



AUSTRALIAN CAPITAL TERRITORY

**National Crime Authority
(Territory Provisions) (Amendment) Act
1993**

No. 95 of 1993

An Act to amend the *National Crime Authority (Territory Provisions) Act 1991*

[Notified in ACT Gazette S267: 24 December 1993]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *National Crime Authority (Territory Provisions) (Amendment) Act 1993*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

3. In this Act, “Principal Act” means the *National Crime Authority (Territory Provisions) Act 1991*.¹

Insertion

4. After section 17 of the Principal Act the following sections are inserted:

Disclosure of notice or summons etc. may be prohibited

“17A. (1) The member issuing a summons under section 16 or a notice under section 17 shall, 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.

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

- (a) the member shall include the notation if satisfied that failure to do so would reasonably be expected to prejudice—
 - (i) the safety or reputation of a person;
 - (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;
 - (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 shall be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 17B 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 subsection 6 (1) or (2);

- (b) evidence of an offence or offences has been assembled and given as required by subsection 6 (1) or (2) and the Authority has been advised that no person will be prosecuted;
- (c) evidence of an offence or offences committed by only 1 person has been assembled and given as required by subsection 6 (1) or (2) and criminal proceedings have begun against that person; or
- (d) evidence of an offence or offences committed by 2 or more persons has been assembled and given as required by subsection 6 (1) or (2) and—
 - (i) criminal proceedings have begun against all those persons; or
 - (ii) criminal proceedings have begun against 1 or more of those persons and the Authority has been advised that no 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 section.

“(5) If a notation is cancelled by subsection (4), the Authority shall 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 subsection 15 (14), a notation has no effect to the extent of the inconsistency.

Offences of disclosure

“17B. (1) A person who is served with, or is otherwise given, a summons or notice containing a notation made under section 17A shall 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: \$2,000 or imprisonment for 1 year.

“(2) Subsection (1) does not prevent a person from making a disclosure—

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

- (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter;
- (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;
- (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 subsection 18 (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 shall 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 shall not, in any circumstances, make a record of, or disclose the existence of, the summons, notice or matter, or any information about any of them.

Penalty: \$2,000 or imprisonment for 1 year.

“(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 paragraph (2) (d)—
 - (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons or notice;
 - (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;
- (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 subsection 17A (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 member of staff, of a legal aid commission within the meaning of the *Commonwealth Legal Aid Act 1977* of the Commonwealth; or
- (b) a person to whom the Commonwealth Attorney-General 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.”.

Warrant for arrest of witness

5. Section 19 of the Principal Act is amended—

(a) by omitting from paragraph (1) (a) “or” (last occurring);

(b) by adding at the end of paragraph (1) (b) “or”; and

(c) by inserting after paragraph (1) (b) the following paragraph:

“(c) has committed an offence under subsection 18 (1) or is likely to do so;”.

Amendments of Principal Act

6. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 6

AMENDMENTS OF PRINCIPAL ACT

Subsection 12 (1)—

Omit “of the Authority”.

Subparagraph 12 (8) (b) (ii)—

Omit “Authority”, substitute “member”.

Subsection 14 (4)—

Omit “Authority” (last occurring), substitute “member”.

Subsection 15 (4)—

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

Subsection 15 (5)—

Omit “Chairman”, substitute “Chairperson”.

Subsections 15 (15) and (16)—

Omit “Chairman”, substitute “Chairperson”.

Subsection 16 (6)—

Omit “Chairman”, substitute “Chairperson”.

Subsection 20 (9)—

Omit “as the Authority”, substitute “as a member”.

SCHEDULE—continued

Section 26—

Omit “Chairman”, substitute “Chairperson”.

NOTE

1. Act No. 75, 1991. See also Act No. 44, 1993.

[Presentation speech made in Assembly on 25 November 1993]

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