

Serial 313
National Crime
Authority
(Territory
Provisions)
Amendment
Mr Manzie

NORTHERN TERRITORY OF AUSTRALIA

NATIONAL CRIME AUTHORITY
(TERRITORY PROVISIONS) AMENDMENT BILL 1994

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *National Crime Authority
(Territory Provisions) Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *National Crime Authority (Territory Provisions) Amendment Act 1994*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *National Crime Authority (Territory Provisions) Act* is in this Act referred to as the Principal Act.

4. FUNCTIONS UNDER LAW OF THE TERRITORY

Section 5 of the Principal Act is amended by inserting after subsection (3) the following:

"(3A) The Minister may, with the approval of the Inter-Governmental Committee -

- (a) in a notice under subsection (1) referring the matter to the Authority, state that the reference is related to another reference; or

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- (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."

5. PERFORMANCE OF FUNCTIONS

Section 6(1) of the Principal Act is amended by inserting at the end "or any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of a State to prosecute the offence".

6. CO-OPERATION WITH LAW ENFORCEMENT AGENCIES

Section 9 of the Principal Act is amended by adding at the end the following:

"(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."

7. HEARINGS

Section 16 of the Principal Act is amended -

- (a) by omitting subsection (3) and substituting the following:

"(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 the 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."; and

- (b) by inserting after subsection (9) the following:

"(9A) Subject to subsection (9B), the Chairperson may, in writing, vary or revoke a direction under subsection (9).

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"(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."

8. NEW SECTION

The Principal Act is amended by inserting after section 18 the following:

"18A. DISCLOSURE OF SUMMONS OR NOTICE MAY BE PROHIBITED

"(1) The member issuing a summons under section 17 or a notice under section 18 shall, 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 notification shall not be included in the summons or notice except as follows:

(a) the member shall 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 shall 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.

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"(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 furnished 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 furnished as required by section 6(1) and criminal proceedings have begun against that person;
- (d) evidence of an offence or offences committed by 2 or more persons has been assembled and furnished 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 shall 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 subsection 16(9), a notation has no effect to the extent of the inconsistency.

"18B. OFFENCES OF DISCLOSURE

"(1) 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) the person to whom the Commonwealth Attorney-General has delegated his or her powers and functions under section 27 of the *Commonwealth Act*;

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'official matter' means -

- (a) a reference under sections 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,

whether past, present or contingent.

"(2) A person who is served with, or otherwise given, a summons or notice containing a notation made under section 18A shall 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 12 months.

"(3) Subsection (2) 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

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- (ii) for the purpose of obtaining the agreement of another person under subsection 19(3) to the legal practitioner answering a question or producing a document at a hearing before the Authority.

"(4) If a disclosure is made to a person as permitted by subsection (3) or (5) -

- (a) while he or she is a person of a kind to whom a disclosure is so permitted to be made, he or she shall 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 (5); and
- (b) while he or she is no longer such a person, he or she shall 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 12 months.

"(5) A person to whom information has been disclosed, as permitted by subsection (3) or this subsection, may disclose that information -

- (a) if the person is an officer or agent of a body corporate referred to in paragraph (3)(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.

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"(6) This section ceases to apply to a summons or notice after -

- (a) the notation contained in the summons or notice is cancelled by subsection 18A(4); or
- (b) 5 years elapse after the issue of the summons or notice,

whichever is sooner.

"(7) 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.".

9. WARRANT FOR ARREST OF WITNESS

Section 20(1) of the Principal Act is amended -

- (a) by omitting from paragraph (b)(ii) "summons," and substituting "summons; or"; and
- (b) by inserting after paragraph (b) the following:
 - "(c) that a person has committed an offence under subsection 19(1) or is likely to do so,".

10. FURTHER AMENDMENTS

The Principal Act is further amended as set out in the Schedule.

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SCHEDULE

Section 11

| Provision | Amendment | |
|----------------------|--|---|
| | omit | substitute |
| Section 12(1) | "of the Authority" | - |
| | "if the Authority" | "if the member" |
| Section 12(8)(b) | "the Authority shall" | "a member shall" |
| Section 12(8)(b)(ii) | "the Authority" | "a member" |
| Section 12(9) | "The Authority" | "A member" |
| Section 12(9) | "the Authority" | "a member" |
| Section 13(1) | "the Authority considers" | "a member considers" |
| Section 13(1) | "a member of the Authority" | "the member" |
| Section 15(1) | "of the Authority" | - |
| Section 15(3) | "by the Authority" | "by a member" |
| Section 15(4) | "the Authority shall" | "a member shall" |
| Section 16(2) | "or acting members" | - |
| Section 16(7) | "or an acting member" | - |
| Section 17(1) | "or an acting member" | - |
| Section 17(3) | "unless the Authority" | "unless the member issuing the summons" |
| Section 17(4) | "or acting member" | - |
| Section 17(5) | "or acting member" (wherever occurring) | - |
| Section 17(6) | "or by a person acting as Chairman" | |
| | "by the Chairman" | "by the Chairperson" |
| Section 18(1) | "or acting member" (wherever occurring) | - |

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| | "or acting member of the Authority" | |
| Section 19(1)(b) | "or an acting member" | |
| Section 19(2) | "or acting member" | |
| Section 19(3) | "or acting member" | |
| Section 20(1) | "Federal Court" | "Federal Court or of the Supreme Court" |
| Section 20(3) | "Federal Court" | "Federal Court or of the Supreme Court" |
| Section 20(4) | "Federal Court" | "Federal Court or of the Supreme Court" |
| Section 21(9) | "as the Authority" | "as a member" |
| Section 24 | "or acting member" (twice occurring) | |
| Section 25(a) | "or an acting member" | |
| Section 27(1) | "Chairman" (twice occurring) | "Chairperson" |
| Section 27(3) | "Chairman" | "Chairperson" |
| Section 29(1) | "or an acting member" | |
| | "or acting member" | |
| Section 30 | "or acting member" (wherever occurring) | |
| Section 31(1) | "or acting member of the Authority" | |
| Section 31(3) | "or acting member" | |
| | "or acting member's" | |

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