

1990-91

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 12 September 1991

(Attorney-General)

A BILL

FOR

An Act to amend the *National Crime Authority Act 1984*

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *National Crime Authority Amendment Act 1991*.

5 **(2)** In this Act, "**Principal Act**" means the *National Crime Authority Act 1984*¹.

2. After section 29 of the Principal Act the following section is inserted:

Disclosure of summons or notice etc. may be prohibited

“29A.(1) The member issuing a summons under section 28 or a notice under section 29 may 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. 5

“(2) The member may include the notation only if satisfied that failure to do so:

- (a) might prejudice:
 - (i) the safety or reputation of a person; or 10
 - (ii) the fair trial of a person who has been or may be charged with an offence; or
 - (iii) the effectiveness of an investigation; or
- (b) might otherwise be contrary to the public interest.

“(3) If, after the Authority has concluded the investigation concerned: 15

- (a) no evidence of an offence has been obtained as described in subsection 12(1) or (1A); or
- (b) evidence of an offence or offences has been assembled and given as required by subsection 12(1) or (1A) and the Authority has been advised that no person will be prosecuted; or 20
- (c) evidence of an offence or offences committed by only one person has been assembled and given as required by subsection 12(1) or (1A) and criminal proceedings have begun against that person; or 25
- (d) evidence of an offence or offences committed by 2 or more persons has been assembled and given as required by subsection 12(1) or (1A) and:
 - (i) criminal proceedings have begun against all those persons; or 30
 - (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. 35

“(4) If a notation is cancelled by subsection (3), 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. 40

“(5) If a notation made under subsection (1) is inconsistent with a direction given under subsection 25(9), a notation has no effect to the extent of the inconsistency.

Offences of disclosure

“29B.(1) A person who is served with, or otherwise given, a summons or notice containing a notation made under section 29A must not disclose:

- 5 (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.

10 “(2) Subsection (1) does not prevent the person from making a disclosure:

- (a) in accordance with the circumstances, if any, specified in the notation; or
- 15 (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
- (c) to a legal aid officer for the purpose of obtaining assistance under section 27 relating to the summons, notice or matter; or
- (d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with
- 20 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
- 25 (ii) for the purpose of obtaining the agreement of another person under subsection 30(3) to the legal practitioner answering a question or producing a document at a hearing before the Authority.

30 “(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
- 35 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.

40 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 paragraph (2)(d):

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

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

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

(b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or obtaining assistance under section 27, 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 subsection 29A(3); 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*; or

(b) a person to whom the Attorney-General has delegated his or her powers and functions under section 27;

‘official matter’ means any of the following (whether past, present or contingent):

(a) a reference under section 13 or 14;

(b) an investigation conducted or co-ordinated by the Authority;

(c) a hearing held by the Authority;

(d) court proceedings.”.

Warrant for arrest of witness

3. Section 31 of the Principal Act is amended by inserting after paragraph (1)(b) the following word and paragraph:

“or (c) that a person has committed an offence under subsection 30(1) or is likely to do so;”.

Counsel assisting Authority

4. Section 50 of the Principal Act is amended by omitting “Attorney-General” and substituting “Chairman”.

Furnishing of reports and information

5 5. Section 59 of the Principal Act is amended by inserting after subsection (1) the following subsection:

10 “(1A) If a Minister of the Crown of a State who is a member of the Inter-Governmental Committee requests the Authority to provide him or her with information concerning a specific matter relating to the Authority’s operations in the performance of its general functions, being operations conducted within the jurisdiction of that State, the Authority must comply with the request.”.

NOTE

1. No. 41, 1984, as amended. For previous amendments, see Nos. 123 and 165, 1984; Nos. 104 and 193, 1985; Nos. 89 and 141, 1987; Nos. 65, 66, 75, 87 and 110, 1988; No. 108, 1989; Nos. 4 and 118, 1990; and Nos. 28, 70 and 122, 1991.



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