

Act 1994 No. 62

**NATIONAL CRIME AUTHORITY (STATE PROVISIONS)  
AMENDMENT BILL 1994**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the National Crime Authority (State Provisions) Act 1984 (“the State Act”) so as to reflect amendments made to the National Crime Authority Act 1984 of the Commonwealth (“the Commonwealth Act”).

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the provisions of the proposed Act to commence OR a day or days to be fixed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments set out in Schedule 1.

**Clause 4** is a transitional provision that makes it clear that section 6 of the State Act (as amended by the proposed Act) will apply to investigations started before the commencement of the amendment of that section by the proposed Act. (The section relates to the performance of the NCA’s functions.)

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**SCHEDULE 1—AMENDMENTS**

**Functions of National Crime Authority (NCA) under laws of the State**

Section 5 of the State Act allows the Minister to refer matters to the NCA for investigation if the relevant offence is an offence against the laws of New South Wales. As a result of the amendment to the section made by Schedule 1 (1), the Minister will be able to notify the NCA as to whether the matter being referred is related to another reference or that a reference already made is related to another reference.

### **Performance of functions**

Section 6 (1) of the State Act at present requires the NCA to give to the Attorney-General of the Commonwealth or of a State or the relevant law enforcement agency evidence of an offence against the law of the Commonwealth or of a State or a Territory collected during an investigation. As a result of the amendment made to the subsection by Schedule 1 (2), the NCA will also be able to give such evidence to any persons or authorities authorised to prosecute the offence.

### **Power to prohibit the disclosure of summonses, notices and other documents**

Proposed section 18A, combined with proposed section 18B, is designed to ensure that a recipient of summons or notice issued under section 17 or 18 of the State Act is prohibited from disclosing not only any information about the document, but also from disclosing any information that would indicate the existence of the NCA reference or investigation or any proceedings connected with the reference or investigation.

Proposed section 18A will enable the NCA to prohibit the recipient of such a document from disclosing to others the existence of the document, or any details about it or any matter connected with it, except in circumstances specified by the member of the NCA who issues the document. The member concerned will be required to note a prohibition on a document if satisfied that failure to do so would reasonably be expected to prejudice the safety, reputation or fair trial of a person or the effectiveness of an investigation. It will also be possible for that member to note a prohibition on a document if he or she is satisfied that disclosure might prejudice the safety, reputation or fair trial of a person or the effectiveness of an investigation, or that disclosure might otherwise be contrary to the public interest. (See Schedule 1 (6).)

### **Offences of disclosure**

Proposed section 18B is designed to ensure that a person receiving a summons or notice issued under section 17 or 18 of the State Act is able to comply with the document and is not denied his or her legal rights. In particular, the proposed section prohibits disclosure of any information about such a document or any official matter connected with it, except in certain specified circumstances which provide safeguards for a person receiving the document, and is designed to ensure that no information that might suggest the existence of the NCA investigation can be communicated to others. However, a person receiving the document will be able to disclose its existence if the disclosure is:

- in accordance with the circumstances (if any) specified in the notation on the document; or
- to a legal practitioner in order to obtain legal advice or representation; or
- to a legal aid officer in order to obtain legal or financial assistance under section 27 of the Commonwealth Act; or
- to an officer or agent of a body corporate to enable compliance with the document; or
- if the person is a legal practitioner, to allow compliance with a legal duty of disclosure arising from the practitioner's professional relationship with the client or to enable the legal practitioner to obtain instructions in relation to waiving legal professional privilege.

Persons to whom disclosure of such a document can be made are, in turn, generally prohibited from disclosing the existence of the document. (See Schedule 1 (6).)

**Warrants for arrest of a witness**

Under section 20 of the State Act, a judge of the Federal Court, or the Supreme Court, can issue a warrant for the apprehension of a witness who has absconded, is likely to abscond or is likely to evade service, when a summons has been issued requiring the witness to appear and give evidence or produce documents or other things. Schedule 1 (7) amends the section so as to enable the NCA to apply for the issue of a warrant of apprehension to secure the attendance of a witness who has failed to appear at a NCA hearing or is likely to do so.

**Minor amendments**

Other amendments are made to sections 16, 17 and 27 of the State Act so as to replace references to “Chairman” with references to “Chairperson”. A further amendment is made to section 12 so as to replace the reference in section 12 to “Authority” with a reference to “member”. (See Schedule 1 (3)–(5) and (8).)

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