

**NATIONAL CRIME AUTHORITY (STATE PROVISIONS)  
AMENDMENT ACT 1994 No. 62**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of National Crime Authority (State Provisions) Act 1984 No. 157
4. Transitional provision

SCHEDULE 1—AMENDMENTS

---



**NATIONAL CRIME AUTHORITY (STATE PROVISIONS)  
AMENDMENT ACT 1994 No. 62**

NEW SOUTH WALES



**Act No. 62, 1994**

An Act to amend the National Crime Authority (State Provisions) Act 1984 to ensure that that Act conforms with the National Crime Authority Act 1984 of the Commonwealth. [Assented to 23 November 1994]

*National Crime Authority (State Provisions) Amendment Act 1994 No. 62*

---

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the National Crime Authority (State Provisions) Amendment Act 1994.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of National Crime Authority (State Provisions) Act 1984 No. 157**

3. The National Crime Authority (State Provisions) Act 1984 is amended as set out in Schedule 1.

**Transitional provision**

4. Section 6 of the National Crime Authority (State Provisions) Act 1984 (as amended by Schedule 1 (2) to this Act) applies to investigations started before the commencement of that amendment as well as to investigations started after that commencement.

---

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 5 (Functions under laws of the State):**

After section 5 (5), insert:

(6) The Minister may, with the approval of the Inter-Governmental Committee:

- (a) in a notice under subsection (1) referring a matter to the Authority, state that the reference is related to another reference; or
- (b) in a notice in writing to the Authority, state that a reference already made to the Authority by the Minister is related to another reference.

SCHEDULE 1—AMENDMENTS—*continued*(2) Section 6 (**Performance of functions**):

Omit section 6 (1), insert instead:

(1) Where, in carrying out an investigation under section 5 (4), the Authority obtains evidence of an offence against a law of the Commonwealth or of a State or Territory, being evidence that would be admissible in a prosecution for the offence, the Authority must assemble the evidence and give it to:

- (a) the Attorney-General of the Commonwealth or of the State, as the case requires; or
- (b) the relevant law enforcement agency; or
- (c) any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of the State or Territory to prosecute the offence.

(3) Section 12 (**Search warrants**):

From section 12 (8) (b) (ii), omit “the Authority”, insert instead “the member”.

(4) Section 16 (**Hearings**):

Omit “Chairman” wherever occurring, insert instead “Chairperson”.

(5) Section 17 (**Power to summon witnesses and take evidence**):

From section 17 (6), omit “Chairman”, insert instead “Chairperson”.

## (6) Sections 18A and 18B:

After section 18, insert:

**Disclosure of summons or notice etc. may be prohibited**

18A. (1) The member issuing a summons under section 17 or a notice under section 18 must, or may, as provided in subsection (2), include in it a notation to the effect that disclosure of information about the summons or notice, or any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation.



SCHEDULE 1—AMENDMENTS—*continued*

(2) A notation must not be included in the summons or notice except as follows:

(a) the member must include the notation if satisfied that failure to do so would reasonably be expected to 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; or
- (iii) the effectiveness of an investigation;

(b) the member may include the notation if satisfied that failure to do 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; or
- (iii) the effectiveness of an investigation;

(c) the member may include the notation if satisfied that failure to do so might otherwise be contrary to the public interest.

(3) If a notation is included in the summons or notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 18B on the person who was served with, or otherwise given, the summons or notice.

(4) If, after the Authority has concluded the investigation concerned:

- (a) no evidence of an offence has been obtained as described in section 6 (1); or
- (b) evidence of an offence or offences has been assembled and given as required by section 6 (1) and the Authority has been advised that no person will be prosecuted; or
- (c) evidence of an offence or offences committed by only one person has been assembled and given as required by section 6 (1) and criminal proceedings have begun against that person; or

**SCHEDULE 1—AMENDMENTS—*continued***

(d) evidence of an offence or offences committed by 2 or more persons has been assembled and given as required by section 6 (1) and:

- (i) criminal proceedings have begun against all those persons; or
- (ii) criminal proceedings have begun against one or more of those persons and the Authority has been advised that none of the other of those persons will be prosecuted,

all the notations that were included under this section in any summonses or notices relating to the investigation are cancelled by this subsection.

(5) If a notation is cancelled by subsection (4), the Authority must serve a written notice of that fact on each person who was served with, or otherwise given, the summons or notice containing the notation.

(6) If a notation made under subsection (1) is inconsistent with a direction given under section 16 (9), a notation has no effect to the extent of the inconsistency.

**Offences of disclosure**

18B. (1) A person who is served with, or otherwise given, a summons or notice containing a notation made under section 18A must not disclose:

- (a) the existence of the summons or notice or any information about it; or
- (b) the existence of, or any information about, any official matter connected with the summons or notice.

Penalty: 20 penalty units or imprisonment for 12 months.

(2) Subsection (1) does not prevent the person from making a disclosure:

- (a) in accordance with the circumstances, if any, specified in the notation; or
- (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or

SCHEDULE 1—AMENDMENTS—*continued*

- (c) to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or
- (d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
- (e) if the person is a legal practitioner:
  - (i) for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client; or
  - (ii) 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.

(3) If a disclosure is made to a person as permitted by subsection (2) or (4), the following provisions apply:

- (a) while he or she is a person of a kind to whom a disclosure is so permitted to be made, he or she must not disclose the existence of, or any information about, the summons or notice, or any official matter connected with it, except as permitted by subsection (4);
- (b) while he or she is no longer such a person, he or she must not, in any circumstances, make a record of, or disclose the existence of, the summons, notice or matter, or disclose any information about any of them.

Penalty: 20 penalty units or imprisonment for 12 months.

(4) A person to whom information has been disclosed, as permitted by subsection (2) or this subsection, may disclose that information:

- (a) if the person is an officer or agent of a body corporate referred to in subsection (2) (d):



SCHEDULE 1—AMENDMENTS—*continued*

- (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
  - (ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or
  - (iii) to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or
  - (b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or obtaining assistance under section 27 of the Commonwealth Act, relating to the summons, notice or matter; or
  - (c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation relating to the summons, notice or matter.
- (5) This section ceases to apply to a summons or notice after:
- (a) the notation contained in the summons or notice is cancelled by section 18A (4); or
  - (b) 5 years elapse after the issue of the summons or notice,
- whichever is sooner.

(6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

(7) In this section:

**“legal aid officer”** means:

- (a) a member, or a member of staff, of a legal aid commission within the meaning of the Commonwealth Legal Aid Act 1977 of the Commonwealth; or

SCHEDULE 1—AMENDMENTS—*continued*

- (b) a person to whom the Attorney-General of the Commonwealth has delegated his or her powers and functions under section 27 of the Commonwealth Act;

**“official matter”** means any of the following (whether past, present or contingent):

- (a) a reference under section 13 or 14 of the Commonwealth Act;
- (b) an investigation conducted or co-ordinated by the Authority;
- (c) a hearing held by the Authority;
- (d) court proceedings.

(7) Section 20 (**Warrant for arrest of witness**):

After section 20 (1) (b), insert:

; or

- (c) that a person has committed an offence under section 19 (1) or is likely to do so,

(8) Section 27 (**Powers of acting members of the Authority**):

Omit “Chairman” wherever occurring, insert instead “Chairperson”.

---

[Minister's second reading speech made in—

*Legislative Council on 13 October 1994*

*Legislative Assembly on 26 October 1994]*

FIRST PRINT

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

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

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

---

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

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

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

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

---

**SCHEDULE 1—AMENDMENTS**

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

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



*National Crime Authority (State Provisions) Amendment 1994*

---

**Performance of functions**

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

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

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

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

**Offences of disclosure**

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

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



*National Crime Authority (State Provisions) Amendment 1994*

---

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

**Warrants for arrest of a witness**

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

**Minor amendments**

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

---



FIRST PRINT

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

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of National Crime Authority (State Provisions) Act 1984 No. 157
4. Transitional provision

**SCHEDULE 1—AMENDMENTS**

---





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

**NEW SOUTH WALES**



No.      , 1994

---

---

**A BILL FOR**

An Act to amend the National Crime Authority (State Provisions) Act 1984 to ensure that that Act conforms with the National Crime Authority Act 1984 of the Commonwealth.

---

---

*National Crime Authority (State Provisions) Amendment 1994*

---

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the National Crime Authority (State Provisions) Amendment Act 1994.

5      **Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of National Crime Authority (State Provisions) Act 1984 No. 157**

10      3. The National Crime Authority (State Provisions) Act 1984 is amended as set out in Schedule 1.

**Transitional provision**

15      4. Section 6 of the National Crime Authority (State Provisions) Act 1984 (as amended by Schedule 1 (2) to this Act) applies to investigations started before the commencement of that amendment as well as to investigations started after that commencement.

---

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 5 (**Functions under laws of the State**):

20      After section 5 (5), insert:

(6) The Minister may, with the approval of the Inter-Governmental Committee:

- 25      (a) in a notice under subsection (1) referring a matter to the Authority, state that the reference is related to another reference; or
- (b) in a notice in writing to the Authority, state that a reference already made to the Authority by the Minister is related to another reference.

*National Crime Authority (State Provisions) Amendment 1994*

---

**SCHEDULE 1—AMENDMENTS—*continued***

**(2) Section 6 (Performance of functions):**

Omit section 6 (1), insert instead:

(1) Where, in carrying out an investigation under section 5 (4), the Authority obtains evidence of an offence against a law of the Commonwealth or of a State or Territory, being evidence that would be admissible in a prosecution for the offence, the Authority must assemble the evidence and give it to: 5

(a) the Attorney-General of the Commonwealth or of the State, as the case requires; or 10

(b) the relevant law enforcement agency; or

(c) any person or authority (other than a law enforcement agency) who is authorised by or under a law of the Commonwealth or of the State or Territory to prosecute the offence. 15

**(3) Section 12 (Search warrants):**

From section 12 (8) (b) (ii), omit "the Authority", insert instead "the member".

**(4) Section 16 (Hearings):** 20

Omit "Chairman" wherever occurring, insert instead "Chairperson".

**(5) Section 17 (Power to summon witnesses and take evidence):**

From section 17 (6), omit "Chairman", insert instead "Chairperson". 25

**(6) Sections 18A and 18B:**

After section 18, insert:

**Disclosure of summons or notice etc. may be prohibited**

18A. (1) The member issuing a summons under section 17 or a notice under section 18 must, or may, as provided in subsection (2), include in it a notation to the effect that disclosure of information about the summons or notice, or any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation. 30

*National Crime Authority (State Provisions) Amendment 1994*

---

SCHEDULE 1—AMENDMENTS—*continued*

(2) A notation must not be included in the summons or notice except as follows:

5 (a) the member must include the notation if satisfied that failure to do so would reasonably be expected to 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; or

10 (iii) the effectiveness of an investigation;

(b) the member may include the notation if satisfied that failure to do so might prejudice:

(i) the safety or reputation of a person; or

15 (ii) the fair trial of a person who has been or may be charged with an offence; or

(iii) the effectiveness of an investigation;

(c) the member may include the notation if satisfied that failure to do so might otherwise be contrary to the public interest.

20 (3) If a notation is included in the summons or notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 18B on the person who was served with, or otherwise given, the summons or notice.

25 (4) If, after the Authority has concluded the investigation concerned:

(a) no evidence of an offence has been obtained as described in section 6 (1); or

30 (b) evidence of an offence or offences has been assembled and given as required by section 6 (1) and the Authority has been advised that no person will be prosecuted; or

35 (c) evidence of an offence or offences committed by only one person has been assembled and given as required by section 6 (1) and criminal proceedings have begun against that person; or



*National Crime Authority (State Provisions) Amendment 1994*

---

**SCHEDULE 1—AMENDMENTS—*continued***

(d) evidence of an offence or offences committed by 2 or more persons has been assembled and given as required by section 6 (1) and:

(i) criminal proceedings have begun against all those persons; or 5

(ii) criminal proceedings have begun against one or more of those persons and the Authority has been advised that none of the other of those persons will be prosecuted, 10

all the notations that were included under this section in any summonses or notices relating to the investigation are cancelled by this subsection.

(5) If a notation is cancelled by subsection (4), the Authority must serve a written notice of that fact on each person who was served with, or otherwise given, the summons or notice containing the notation. 15

(6) If a notation made under subsection (1) is inconsistent with a direction given under section 16 (9), a notation has no effect to the extent of the inconsistency. 20

**Offences of disclosure**

18B. (1) A person who is served with, or otherwise given, a summons or notice containing a notation made under section 18A must not disclose:

(a) the existence of the summons or notice or any information about it; or 25

(b) the existence of, or any information about, any official matter connected with the summons or notice.

Penalty: 20 penalty units or imprisonment for 12 months. 30

(2) Subsection (1) does not prevent the person from making a disclosure:

(a) in accordance with the circumstances, if any, specified in the notation; or 35

(b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or

*National Crime Authority (State Provisions) Amendment 1994*

---

SCHEDULE 1—AMENDMENTS—*continued*

- (c) to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or
- (d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
- (e) if the person is a legal practitioner:
  - (i) for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client; or
  - (ii) 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.

(3) If a disclosure is made to a person as permitted by subsection (2) or (4), the following provisions apply:

- (a) while he or she is a person of a kind to whom a disclosure is so permitted to be made, he or she must not disclose the existence of, or any information about, the summons or notice, or any official matter connected with it, except as permitted by subsection (4);
- (b) while he or she is no longer such a person, he or she must not, in any circumstances, make a record of, or disclose the existence of, the summons, notice or matter, or disclose any information about any of them.

Penalty: 20 penalty units or imprisonment for 12 months.

(4) A person to whom information has been disclosed, as permitted by subsection (2) or this subsection, may disclose that information:

- (a) if the person is an officer or agent of a body corporate referred to in subsection (2) (d):

*National Crime Authority (State Provisions) Amendment 1994*

---

SCHEDULE 1—AMENDMENTS—*continued*

- (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice; or
  - (ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter; or 5
  - (iii) to a legal aid officer for the purpose of obtaining assistance under section 27 of the Commonwealth Act relating to the summons, notice or matter; or 10
- (b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or obtaining assistance under section 27 of the Commonwealth Act, relating to the summons, notice or matter; or 15
- (c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation relating to the summons, notice or matter. 20
- (5) This section ceases to apply to a summons or notice after:
  - (a) the notation contained in the summons or notice is cancelled by section 18A (4); or
  - (b) 5 years elapse after the issue of the summons or notice, 25
 whichever is sooner.
- (6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence. 30
- (7) In this section:
 

**“legal aid officer”** means:

  - (a) a member, or a member of staff, of a legal aid commission within the meaning of the Commonwealth Legal Aid Act 1977 of the Commonwealth; or 35



*National Crime Authority (State Provisions) Amendment 1994*

---

SCHEDULE 1—AMENDMENTS—*continued*

- (b) a person to whom the Attorney-General of the Commonwealth has delegated his or her powers and functions under section 27 of the Commonwealth Act;

5

**“official matter”** means any of the following (whether past, present or contingent):

- (a) a reference under section 13 or 14 of the Commonwealth Act;

10

- (b) an investigation conducted or co-ordinated by the Authority;

- (c) a hearing held by the Authority;

- (d) court proceedings.

(7) Section 20 (**Warrant for arrest of witness**):

15

After section 20 (1) (b), insert:

; or

- (c) that a person has committed an offence under section 19 (1) or is likely to do so,

(8) Section 27 (**Powers of acting members of the Authority**):

20

Omit “Chairman” wherever occurring, insert instead “Chairperson”.

---