



National Crime Authority Legislation Amendment Act 2001

Act No. 135 of 2001 as amended

This compilation was prepared on 15 January 2003

[This Act was amended by Act No. 125 of 2002]

Amendments from Act No. 125 of 2002

[Schedule 2 (items 78 to 83) amended section 4

Schedule 2 (items 78 to 83) commenced on 1 January 2003]

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Contents

An Act to amend the *National Crime Authority Act 1984* and the *Ombudsman Act 1976*, and for related purposes

[Assented to 1 October 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Crime Authority Legislation Amendment Act 2001*.

2 Commencement

- (1) Sections 1, 2, 3 and 4 commence on the day on which this Act receives the Royal Assent.
- (2) Schedules 1 to 7 and 9 to 12 commence on a day to be fixed by Proclamation.
- (3) If a provision of this Act to which subsection (2) applies does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (4) Schedule 8 commences on a day to be fixed by Proclamation.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Review of effect of this Act

- (1) The Minister must cause a person (the *responsible person*) to review, and to report in writing about, the operation of the *National Crime Authority Act 1984* (the *NCA Act*) and the *Australian Crime*

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Commission Act 2002 (the *ACC Act*) as affected by the following provisions of this Act:

- (a) items 1, 3, 5, 11 and 13 of Schedule 1 (the *provisions that remove the defence of reasonable excuse*);
 - (b) item 12 of Schedule 1 (the *provision that removes the derivative-use immunity*);
 - (c) items 7, 12 and 15 of Schedule 1 (the *provisions that increase the penalties for non-compliance*).
- (2) The responsible person must be someone who, in the Minister's opinion, is suitably qualified and appropriate to conduct the review and make the report.
- (3) The review and report must relate to the 5 year period (the *review period*) beginning on the commencement of Part 1 of Schedule 1.
- (4) The review and report must include an assessment of:
- (a) the effects of the following provisions in facilitating the performance of the functions of the Authority and the Australian Crime Commission:
 - (i) the provisions that remove the defence of reasonable excuse;
 - (ii) the provision that removes the derivative-use immunity;
 - (iii) the provisions that increase the penalties for non-compliance; and
 - (b) the extent (if any) to which persons have been unjustifiably prejudiced because of the enactment of:
 - (i) the provisions that remove the defence of reasonable excuse; and
 - (ii) the provision that removes the derivative-use immunity; and
 - (c) the extent (if any) to which courts have imposed increased penalties allowed for by the provisions that increase the penalties for non-compliance.
- (5) The review and report must also include an assessment of any other matter that the responsible person considers relevant to the operation of the provisions of the NCA Act and the ACC Act as affected by the provisions referred to in paragraphs (1)(a) to (c).
- (6) The report must not:

- (a) identify persons as being suspected of having committed offences; or
 - (b) identify persons as having committed offences unless those persons have been convicted of those offences; or
 - (c) reveal the identity of a person, if doing so might prejudice:
 - (i) the safety or reputation of a person; or
 - (ii) the fair trial of a person who has been or may be charged with an offence.
- (7) The Authority must give all reasonable assistance requested by the responsible person in connection with the carrying out of the review and report.
- (7A) The Chief Executive Officer of the Australian Crime Commission, and members of the staff of the ACC (within the meaning of the ACC Act), must give all reasonable assistance requested by the responsible person in connection with the carrying out of the review and report.
- (8) The following activities by a current or former member of the Authority (within the meaning of the NCA Act) or a current or former member of staff of the Authority (within the meaning of the NCA Act) do not constitute a contravention of section 51 of the NCA Act, if they are carried out for the purposes of assisting the responsible person to carry out the review and report:
- (a) divulging or communicating information to the responsible person;
 - (b) recording information;
 - (c) providing a record of information to the responsible person.
- (8A) The following activities by the current or former Chief Executive Officer of the Australian Crime Commission or a current or former member of the staff of the ACC (within the meaning of the ACC Act) do not constitute a contravention of section 51 of the ACC Act, if they are carried out for the purposes of assisting the responsible person to carry out the review and report:
- (a) divulging or communicating information to the responsible person;
 - (b) recording information;
 - (c) providing a record of information to the responsible person.

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- (9) The responsible person must provide a reasonable opportunity for members of the public to make submissions to him or her about matters to which the review and report relate. However, the review process must not include any hearings.
- (10) The responsible person must give the report to the Inter-Governmental Committee no later than 6 months after the end of the review period. The report is then to be considered by the Committee and given by the Committee, together with such comments on the report as the Committee thinks fit, to:
 - (a) the Minister; and
 - (b) the appropriate Minister of the Crown of each participating State.
- (11) After the Minister receives the report and comments from the Inter-Governmental Committee, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House.

Schedule 1—National Crime Authority Act 1984

Part 1—Amendments relating to reasonable excuse, self-incrimination and increases in penalties

1 Subsection 19A(4)

Omit “, without reasonable excuse,”.

2 Subsection 20(3)

Repeal the subsection.

3 Subsection 20(4)

Omit “, without reasonable excuse,”.

4 Subsection 27(2)

Repeal the subsection, substitute:

- (2) A person who proposes to make, or has made, an application to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act may make an application to the Attorney-General for the provision of assistance under this section in respect of the application to the Federal Court.

5 Subsection 29(3)

Omit “, without reasonable excuse,”.

6 Subsection 29(3) (penalty)

Repeal the penalty.

7 After subsection 29(3)

Insert:

- (3A) A person who contravenes subsection (3) is guilty of an indictable offence that, subject to this section, is punishable, upon conviction,

by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 5 years.

(3B) Notwithstanding that an offence against subsection (3) is an indictable offence, 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.

(3C) Where, in accordance with subsection (3B), 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 1 year.

8 Subsection 29(4)

Omit “30(3) to (10), inclusive,”, substitute “30(3) to (5) and (9)”.

9 Subsection 29(4)

Omit “and so apply as if a reference in those subsections to subsection 30(2) were a reference to subsection (3) of this section”.

10 Subsection 29(5)

Repeal the subsection.

11 Subsections 30(1) and (2)

Omit “, without reasonable excuse”.

Note 1: The following heading to subsection 30(1) is inserted “*Failure to attend*”.

Note 2: The following heading to subsection 30(2) is inserted “*Failure to answer questions etc.*”.

12 Subsections 30(4) to (11)

Repeal the subsections, substitute:

Use immunity available in some cases if self-incrimination claimed

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

- (a) a person appearing as a witness at a hearing before the Authority:
 - (i) answers a question that he or she is required to answer by the member presiding at the hearing; or
 - (ii) produces a document or thing that he or she was required to produce by a summons under this Act served on him or her 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 his or her 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.

Offence for contravention of subsection (1), (2) or (3)

- (6) A person who contravenes subsection (1), (2) or (3) is guilty of an indictable offence that, subject to this section, is punishable, upon conviction, by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 5 years.
- (7) Notwithstanding that an offence against subsection (1), (2) or (3) is an indictable offence, 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 1 year.

Legal professional privilege

(9) Subsection (3) does not affect the law relating to legal professional privilege.

13 Sections 32, 32A, 32B and 32C

Repeal the sections.

14 Subsection 35(1) (penalty)

Repeal the penalty.

15 Subsection 35(2)

Repeal the subsection, substitute:

- (2) A person who contravenes subsection (1) is guilty of an indictable offence that, subject to this section, is punishable, upon conviction, by a fine not exceeding \$20,000 or imprisonment for a period not exceeding 5 years.
- (3) Notwithstanding that an offence against subsection (1) is an indictable offence, 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 1 year.

16 Subparagraph 61(2)(g)(i)

Repeal the subparagraph.

17 Saving of sections 32, 32A, 32B and 32C in relation to relevant claims

- (1) Despite the repeal of sections 32, 32A, 32B and 32C of the *National Crime Authority Act 1984* by item 13, those sections continue to have
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effect on and after the commencement of that item as if they had not been repealed, in relation to a relevant claim.

(2) In this item:

relevant claim means a claim, made before the commencement of item 13, that a person is entitled to refuse:

- (a) to furnish information, or produce a document, pursuant to a notice under section 20 of the *National Crime Authority Act 1984*; or
- (b) to produce a document pursuant to a notice under section 29 of that Act; or
- (c) to answer a question put to him or her, or produce a document that he or she was required to produce, under section 30 of that 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 that Act;

to which section 32 of that Act applied, because of section 32B of that Act, before the commencement of item 13.

Part 2—Relevant criminal activity

18 Subsection 4(1) (definition of relevant criminal activity)

Omit “or may be being”, substitute “may be being, or may in future be”.

Part 3—Terms of appointment

19 Subsection 37(1)

Omit “4 years”, substitute “6 years”.

20 Subsection 37(1C)

Omit “4 years”, substitute “6 years”.

21 Subsection 37(1E)

Omit “4 years”, substitute “6 years”.

Part 4—Definitions

22 Subsection 4(1) (definition of document)

Repeal the definition, substitute:

document has the same meaning as in the *Evidence Act 1995*.

23 Subsection 4(1) (paragraph (d) of the definition of relevant offence)

Repeal the paragraph, substitute:

- (d) that is of a prescribed kind or involves any of the following:
 - (i) theft;
 - (ii) fraud;
 - (iii) tax evasion;
 - (iv) money laundering;
 - (v) currency violations;
 - (vi) illegal drug dealings;
 - (vii) illegal gambling;
 - (viii) obtaining financial benefit by vice engaged in by others;
 - (ix) extortion;
 - (x) violence;
 - (xi) bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory;
 - (xii) perverting the course of justice;
 - (xiii) bankruptcy and company violations;
 - (xiv) harbouring of criminals;
 - (xv) forging of passports;
 - (xvi) armament dealings;
 - (xvii) illegal importation or exportation of fauna into or out of Australia;
 - (xviii) matters of the same general nature as one or more of the matters listed above;

Part 5—Police power to interview

24 Subsections 12(4) and (5)

Repeal the subsections.

Part 6—People who may apply for, or issue, search warrants

25 Subsection 4(1)

Insert:

eligible person means:

- (a) a member; or
- (b) a member of the staff of the Authority who is also a member of:
 - (i) the Australian Federal Police; or
 - (ii) the Police Force of a State.

26 Subsection 4(1)

Insert:

issuing officer means:

- (a) a Judge of the Federal Court; or
- (b) a Judge of a court of a State or Territory; or
- (c) a Federal Magistrate.

27 Subsection 22(1)

Omit “A member”, substitute “An eligible person”.

28 Subsection 22(1)

Omit “a Judge of a prescribed court”, substitute “an issuing officer”.

29 Paragraph 22(1)(a)

Omit “the member”, substitute “the eligible person”.

30 Paragraph 22(1)(b)

Omit “the member”, substitute “the eligible person”.

31 Subsection 22(2)

Omit “a Judge of a prescribed court, the Judge”, substitute “an issuing officer, the issuing officer”.

32 Subsection 22(3)

Omit “A Judge”, substitute “An issuing officer”.

33 Subsection 22(3)

Omit “the Judge” (wherever occurring), substitute “the issuing officer”.

34 Subsection 22(4)

Omit “a Judge”, substitute “an issuing officer”.

35 Paragraph 22(8)(b)

Omit “a member”, substitute “an eligible person”.

36 Subparagraph 22(8)(b)(ii)

Omit “the member”, substitute “the eligible person”.

37 Subsection 22(9)

Omit “A member”, substitute “An eligible person”.

38 Subsection 22(9)

Omit “the member”, substitute “the eligible person”.

39 Subsections 22(11) and (12)

Repeal the subsections, substitute:

(11) In this section:

thing includes a document.

40 At the end of section 22

Add:

(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 he or she were performing that function as, or as a member of, a court (being the court of which the issuing officer is a member).

41 Subsection 23(1)

Omit “a member”, substitute “an eligible person”.

42 Subsection 23(1)

Omit “the member”, substitute “the eligible person”.

43 Subsection 23(2)

Omit “member”, substitute “eligible person”.

44 Subsection 23(3)

Omit “a Judge”, substitute “an issuing officer”.

45 Paragraph 23(3)(b)

Omit “member”, substitute “eligible person”.

46 Subsection 23(4)

Omit “Judge” (wherever occurring), substitute “issuing officer”.

47 Subsection 23(5)

Omit “Judge”, substitute “issuing officer”.

48 Subsection 23(6)

Omit “Judge”, substitute “issuing officer”.

49 At the end of section 23

Add:

- (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 he or she were performing that function as, or as a member of, a court (being the court of which the issuing officer is a member).

Part 7—Non-disclosure of information about summons, notices etc.

50 At the end of section 29A

Add:

(7) If:

- (a) under this section, a notation in relation to the disclosure of information about:
 - (i) a summons issued under section 28; or
 - (ii) a notice issued under section 29; or
 - (iii) any official matter connected with the summons or notice;has been made and not cancelled; and
- (b) apart from this subsection, a credit reporting agency (within the meaning of section 11A of the *Privacy Act 1988*) would be required, under subsection 18K(5) of the *Privacy Act 1988*, to make a note about the disclosure of the information; such a note must not be made until the notation is cancelled.

51 Application

If:

- (a) under section 29A of the *National Crime Authority Act 1984*, a notation was made before the commencement of item 50 in relation to the disclosure of information about:
 - (i) a summons issued under section 28 of that Act; or
 - (ii) a notice issued under section 29 of that Act; or
 - (iii) any official matter connected with the summons or notice; and
- (b) before the commencement of that item, a body made a note about the disclosure of the information about a person in accordance with the *Privacy Act 1988*; and
- (c) after the commencement of that item, an individual seeks access to that file in accordance with section 18H of the *Privacy Act 1988* before the notation is cancelled;

then the note must be removed before such access is given and
neither the note nor any information in the note may be disclosed
to the individual when such access is given.

Part 8—Delegation of Chair’s powers

52 Subsection 4(1)

Insert:

acting SES employee has the same meaning as in the *Public Service Act 1999*.

53 Subsection 4(1)

Insert:

SES employee has the same meaning as in the *Public Service Act 1999*.

54 At the end of section 59A

Add:

- (2) The Chair may, by signed instrument, delegate to a member, the Chair’s power under subsection 25(9A).
- (3) The Chair may, by signed instrument, delegate to a member, the Chair’s power under subsection 26(2) to direct that a witness or person be paid in respect of expenses.
- (4) The Chair may, by signed instrument, delegate to a member, or a member of the staff of the Authority who is an SES employee or acting SES employee, the Chair’s power under subsection 48(1).

Part 9—Hearings

55 After subsection 25(7)

Insert:

- (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 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.
- (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 paragraph (7A)(b).

Part 10—Disclosure of information by legal practitioners

56 Paragraph 29B(2)(e)

Repeal the paragraph, substitute:

- (e) if the person is a legal practitioner—for the purpose of obtaining the agreement of another person under subsection 30(3) to the legal practitioner answering a question or producing a document at a hearing before the Authority.

Part 11—Use of reasonable force to execute warrants

57 After subsection 22(6)

Insert:

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

58 After subsection 31(2A)

Insert:

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

59 Application

The amendments made by items 57 and 58 apply to a person executing a warrant on or after the commencement of those items, regardless of whether the warrant was issued before, on or after the commencement.

Part 12—Access to information by the Parliamentary Joint Committee on the National Crime Authority

60 At the end of section 55

Add:

- (3) To avoid doubt, the Committee may examine, and report to both Houses of the Parliament on, information given to it under section 59.

61 After subsection 59(6)

Insert:

- (6A) Subject to subsection (6B), the Authority:
 - (a) must comply with a request by the Parliamentary Joint Committee on the National Crime Authority for the time being constituted under Part III (the *PJC*) to give the PJC information relating to an investigation that has been conducted by the Authority; and
 - (b) must when requested by the PJC, and may at such other times as the Authority thinks appropriate, inform the PJC concerning the general conduct of the operations of the Authority.
- (6B) If the Chair considers that disclosure of information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the Authority must not give the PJC the information.
- (6C) If the Authority does not give the PJC information on the ground that the Chair considers that disclosure of the information to the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies, the PJC may refer the request to the Minister.
- (6D) If the PJC refers the request to the Minister, the Minister:

- (a) must determine in writing whether disclosure of the information could prejudice the safety or reputation of persons or the operations of law enforcement agencies; and
- (b) must provide copies of that determination to the Chair and the PJC; and
- (c) must not disclose his or her reasons for determining the question of whether the information could prejudice the safety or reputation of persons or the operations of law enforcement agencies in the way stated in the determination.

Part 13—Dissemination of information overseas

62 Subsection 4(1)

Insert:

foreign law enforcement agency means:

- (a) a police force (however described) of a foreign country; or
- (b) any other authority or person responsible for the enforcement of the laws of the foreign country.

63 At the end of section 59

Add:

- (12) Despite section 11, the Chair may give to any foreign law enforcement agency any information that is in the Authority's possession and is relevant to the activities of that agency if:
 - (a) it appears to the Chair to be appropriate to do so; and
 - (b) to do so would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

Part 14—Application of the Criminal Code

64 After section 6

Insert:

6A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

65 Subsections 19A(7) and 20(4A)

Repeal the subsections.

**Part 16—Amendments relating to the operation of
the Ombudsman Act 1976**

69 At the end of section 36

Add:

- (4) To avoid doubt, this section does not limit the powers of the Ombudsman under the *Ombudsman Act 1976*.

Part 17—Hearing officers

70 Subsection 4(1)

Insert:

hearing officer means a person appointed under subsection 25A(1).

71 Paragraph 24(1)(a)

After “before the Authority” (wherever occurring), insert “or a hearing officer”.

72 Paragraph 24(1)(b)

After “give to the Authority”, insert “or the hearing officer”.

73 Paragraph 24(1)(b)

After “produce to the Authority”, insert “or the hearing officer”.

74 Before section 25

Insert:

24A 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.

75 Subsection 25(1)

Repeal the subsection, substitute:

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

Note: The heading to section 25 is replaced by the heading “**Hearings of the Authority**”.

76 After section 25

Insert:

25A Hearings by hearing officers

- (1) Hearing officers are to be appointed by the Governor-General on the advice of the Minister.
- (2) Any advice to the Governor-General with respect to the appointment of a person as a hearing officer must be consistent with a unanimous recommendation of the Inter-Governmental Committee.
- (3) A person must not be appointed as a hearing officer unless he or she is enrolled as a legal practitioner, and has been so for not less than 5 years.
- (4) A hearing officer may regulate the conduct of proceedings at a hearing as he or she thinks fit.
- (5) 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.
- (6) 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.
- (7) Nothing in a direction given by the hearing officer under subsection (6) 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 (5), a person who, by reason of a direction given by the hearing officer under subsection (6), is entitled to be present.
- (8) 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 (6) or by reason of subsection (7).

- (9) 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; or
 - (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 (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) 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.
- (11) 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 (10); or
 - (b) a witness comments adversely on the presence of the person under paragraph (10)(b).
- (12) A hearing officer may direct that:
- (a) any evidence given before the hearing officer; or
 - (b) the contents of any document, or a description of any thing, produced to the hearing officer; or
 - (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.

- (13) Subject to subsection (14), the Chair may, in writing, vary or revoke a direction under subsection (12).
- (14) 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.
- (15) 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 (12), 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.
- (16) Where:
- (a) the hearing officer or the Authority makes evidence available to a court in accordance with subsection (15); 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.
- (17) A person who:
- (a) is present at a hearing in contravention of subsection (8); or
 - (b) makes a publication in contravention of a direction given under subsection (12);
- is guilty of an offence punishable, upon summary conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.

- (18) 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.

77 Subsections 26(1) and 27(1)

After “Authority”, insert “or a hearing officer”.

78 Subsection 27(3)

After “Authority”, insert “or the hearing officer”.

79 Subsections 28(1) and 28(2)

After “before the Authority”, insert “or a hearing officer”.

80 Subsection 28(3)

Omit “Authority at a hearing”, substitute “Authority or a hearing officer at a hearing”.

81 Subsection 28(3)

Omit “Authority intends”, substitute “Authority or the hearing officer intends”.

82 Subsection 28(3)

Omit “Authority from”, substitute “Authority or the hearing officer from”.

83 Subsection 28(4)

After “Authority”, insert “, or the hearing officer who is holding a hearing,”.

84 Subsection 28(5)

Omit “Authority may”, insert “Authority or a hearing officer may”.

85 Paragraph 28(5)(a)

After “a member”, insert “or the hearing officer”.

86 Paragraph 28(5)(a)

After “presiding at the hearing”, insert “or the hearing officer”.

87 Paragraph 28(5)(b)

After “a member,”, insert “the hearing officer”.

88 Paragraph 29(1)(a)

Omit “or a member of the staff of the Authority”, substitute “, a member of the staff of the Authority or a hearing officer”.

89 Subsection 29(2)

After “Authority”, insert “or a hearing officer”.

90 At the end of subsection 29(4)

Add “or a hearing officer”.

91 Paragraph 29B(2)(e)

After “Authority”, insert “or a hearing officer”.

92 Subsection 29B(7) (paragraph (c) of the definition of official matter)

After “Authority”, insert “or a hearing officer”.

93 Subsection 30(1)

After “Authority”, insert “or a hearing officer”.

94 At the end of paragraph 30(1)(b)

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

95 Subsection 30(2)

After “Authority”, insert “or a hearing officer”.

96 At the end of paragraph 30(2)(b)

Add “or the hearing officer”.

97 Paragraph 30(3)(a)

After “Authority”, insert “or a hearing officer”.

98 Subsection 30(3)

After “at the hearing”, insert “or the hearing officer”.

99 Subsection 30(3)

Omit “Authority the name”, substitute “Authority or the hearing officer the name”.

100 Subsection 30(4)

After “given at a hearing before the Authority”, insert “or a hearing officer”.

101 Subsection 30(4)

After “produced at a hearing before the Authority”, insert “or a hearing officer”.

102 Paragraph 30(4)(a)

After “Authority”, insert “or a hearing officer”.

103 Subparagraph 30(4)(a)(i)

After “at the hearing”, insert “or the hearing officer who is holding the hearing”.

104 Paragraph 31(1)(a)

After “before the Authority”, insert “or a hearing officer”.

105 At the end of paragraph 31(3)(a)

Add “or the hearing officer”.

106 Subsection 33(1)

After “Authority”, insert “or a hearing officer”.

107 Section 34

After “a member”, insert “or a hearing officer”.

108 Paragraph 34(a)

After “Authority”, insert “or a hearing officer”.

109 Paragraph 34(b)

After “before the Authority”, insert “or a hearing officer”.

110 Section 34

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

122 Paragraph 35(1)(a)

Repeal the paragraph, substitute:

(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 his or her functions as a hearing officer; or

123 Paragraph 35(1)(b)

After “Authority”, insert “or a hearing officer”.

124 Subsection 36(1)

After “member” (wherever occurring), insert “or a hearing officer”.

125 Subsection 36(1)

After “Authority”, insert “or the hearing officer”.

126 Subsection 36(2)

After “Authority” (wherever occurring), insert “or a hearing officer”.

127 Subsection 36(3)

After “Authority”, insert “or a hearing officer”.

128 Subsection 37(1)

Omit “and each of the other members”, substitute “, each of the other members and each of the hearing officers”.

129 Subsection 37(1A)

Omit “and the other members”, substitute “, the other members and hearing officers”.

130 After subsection 37(1D)

Insert:

(1DA) A hearing officer may be re-appointed for one or more periods.

131 Subsection 37(1E)

After “appointment”, insert “or a hearing officer’s first appointment”.

132 Subsection 37(2)

After “member” (wherever occurring), insert “or a hearing officer”.

133 After subsection 37(4)

Insert:

- (5) A hearing officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

134 Subsection 38(1)

After “member”, insert “or a hearing officer”.

135 Subsection 38(2)

After “member”, insert “or a hearing officer”.

136 Section 41

After “member”, insert “or a hearing officer”.

137 At the end of section 42

Insert:

- (3) A hearing officer who has a direct or indirect interest in a matter that arises, or that could arise, during the course of a hearing before the hearing officer, must, as soon as possible after the relevant facts have come to his or her attention, disclose the nature of his or her interest to the Chair.
- (4) If a hearing officer makes a disclosure under subsection (3):
 - (a) the Chair must cause the disclosure to be recorded in the minutes of the next meeting of the Authority; and
 - (b) the hearing officer must not, unless the Minister otherwise determines, hold hearings, or further hearings, as the case may be, in relation to the matter.

138 Subsection 43(1)

After “member”, insert “or a hearing officer”.

139 After subsection 43(2)

Insert:

(2A) If a hearing officer:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b) fails, without reasonable excuse, to comply with his or her obligations under section 42;

the Governor-General must terminate the appointment of that hearing officer.

140 At the end of subsection 51(1)

Add:

; and (c) a hearing officer.

141 Subsection 51(3)

Omit “or acting member”, substitute “, acting member or hearing officer”.

Part 19—Prescribed provisions

**144 Schedule 1 (after the item relating to the
Telecommunications (Interception) Act 1979)**

Insert:

Reserve Bank Act 1959, section 79B

**145 Schedule 1 (item relating to Regulation 6 of the Reserve
Bank Regulations)**

Repeal the item.

Part 20—Renaming the Chairperson of the Authority

146 Subsection 4(1)

Insert:

Chair means Chair of the Authority.

147 Subsection 4(1) (definition of Chairperson)

Repeal the definition.

148 Subsection 4(1) (definition of member)

Omit “Chairperson”, substitute “Chair”.

149 Paragraph 7(2)(a)

Omit “Chairperson”, substitute “Chair”.

150 Subsections 7(3), (4), (5) and (9)

Omit “Chairperson”, substitute “Chair”.

151 Subsection 8(9)

Omit “Chairperson”, substitute “Chair”.

152 Subsections 25(3), (3A), (9A) and (9B)

Omit “Chairperson” (wherever occurring), substitute “Chair”.

153 Section 26

Omit “Chairperson” (wherever occurring), substitute “Chair”.

154 Subsection 28(6)

Omit “Chairperson”, substitute “Chair”.

155 Subsections 37(1), (1A) and (1B)

Omit “Chairperson”, substitute “Chair”.

156 Subsection 37(1C)

Omit “Chairperson’s”, substitute “Chair’s”.

157 Subsection 37(1D)

Omit “Chairperson”, substitute “Chair”.

158 Section 44

Omit “Chairperson” (wherever occurring), substitute “Chair”.

Note: The heading to section 44 is altered by omitting “**Chairperson**” and substituting “**Chair**”.

159 Subsection 45(1)

Omit “Chairperson”, substitute “Chair”.

160 Section 46

Omit “Chairperson” (wherever occurring), substitute “Chair”.

161 Section 46A

Omit “Chairperson”, substitute “Chair”.

Note: The heading to section 46A is altered by omitting “**Chairperson**” and substituting “**Chair**”.

162 Subsection 47(2)

Omit “Chairperson” (wherever occurring), substitute “Chair”.

163 Section 48

Omit “Chairperson” (wherever occurring), substitute “Chair”.

164 Section 50

Omit “Chairperson”, substitute “Chair”.

165 Subsections 59(7), (8) and (11)

Omit “Chairperson” (wherever occurring), substitute “Chair”.

166 Section 59A

Omit “Chairperson”, substitute “Chair”.

167 Section 59A

Omit “Chairperson’s”, substitute “Chair’s”.

168 Subsections 60(3) and (3A)

Omit “Chairperson” (wherever occurring), substitute “Chair”.

169 Paragraph 61(2)(d)

Omit “Chairperson”, substitute “Chair”.

Schedule 2—Privacy Act 1988

1 At the end of subsection 18K(5)

Add:

Note: A credit reporting agency must not include a note about the disclosure of information in a file if a notation has been made on a summons, or a notice, relating to the disclosure of the information and the notation has not been cancelled (see section 29A of the *National Crime Authority Act 1984*).

Schedule 3—Ombudsman Act 1976

1 Subsection 3(1)

Insert:

law enforcement agency has the same meaning as in the *National Crime Authority Act 1984*.

2 Subsection 3(1)

Insert:

National Crime Authority means the National Crime Authority established by the *National Crime Authority Act 1984*.

3 After subsection 3(13)

Insert:

(13A) For the purposes of this Act, the National Crime Authority is taken to be a prescribed authority.

4 Paragraph 5(2)(b)

After “Parliament”, insert “other than action taken by a Justice or Judge in his or her capacity as a member of the National Crime Authority”.

5 After section 6

Insert:

6A Transfer of complaints about National Crime Authority

(1) If:

(a) the Ombudsman forms the opinion that:

- (i) a complaint in respect of action taken by the National Crime Authority could have been made to another authority established under a law of the Commonwealth, a State or a Territory; and
- (ii) the complaint could be more conveniently or effectively dealt with by the other authority; and

- (b) the other authority can deal with the complaint if the Ombudsman transfers the complaint to the other authority; the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to transfer the complaint to the other authority.
- (2) If the Ombudsman decides to transfer the complaint, the Ombudsman must:
 - (a) do so as soon as is reasonably practicable; and
 - (b) subject to section 35B, give the other authority any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
 - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the other authority.

6 After section 8A

Insert:

8B Investigations by other authorities of National Crime Authority actions

- (1) If an authority established under a law of the Commonwealth, a State or a Territory has power to investigate action taken by the National Crime Authority, or a member of the staff of the Authority, the Ombudsman may enter into an arrangement with the authority for such an investigation.
- (2) If the Ombudsman enters into such an arrangement with an authority established under a law of a State or a Territory, the authority may conduct the investigation to the full extent of its powers under State or Territory law.
- (3) The Ombudsman may arrange with the authority for the variation or revocation of the arrangement.
- (4) The arrangement may relate to particular action or actions, to a series of related actions or to actions included in a class of actions.
- (5) The arrangement, or the variation or revocation of the arrangement, must be in writing.

- (6) The regulations may make provision for and in relation to the participation by the Ombudsman in the carrying out of an investigation in accordance with an arrangement under this section.
- (7) Nothing in this section affects the powers and duties of the Ombudsman under any other provision of this Act.
- (8) In this section:

member of the staff of the Authority has the same meaning as in the *National Crime Authority Act 1984*.

7 At the end of paragraphs 9(3)(a) and (b)

Add “or”.

8 After paragraph 9(3)(d)

Insert:

- or (e) if the information, documents or records are, or were, in the possession or under the control of the National Crime Authority—by reason that it would:
 - (i) endanger the life of a person; or
 - (ii) create a risk of serious injury to a person;

9 Subsection 35(5)

Omit “or (d)”, substitute “, (d) or (e)”.

10 Subsection 35A(1)

Omit “Nothing”, substitute “Subject to section 35B, nothing”.

11 After section 35A

Insert:

35B Disclosure of NCA information

- (1) If the Attorney-General gives the Ombudsman a certificate certifying that the disclosure of certain NCA information by one or more listed disclosure methods specified in the certificate would be contrary to the public interest by reason that it would prejudice:
 - (a) the safety of a person; or

- (b) the fair trial of a person who has been, or may be, charged with an offence; or
 - (c) the effectiveness of an investigation by the National Crime Authority; or
 - (d) the operations of a law enforcement agency;
- the Ombudsman must not so disclose the NCA information.

(2) In this section:

listed disclosure method, in relation to information, a document or a record, means:

- (a) including the information or the contents of the document or record in any report under Division 2 of Part 2; or
- (b) giving the information, document or record to another person or authority under section 6 or 6A; or
- (c) giving the information, document or record to an Ombudsman of a State; or
- (d) giving the information, document or record to an authority with which the Ombudsman has made an arrangement under section 8B; or
- (e) disclosing, or making a statement that discloses, the information or the contents of the document or record under subsection 35A(1); or
- (f) disclosing information or the contents of a document or record by any other specified method.

NCA information means information or the contents of a document or a record that is, or was, in the possession or under the control of the National Crime Authority.

Schedule 5—Financial Transaction Reports Act 1988

1 Subsection 16(6) (paragraph (b) of the definition of relevant authority)

Omit “Chairperson”, substitute “Chair”.

2 Paragraph 26(1)(c)

Omit “Chairperson”, substitute “Chair”.

3 After paragraph 27(5)(a)

Insert:

; and (aa) the NCA may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, communicate the information to the Parliamentary Joint Committee on the National Crime Authority under subsection 59(6A) of the NCA Act; and

4 At the end of paragraphs 27(5)(b) and (c)

Add “and”.

5 Paragraph 27(5)(d)

After “(a),” insert “(aa),”.

Schedule 6—Jurisdiction of Courts (Cross-vesting) Act 1987

1 Subsection 3(1) (at the end of paragraphs (a) to (c) of the definition of special federal matter)

Add “or”.

2 Subsection 3(1) (paragraph (d) of the definition of special federal matter)

Repeal the paragraph.

3 Paragraph 6(2)(a)

Omit “, (d)”.

Schedule 7—Telecommunications (Interception) Act 1979

Part 2—Chair of the NCA

2 Subsection 5(1) (subparagraph (b)(ii) of the definition of certifying officer)

Omit “Chairman”, substitute “Chair”.

3 Subsection 5(1) (paragraph (b) of the definition of chief officer)

Omit “Chairman”, substitute “Chair”.

4 Subsection 5(1) (definition of member of the authority)

Omit “Chairman”, substitute “Chair”.

5 Subsection 5(1) (subparagraph (a)(v) of the definition of permitted purpose)

Omit “Chairman”, substitute “Chair”.

6 Paragraph 35(1)(a)

Omit “Chairman”, substitute “Chair”.

7 Paragraph 71(2)(d)

Omit “Chairman”, substitute “Chair”.

8 Subsection 80(2)

Omit “Chairman” (wherever occurring), substitute “Chair”.

9 Subsection 81(2)

Omit “Chairman”, substitute “Chair”.

Schedule 8—Crimes Act 1914

1 Subparagraph 15G(1)(b)(i)

Omit “Chairperson”, substitute “Chair”.

2 Paragraph 15N(2A)(b)

Omit “Chairperson”, substitute “Chair”.

3 Subsection 15R(2)

Omit “Chairperson”, substitute “Chair”.

4 Paragraph 15S(4)(b)

Omit “Chairperson”, substitute “Chair”.

5 Subsection 15T(4)

Omit “Chairperson”, substitute “Chair”.

6 Subsection 15U(2)

Omit “Chairperson”, substitute “Chair”.

Schedule 9—Witness Protection Act 1994

1 Section 3 (paragraph (b) of the definition of approved authority)

Omit “Chairman”, substitute “Chair”.

Schedule 10—Customs Act 1901

1 Subsection 219A(1) (paragraph (a) of the definition of chief officer)

Omit “Chairman”, substitute “Chair”.

Schedule 11—Proceeds of Crime Act 1987

1 Subsection 39(2)

Omit “Chairman”, substitute “Chair”.

2 Subsection 40(10) (paragraph (b) of the definition of responsible custodian)

Omit “Chairman”, substitute “Chair”.

Schedule 12—Taxation Administration Act 1953

1 Subsection 2(1) (paragraph (d) of the definition of head)

Omit “Chairman”, substitute “Chair”.

*[Minister’s second reading speech made in—
Senate on 7 December 2000
House of Representatives on 24 September 2001]*

(219/00)