or
misleading
evidence.

(2) A contravention of subsection (1) is an indictable offence and, subject to this section, is punishable, upon conviction, by a fine not exceeding \$20 000 or by imprisonment for a period not exceeding 5 years.

(3) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding \$2 000 or imprisonment for a period not exceeding one year.

24. Where it appears to a member or acting member that, by reason of the fact that a person—

Protection
of witnesses,
etc.

(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 or acting 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.

Contempt of
Authority.

25. A person shall not—

- (a) obstruct or hinder the Authority or a member or an acting 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.

Double jeopardy.

26. 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.

Powers of
acting
members of
the
Authority.

27. (1) While a person is acting as Chairman, the person has, and may exercise, all the powers, and shall perform all the functions, of the Chairman 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 Chairman 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.

28. 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—

Admin-
istrative
arrange-
ments with
Common-
wealth.

- (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. (1) A member or an acting member has, in the performance of functions, or the exercise of powers, as a member or acting member in relation to a hearing before the Authority, the same protection and immunity as a Justice of the High Court.

Protection of
members,
etc.

(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.

30. (1) The appointment of the holder of a judicial office as a member or acting member, or service by the holder of a judicial office as a member or acting 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 or acting member shall be taken to be service as the holder of that judicial office.

Appoint-
ment of
Judge as
member not
to affect
tenure, etc.

(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.

Secrecy.

31. (1) This section applies to—

- (a) a member or acting 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.

32. 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,

Report to
be laid
before
Parliament.

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

