

National Crime Authority (State Provisions) Amendment Bill 2002

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Western Australia

LEGISLATIVE ASSEMBLY

**National Crime Authority (State Provisions)
Amendment Bill 2002**

A Bill for

An Act to amend the *National Crime Authority (State Provisions) Act 1985* so that it more closely reflects the *National Crime Authority Act 1984* of the Commonwealth, and for other purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

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

5 **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.

10 **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*.

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

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

4. Section 18 amended

Section 18(3) to (5) are repealed and the following subsections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.

”.

s. 5

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,
- 5 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 —
- 10 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
- 15 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.
- 20
- (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.
- 25
- (9) Subsection (3) does not affect the law relating to legal professional privilege.

”.

6. Section 21 repealed and a saving provision

- 30 (1) Section 21 is repealed.

s. 6

(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.

7. Section 25 replaced

Section 25 is repealed and the following section is inserted instead —

“

5

25. Contempt of Authority

(1) A person shall not —

(a) obstruct or hinder —

10

(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

15

(b) disrupt a hearing before the Authority or a hearing officer.

20

(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.

25

(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.

30

(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.

”.

**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:

- 5 (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

”;

- 10 (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 —

- 15 “ 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 ”;

- 20 (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 ”;

- 25 (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).

”.

s. 9

9. Section 13 amended

- (1) Section 13(1) is amended by deleting “a member” and inserting instead —
“ an eligible person ”.
- 5 (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 —
10 “ 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 —
15 “ 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
20 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.
- 25 (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
30 issuing officer is a member).
- ”.

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 —

5

“

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

”.

10

11. Section 20 amended

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

“

15

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

”.

Part 5 — Amendments relating to hearing officers

12. Section 15 inserted

After section 14 the following section is inserted —

“

5

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.

10

”.

13. Section 16 amended

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

15

“

- (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**”.

20

14. Section 16A inserted

After section 16 the following section is inserted —

“

16A. Hearings by hearing officers

25

- (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

- 5 (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.
- 10 (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 be present during the hearing
or a part of the hearing.
- 15 (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.
- 20 (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
25 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 —
- 30 (a) counsel assisting the hearing officer generally
or in relation to the matter to which the
investigation relates;

s. 14

- (b) any person authorised 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),
- 5 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.
- 10 (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 —
- 15 (a) inform the witness that the person is present; and
- (b) give the witness an opportunity to comment on the presence of the person.
- 20 (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).
- 25 (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;
- 30 (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.

5

10

- (10) Subject to subsection (11), the Chair may, in writing, vary or revoke a direction under subsection (9).

15

- (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 —

20

- (a) a person has been charged with an offence before a federal court or before a court of a State or Territory; and

25

- (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,

30

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.

s. 15

- (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.
- ”.
- 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:

- 5 (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
10 hearing” —
“ or the hearing officer ”;
- (d) in paragraph (b) by inserting after “a member,” —
“ the hearing officer ”.

16. Section 18 amended

15 (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;
 ”.

20 (2) Section 18(2) is amended by inserting after “Authority” —
“ or a hearing officer ”.

17. Section 18B amended

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

25 “ or a hearing officer ”.

s. 18

18. Section 19 amended

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

(a) by inserting after “Authority” —

“ or a hearing officer ”;

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

“

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

10

”.

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

(a) by inserting after “Authority” —

“ or a hearing officer ”;

15 (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 ”;

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

“

or the hearing officer, furnish to the Authority or the hearing officer

25

”.

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

5 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 ”;
- 10 (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, ”.

15 **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” —
20 “ 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

25 (1) Section 31 is amended as follows:

- (a) after paragraph (a) by deleting “and”;

s. 23

(b) after paragraph (b) by deleting the full stop and inserting —

“

; and

5

(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 —

“

10

, acting member or hearing officer in the member’s,
acting member’s or hearing officer’s

”.

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

24. Section 16 amended

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

25. Section 17 amended

10 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 ”.

15 **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.*]

- 20 (2) Section 12(1)(f)(iii) is amended by deleting “Chairman” and
inserting instead —
“ Chair ”.

28. *Surveillance Devices Act 1998* amended

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

25 [* *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.]*

s. 29

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

5

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.*

10

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 —

15

“ Chair ”.

Part 7 — Other amendments

30. Section 6 amended

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

31. Section 16 amended

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

“

- 10 (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.
- 15 (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).

20

”.

32. Section 18B amended

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

“

- 25 (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
- 30 a hearing officer.

”.

s. 33

33. Section 23 amended

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

“ a crime ”.

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