

# **National Crime Authority (State Provisions) (Amendment) Bill**

No.

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By Authority L. V. North, Government Printer Melbourne



# LEGISLATIVE ASSEMBLY

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Read 1° 30 March 1994

*(Brought in by Mr McNamara and Mr Gude)*

## A BILL

to amend the **National Crime Authority (State Provisions) Act 1984**.

### **National Crime Authority (State Provisions)(Amendment) Act 1994**

**The Parliament of Victoria enacts as follows:**

**1. *Purpose***

5           The chief purpose of this Act is to amend the **National Crime Authority (State Provisions) Act 1984** to take account of changes that have been made to its Commonwealth counterpart.

**2. *Commencement***

          This Act comes into operation on the day on which it receives the Royal Assent.

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

**3. Principal Act**

In this Act the **National Crime Authority (State Provisions) Act 1984** is called the Principal Act.

**4. Extension of list of who evidence may be given to**

For section 6 (1) of the Principal Act **substitute—** 5

“(1) If, in performing a special function, the Authority obtains evidence in the course of its investigations of an offence against a law of the Commonwealth or of a State or Territory that would be admissible in a prosecution for the offence, the Authority must assemble the evidence and give it to— 10

(a) the Attorney-General of the Commonwealth or of the relevant State or Territory; or 15

(b) the relevant law enforcement agency; or

(c) any other person or authority who is authorised by or under a law of the Commonwealth or of the relevant State or Territory to prosecute the offence.”. 20

**5. Changes concerning search warrants**

In section 12 of the Principal Act—

(a) in sub-section (1) (a), for “Authority has” **substitute** “member has”; 25

(b) in sub-section (1) (b), for “Authority” **substitute** “member”;

(c) in sub-section (8) (b), for “the Authority shall” **substitute** “a member of the Authority must”;

(d) in sub-section (8) (b) (ii), for “Authority” **substitute** “member”;

(e) in sub-section (9)—

(i) for “The Authority” **substitute** “A member”;

(ii) for “the Authority” **substitute** “the member”. 35

**6. Minor change concerning applying for search warrants by phone**

For section 13 (1) of the Principal Act **substitute**—

5 “(1) A member of the Authority may apply by telephone for a warrant under section 12 if the member considers it necessary because of urgent circumstances.”.

**7. Minor change concerning delivery of passports of witnesses**

10 In section 15 of the Principal Act—

(a) in sub-section (3), after “application by” **insert** “a member of”;

(b) in sub-section (4), for “the Authority shall” **substitute** “a member of the Authority must”.

**8. Conduct of special investigation hearings**

15 (1) In section 16 (2) of the Principal Act, **omit** “or acting members”.

(2) For section 16 (3) of the Principal Act **substitute**—

20 “(3) The Chairperson is to preside at all hearings at which he or she is present.

(3A) If the Chairperson is not present at a hearing at which there are 2 or more members, those members must elect one of their number to preside at the hearing.

25 (3B) Questions arising at a hearing are to 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.

30 (3D) The Authority may regulate the conduct of proceedings at a hearing as it thinks fit.”.

(3) In section 16 (7) of the Principal Act, **omit** “or an acting member”.

*National Crime Authority (State Provisions) (Amendment)*

(4) After section 16 (9) of the Principal Act insert—

“(9A) The Chairperson may, in writing, vary or revoke a direction under sub-section (9).

(9B) However, the Chairperson must not vary or revoke such 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.”.

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**9. *Minor changes concerning the power to summon witnesses***

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In section 17 of the Principal Act—

(a) in sub-section (1), for “or an acting member” **substitute** “of the Authority”;

(b) in sub-section (3), for “unless the Authority” **substitute** “unless the member issuing the summons”;

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(c) in sub-sections (4) and (5), **omit** “or acting member” (wherever occurring);

(d) in sub-section (6), for “Chairman or by a person acting as Chairman” **substitute** “Chairperson”.

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**10. *Minor change***

In section 18 (1) of the Principal Act, **omit** “or acting member” (wherever occurring).

**11. *Insertion of new sections 18A and 18B***

After section 18 of the Principal Act insert—

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**‘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 include in it a notation to the effect that the disclosure of information about it, or any official matter connected with it, is

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prohibited if the member is satisfied that a failure to do so would reasonably be expected to prejudice—

5 (a) the safety or reputation of a person; or

(b) the fair trial of a person who has been or may be charged with an offence; or

(c) the effectiveness of an investigation.

10 (2) The member may include such a notation in a summons under section 17 or a notice under section 18 if the member is satisfied that a failure to do so—

15 (a) might prejudice anything listed in sub-section (1) (a), (b) or (c); or

(b) might otherwise be contrary to the public interest.

20 (3) If a notation is included in a 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.

25 (4) If, after the Authority has concluded the investigation in respect of which a summons or notice was issued—

30 (a) no evidence of an offence has been obtained as described in section 6 (1); or

(b) evidence of an offence or offences has been assembled and given as required by section 6 (1) and the Authority has been advised that no person will be prosecuted; or

35 (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— 5

(i) criminal proceedings have begun against all those persons; or 10

(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— 15

any notation that was included in the summons or notice under this section is cancelled.

(5) If a notation is cancelled by sub-section (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. 20 25

(6) If a notation is inconsistent with a direction given under section 16 (9), the notation has no effect to the extent of the inconsistency.

(7) In including a notation, the member may specify circumstances in which the disclosure of the information described in sub-section (1) may be made. 30

**18B. *Offences concerning the disclosure of information about summonses and notices*** 35

(1) A person who is served with, or otherwise given, a summons or notice containing a



notation made under section 18A must not disclose—

- (a) the existence of the summons or notice or any information about it; or
- (b) the existence of, or any information about, any official matter connected with the summons or notice.

Penalty: 20 penalty units or level 10 imprisonment.

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

- (a) in accordance with the circumstances, if any, specified in the notation; or
- (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
- (c) to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or
- (d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
- (e) if the person is a legal practitioner—
  - (i) for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client; or
  - (ii) for the purpose of obtaining the agreement of another person under section 19 (3) to the legal practitioner answering a

question or producing a document at a hearing before the Authority.

(3) If a disclosure is made to a person as permitted by sub-section (2) or (4)— 5

(a) while he or she is a person of a kind to whom a disclosure is 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 sub-section (4); 10

(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. 15 20

Penalty: 20 penalty units or level 10 imprisonment.

(4) A person to whom information has been disclosed, as permitted by sub-section (2) or this sub-section, may disclose that information— 25

(a) if the person is an officer or agent of a body corporate referred to in sub-section (2) (d)—

(i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or 30

(ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or 35

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

(b) if the person is a legal practitioner— for the purpose of giving legal advice, making representations, or obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or

(c) if the person is a legal aid officer— for the purpose of obtaining legal advice or representation relating to the summons, notice or matter.

(5) This section ceases to apply to a summons or notice after—

(a) the notation contained in the summons or notice is cancelled by section 18A (4); or

(b) 5 years elapse after the issue of the summons or notice—

whichever is sooner.

(6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

(7) In this section—

**“legal aid officer”** means—

(a) a member, or 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 of the Commonwealth Act;

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**“official matter”** means any of the following (whether past, present or contingent)—

- (a) a reference under section 13 or 14 of the Commonwealth Act;
- (b) an investigation conducted or co-ordinated by the Authority;
- (c) a hearing held by the Authority;
- (d) court proceedings.’.

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**12. Widening of grounds for the issue of arrest warrants**

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After section 20 (1) (b) of the Principal Act insert—  
“; or

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

**13. Other minor changes**

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In the Principal Act—

- (a) in section 19 (1) (b), **omit** “or an acting member”;
- (b) in sections 19 (2) and (3), **omit** “or acting member”;
- (c) in sections 20 (1), (3) and (4), after “Federal Court” **insert** “or of the Supreme Court”;
- (d) in section 21 (9), after “such later day as” **insert** “a member of”;
- (e) in section 24, **omit** “or acting member” (wherever occurring);
- (f) in section 25 (1) (a), **omit** “or an acting member”;

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- (g) in sections 27 (1) and (3), for “Chairman” (wherever occurring) **substitute** “Chairperson”;
- (h) in section 29 (1), **omit** “or an acting member”;
- (i) in sections 29 (1), 30 and 31 (1), **omit** “or acting member” (wherever occurring).

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