

Queensland



**NATIONAL CRIME
AUTHORITY (STATE
PROVISIONS) AMENDMENT
BILL 1995**

Queensland



NATIONAL CRIME AUTHORITY (STATE PROVISIONS) AMENDMENT BILL 1995

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1995

A BILL

FOR

An Act to amend the *National Crime Authority (State Provisions) Act 1985*, and for other purposes

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The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

Clause **1.** This Act may be cited as the *National Crime Authority (State Provisions) Amendment Act 1995*.

4

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**PART 2—AMENDMENT OF NATIONAL CRIME
AUTHORITY (STATE PROVISIONS) ACT 1985**

6

7

Act amended

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Clause **2.** This Part amends the *National Crime Authority (State Provisions) Act 1985*.

9

10

Omission of s 2 (Commencement)

11

Clause **3.** Section 2—
omit.

12

13

Amendment of s 3 (Interpretation)

14

Clause **4.(1)** Section 3(1), definitions “acting member” and “document”—
omit.

15

16

(2) Section 3(1)—

17

insert—

18

“Minister of the Crown of a State” includes—

19

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- (a) for the Australian Capital Territory—a person appointed as Minister under the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), section 41; and 1
2
3
- (b) for the Northern Territory—a person holding ministerial office within the meaning of the *Northern Territory (Self-Government) Act 1978* (Cwlth). 4
5
6
- “nondisclosure statement”**, for sections 18A to 18D,¹ means a statement prohibiting the disclosure of information about a notice, summons or official matter related to a notice or summons. 7
8
9
- “notice”**, for sections 18A to 18D,¹ means a notice issued under section 18. 10
11
- “official matter”**, for sections 18A and 18D,¹ means any of the following things (whether past, present or contingent)— 12
13
- (a) a reference under the Commonwealth Act, section 13 or 14; 14
- (b) an investigation conducted or coordinated by the authority; 15
- (c) a hearing before the authority; 16
- (d) a court proceeding. 17
- “Parliament of a State”** includes the Legislative Assembly of the Australian Capital Territory and of the Northern Territory. 18
19
- “Premier of a State”** includes the Chief Minister of the Australian Capital Territory and of the Northern Territory. 20
21
- “summons”**, for sections 18A to 18D,¹ means a summons issued under section 17. 22
23
- (4) Section 3(1), definition “State of the Commonwealth”, after ‘includes’— 24
25
- insert—* 26
- ‘the Australian Capital Territory and’. 27

¹ Sections 18A to 18D deal with the prohibition of disclosure of certain information about a notice or summons.

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Amendment of s 5 (Functions under laws of Queensland)

Clause	5. Section 5—	2
	<i>insert—</i>	3
	‘(3A) The Minister, with the Inter-Governmental Committee’s approval, may—	4 5
	(a) in a notice under subsection (1)—state that the reference is related to another reference; or	6 7
	(b) by written notice to the authority—state that a reference already made to the authority by the Minister is related to another reference.	8 9 10

Amendment of s 6 (Performance of functions)

Clause	6. Section 6(1), at the end—	12
	<i>insert—</i>	13
	‘or any person or authority (other than a law enforcement agency) authorised under a Commonwealth or State law to prosecute the offence’.	14 15

Amendment of s 9 (Cooperation with law enforcement agencies)

Clause	7. Section 9—	17
	<i>insert—</i>	18
	‘(2) Also, in performing its special functions, the authority may coordinate its activities with the activities of an entity in another country if the entity performs similar functions to the authority’s functions.’.	19 20 21

Amendment of s 12 (Search warrants)

Clause	8.(1) Section 12(1), ‘of the Authority’—	23
	<i>omit.</i>	24
	(2) Section 12(1)(a), ‘Authority has’—	25
	<i>omit, insert—</i>	26

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‘member has’.	1
(3) Section 12(1)(b) and (8)(b)(ii), ‘Authority’—	2
<i>omit, insert—</i>	3
‘member’.	4
(4) Section 12(8)(b), ‘the Authority shall’—	5
<i>omit, insert—</i>	6
‘a member must’.	7
(5) Section 12(9), ‘The Authority’—	8
<i>omit, insert—</i>	9
‘A member’.	10
(6) Section 12(9), ‘the Authority’—	11
<i>omit, insert—</i>	12
‘the member’.	13

Amendment of s 13 (Application by telephone for search warrants)	14
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Clause	9.(1) Section 13(1), ‘the Authority considers’—	15
	<i>omit, insert—</i>	16
	‘a member considers’.	17
	(2) Section 13(1), ‘a member of the Authority’—	18
	<i>omit, insert—</i>	19
	‘the member’.	20

Amendment of s 15 (Order for delivery to Authority of passport of witness)	21
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Clause	10.(1) Section 15(1), ‘of the Authority’—	23
	<i>omit.</i>	24

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(2) Section 15(3), ‘by the Authority’—	1
<i>omit, insert—</i>	2
‘by a member’.	3
(3) Section 15(4), ‘the Authority shall’—	4
<i>omit, insert—</i>	5
‘a member must’.	6

Amendment of s 16 (Hearings)	7
-------------------------------------	---

Clause	11.(1) Section 16(2), ‘or acting members’—	8
	<i>omit.</i>	9
	(2) Section 16(3)—	10
	<i>omit, insert—</i>	11
	‘(3) The chairperson is to preside at all hearings at which the chairperson is present.	12
		13
	‘(3A) If the chairperson is not present at a hearing but 2 or more other members are present, the members present must elect 1 of them to preside at the hearing.	14
		15
		16
	‘(3B) Questions arising at a hearing must be decided by a majority of the votes of the members present.	17
		18
	‘(3C) The person presiding at a hearing has a deliberative vote and also, if necessary, a casting vote.	19
		20
	‘(3D) The authority may decide how a hearing’s proceedings are to be conducted.’.	21
		22
	(3) Section 16(7), ‘or an acting member’—	23
	<i>omit.</i>	24
	(4) Section 16—	25
	<i>insert—</i>	26
	‘(9A) The chairperson may change or repeal a direction given by the authority to a person under subsection (9), by written notice given to the	27
		28

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person.

‘**(9B)** However, the chairperson must not change or repeal a direction if the change or repeal might prejudice—

- (a) a person’s safety or reputation; or
- (b) the fair trial of a person who has been or may be charged with an offence.’.

Amendment of s 17 (Power to summon witnesses and take evidence)

Clause **12.(1)** Section 17(1), ‘or an acting member’—

omit.

(2) Section 17(3), ‘unless the Authority’—

omit, insert—

‘unless the member issuing the summons’.

(3) Section 17(4) and (5), ‘or acting member’—

omit.

(4) Section 17(6), from ‘or by a person’—

omit.

Amendment of s 18 (Power to obtain documents)

Clause **13.** Section 18(1), ‘or acting member’—

omit.

Insertion of new ss 18A–18D

Clause **14.** After section 18—

insert—

‘Disclosure of information about a notice, summons or official matter may be prohibited

‘18A.(1) A member issuing a notice or summons must not include a

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nondisclosure statement in it unless the statement's inclusion is required or permitted under this section.

‘(2) A member issuing a notice or summons must include a nondisclosure statement in it if the member reasonably believes disclosure of information about it or about official matter related to it would prejudice—

- (a) a person's safety or reputation; or
- (b) the fair trial of a person who has been or may be charged with an offence; or
- (c) an investigation.

‘(3) A member issuing a notice or summons may include a nondisclosure statement in it if the member reasonably believes disclosure of information about it or about official matter related to it—

- (a) might prejudice—
 - (i) a person's safety or reputation; or
 - (ii) the fair trial of a person who has been or may be charged with an offence; or
 - (iii) an investigation; or
- (b) might otherwise be contrary to the public interest.

‘(4) A nondisclosure statement included in a notice or summons must state the circumstances (if any) in which disclosure of the information is allowed.

‘(5) If a nondisclosure statement is inconsistent with a direction given under section 16(9), the direction prevails to the extent of the inconsistency.

‘Nondisclosure statement to be accompanied by statement of rights and obligations

‘18B. If, under section 18A, a member includes a nondisclosure statement in a notice or summons, the member must ensure the nondisclosure statement is accompanied by a written statement about the rights and obligations conferred or imposed under section 18D on the person served with the notice or summons.

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‘Cancellation of nondisclosure statements

‘18C.(1) A nondisclosure statement included in a notice or summons about an investigation is cancelled by this section if, at the end of the investigation—

- (a) evidence mentioned in section 6(1) has not been obtained by the authority;² or
- (b) evidence has been assembled and given under section 6(1) and the authority has been advised that no-one will be prosecuted; or
- (c) evidence of an offence committed by only 1 person has been assembled and given under section 6(1) and criminal proceedings against the person have started; or
- (d) evidence of an offence committed by 2 or more persons has been assembled and given under section 6(1) and—
 - (i) criminal proceedings against all the persons have started; or
 - (ii) criminal proceedings against 1 or more of the persons have started and the authority has been advised that no-one else will be prosecuted.

‘(2) If, under subsection (1), a nondisclosure statement is cancelled, the authority must give each person served with the notice or summons, written notice of the cancellation.

‘Offences about disclosure of information prohibited by a nondisclosure statement

‘18D.(1) A person served with a notice or summons containing a nondisclosure statement must not disclose information about—

- (a) the notice or summons or its existence; or
- (b) an official matter relating to the notice or summons, or the official matter’s existence.

² Section 6(1) refers to evidence of an offence against the Commonwealth, a Territory of the Commonwealth or a State obtained by the authority in the course of its investigations.

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Maximum penalty—\$2 000 or imprisonment for 1 year.

‘(2) However, subsection (1) does not apply to a person who discloses the information—

- (a) in the circumstances allowed under the nondisclosure statement;
or
- (b) to a legal practitioner to obtain legal advice or representation about the notice, summons or matter; or
- (c) to a legal aid officer to obtain assistance under the Commonwealth Act, section 27, about the notice, summons or matter; or
- (d) if the person is a body corporate—to an officer or agent of the body corporate to ensure compliance with the notice or summons; or
- (e) if the person is a legal practitioner—
 - (i) to comply with a legal duty of disclosure arising from the legal practitioner’s professional relationship with a client; or
 - (ii) to obtain a person’s agreement under section 19(3) to the legal practitioner answering a question or producing a document at a hearing before the authority.

‘(3) A person to whom information has been disclosed under this section must not disclose the information unless—

- (a) if the person is an officer or agent mentioned in subsection (2)(d)—the person discloses the information to—
 - (i) another officer or agent of the body corporate to ensure compliance with the notice or summons; or
 - (ii) a legal practitioner to obtain legal advice or representation about the notice, summons or matter; or
 - (iii) a legal aid officer to obtain assistance under the Commonwealth Act, section 27, about the notice, summons or matter; or
- (b) if the person is a legal practitioner—to give advice, make representation or obtain assistance under the Commonwealth Act,

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section 27, about the notice, summons or matter; or	1
(c) if the person is a legal aid officer—to obtain legal advice or representation about the notice, summons or matter.	2 3
Maximum penalty—\$2 000 or imprisonment for 1 year.	4
‘(4) A person to whom information is disclosed under subsection (2) or (3)—	5 6
(a) while the person is a person to whom, under this section, the information may be disclosed—must not, unless the disclosure is allowed under subsection (3), disclose information about—	7 8 9
(i) the notice, summons, an official matter related to the notice or summons; or	10 11
(ii) the notice, summons or official matter’s existence; and	12
(b) if the person is no longer a person to whom, under this section, the information may be disclosed—must not—	13 14
(i) make a record, or disclose the existence, of the notice, summons or matter; or	15 16
(ii) disclose information about the notice, summons of matter.	17
Maximum penalty—\$2 000 or imprisonment for 1 year.	18
‘(5) This section stops applying to a notice or summons when the earliest of the following things happen—	19 20
(a) the notice or summons is cancelled by section 18C(1);	21
(b) 5 years elapse after the day the notice or summons was issued.	22
‘(6) In this section, a reference to disclosing something’s existence includes disclosing information from which a person could reasonably be expected to infer its existence.	23 24 25
‘(7) In this section—	26
“legal aid officer” means—	27
(a) a member, or staff member, of a legal aid commission within the meaning of the <i>Legal Aid Act 1977</i> (Cwlth); and	28 29
(b) the person delegated the Commonwealth Attorney-General’s	30

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powers and functions under the Commonwealth Act,
section 27.’.

Amendment of s 19 (Failure of witnesses to attend and answer questions)

Clause 15.(1) Section 19(1)(b), ‘or an acting member’—
omit.

(2) Section 19(2)(b) and (3), ‘or acting member’—
omit.

Amendment of s 20 (Warrant for arrest of witness)

Clause 16.(1) Section 20(1), (3) and (4), before ‘Supreme Court’—
insert—
‘Federal Court or’.

(2) Section 20(1)—
insert—

‘(c) a person has committed, or is likely to commit, an offence under
section 19(1).³’.

Amendment of s 21 (Applications to Federal Court of Australia)

Clause 17. Section 21(9), ‘as the Authority’—
omit, insert—
‘as a member’.

³ Section 19 (Failure of witnesses to attend and answer questions)

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Amendment of s 24 (Protection of witnesses etc.)

Clause **18.** Section 24, ‘or acting member’—
 omit.

Amendment of s 25 (Contempt of Authority)

Clause **19.** Section 25(a), ‘or an acting member’—
 omit.

Amendment of s 29(1) (Protection of members etc.)

Clause **20.(1)** Section 29(1), ‘or an acting member’—
 omit.
 (2) Section 29(1), ‘or acting member’—
 omit.

Amendment of s 30 (Secrecy)

Clause **21.(1)** Section 30(1)(a), ‘or acting member’—
 omit.
 (2) Section 30(4)—
 insert—

“member of the staff of the authority” includes a person who assists, or performs services for, a legal practitioner appointed under the Commonwealth Act, section 50, in the performance of the legal practitioner’s duties as counsel to the authority.’.

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PART 3—AMENDMENT OF FREEDOM OF
INFORMATION ACT 1992

Act amended

Clause 22. This part amends the *Freedom of Information Act 1992*.

Amendment of sch 1 (Secrecy provisions giving exemption)

Clause 23. Schedule 1—

insert—

‘*National Crime Authority (State Provisions) Act 1985*, sections 17 and 18 (so far as they apply to a summons or notice given under section 17 or 18 that includes a nondisclosure statement mentioned in section 18A).’.