

# NATIONAL CRIME AUTHORITY (STATE PROVISIONS) AMENDMENT BILL 2002

## Explanatory Memorandum

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### Part 1 — Preliminary

#### 1. Short title

This Act may be cited as the *National Crime Authority (State Provisions) Amendment Act 2002*.

### EXPLANATION

Introduces the short title of the Act

#### 2. Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

### EXPLANATION

It is intended that the Act will come into operation on a day to be fixed.

While different days may be fixed pursuant to clause 2(2) it is unlikely there will be a need for this to occur.

#### 3. The Act amended

The amendments in this Act are to the *National Crime Authority (State Provisions) Act 1985*\* unless otherwise indicated.

[\* Act No. 4 of 1985.  
For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 306, and Act No. 32 of 2001.]

### EXPLANATION

Clarifies that the provisions relate only to the State Act unless otherwise indicated.

Part 6 includes consequential amendment to the Anti-Corruption Commission Act 1988, the Surveillance Devices Act 1988 and the Witness Protection (Western Australia) Act 1996.

**Part 2 — Amendments relating to reasonable excuse, self-incrimination and increases in penalties**

4. Section 18 amended

- (1) Section 18(3) to (5) are repealed and the following subsections are inserted instead —

- “(3) A person shall not refuse or fail to comply with a notice served on the person under this section.
- (4) A person who contravenes subsection (3) is guilty of a crime 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.
- (5) Notwithstanding that an offence against subsection (3) is a crime, 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.
- (6) Where, in accordance with subsection (5), a court of summary jurisdiction convicts a person of an offence against subsection (3), the penalty that the court may impose is a fine not exceeding \$2 000 or imprisonment for a period not exceeding one year.
- (7) The provisions of, section 19(3), (4), (5) and (9) 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 or a hearing officer.”

**EXPLANATION**

The proposed amendments relate to reasonable excuse, self-incrimination and increases in penalties designed to enhance the investigative powers of the Authority.

The amendment to section 18(3) removes the defence of “reasonable excuse”. The previous provision provided that “ A person shall not, without

reasonable excuse, refuse or fail to comply with a notice served on the person under this section.”

The amendment ensures consistency with the Commonwealth Act, and avoids delays to the Authority’s hearing process by persons challenging in court its decision that he or she did not have a reasonable excuse for his or her failure to comply with a notice served under this section.

A person who fails to comply with a notice served on the person will still have adequate legal defences available under the Criminal Code such as accident, sudden and extraordinary emergency and duress.

Subsection (4) makes it a crime for a person who does not comply with the Act and provides increased penalties. On conviction a person is liable to a fine not exceeding \$20 000 or imprisonment for a period not exceeding five years. The previous penalty was \$1 000 or six months imprisonment.

Subsection (5) and (6) provides for summary conviction where the court is satisfied that this is appropriate and both the prosecution and the defendant consent. A maximum fine of \$2 000 or imprisonment for a period not exceeding one year is provided. This improves the effectiveness of the Act by allowing for these matters to be determined by a Court of Petty Sessions rather than being dealt with by a District Court.

Subsection (7) links, the requirement of a person to produce a document or thing pursuant to a notice served on the person, to the provisions of section 19 (3) to (5) inclusive and (9). These provisions exist to afford protection to persons who are forced to self-incriminate themselves by answering questions put to them, or by producing a document or thing, at a hearing.

## 5. Section 19 amended

(1) “Section 19(1) and (2) are amended by deleting”, without reasonable excuse”.

(2) Section 19(4) to (13) are repealed and the following subsections are inserted instead —

“(4) Subsection (5) limits the use that can be made of any answers given at a hearing before the Authority or a hearing officer, or documents or things produced at a hearing before the Authority or a hearing officer. That subsection only applies if —

(a) a person appearing as a witness at a hearing before the Authority or a hearing officer —

- (i) answers a question that the person is required to answer by the member presiding at the hearing or the hearing officer who is holding the hearing; or
- (ii) produces a document or thing that the person was required to produce by a summons under this Act served as prescribed;

and

- (b) in the case of the production of a document that is, or forms part of, a record of an existing or past business — the document sets out details of earnings received by the person in respect of the person's employment and does not set out any other information; and
  - (c) before answering the question or producing the document or thing, the person claims that the answer, or the production of the document or thing, might tend to incriminate the person or make the person liable to a penalty.
- (5) The answer, or the document or thing, is not admissible in evidence against the person in —
- (a) a criminal proceeding; or
  - (b) a proceeding for the imposition of a penalty,
- other than a proceeding in respect of —
- (c) in the case of an answer — the falsity of the answer; or
  - (d) in the case of the production of a document — the falsity of any statement contained in the document.
- (6) A person who contravenes subsection (1), (2) or (3) is guilty of a crime that, subject to this section, is publishable, upon conviction, by a fine not exceeding \$20 000 or by imprisonment for a period not exceeding 5 years.
- (7) Notwithstanding that an offence against subsection (1), (2) or (3) is a crime, 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.

- (8) Where, in accordance with subsection (7), a court of summary jurisdiction convicts a person of an offence against subsection (1), (2) or (3), the penalty that the court may impose is a fine not exceeding \$2 000 or imprisonment for a period not exceeding one year.
- (9) Subsection (3) does not affect the law relating to legal professional privilege. ”.

## EXPLANATION

The proposed amendments relate to reasonable excuse, self-incrimination and increases in penalties designed to enhance the investigative powers of the Authority.

The amendment to section 19(1) and (2) removes the defence of reasonable excuse for a person who fails to comply with a summons served on them, or the requirements of a hearing. However, the person will still have adequate legal defences available under the Criminal Code such as accident, sudden and extraordinary emergency and duress.

Subsections (4) and (5) provide that if, after claiming privilege against self-incrimination in respect to an answer to a question or the production of a document or thing, the person answers the question or produces the document or thing, the answer or document or thing is not admissible in evidence against the person in any subsequent criminal proceedings or a proceedings for the imposition of a penalty.

Exceptions to the above are where the matter relates to any existing false evidence exception or the evidence is necessary in any proceedings concerning the falsity of any answer or the falsity of any statement contained within the document so produced.

Subsection (6) makes it a crime for a person who does not comply with the Act and provides for an increased penalty. On conviction a person is liable to a fine not exceeding \$20 000 or imprisonment for a period not exceeding five years. The previous penalty was \$1 000 or six months imprisonment.

Subsections (7) and (8) provide for summary conviction where the court is satisfied that this is appropriate and both the prosecution and the defendant consent. A maximum fine of \$2 000 or imprisonment for a period not exceeding one year is provided. This improves the effectiveness of the Act by allowing for these matters to be determined by a Court of Petty Sessions rather than being dealt with by a District Court.

Finally subsection (9) preserves the law relating to legal professional privilege. The effect of this subsection is that a legal practitioner required to answer a question or produce a document will not be placed in a position whereby they breach their obligation to their clients.

6. Section 21 repealed and a saving provision

(1) Section 21 is repealed.

(2) In this section —

“**NCA Act**” means the *National Crime Authority Act 1984* of the Commonwealth;

“**relevant claim**” means a claim, made before the coming into operation of this section that a person is entitled to refuse —

- (a) to furnish information, or produce a document, pursuant to a notice under section 20 of the NCA Act;
- (b) to produce a document pursuant to a notice under section 29 of the NCA Act;
- (c) to answer a question put to the person, or produce a document that the person was required to produce, under section 30 of the NCA Act; or
- (d) to comply with a requirement —
  - (i) to answer a question, or to produce a document, at a hearing before the Authority under a law of a State; or
  - (ii) to produce a document pursuant to a notice under a provision of a law of a State that corresponds to section 29 of the NCA Act,

to which section 32 of the NCA Act applied, because of section 32B of the NCA Act, before the coming into operation of item 13 of Schedule 1 to the *National Crime Authority Legislation Amendment Act 2001* of the Commonwealth.

(3) Section 21, as in force immediately before its repeal by subsection (1), continues to apply in relation to a relevant claim as if it had not been repealed.

## EXPLANATION

The current provisions of section 21 sets out a regime for a person to apply to the Federal Court (or a State Supreme Court in certain circumstances) for a review of certain decision by the Authority.

As a consequence of the omission of the defence of reasonable excuse the Authority will no longer be required to make a decision as to whether the person's claim is or is not justified. The provisions of section 21 therefore no longer have a role.

The savings provisions are considered necessary to cover any claims made before the coming into operation of this amendment.

### 7. Section 25 replaced

Section 25 is repealed and the following section is inserted instead —

#### **“25. Contempt of Authority**

- (1) A person shall not —
  - (a) obstruct or hinder —
    - (i) the Authority or a member in the performance of the functions of the Authority; or
    - (ii) a hearing officer in the performance of the hearing officer's functions as a hearing officer;
  - or
  - (b) disrupt a hearing before the Authority or a hearing officer.
- (2) A person who contravenes subsection (1) is guilty of a crime 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 a crime, 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. ”.

## EXPLANATION

Amendment to subsection (1) extends the provisions of section 25 to include “hearing officers” in the performance of a hearing officer’s functions as a hearing officer. A hearing officer is a person appointed by the Governor-General (Commonwealth) on the advice of the Minister.

Consistent with sections 18 and 19, the amendment at subsection (2) makes it a crime for a person who does not comply with the Act and provides for an increased penalty. On conviction a person is liable to a fine not exceeding \$20 000 or imprisonment for a period not exceeding five years.

Subsections (3) and (4) provide for summary conviction where the court is satisfied that this is appropriate and both the prosecution and the defendant consent. A maximum fine of \$2 000 or imprisonment for a period not exceeding one year is provided.

### **Part 3 — Amendments relating to people who may apply for, or issue, search warrants**

#### **8. Section 12 amended**

##### **(1) Section 12(1) is amended as follows:**

- (a) by deleting “A member may apply to a Judge of a prescribed court” and inserting instead —**

**“An eligible person may apply to an issuing officer”;**

- (b) in paragraphs (a) and (b) by deleting “the member” and inserting instead —**

**“the eligible person”.**

##### **(2) Section 12(2) is amended by deleting “a Judge of a prescribed court, the Judge” and inserting instead —**

**“an issuing officer, the issuing officer”.**

##### **(3) Section 12(3) is amended as follows:**

- (a) by deleting “A Judge” and inserting instead —**

**“An issuing officer”;**



- (b) by deleting “the Judge” wherever occurring and inserting instead —  
“the issuing officer”.
- (4) Section 12(4) is amended as follows:
  - (a) by deleting “a Judge” and inserting instead —  
“an issuing officer”;
  - (b) by deleting “the Judge” and inserting instead —  
“the issuing officer”.
- (5) Section 12(8)(b) is amended as follows:
  - (a) by deleting “a member” and inserting instead —  
“an eligible person”;
  - (b) in subparagraph (ii) by deleting “the member” and inserting instead —  
“the eligible person”.
- (6) Section 12(9) is amended as follows:
  - (a) by deleting “A member” and inserting instead —  
“An eligible person”;
  - (b) by deleting “the member” and inserting instead —  
“the eligible person”.
- (7) Section 12(11) is repealed.
- (8) After section 12(13) the following subsections are inserted —  
“
  - (14) A function of issuing a warrant conferred on an issuing officer by this section is conferred on the issuing officer in a personal capacity and not as a court or a member of a court.
  - (15) Without limiting the generality of subsection (14), the issue of a warrant has effect only by virtue of this Act”

and is not to be taken by implication to be made by a court.

- (16) An issuing officer performing a function of, or connected with, issuing a warrant under this section has the same protection and immunity as if the issuing officer were performing that function as, or as a member of, a court (being a court of which the issuing officer is a member)."

## EXPLANATION

The amendments to section 12 expands the class of persons who may apply for search warrants to include a member of the Authority and a member of the staff of the Authority who are police officers (Members of State and Territory Police Forces, including the Australian Federal Police).

Similarly, the class of persons who may issue search warrants has been expended to include federal magistrates.

Subsection (8) adds three new provisions clarifying that the functions of issuing a warrant under section 12 is conferred on an issuing officer in a personal capacity and not as a court or as a member of a court.

This puts beyond doubt any suggestion that non-judicial functions are meant to be discharged in a judicial capacity. The issue of the warrant has effect only by virtue of the Commonwealth and State Acts and is not to be taken by implication to have been made by a court.

However, an issuing officer performing a function of, or connected with issuing a warrant under section 12 will be afforded the same protection and immunity as if he or she was performing that function as, or as a member of a court.

The definitions of "eligible person" and "issuing officer" are contained in the National Crime Authority Act 1984 (Cwlth)

### 9. Section 13 amended

- (1) Section 13(1) is amended by deleting "a member" and inserting instead —

"an eligible person".

- (2) Section 13(1), (2) and (3)(b) are amended by deleting "the member" and inserting instead —

"the eligible person".

- (3) Section 13(3) is amended as follows:
  - (a) by deleting “a Judge” and inserting instead —  
“an issuing officer”;
  - (b) by deleting “the Judge” and inserting instead —  
“ the issuing officer”.
- (4) Section 13(4), (5) and (6) are amended by deleting “Judge” wherever occurring and inserting instead —  
“issuing officer”.
- (5) After section 13(7) the following subsections are inserted —
  - “(8) A function of issuing a warrant conferred on an issuing officer by this section is conferred on the issuing officer in a personal capacity and not as a court or a member of a court.
  - (9) Without limiting the generality of subsection (8), the issue of a warrant has effect only by virtue of this Act and is not to be taken by implication to be made by a court.
  - (10) An issuing officer performing a function of, or connected with, issuing a warrant under this section has the same protection and immunity as if the issuing officer were performing that function as, or as a member of, a court (being the court of which the issuing officer is a member).”

## **EXPLANATION**

Amendments to section 13 are the same as for section 12.

Section 13 similarly expands the class of persons who may apply for search warrants to include a member of the Authority and a member of the staff of the Authority who are police officers (Members of State and Territory Police Forces, including the Australian Federal Police).

Similarly, the class of persons who may issue search warrants has been expended to include federal magistrates.

Likewise subsection (8) – (10) adds three new provisions clarifying that the functions of issuing a warrant under section 12 is conferred on an issuing officers in a personal capacity and not as a court or as a member of a court.

This puts beyond doubt any suggestion that non-judicial functions are meant to be discharged in a judicial capacity. The issue of the warrant has effect only by virtue of the Commonwealth and State Acts and is not to be taken by implication to be made by a court.

However, an issuing officer performing a function of, or connected with issuing a warrant under section 12 will have the same protection and immunity as if he or she was performing that function as, or as a member of a court.

#### **Part 4 — Amendments relating to use of reasonable force to execute warrants**

10. Section 12 amended

After section 12(6) the following subsection is inserted —

“(6a) A person executing a warrant issued under this section may only use such reasonable force as is necessary for the execution.”

11. Section 20 amended

After section 20(2) the following subsection is inserted —

“(2a) A person executing a warrant under this section may only use such reasonable force as is necessary for the execution.”

#### **EXPLANATION**

These amendments serve to clarify the degree of force being reasonable force that may be used when executing a search or arrest warrant under the Act.

#### **Part 5 — Amendments relating to hearing officers**

12. Section 15 inserted

After section 14 the following section is inserted —

**“15. Hearings**

For the purposes of a special investigation —

- (a) the Authority may hold hearings of the Authority;  
and

- (b) the Chair may, in writing, direct a hearing officer to hold hearings.”

13. Section 16 amended

Section 16(1) is repealed and the following subsection is inserted instead —

“(1) This section applies to a hearing held by the Authority.”

Note: The heading to section 16 will be altered to read **“Hearings of the Authority”**.

14. Section 16A inserted

After section 16 the following section is inserted —

**“16A. Hearings by hearing officers**

- (1) A hearing officer may regulate the conduct of proceedings at a hearing as the hearing officer thinks fit.
- (2) At a hearing before a hearing officer —
  - (a) a person giving evidence may be represented by a legal practitioner; and
  - (b) if, by reason of the existence of special circumstances, the hearing officer consents to a person who is not giving evidence being represented by a legal practitioner — the person may be so represented.
- (3) A hearing before a hearing officer must be held in private and the hearing officer may give directions as to the persons who may present during the hearing or a part of the hearing.
- (4) Nothing in a direction given by the hearing officer under subsection (3) prevents the presence, when evidence is being taken at a hearing before the hearing officer, of —
  - (a) a person representing the person giving evidence; or
  - (b) a person representing, in accordance with subsection (2), a person who, by reason of a direction given by the hearing officer under subsection (3), is entitled to be present.

- (5) If a hearing before a hearing officer is being held, a person (other than a member or a member of the staff of the Authority approved by the Authority) must not be present at the hearing unless the person is entitled to be present by reason of a direction given by the hearing officer under subsection (3) or by reason of subsection (4).
- (6) At a hearing before a hearing officer for the purposes of a special investigation —
- (a) counsel assisting the hearing officer generally or in relation to the matter to which the investigation relates;
  - (b) any person authorized by the hearing officer to appear before the hearing officer at the hearing;
- or
- (c) any legal practitioner representing a person at the hearing in accordance with subsection (2),
- may, so far as the hearing officer thinks appropriate, examine or cross-examine any witness on any matter that the hearing officer considers relevant to the special investigation.
- (7) If a person (other than a member or a member of the staff of the Authority) is present at a hearing before a hearing officer while another person (“**the witness**”) is giving evidence at the hearing, the hearing officer must —
- (a) inform the witness that the person is present;  
and
  - (b) give the witness an opportunity to comment on the presence of the person.
- (8) To avoid doubt, a person does not cease to be entitled to be present at a hearing before a hearing officer or part of such a hearing if —
- (a) the hearing officer fails to comply with subsection (7); or
  - (b) a witness comments adversely on the presence of the person under subsection (7)(b).
- (9) A hearing officer may direct that —
- (a) any evidence given before the hearing officer;

- (b) the contents of any document, or a description of any thing, produced to the hearing officer;
- (c) any information that might enable a person who has given evidence before the hearing officer to be identified; or
- (d) the fact that any person has given or may be about to give evidence at a hearing,

must not be published, or must not be published except in such manner, and to such persons, as the hearing officer specifies. The hearing officer must give such a direction if the failure 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.

- (10) Subject to subsection (11), the Chair may, in writing, vary or revoke a direction under subsection (9).
- (11) The Chair must 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.
- (12) Where —
  - (a) a person has been charged with an offence before a federal court or before a court of a State or Territory; and
  - (b) the court considers that it may be desirable in the interests of justice that particular evidence given before a hearing officer, being evidence in relation to which the hearing officer 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 hearing officer or the Authority a certificate to that effect and, if the court does so, the hearing officer or the Authority, as the case may be, must make the evidence available to the court.

- (13) Where —
  - (a) the hearing officer or the Authority makes evidence available to a court in accordance with subsection (12); 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.

- (14) A person who —

- (a) is present at a hearing in contravention of subsection (5); 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.

- (15) At the conclusion of a hearing held by a hearing officer, the hearing officer must give the Authority —

- (a) a record of the proceedings of the hearing; and

- (b) any documents or other things given to the hearing officer at, or in connection with, the hearing.”

## EXPLANATION

The purpose of this Part 5 is to increase the investigative capacity of the Authority by enabling the appointment of a number of persons who are empowered to conduct hearings on behalf of the Authority.

The provisions further allow a hearing officer to regulate the conduct of his or her hearings as he or she thinks fit and all hearings are to be held in private (subsection (3)).

Hearing officers may give directions as to the persons who may be present during a hearing. The provisions provide that legal practitioners may represent witnesses and other persons at these hearings. Accordingly, the above provisions provide that a hearing officer cannot limit the presence of those legal practitioners.

No other person can be present at a hearing (except a member or a member of the staff of the Authority) unless the hearing officer so directs.

If other persons are present while a witness is giving evidence, then the hearing officer is required to inform the witness and give the witness the



opportunity to comment. However, should the hearing officer fail to do either of these that other person does not cease to be entitled to be remain present at the hearing.

At a hearing, counsel assisting the hearing officer and any legal practitioner who is entitled to be present may, as far as the hearing officer considers it appropriate, examine or cross-examine any witness on any matter that the hearing officer considers relevant to the special investigation.

A hearing officer may also give a non-publication order in relation to any evidence given before him or her; the contents of any document or thing produced; the identity of a witness or the fact that any person has or may be about to give any evidence at a hearing. Such a direction must be given if a failure to do so may prejudice the safety, reputation or fair trial of a person who has been or may be charged with an offence

The Chair may in writing vary or revoke a non-publication order given by a hearing officer, but he or she must not do so if it might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been charged or may be charged with an offence.

The provisions also provide that where a person has been charged with an offence before a federal, State or Territory court, the court may give to the hearing officer (or the Authority) a certificate to the effect that the court considers it may be desirable in the interests of justice that particular evidence given before a hearing officer, to which there is a non-publication order, be given to the person charged or to his or her legal practitioner,

If after examining the evidence, the Court is of the view that the evidence should be given to the person charged or his or her legal practitioner, then the court may do so.

Finally, any person who is present at a hearing contrary to the direction of a hearing officer or who breaches a non-publication order commits an offence and is liable to a fine of not more than \$2 000 or imprisonment for a period not exceeding 12 months. This is a new section and penalty is identical to that provided by previous section 16

15. Section 17 amended

- (1) Section 17(1), (2) and (3) are amended by inserting after “before the Authority” —

“ or a hearing officer”.

(2) Section 17(3) is amended by inserting after “to which the Authority” and after “prevents the Authority” —

“or the hearing officer”.

(3) Section 17(4) is amended by inserting after “Authority” —

“or the hearing officer who is holding a hearing”.

(4) Section 17(5) is amended as follows:

(a) by inserting after “The Authority” —

“or the hearing officer”;

(b) in paragraph (a) by inserting after “a member” —

“or a hearing officer”;

(c) in paragraph (a) by inserting after “presiding at the hearing” —

“or the hearing officer”.

(d) in paragraph (b) by inserting after “a member,” —

“the hearing officer”;

16. Section 18 amended

(1) Section 18(1)(a) is amended by deleting “or a member of the staff of the Authority;” and inserting instead —

“,a member of the staff of the Authority or a hearing officer;”

(2) Section 18(2) is amended by inserting after “Authority” —

“or a hearing officer”.

17. Section 18B amended

Section 18B(7) is amended the definition of “official matter”, in paragraph (c), by inserting after “Authority” —

“ or a hearing officer”.

18. Section 19 amended

(1) Section 19(1) is amended as follows:

(a) by inserting after “Authority” —

“or a hearing officer”;

(b) in paragraph (b) by deleting “member.” and inserting instead —

“member or the hearing officer, as the case may be.”

(2) Section 19(2) is amended as follows:

(a) by inserting after “Authority” —

“or a hearing officer”;

(b) in paragraph (b) by deleting “hearing;” and inserting instead —

“hearing or the hearing officer;”.

(3) Section 19(3) is amended as follows:

(a) in paragraph (a) by inserting after “Authority” —

“or a hearing officer”;

(b) by deleting “, furnish to the Authority” and inserting instead —

“or the hearing officer, furnish to the Authority or the hearing officer”.

19. Section 20 amended

Section 20(1)(a) and (3)(a) are amended by inserting after “before the Authority” —

“or a hearing officer”.

20. Section 23 amended

Section 23(1) is amended by inserting after “Authority”—

“or a hearing officer”.

21. Section 24 amended

Section 24 is amended as follows:

- (a) by inserting after “a member” —  
“ or a hearing officer”;
- (b) in paragraph (a) by inserting after “Authority” —  
“or a hearing officer”;
- (c) in paragraph (b) by inserting after “before the Authority” —  
“or a hearing officer”;
- (d) by inserting after “the member” —  
“or the hearing officer, as the case may be,”.

22. Section 29 amended

(1) Section 29(1) is amended as follows:

- (a) by inserting after “member” wherever occurring —  
“or a hearing officer”;
- (b) by inserting after “Authority” —  
“ or the hearing officer”.

(2) Section 29(2) and (3) are amended by inserting after “Authority” wherever occurring —  
“or a hearing officer”.

23. Section 31 amended

(1) Section 31 is amended as follows:

- (a) after paragraph (a) by deleting “and”;
- (b) after paragraph (b) by deleting the full stop and inserting —  
“ ; and
- (c) a hearing officer.”

- (2) Section 31(3) is amended by deleting “or acting member in the member’s or acting member’s” and inserting instead —

“, acting member or hearing officer in the member’s, acting member’s or hearing officer’s”.

## EXPLANATION

The amendments to sections 17, 18, 18B, 19, 20, 23, 24, 29 and 31 are amended to reflect the conduct of hearing and the role of hearing officers to ensure consistency of these provisions to the Commonwealth Act.

### **Part 6 — Amendments relating to references to the Chairman or Chairperson of the Authority**

24. Section 16 amended

Section 16(3), (3a), (9a) and (9b) are amended by deleting “Chairperson” wherever occurring and inserting instead —

“Chair”.

25. Section 17 amended

Section 17(6) is amended by deleting “Chairperson.” and inserting instead —

“Chair.”

26. Section 27 amended

Section 27(1) and (3) are amended by deleting “Chairperson” wherever occurring and inserting instead —

“Chair”.

27. *Anti-Corruption Commission Act 1988* amended

- (1) The amendment in this section is to the *Anti-Corruption Commission Act 1988*\*

*[\* Reprinted as at 6 July 2001.]*

- (2) Section 12(1)(f)(iii) of the *Anti-Corruption Commission Act 1988*\* is amended by deleting “Chairman” and inserting instead —

“Chair”.

28. *Surveillance Devices Act 1998* amended

- (1) The amendments in this section is to the *Surveillance Devices Act 1998*\*

[\* Act No. 56 of 1998.

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 443, and Act No. 35 of 2001.]*

- (2) Each of the provisions set out in the Table is amended by deleting “Chairperson” wherever occurring and inserting instead -

“ Chair ”.

**Table**

section 3(1) in paragraph (c) of the definition of “authorized person”  
section 9(2)(a)(iii)  
section 15(3)(c)  
section 43(3) and (4)  
section 44(1)(f)

29. *Witness Protection (Western Australia) Act 1996* amended

- (1) The amendment in this section is to the *Witness Protection (Western Australia) Act 1996*\*

[\* Act No. 11 of 1996.

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 500.]*

- (2) Section 3(1) is amended in paragraph (c) of the definition of “approved authority” by deleting “Chairman” and inserting instead —

“ Chair ”.

**EXPLANATION**

These amendments replace reference to Chairperson with references to Chair for consistency of use of these expressions in the corresponding provisions of the *National Crime Authority 1984* of the Commonwealth.

**Part 7— Other amendments**

30. Section 6 amended

Section 6(4) and (5) are repealed.

## EXPLANATION

With the amendment of the Commonwealth Act these two provisions are redundant.

Where a matter had been referred to the NCA for investigation, these sections limited the powers of members of the NCA to interview a person suspected of having committed an offence in that they only had powers to interview where the person has been served with a summons to appear before the Authority.

The repeal of these sections removes this restriction and complements the Commonwealth legislation.

### 31. Section 16 amended

After section 16(7) the following subsections are inserted —

- “(7a) If a person (other than a member or a member of the staff of the Authority) is present at a hearing while another person (“**the witness**”) is giving evidence at the hearing, the Authority shall —
- (a) inform the witness that the person is present; and
  - (b) give the witness an opportunity to comment on the presence of the person.
- (7b) To avoid doubt, a person does not cease to be entitled to be present at a hearing or part of a hearing if —
- (a) the Authority fails to comply with subsection (7a); or
  - (b) a witness comments adversely on the presence of the person under subsection (7a)(b). ”.

## EXPLANATION

The amendment allows a person to be present at hearings of the Authority. Where a person is present the provision requires that the Authority inform the witness of the person’s presence and affords the witness an opportunity to comment on that person’s presence.

The provisions are such that a failure of the Authority to inform the witness of the person’s presence or where the witness comments adversely on the person’s presence, the Authority is not precluded from continuing the hearing.

In essence, the amendment removes any doubt as to the powers of the Authority to allow persons to be present at its hearings and is not intended to

restrict or inhibit the manner in which the Authority may otherwise regulate its hearings.

32. Section 18B amended

Section 18B(2)(e) is deleted and the following paragraph is inserted instead —

- “(e) if the person is a legal practitioner — 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 or a hearing officer. ”.

**EXPLANATION**

The amendment removes a provision that enabled a legal practitioner to disclose the existence of a summons or notice to appear before the Authority for the purpose of complying with a “legal duty” of disclosure arising from a legal practitioner’s professional relationship with a client.

As the meaning of “legal duty” is uncertain and is anomalous in that the provision applies only to legal practitioners and not other persons in a fiduciary or legal relationship with another person, the provision was repealed.

33. Section 23 amended

Section 23(2) and (3) are amended by deleting “an indictable offence” and inserting instead —

“a crime”.

**EXPLANATION**

This amendment is made so that the Act conforms to normal drafting practice in this State. The term “indictable offence” is not sufficiently precise.