



National Crime Authority Act 1984

No. 41 of 1984

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National Crime Authority Act 1984

No. 41 of 1984

An Act to establish a National Crime Authority

[Assented to 15 June 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *National Crime Authority Act 1984*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Repeal

3. The *National Crimes Commission Act 1982* is repealed.

Interpretation

4. (1) In this Act, unless the contrary intention appears—
“acting member” means a person, not being a member, who is acting as Chairman or as a member other than the Chairman;

“appoint” includes re-appoint;

“Authority” means the National Crime Authority established by section 7;

“business” includes—

- (a) any profession, trade, employment or vocational calling;
- (b) any transaction or transactions, whether lawful or unlawful, in the nature of trade or commerce (including the making of a loan); and
- (c) any activity, whether lawful or unlawful, carried on for the purposes of gain, whether or not the gain is of a pecuniary nature and whether the gain is direct or indirect;

“Chairman” means Chairman of the Authority;

“document” includes any book, register or other record of information, however compiled, recorded or stored;

“Federal Court” means the Federal Court of Australia;

“Inter-Governmental Committee” or “Committee” means the Inter-Governmental Committee referred to in section 8;

“Judge” means—

- (a) a Judge of a court created by the Parliament or of a court of a State or Territory; or
- (b) a person who has the same designation and status as a Judge of a court created by the Parliament;

“law enforcement agency” means—

- (a) the Australian Federal Police;
- (b) a Police Force of a State; or
- (c) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the States;

“legal practitioner” means a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of the High Court or of the Supreme Court of a State or Territory;

“member” means member of the Authority and includes the Chairman;

“member of the staff of the Authority” means—

- (a) a member of the staff referred to in sub-section 47 (1);
- (b) a person engaged under sub-section 48 (1); or
- (c) a person referred to in section 49 whose services are made available to the Authority;

“officer of a State” includes—

- (a) a Minister of the Crown of a State;
- (b) a member of either House of the Parliament of a State or, if there is only one House of the Parliament of a State, a member of that House;
- (c) a person holding or acting in an office (including a judicial office) or appointment, or employed, under a law of a State; and

- (d) a person who is, or is a member of, an authority or body established for a public purpose by or under a law of a State or is an officer or employee of such an authority or body;

“officer of a Territory” includes—

- (a) a person holding or acting in an office (including a judicial office) or appointment, or employed, under a law of a Territory; and
- (b) a person who is, or is a member of, an authority or body established for a public purpose by or under a law of a Territory or is an officer or employee of such an authority or body;

“officer of the Commonwealth” includes—

- (a) a Minister of State of the Commonwealth;
- (b) a member of either House of the Parliament of the Commonwealth;
- (c) a person holding or acting in an office (including a judicial office) or appointment, or employed, under a law of the Commonwealth; and
- (d) a person who is, or is a member of, an authority or body established for a public purpose by or under a law of the Commonwealth or is an officer or employee of such an authority or body,

but does not include an officer of a Territory;

“participating State” means a State the Premier of which—

- (a) has notified the Prime Minister that the State will participate in the activities of the Inter-Governmental Committee; and
- (b) has not subsequently notified the Prime Minister that the State will not participate in the activities of the Committee;

“passport” means an Australian passport or a passport issued by the Government of a country other than Australia;

“relevant criminal activity” means any circumstances implying, or any allegations, that a relevant offence may have been, or may be being, committed against a law of the Commonwealth, of a State or of a Territory;

“relevant offence” means an offence—

- (a) that involves 2 or more offenders and substantial planning and organization;
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques;
- (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
- (d) that involves theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, extortion, violence, bribery or corruption of, or by, an officer of the Commonwealth, an

officer of a State or an officer of a Territory, bankruptcy and company violations, harbouring of criminals, forging of passports, armament dealings or illegal importation or exportation of fauna into or out of Australia, or that involves matters of the same general nature as one or more of the foregoing, or that is of any other prescribed kind,

but—

- (e) does not include an offence committed in the course of a genuine dispute as to matters pertaining to the relations of employees and employers by a party to the dispute, unless the offence is committed in connection with, or as part of, a course of activity involving the commission of a relevant offence other than an offence so committed;
- (f) does not include an offence the time for the commencement of a prosecution for which has expired; and
- (g) does not include an offence that is not punishable by imprisonment or is punishable by imprisonment for a period of less than 3 years;

“special investigation” means an investigation that the Authority is conducting in the performance of its special functions;

“State” includes the Northern Territory;

“Task Force” includes a body of persons that is similar to a Task Force, however the body is described;

“Territory” does not include the Northern Territory;

“the Commonwealth Minister” or “the Minister” means the Minister of State administering this Act.

(2) Where the Authority suspects that an offence that is not a relevant offence as defined in sub-section (1) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a relevant offence as so defined, whether or not the Authority has identified the nature of that relevant offence, the first-mentioned offence shall, for so long only as the Authority so suspects, be deemed, for the purposes of this Act, to be a relevant offence.

(3) In this Act—

- (a) a reference to the Parliament of a State shall, in relation to the Northern Territory, be construed as a reference to the Legislative Assembly of that Territory;
- (b) a reference to the Governor of a State shall, in relation to the Northern Territory, be construed as a reference to the Administrator of that Territory;
- (c) a reference to the Premier of a State shall, in relation to the Northern Territory, be construed as a reference to the Chief Minister of that Territory; and
- (d) a reference to a Minister of the Crown of a State shall, in relation to the Northern Territory, be construed as a reference to a person holding

Ministerial office within the meaning of the *Northern Territory (Self-Government) Act 1978*.

Act to bind the Commonwealth and Norfolk Island

5. This Act binds the Crown in right of the Commonwealth and of Norfolk Island but does not bind the Crown in right of a State.

Extension to external Territories

6. This Act extends to all the external Territories.

PART II—THE NATIONAL CRIME AUTHORITY

Division 1—Establishment, Functions and Powers

Establishment and constitution of Authority

7. (1) There is established by this Act an Authority by the name of the National Crime Authority.

(2) The Authority shall consist of a Chairman and 2 other members.

(3) The Chairman and the other members shall be appointed by the Governor-General.

(4) If the Chairman is not a person who is, and is expected to continue to be, a Judge, he shall be appointed as a full-time member.

(5) The members other than the Chairman shall be appointed as full-time members.

(6) Of the offices to be held by members other than the office of Chairman—

(a) one shall be an office to which sub-section (7) applies; and

(b) one shall be an office to which sub-section (8) applies.

(7) If—

(a) there is a vacancy in the office of a member to which this sub-section applies, whether or not an appointment has previously been made to the office;

(b) within 3 months after the occurrence of the vacancy the Attorney-General of the Commonwealth and the Attorneys-General of the participating States unanimously recommend a person for appointment to the office; and

(c) the person so recommended agrees to be appointed,

any advice to the Governor-General with respect to the appointment of a person to fill the vacancy shall be consistent with the recommendation.

(8) If—

(a) there is a vacancy in the office of a member to which this sub-section applies, whether or not an appointment has previously been made to the office;

- (b) within 3 months after the occurrence of the vacancy the Special Minister of State of the Commonwealth and the Ministers of the Crown of the participating States who are responsible for matters relating to the respective Police Forces of those States unanimously recommend a person for appointment to the office; and
 - (c) the person so recommended agrees to be appointed,
- any advice to the Governor-General with respect to the appointment of a person to fill the vacancy shall be consistent with the recommendation.

(9) A person shall not be appointed as Chairman unless—

- (a) he is or has been a Judge; or
- (b) he is enrolled as a legal practitioner, and has been so enrolled for not less than 5 years.

(10) The performance of the functions or the exercise of the powers of the Authority is not affected by reason only of a vacancy in the membership of the Authority.

Establishment and constitution of Inter-Governmental Committee

8. (1) There is hereby established an Inter-Governmental Committee consisting of—

- (a) a member to represent the Commonwealth, being the Commonwealth Minister; and
- (b) in the case of each participating State—a member to represent that State, being a Minister of the Crown of that State nominated by the Premier of that State.

(2) The Commonwealth Minister may appoint a person as his delegate to attend a meeting of the Committee at which the Commonwealth Minister is not present.

(3) A member of the Committee for the time being representing a State may appoint a person as his delegate to attend a meeting of the Committee at which that member is not present.

(4) Where a person attends a meeting of the Committee as the delegate of the member representing the Commonwealth or as the delegate of a member representing a State, the delegate shall be deemed to be the member representing the Commonwealth or that State, as the case may be.

(5) Meetings of the Committee shall be held at such times and places as are from time to time agreed upon by the members of the Committee.

(6) At a meeting of the Committee—

- (a) a quorum is constituted by—
 - (i) if every State is a participating State—5 members of the Committee; or
 - (ii) in any other case—not less than one-half of the members of the Committee;

- (b) the member representing the Commonwealth shall preside;
- (c) each member of the Committee (including the member presiding) has a deliberative vote but the member of the Committee presiding does not have a casting vote; and
- (d) subject to this Act, questions arising shall be decided by a majority of the votes of the members of the Committee present.

(7) A resolution—

- (a) which, without being considered at a meeting of the Committee, is referred to all members of the Committee; and
- (b) of which a majority of those members or, if a majority including a particular member or particular members is required for the resolution to have effect, a majority including that member or those members indicate by telephone, teleprinter message or other mode of communication to the member of the Committee representing the Commonwealth that they are in favour,

shall be as valid and effectual as if it had been passed at a meeting of the Committee duly convened and held.

(8) Subject to the foregoing provisions of this section, the Committee may determine its procedure and for that purpose may make rules of procedure, including rules relating to the convening of meetings and the conduct of business at meetings, and may from time to time alter rules so made.

(9) The Chairman and the other members of the Authority may, with the consent of the members of the Committee present at a meeting of the Committee, attend that meeting and participate in the discussion of matters arising at the meeting.

Functions of Committee

9. (1) The functions of the Committee are—

- (a) to consider whether approval should be given for a matter relating to a relevant criminal activity to be referred by a Minister or Ministers to the Authority for investigation;
- (b) to monitor generally the work of the Authority; and
- (c) to receive reports furnished to the Committee by the Authority for transmission to the Governments represented on the Committee and to transmit those reports accordingly.

(2) The Committee shall, before approving a reference, consider whether ordinary police methods of investigation into the matter are likely to be effective.

(3) A resolution of the Committee purporting to approve a reference or references to the Authority of a matter for investigation does not have any effect for the purposes of this Act unless—

- (a) if the reference or any of the references is a reference by the Commonwealth Minister—the member of the Committee representing the Commonwealth voted in favour of the resolution; and

- (b) if the reference or any of the references is a reference by a Minister of the Crown of a State—the member of the Committee representing that State voted in favour of the resolution.

(4) Where, by reason that a member (in this sub-section referred to as the “relevant member”) or members (in this sub-section referred to as the “relevant members”) of the Committee did not vote in favour of a resolution of the Committee purporting to approve a reference or references to the Authority of a matter for investigation, the resolution does not have any effect for the purposes of this Act, nothing in sub-section (3) prevents the Committee from passing a further resolution approving a reference or references to the Authority of the matter for investigation other than—

- (a) if the relevant member was, or the relevant members included, the member representing the Commonwealth—a reference of the matter by the Commonwealth Minister; or
- (b) if the relevant member was, or the relevant members were or included, a member representing a State, or members representing States—a reference of the matter by a Minister of the Crown of that State, or of any of those States, as the case may be.

(5) In this section, “Minister” means the Commonwealth Minister or a Minister of the Crown of a State.

Authority may request approval of references

10. (1) The Authority, if it considers it appropriate to do so, may request the Inter-Governmental Committee to give approval for a matter relating to a relevant criminal activity to be referred by a Minister or Ministers to the Authority for investigation.

(2) Where the Authority has made a request under sub-section (1) in relation to a matter relating to a relevant criminal activity, the Committee may, whether or not the Minister concerned, or all the Ministers concerned, have proposed to refer the matter to the Authority for investigation, give approval for the matter to be so referred by a Minister or Ministers.

(3) A request by the Authority under sub-section (1) shall be in writing and may be accompanied by such written submissions as the Authority thinks fit.

(4) Where the Authority has made a request under sub-section (1), the Authority—

- (a) may, with the consent of the members of the Committee present at a meeting of the Committee at which the matter is considered, make at the meeting such oral submissions to the Committee concerning the request as the Authority thinks fit; and
- (b) shall, if requested to do so by the Committee, or by a member of the Committee, consult with the Committee, or with that member, as the case may be, concerning the request under sub-section (1).

(5) Notwithstanding sub-section 59 (5), where the Authority proposes to include in a submission under sub-section (3) or (4) any matter the disclosure of which could prejudice a person's reputation, the Authority is not prohibited by reason only of that fact from including the matter in the submission.

(6) In this section, "Minister" means the Commonwealth Minister or a Minister of the Crown of a State.

Functions of Authority

11. (1) The general functions of the Authority are—

- (a) to collect and analyse criminal information and intelligence relating to relevant criminal activities and disseminate that information and intelligence to—
 - (i) law enforcement agencies; and
 - (ii) any person authorized by the Governor-General, the Governor of a State, a Minister of State of the Commonwealth or a Minister of the Crown of a State to hold an inquiry to which the information or intelligence is relevant;
 - (b) to investigate, otherwise than pursuant to a reference made under section 13 or in accordance with section 14, matters relating to relevant criminal activities;
 - (c) where the Authority considers it appropriate to do so for the purpose of investigating matters relating to relevant criminal activities—
 - (i) to arrange for the establishment of Commonwealth Task Forces;
 - (ii) to seek the establishment by a State, or the joint establishment by 2 or more States, of State Task Forces; and
 - (iii) with the concurrence of the States concerned, to arrange for the establishment of joint Commonwealth and State Task Forces, or for co-operation between Commonwealth Task Forces and State Task Forces; and
 - (d) to co-ordinate investigations by Commonwealth Task Forces, and, with the concurrence of the States concerned, to co-ordinate investigations by State Task Forces and by joint Commonwealth and State Task Forces, being investigations into matters relating to relevant criminal activities, but not so as to preclude the making of separate bilateral or multilateral arrangements between such Task Forces.
- (2)** The special functions of the Authority are—
- (a) where a reference to the Authority made under section 13 is in force in respect of a matter relating to a relevant criminal activity—to investigate the matter in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the Commonwealth or of a Territory; and
 - (b) where a reference to the Authority made in accordance with section 14 by a Minister of the Crown of a State is in force in respect of a matter relating to a relevant criminal activity—subject to sub-section 14 (1),

to investigate the matter in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the State.

Performance of functions

12. (1) The Authority shall—

- (a) in performing the functions referred to in paragraph 11 (1) (b) and in sub-section 11 (2), assemble any evidence of an offence against a law of the Commonwealth or of a Territory, or of an offence against a law of a State, that it obtains in the course of its investigations, being evidence that would be admissible in the prosecution of a person for that offence, and furnish that evidence to the Attorney-General of the Commonwealth or of the State or to the relevant law enforcement agency; and
- (b) in performing the function referred to in paragraph 11 (1) (d), endeavour to ensure that any evidence of an offence against a law of the Commonwealth or of a Territory, or of an offence against a law of a State, that is obtained in the course of investigations of a kind referred to in that paragraph, being evidence that would be admissible in the prosecution of a person for that offence, is assembled and furnished to the Attorney-General of the Commonwealth or of the State or to the relevant law enforcement agency.

(2) The Authority shall, in performing its functions, co-operate and consult with the Australian Bureau of Criminal Intelligence.

(3) Where, as a result of the performance of any of its functions, the Authority considers that a recommendation should be made to the Commonwealth Minister or to the appropriate Minister of the Crown of a participating State, being a recommendation—

- (a) for reform of the law relating to relevant offences, including—
 - (i) evidence and procedure applicable to the trials of relevant offences;
 - (ii) relevant offences in relation to, or involving, corporations;
 - (iii) taxation, banking and financial frauds;
 - (iv) reception by Australian courts of evidence obtained in foreign countries as to relevant offences; and
 - (v) maintenance and preservation of taxation, banking and financial records;
- (b) for reform of administrative practices; or
- (c) for reform of administration of the courts in relation to trials of relevant offences,

the Authority may make the recommendation to the Commonwealth Minister, or to that Minister of the Crown of that State, as the case may be.

(4) In relation to the performance by the Authority of the functions referred to in paragraph 11 (1) (b) and sub-section 11 (2), nothing in this Act (other than section 28)—

- (a) shall be taken to confer on a member, or on a member of the staff of the Authority (other than a member of the Australian Federal Police or a member of the Police Force of a State), power to interview a person in relation to an offence that the person is suspected of having committed, except in a case where the person has been served, as prescribed, with a summons to appear as a witness at a hearing before the Authority and has not yet so appeared; or
- (b) shall be taken to confer on a member of the staff of the Authority who is a member of the Australian Federal Police or of the Police Force of a State power to interview a person that the member of the staff of the Authority does not have in his capacity as a member of the Australian Federal Police or of the Police Force of that State, as the case may be.

(5) Nothing in paragraph (4) (a) shall be taken to affect a power of a member, or of a member of the staff of the Authority, to interview a person otherwise than in relation to an offence that the person is suspected of having committed.

(6) Where the Authority has obtained particular information or intelligence in the course of performing one or more of its functions, nothing in this Act shall be taken to prevent the Authority from making use of the information or intelligence in the performance of any of its other functions.

References by Commonwealth

13. (1) The Minister may, after consulting the Inter-Governmental Committee, by notice in writing to the Authority, refer a matter relating to a relevant criminal activity to the Authority for investigation in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the Commonwealth or of a Territory.

(2) A notice under sub-section (1) referring a matter to the Authority for investigation—

- (a) shall describe the general nature of the circumstances or allegations constituting the relevant criminal activity;
- (b) shall state that the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the Commonwealth or a law of a Territory but need not specify the particular offence or offences; and
- (c) shall set out the purpose of the investigation.

(3) A reference of a matter to the Authority under this section may, with the approval of each House of the Parliament given by resolution of that House, be withdrawn by the Minister at any time by notice in writing to the Authority.

(4) Where the Minister gives notice to the Authority under sub-section (3), the Minister shall—

- (a) as soon as practicable after giving the notice to the Authority, cause a copy of the notice to be published in the *Gazette*; and
- (b) cause a copy of the notice to be laid before each House of the Parliament within 15 sitting days of that House after the Minister gives the notice to the Authority.

Functions under State laws

14. (1) If a Minister of the Crown of a State has, whether or not pursuant to a law of the State, with the approval of the Inter-Governmental Committee, by notice in writing to the Authority, referred a matter relating to a relevant criminal activity to the Authority for investigation in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of that State and has not, by notice in writing to the Authority, withdrawn the reference, the Authority shall, with the consent of the Minister, perform the function of investigating that matter.

(2) A notice referred to in sub-section (1) referring a matter to the Authority—

- (a) shall describe the general nature of the circumstances or allegations constituting the relevant criminal activity;
- (b) shall state that the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the State but need not specify the particular offence or offences; and
- (c) shall set out the purpose of the investigation.

Members may have concurrent functions and powers under State laws

15. If—

- (a) with the consent of the Inter-Governmental Committee, any functions or powers in relation to the investigation of matters relating to relevant criminal activities are conferred on a member or members by the Governor of a State or a Minister of the Crown of a State; and
- (b) the Minister informs the member or members in writing that he is satisfied that those functions or powers may conveniently be performed or exercised in conjunction with the performance or exercise by the Authority of its functions or powers under this Act,

then, notwithstanding anything contained in any other provision of this Act, the member or members referred to in paragraph (a) shall perform the functions, or may exercise the powers, referred to in that paragraph in conjunction with the performance or exercise by the Authority of its functions or powers under this Act, and the members of the staff of the Authority may be employed by the Authority in assisting the member or members referred to in paragraph (a) in the performance of the functions or the exercise of the powers referred to in that paragraph.

Limitation on challenges to validity of references

16. Where, with the approval of the Inter-Governmental Committee, the Minister, or a Minister of the Crown of a State, refers a matter to the Authority for investigation, then, except in a proceeding instituted by the Attorney-General of the Commonwealth or the Attorney-General of a State, any act or thing done by the Authority in pursuance of the reference shall not be challenged, reviewed, quashed or called in question in any court on the ground that any necessary approval of the Inter-Governmental Committee or consent of the Minister has not been obtained or was not lawfully given.

Co-operation with law enforcement agencies

17. In performing its functions under this Act, the Authority shall, so far as is practicable, work in co-operation with law enforcement agencies.

Directions and guidelines to Authority

18. (1) Subject to sub-sections (2) and (3), the Minister may, by notice in writing to the Authority, give directions or furnish guidelines to the Authority with respect to the performance of its functions and the Authority shall comply with any such directions or guidelines.

(2) The Minister shall not, without the approval of a resolution passed at a meeting of the Inter-Governmental Committee, being a resolution as to which all the members of the Committee present at the meeting have voted in favour, give any directions or furnish any guidelines to the Authority under sub-section (1) with respect to particular cases.

(3) The Minister shall not give any directions or furnish any guidelines to the Authority under sub-section (1) with respect to the performance of the function of the Authority referred to in paragraph 11 (2) (b) unless the appropriate Minister of the Crown of the State concerned has agreed to the giving of the directions or the furnishing of the guidelines.

(4) Where the Minister gives a direction or furnishes a guideline to the Authority under sub-section (1), the Minister shall—

- (a) as soon as practicable after giving the direction or furnishing the guideline, cause a copy of the direction or guideline to be published in the *Gazette*; and
- (b) cause a copy of the direction or guideline to be laid before each House of the Parliament within 15 sitting days of that House after the copy is published in the *Gazette*.

Incidental powers of Authority

19. The Authority has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the performance of its general functions or of its special functions, and any specific powers conferred on the Authority by this Act shall not be taken to limit by implication the generality of this section.

Authority may require information from certain Commonwealth agencies

20. (1) A member or acting member may, by notice in writing served on the principal officer of an agency, or on a person who is a member, officer or employee of an agency, require that principal officer, or that person, as the case may be, to furnish to the Authority, by writing signed by that principal officer, or by that person, within the time and in the manner specified in the notice, information so specified, being information that—

- (a) was acquired by the first-mentioned agency in the ordinary course of performing its functions, or was acquired by that person in that person's capacity as such a member, officer or employee; and
- (b) is relevant to a prescribed investigation.

(2) A member or acting member may, by notice in writing served on the principal officer of an agency, require that principal officer—

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member or acting member of the Authority or a member of the staff of the Authority; and
- (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that relates to the performance by the agency of its functions and is relevant to a prescribed investigation.

(3) If a person who is required, by a notice served on him under this section, to furnish information, or produce a document or thing, to a person specified in the notice (in this sub-section referred to as the "specified person") claims to the specified person that he is entitled to refuse to furnish the information or produce the document or thing, the specified person shall—

- (a) if he is satisfied that the claim is justified—inform the claimant that the requirement will not be insisted upon; or
- (b) in any other case—inform the claimant that he is not so satisfied and, if the document or thing is not produced forthwith, refer the claim to the Authority for decision under section 32.

(4) Subject to a prescribed provision, but notwithstanding any other provision of a law of the Commonwealth that prohibits the divulging or communicating of information or the production of a document or thing, a person shall not—

- (a) without reasonable excuse, fail to comply with a notice served on the person under sub-section (1) or (2); or
- (b) in purported compliance with a notice served on the person under sub-section (1), knowingly furnish information that is false or misleading.

Penalty: \$1,000 or imprisonment for 6 months.

(5) In this section—

"agency" has the same meaning as that expression has in the *Freedom of Information Act 1982*;

“law of the Commonwealth” includes a law of a Territory;

“prescribed investigation” means an investigation that the Authority, in the performance of any of the functions referred to in paragraphs 11 (1) (b) and (d) and in sub-section 11 (2), is conducting or co-ordinating;

“prescribed provision” means a provision of a law of the Commonwealth that is specified in the Schedule;

“principal officer” has the same meaning as that expression has in the *Freedom of Information Act 1982*.

(6) The regulations may amend the Schedule by inserting in the Schedule, or by omitting from the Schedule, a reference to a provision of a law of the Commonwealth.

Arrangements for Authority to obtain information or intelligence

21. (1) The Commonwealth Minister may make an arrangement with the appropriate Minister of the Crown of a State for the Authority to receive from the State, or from an authority of the State, information or intelligence relating to relevant criminal activities.

(2) The Authority may make an arrangement with a body or person, not being a State or an authority of a State, for the Authority to obtain from that body or person information or intelligence relating to relevant criminal activities.

Search warrants

22. (1) A member of the Authority may apply to a Judge of a prescribed court for the issue of a warrant under sub-section (2) if—

- (a) the Authority has reasonable grounds for suspecting that, on a particular day (in this section referred to as the “relevant day”), being the day on which, or a particular day within one month after the day on which, the application is made, there may be, upon any land or upon or in any premises, vessel, aircraft or vehicle, a thing or things of a particular kind connected with a matter relating to a relevant criminal activity, being a matter into which the Authority is conducting a special investigation (in this section referred to as “things of the relevant kind”); and
- (b) the Authority believes on reasonable grounds that, if a summons were issued for the production of the thing or things, the thing or things might be concealed, lost, mutilated or destroyed.

(2) Where an application under sub-section (1) is made to a Judge of a prescribed court, the Judge may issue a warrant authorizing a member of the Australian Federal Police or of the Police Force of a State, or any other person, named in the warrant, with such assistance as he thinks necessary and if necessary by force—

- (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;

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- (b) to search the land, premises, vessel, aircraft or vehicle for things of the relevant kind; and
 - (c) to seize any things of the relevant kind found upon the land or upon or in the premises, vessel, aircraft or vehicle and deliver things so seized to the Authority.
- (3) A Judge shall not issue a warrant under sub-section (2) unless—
- (a) an affidavit has been furnished to him setting out the grounds on which the issue of the warrant is being sought;
 - (b) the applicant (or some other person) has given to the Judge, either orally or by affidavit, such further information (if any) as the Judge requires concerning the grounds on which the issue of the warrant is being sought; and
 - (c) the Judge is satisfied that there are reasonable grounds for issuing the warrant.
- (4) Where a Judge issues a warrant under sub-section (2), he shall state on the affidavit furnished to him in accordance with sub-section (3) which of the grounds specified in that affidavit he has relied on to justify the issue of the warrant and particulars of any other grounds relied on by him to justify the issue of the warrant.
- (5) A warrant issued under this section shall—
- (a) include a statement of the purpose for which the warrant is issued, which shall include a reference to the matter relating to a relevant criminal activity into which the Authority is conducting a special investigation and with which the things of the relevant kind are connected;
 - (b) state whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
 - (c) include a description of the kind of things authorized to be seized; and
 - (d) specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.
- (6) A warrant issued under this section may be executed, in accordance with its terms, at any time during the period commencing on the relevant day and ending on the date specified in the warrant as the date upon which the warrant ceases to have effect.
- (7) Where, in the course of searching, in accordance with the terms of a warrant issued under this section, for things of the relevant kind, the person executing the warrant finds a thing that he believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an offence against a law of the Commonwealth, of a State or of a Territory, and he believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction, or its use in committing such an offence, the person may seize the thing and, if he does so, the thing shall be deemed, for the purposes of this Act, to have been seized pursuant to the warrant.

(8) Where a thing is seized pursuant to a warrant issued under this section—

- (a) the Authority may retain the thing if, and for so long as, retention of the thing by the Authority is reasonably necessary for the purposes of a special investigation to which the thing is relevant; and
- (b) if the retention of the thing by the Authority is not, or ceases to be, reasonably necessary for such purposes, the Authority shall cause the thing to be delivered to—
 - (i) if the thing may be used in evidence in proceedings of a kind referred to in sub-section (13)—the authority or person responsible for taking the proceedings; or
 - (ii) if sub-paragraph (i) does not apply—the person who appears to the Authority to be entitled to the possession of the thing,

unless the Authority has furnished the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement agency, in accordance with paragraph 12 (1) (a).

(9) The Authority may, instead of delivering a thing in accordance with sub-paragraph (8) (b) (ii), deliver the thing to the Attorney-General of the Commonwealth or of a State, or to a law enforcement agency, for the purpose of assisting in the investigation of criminal offences, where the Authority is satisfied that the thing is likely to be useful for that purpose.

(10) Nothing in this section affects a right of a person to apply for, or the power of a person to issue, a warrant, being a right or power existing otherwise than by virtue of this section.

(11) A reference in this section to a Judge of a prescribed court shall be construed as a reference to—

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

(12) In this section “thing” includes a document.

(13) Without limiting the generality of paragraph (1) (a), a reference in this section to a thing connected with a matter relating to a relevant criminal activity, being a matter into which the Authority is conducting a special investigation, includes a reference to a thing that may be used in evidence in proceedings for the taking, by or on behalf of the Crown in right of the Commonwealth, of a State or of a Territory, of civil remedies in respect of a matter connected with, or arising out of, an offence to which the relevant criminal activity relates.

Application by telephone for search warrants

23. (1) Where, by reason of circumstances of urgency, the Authority considers it necessary to do so, a member of the Authority may make application by telephone for a warrant under section 22.

(2) Before so making application, the member shall prepare an affidavit that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the affidavit has been sworn.

(3) Where a Judge issues a warrant under section 22 upon an application made by telephone, he shall—

- (a) complete and sign that warrant;
- (b) inform the member who made the application of the terms of the warrant and the date on which and the time at which it was signed;
- (c) record on the warrant his reasons for issuing the warrant; and
- (d) send a copy of the warrant to the Authority.

(4) Where a warrant is issued under section 22 upon an application made by telephone, a member of the staff of the Authority or a member of the Australian Federal Police or of the Police Force of a State may complete a form of warrant in the terms indicated by the Judge under sub-section (3) and, where a form of warrant is so completed, he shall write on it the name of the Judge who issued the warrant and the date on which and the time at which it was signed.

(5) Where a person completes a form of warrant in accordance with sub-section (4), the person shall, not later than the day next following the date of expiry of the warrant, send to the Judge who signed the warrant the form of warrant completed by him and the affidavit duly sworn in connection with the warrant.

(6) Upon receipt of the documents referred to in sub-section (5), the Judge shall attach them to the warrant signed by him and deal with the documents in the manner in which he would have dealt with the affidavit if the application for the warrant had been made to him in accordance with section 22.

(7) A form of warrant duly completed in accordance with sub-section (4) shall be deemed to be a warrant issued under section 22.

Order for delivery to Authority of passport of witness

24. (1) Where, upon application by the Authority, a Judge of the Federal Court sitting in Chambers is satisfied by evidence on oath that—

- (a) in connection with an investigation that is being conducted by the Authority into a matter that was referred to the Authority, a summons has been issued under this Act requiring a person to appear before the Authority at a hearing (whether or not the summons has been served), or a person has appeared before the Authority at a hearing, to give evidence or to produce documents or other things;
- (b) there are reasonable grounds for believing that the person may be able to give to the Authority evidence or further evidence that is, or to produce to the Authority documents or other things or further documents or other things that are, relevant to the matter in respect of

which the Authority is conducting the investigation and could be of particular significance to the investigation; and

- (c) there are reasonable grounds for suspecting that the person intends to leave Australia and has in his possession, custody or control a passport issued to him,

the Judge may make an order requiring the person to appear before the Federal Court on a date, and at a time and place, specified in the order to show cause why he should not be ordered to deliver the passport to the Authority.

(2) Where—

- (a) an order under sub-section (1) has been made in respect of a person; and
- (b) a copy of that order has been served upon the person,

the person shall not leave Australia unless—

- (c) he has appeared before the Federal Court as required by the order under sub-section (1); and
- (d) if the Court makes an order in respect of him under paragraph (3) (a)—he has complied with the terms of that order and any passport delivered by him to the Authority in accordance with that order has been returned to him.

Penalty: \$5,000 or imprisonment for 2 years.

(3) Where a person appears before the Federal Court in pursuance of an order made under sub-section (1), the Court may, if it thinks fit, make an order—

- (a) requiring the person to deliver to the Authority any passport issued to him that is in his possession, custody or control; and
- (b) authorizing the Authority to retain the passport until the expiration of such period (not exceeding one month) as is specified in the order.

(4) The Federal Court may, upon application by the Authority, extend for a further period (not exceeding one month) or further periods (not exceeding one month in each case) the period for which the Authority is authorized to retain a passport in pursuance of an order made under sub-section (3), but so that the total period for which the Authority is authorized to retain the passport does not exceed 3 months.

(5) The Federal Court may, at any time while the Authority is authorized in pursuance of an order made under this section to retain a passport issued to a person, upon application made by the person, revoke the order and, if the order is revoked, the Authority shall forthwith return the passport to the person.

(6) The Federal Court has jurisdiction with respect to matters arising under this section.

(7) In this section, “Australia” includes the external Territories.

Division 2—Hearings

Hearings

25. (1) For the purposes of a special investigation the Authority may hold hearings.

(2) At a hearing, the Authority may be constituted by one or more members or acting members.

(3) Subject to sub-section (2), section 46 applies, so far as it is capable of application, at a hearing before the Authority as if the hearing were a meeting of the Authority.

(4) At a hearing before the Authority—

(a) a person giving evidence may be represented by a legal practitioner; and

(b) if, by reason of the existence of special circumstances, the Authority consents to a person who is not giving evidence being represented by a legal practitioner—the person may be so represented.

(5) A hearing before the Authority shall be held in private and the Authority may give directions as to the persons who may be present during the hearing or a part of the hearing.

(6) Nothing in a direction given by the Authority under sub-section (5) prevents the presence, when evidence is being taken at a hearing before the Authority, of—

(a) a person representing the person giving evidence; or

(b) a person representing, pursuant to sub-section (4), a person who, by reason of a direction given by the Authority under sub-section (5), is entitled to be present.

(7) Where a hearing before the Authority is being held, a person (other than a member or an acting member, counsel assisting the Authority in relation to the matter that is the subject of the hearing or a member of the staff of the Authority approved by the Authority) shall not be present at the hearing unless the person is entitled to be present by virtue of a direction given by the Authority under sub-section (5) or by virtue of sub-section (6).

(8) At a hearing before the Authority for the purposes of a special investigation—

(a) counsel assisting the Authority generally or in relation to the matter to which the investigation relates;

(b) any person authorized by the Authority to appear before it at the hearing; or

(c) any legal practitioner representing a person at the hearing pursuant to sub-section (4),

may, so far as the Authority thinks appropriate, examine or cross-examine any witness on any matter that the Authority considers relevant to the special investigation.

(9) The Authority may direct that—

- (a) any evidence given before it;
- (b) the contents of any document, or a description of any thing, produced to the Authority or seized pursuant to a warrant issued under section 22;
- (c) any information that might enable a person who has given evidence before the Authority to be identified; or
- (d) the fact that any person has given or may be about to give evidence at a hearing,

shall not be published, or shall not be published except in such manner, and to such persons, as the Authority specifies, and the Authority shall 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.

(10) 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 the Authority, being evidence in relation to which the Authority has given a direction under sub-section (9), be made available to the person or to a legal practitioner representing the person,

the court may give to the Authority a certificate to that effect and, if the court does so, the Authority shall make the evidence available to the court.

(11) Where—

- (a) the Authority makes evidence available to a court in accordance with sub-section (10); 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.

(12) A person who—

- (a) is present at a hearing in contravention of sub-section (7); or
- (b) makes a publication in contravention of a direction given under sub-section (9),

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.

Reimbursement of expenses of witnesses

26. A witness appearing before the Authority shall be paid by the Commonwealth in respect of the expenses of his attendance an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the Authority determines.

Legal and financial assistance

27. (1) A witness who is appearing or is about to appear before the Authority may make an application to the Attorney-General for the provision of assistance under this section in respect of his appearance.

(2) A person who proposes to make, or has made, an application to the Federal Court—

(a) under sub-section 32 (2) for an order of review in respect of a decision of the Authority; or

(b) 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.

(3) Where an application is made by a person under sub-section (1) or (2), the Attorney-General may, if he is satisfied that—

(a) it would involve substantial hardship to the person to refuse the application; or

(b) the circumstances of the case are of such a special nature that the application should be granted,

authorize the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in respect of the appearance of that person before the Authority, or the application by that person to the Federal Court, as the case may be, as the Attorney-General determines.

Power to summon witnesses and take evidence

28. (1) A member or an acting member may summon a person to appear before the Authority at a hearing to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

(2) A summons under sub-section (1) requiring a person to appear before the Authority at a hearing shall be accompanied by a copy of the notice by which the matter to which the hearing relates was referred to the Authority under section 13 or in accordance with section 14.

(3) A summons under sub-section (1) requiring a person to appear before the Authority at a hearing shall, unless the Authority is satisfied that, in the particular circumstances of the special investigation to which the hearing relates, it would prejudice the effectiveness of the special investigation for the summons to do so, set out, so far as is reasonably practicable, the general nature of the matters in relation to which the Authority intends to question the person, but nothing in this sub-section prevents the Authority from questioning the person in relation to any matter that relates to the special investigation.

(4) The member or acting member presiding at a hearing before the Authority may require a person appearing at the hearing to produce a document or other thing.

(5) The Authority may, at a hearing, take evidence on oath or affirmation and for that purpose—

- (a) a member or acting member may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member or acting member presiding at the hearing; and
- (b) a member or acting member, or a person who is an authorized person in relation to the Authority, may administer an oath or affirmation to a person so appearing at the hearing.

(6) In this section, a reference to a person who is an authorized person in relation to the Authority is a reference to a person authorized in writing, or a person included in a class of persons authorized in writing, for the purposes of this section by the Chairman or by a person acting as Chairman.

(7) The powers conferred by this section are not exercisable except for the purposes of a special investigation.

Power to obtain documents

29. (1) A member or acting member may, by notice in writing served on a person, require the person—

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member or acting member of the Authority or a member of the staff of the Authority; and
- (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that is relevant to a special investigation.

(2) A notice may be issued under this section in relation to a special investigation whether or not a hearing before the Authority is being held for the purposes of the investigation.

(3) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on him under this section.

Penalty: \$1,000 or imprisonment for 6 months.

(4) Sub-sections 30 (3) to (10), inclusive, apply in relation to a person who is required to produce a document or thing by a notice served on him under this section in the same manner as they apply in relation to a person who is required to produce a document or thing at a hearing before the Authority and so apply as if a reference in those sub-sections to sub-section 30 (2) were a reference to sub-section (3) of this section.

(5) If a person who is required to produce a document or thing by a notice served on him under this section claims to the person (in this sub-section referred to as the “relevant person”) to whom he is required to produce it that he is entitled to refuse to produce the document or thing, the relevant person shall—

- (a) if he is satisfied that the claim is justified—inform the claimant that the requirement will not be insisted upon; or

- (b) in any other case—inform the claimant that he is not so satisfied and, if the document or thing is not produced forthwith, refer the claim to the Authority for decision under section 32.

Failure of witnesses to attend and answer questions

30. (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before the Authority shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member or an acting member.

(2) A person appearing as a witness at a hearing before the Authority shall not, without reasonable excuse—

- (a) when required pursuant to section 28 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required to answer by the member or acting member presiding at the hearing; or
- (c) refuse or fail to produce a document or thing that he was required to produce by a summons under this Act served on him as prescribed.

(3) Where—

- (a) a legal practitioner is required to answer a question or produce a document at a hearing before the Authority; and
- (b) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner refuses to comply with the requirement, he shall, if so required by the member or acting member presiding at the hearing, furnish to the Authority the name and address of the person to whom or by whom the communication was made.

(4) Subject to sub-sections (5), (7) and (9), it is a reasonable excuse for the purposes of sub-section (2) for a natural person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Authority; or
- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Authority,

that the answer to the question, or the production of the document or thing, as the case may be, might tend to incriminate him.

(5) It is not a reasonable excuse for the purposes of sub-section (2) for a person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Authority; or

- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Authority,

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against a law of the Commonwealth or of a Territory if the Director of Public Prosecutions has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against him for an offence against a law of the Commonwealth or of a Territory other than proceedings in respect of the falsity of evidence given by the person and the Director of Public Prosecutions states in the undertaking—

- (c) that, in his opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by that person; and
- (d) the general nature of those grounds.

(6) The Authority may recommend to the Director of Public Prosecutions that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hearing before the Authority be given an undertaking in accordance with sub-section (5).

(7) It is not a reasonable excuse for the purposes of sub-section (2) for a person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Authority; or
- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Authority,

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against a law of a State if the Attorney-General of that State, or a person authorized by him, being the person holding the office of Director of Public Prosecutions, or a similar office, of that State, has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against him for an offence against a law of that State other than proceedings in respect of the falsity of evidence given by the person and the Attorney-General of that State, or the person so authorized, states in the undertaking—

- (c) that, in his opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by that person; and
- (d) the general nature of those grounds.

(8) The Authority may recommend to the Attorney-General of a State that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hearing before the Authority be given an undertaking in accordance with sub-section (7).

(9) For the purposes of sub-section (2)—

- (a) it is not a reasonable excuse for a corporation to refuse or fail to produce a document or thing that the production of the document or thing might tend to incriminate the corporation; and
- (b) it is not a reasonable excuse for a natural person to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, in the case of a person who is or has been an employee, a document that sets out details of earnings received by the person in respect of his employment and does not set out any other information) that the production of the document might tend to incriminate the person.

(10) Sub-sections (5), (7) and (9) do not apply where the offence in respect of which the answer to a question or the production of a document or thing, as the case requires, might tend to incriminate a person is an offence with which the person has been charged and the charge has not been finally dealt with by a court or otherwise disposed of.

(11) A person who contravenes sub-section (1), (2) or (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.

Warrant for arrest of witness

31. (1) Where, upon application by or on behalf of the Authority, a Judge of the Federal Court sitting in chambers is satisfied by evidence on oath that there are reasonable grounds to believe that a person who has been ordered, under section 24, to deliver his passport to the Authority, whether or not he has complied with the order, is nevertheless likely to leave Australia for the purpose of avoiding giving evidence before the Authority, the Judge may issue a warrant for the apprehension of the person.

(2) The warrant may be executed by any member of the Australian Federal Police or of the Police Force of a State or Territory, or by any person to whom it is addressed, and the person executing it has power to break into and enter any place, building or vessel for the purpose of executing it.

(3) Where a person is apprehended in pursuance of a warrant under this section, he shall be brought, as soon as practicable, before a Judge of the Federal Court and the Judge may—

- (a) admit the person to bail, with such security as the Judge thinks fit, on such conditions as he thinks necessary to ensure the appearance of the person as a witness before the Authority;

- (b) order the continued detention of the person for the purposes of ensuring his appearance as such a witness; or
- (c) order the release of the person.

(4) Where a person is under detention in pursuance of this section, he shall, within 14 days after he was brought, or last brought, before a Judge of the Federal Court in accordance with this section, or within such shorter or longer time as a Judge has fixed upon the last previous appearance of the person before a Judge under this section, be again brought before a Judge and the Judge may thereupon exercise any of the powers of a Judge under sub-section (3).

Applications to Federal Court of Australia

32. (1) Where—

- (a) a person claims to be entitled to refuse to furnish information or produce a document or thing that he is required to furnish or produce pursuant to a notice under section 20;
- (b) a person claims to be entitled to refuse to produce a document or thing that he is required to produce pursuant to a notice under section 29; or
- (c) a person claims to be entitled to refuse to answer a question put to him, or to produce a document or thing that he was required to produce, at a hearing before the Authority,

the Authority shall decide as soon as practicable whether in its opinion the claim is justified and notify the person of its decision.

(2) If the person is dissatisfied with the decision, he may apply to the Federal Court for an order of review in respect of the decision.

(3) Where the Authority decides that a claim by a person that he is entitled to refuse to produce a document is not justified, the person is not entitled to make an application to the Federal Court under sub-section (2) in respect of the decision unless the person has produced the document to the Authority or placed the document in the custody of the Registrar of that Court, and where the person has so produced the document and makes such an application, the Authority shall cause the document to be placed in the custody of the Registrar of that Court.

(4) On an application for an order of review in respect of a decision of the Authority under sub-section (1), the Federal Court may, in its discretion, make an order—

- (a) affirming the decision; or
- (b) setting aside the decision.

(5) Where the Federal Court makes an order under sub-section (4) setting aside a decision by the Authority that a claim by a person that he was entitled to refuse to produce a document is not justified—

- (a) unless paragraph (b) applies—the Federal Court shall make a further order directing that the document be delivered to the person;

- (b) if the Federal Court—
- (i) makes the first-mentioned order for the reason that the person was entitled, on the ground that production of the document might tend to incriminate him, to refuse to produce the document;
 - (ii) is satisfied that the person was not entitled on any other ground to refuse to produce the document; and
 - (iii) is satisfied that an undertaking of a kind referred to in sub-section 30 (5) or (7) has, or 2 or more such undertakings have, been given to the person and that the person, if now required to produce the document at a hearing before the Authority, would not be entitled to refuse so to produce it,

the Federal Court shall make a further order directing that the document be delivered to the Authority; and

- (c) if the Federal Court—
- (i) makes the first-mentioned order for the reason that, or for reasons including the reason that, the person was entitled, on the ground that production of the document might tend to incriminate him, to refuse to produce the document; and
 - (ii) makes a further order directing that the document be delivered to the person,

evidence of production of the document by the person to the Authority, or of the placing of the document by the person in the custody of the Registrar of the Federal Court, as the case may be, for the purposes of the application on which the orders were made is not admissible in proceedings against the person for an offence against a law of the Commonwealth, of a State or of a Territory, other than proceedings in respect of the falsity of evidence given by the person.

(6) A prosecution for an offence under section 20, 29 or 30 shall not be commenced in respect of a refusal or failure by a person to furnish information, produce a document or thing or answer a question—

- (a) if the person has claimed to be entitled to refuse to furnish the information, produce the document or thing or answer the question, as the case may be, and the Authority decides that, in its opinion, the claim is not justified—until the expiration of the period of 5 days (excluding days on which the Registry of the Federal Court is closed) immediately after the day on which the Authority so decides; or
- (b) if the person has made an application to the Federal Court under sub-section (2) for an order of review in respect of a decision by the Authority that, in its opinion, a claim by the person to be entitled to refuse to furnish the information, produce the document or thing or answer the question is not justified—until the application, and any appeal from an order made by the Federal Court on the application, have been determined or otherwise disposed of.

(7) An order of the Federal Court under sub-section (4) is, subject to any appeal from that order, conclusive for the purposes of any other proceedings.

(8) Where a person who is required to produce a document pursuant to a notice under section 29, or who is required to produce a document at a hearing before the Authority, claims that—

(a) the document contains—

(i) particular matter (in this sub-section referred to as the “relevant matter”) relating to the personal affairs of the person, not being matter relating to the activities of an existing or past business; or

(ii) in the case of a person who is or has been an employee—particular matter (in this sub-section also referred to as the “relevant matter”), being details of earnings received by the person in respect of his employment; and

(b) the person would, if the document had contained only the relevant matter, have been entitled, on the ground that production of the document might tend to incriminate him, to refuse so to produce the document,

the person may, whether or not he has made an application to the Federal Court under sub-section (2) in respect of a decision by the Authority in relation to the document, make an application to the Federal Court for an order under this sub-section and, if such an application is made and the document is produced to that Court, then, subject to paragraph (5) (a), that Court—

(c) if it is satisfied that the claim is justified—may, subject to paragraph (d) of this sub-section, make such order as it thinks fit for the excision or concealment of the part of the document that contains the relevant matter and shall, if it makes such an order, make a further order directing that the document be delivered to the Authority after the first-mentioned order has been complied with;

(d) if it is satisfied that an undertaking of a kind referred to in sub-section 30 (5) or (7) has, or 2 or more such undertakings have, been given to the person and that the person would not, if the document contained only the relevant matter and the person were now required to produce the document to the Authority, be entitled, on the ground that production of the document might tend to incriminate him, to refuse so to produce it—shall make an order directing that the document be delivered to the Authority; and

(e) if paragraph (d) does not apply and that Court does not make an order of the kind first referred to in paragraph (c)—shall make an order directing that the document be delivered to the Authority.

(9) A person is not entitled to make an application to the Federal Court under sub-section (8) in relation to a document unless that person has produced the document to the Authority or placed the document in the custody of the Registrar of that Court, and where the person has so produced the

document and makes such an application, the Authority shall cause the document to be placed in the custody of the Registrar of that Court.

(10) Where—

- (a) a person makes a claim as mentioned in sub-section (8) in relation to particular matter (in this sub-section referred to as the “relevant matter”) contained in a document; and
- (b) the Federal Court, being satisfied that the claim is justified, makes in relation to the document an order of the kind first referred to in paragraph (8) (c),

evidence of production of the document by the person to the Authority, or of the placing of the document by the person in the custody of the Registrar of the Federal Court, as the case may be, for the purposes of the application on which the order is made is, in so far as the document contains the relevant matter, not admissible in any proceedings against the person for an offence against a law of the Commonwealth, of a State or of a Territory, other than proceedings in respect of the falsity of evidence given by the person.

(11) A prosecution for an offence under section 29 or 30 shall not be commenced in respect of a refusal or failure by a person to produce a document—

- (a) if the person has made a claim in relation to the document as mentioned in sub-section (8)—until the expiration of the period of 5 days (excluding days on which the Registry of the Federal Court is closed) immediately after the day on which the document was to be produced; or
- (b) if the person has made an application under sub-section (8) in relation to the document—until the application, and any appeal from an order made by the Federal Court on the application, have been determined or otherwise disposed of.

(12) An application to the Federal Court under sub-section (2) or (8)—

- (a) shall be made in such manner as is prescribed by Rules of Court made under the *Federal Court of Australia Act 1976*;
- (b) shall set out the grounds of the application; and
- (c) shall be lodged with a Registry of the Federal Court within the period of 5 days (excluding days on which the Registry is closed) immediately after the day on which—
 - (i) in the case of an application under sub-section (2)—the decision to which the application relates is made; or
 - (ii) in the case of an application under sub-section (8)—the document to which the application relates was to be produced,or within such further period as that Court (whether before or after the expiration of the first-mentioned period) allows.

False or misleading evidence

33. (1) A person shall not, at a hearing before the Authority, give evidence that is to his knowledge false or misleading in a material particular.

(2) A contravention of sub-section (1) is an indictable offence and, subject to this section, is punishable, upon conviction, by imprisonment for a period not exceeding 5 years or by a fine not exceeding \$20,000.

(3) Notwithstanding that an offence against sub-section (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 sub-section (3), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 1 year.

Protection of witnesses, &c.

34. Where it appears to a member or acting member that, by reason of the fact that a person—

- (a) is to appear, is appearing or has appeared at a hearing before the Authority to give evidence or to produce a document or thing; or
- (b) proposes to furnish or has furnished information, or proposes to produce or has produced a document or thing, to the Authority otherwise than at a hearing before the Authority,

the safety of the person may be prejudiced or the person may be subjected to intimidation or harassment, the member or acting member may make such arrangements (including arrangements with the Minister or with members of the Australian Federal Police or of the Police Force of a State) as are necessary to avoid prejudice to the safety of the person, or to protect the person from intimidation or harassment.

Contempt of Authority

35. (1) A person shall not—

- (a) obstruct or hinder the Authority or a member or an acting member in the performance of the functions of the Authority; or
- (b) disrupt a hearing before the Authority.

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

(2) An offence against sub-section (1) is punishable on summary conviction.

Protection of members, &c.

36. (1) A member or an acting member has, in the performance of his functions or the exercise of his powers as a member or acting member in relation to a hearing before the Authority, the same protection and immunity as a Justice of the High Court.

(2) A legal practitioner assisting the Authority or representing a person at a hearing before the Authority has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Authority as a witness has the same protection as a witness in proceedings in the High Court.

Division 3—Administrative Provisions

Terms and conditions of appointment

37. (1) Subject to this Division, a member holds office—

(a) in the case of the first Chairman and the first 2 other members—for such period, not exceeding 4 years, as is specified in the instrument of his appointment;

(b) in the case of a member who is appointed after the expiration of one year after the commencement of this Act—for a period ending at the expiration of 5 years after that commencement; or

(c) in the case of any other member—for a period of 4 years,

and is not eligible for re-appointment.

(2) Subject to sub-section (3), a person who has attained the age of 65 years shall not be appointed as a member and a person shall not be appointed as a member for a period that extends beyond the day on which he will attain the age of 65 years.

(3) In the case of a person who is, and is expected to continue to be, a Judge, a reference in sub-section (2) to the age of 65 years shall be construed as a reference to the age of 70 years.

(4) A member, other than a member who is a Judge, 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.

Remuneration and allowances

38. (1) Subject to sub-section (4), a member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration is in operation, he shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

(4) If a person who is a Judge is appointed as a member, he is not, while he receives salary or annual allowance as a Judge, entitled to remuneration under this Act.

Appointment of Judge as member not to affect tenure, &c.

39. (1) The appointment of the holder of a judicial office as a member or acting member, or service by the holder of a judicial office as a member or acting member, does not affect his tenure of that judicial office or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, his service as a member or acting member shall be taken to be service as the holder of that judicial office.

- (2) In this section, “judicial office” means—
- (a) an office of judge of a court created by the Parliament; or
 - (b) an office the holder of which has, by virtue of his holding that office, the same status as a Judge of a court created by the Parliament.

Leave of absence

40. The Minister may grant to a member leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

41. A member may resign his office by writing signed by him and delivered to the Governor-General.

Disclosure of interests

42. (1) A member or acting member who has a direct or indirect interest in a matter being considered or about to be considered by the Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Authority.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Authority and the member or acting member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Authority with respect to that matter; or
- (b) take part in any decision of the Authority with respect to that matter.

Termination of appointment

43. (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.

- (2) If a member—
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
 - (b) engages, except with the approval of the Minister, in paid employment outside the duties of his office;

- (c) is absent from duty, except on leave granted by the Minister in accordance with section 40, for 14 consecutive days, or for 28 days in any period of 12 months; or
- (d) fails, without reasonable excuse, to comply with his obligations under section 42,

the Governor-General shall terminate the appointment of that member.

(3) Sub-sections (1) and (2) do not apply to a member who is a Judge, but, if a member who is a Judge ceases to be a Judge, the Governor-General may terminate his appointment.

Acting Chairman

44. (1) The Minister may appoint a person to act as Chairman—

- (a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Chairman; and
- (b) at any time terminate such an appointment.

(3) Where a person is acting as Chairman in accordance with paragraph (1) (b) and the office of Chairman becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of a person to act as Chairman ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

(5) While a person is acting as Chairman, he has, and may exercise, all the powers and shall perform all the functions of the Chairman.

(6) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had passed.

Acting member

45. (1) The Minister may appoint a person to act as a member other than the Chairman—

- (a) during a vacancy in the office of a member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when a member is absent from duty or from Australia or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as a member; and
- (b) at any time terminate such an appointment.

(3) Where a person is acting as a member in accordance with paragraph (1) (b) and the office of that member becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of a person to act as a member ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

(5) While a person is acting as a member, he has, and may exercise, all the powers and shall perform all the functions of a member.

(6) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had passed.

Meetings of Authority

46. (1) The Chairman may, at any time, convene a meeting of the Authority.

(2) The Chairman shall convene such meetings of the Authority as, in his opinion, are necessary for the efficient performance of its functions.

(3) At a meeting of the Authority, 2 members constitute a quorum.

(4) The Chairman shall preside at all meetings of the Authority at which he is present.

(5) If the Chairman is not present at a meeting of the Authority, the members present shall elect one of their number to preside at that meeting.

(6) Questions arising at a meeting of the Authority shall be determined by a majority of the votes of the members present.

(7) The person presiding at a meeting of the Authority has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

(8) The Authority may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

(9) In this section—

(a) a reference to the Chairman shall, if a person is acting as Chairman, be construed as a reference to the person so acting;

(b) a reference to a member shall, if a person is acting as a member, be construed as including a reference to the person so acting.

Staff

47. (1) Subject to sections 48 and 49, the staff of the Authority shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Chairman has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1), as if that branch were a separate Department of the Australian Public Service.

Employment of consultants, &c.

48. (1) The Chairman may, on behalf of the Commonwealth and with the approval of the Minister or of an authorized person, engage, under agreements in writing, persons having suitable qualifications and experience as consultants to, or to perform services for, the Authority.

(2) The terms and conditions of engagement of persons engaged under sub-section (1) are such as are from time to time determined by the Chairman with the approval of the Minister or of an authorized person.

(3) In this section—

(a) a reference to the Chairman shall, if a person is acting as Chairman, be construed as a reference to the person so acting; and

(b) a reference to an authorized person is a reference to a person authorized by the Minister, by writing under his hand, to grant approvals on behalf of the Minister under this section.

Staff to be seconded to Authority

49. In addition to the members of the staff referred to in sub-section 47 (1) and persons engaged under sub-section 48 (1), the Authority shall be assisted in the performance of its functions by—

(a) members of the Australian Federal Police whose services are made available to the Authority;

(b) officers and employees of authorities of the Commonwealth whose services are made available to the Authority; and

- (c) persons whose services are made available to the Authority pursuant to arrangements made under section 58.

Counsel assisting Authority

50. The Attorney-General may appoint a legal practitioner to assist the Authority as counsel, either generally or in relation to a particular matter or matters.

Secrecy

- 51. (1)** This section applies to—
- (a) a member or acting member of the Authority; and
 - (b) a member of the staff of the Authority.

(2) A person to whom this section applies who, either directly or indirectly, except for the purposes of this Act or otherwise in connection with the performance of his duties under this Act, and either while he is or after he ceases to be a person to whom this section applies—

- (a) makes a record of any information; or
- (b) divulges or communicates to any person any information,

being information acquired by him by reason of, or in the course of, the performance of his duties under this Act, is guilty of an offence punishable on summary conviction by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 1 year, or both.

(3) A person to whom this section applies shall not be required to produce in any court any document that has come into his custody or control in the course of, or by reason of, the performance of his duties under this Act, or to divulge or communicate to a court a matter or thing that has come to his notice in the performance of his duties under this Act, except where the Authority, or a member or acting member in his official capacity, is a party to the relevant proceeding or it is necessary to do so—

- (a) for the purpose of carrying into effect the provisions of this Act; or
- (b) for the purposes of a prosecution instituted as a result of an investigation carried out by the Authority in the performance of its functions.

(4) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to, and “production” has a corresponding meaning.

**PART III—PARLIAMENTARY JOINT COMMITTEE ON THE
NATIONAL CRIME AUTHORITY**

Interpretation

- 52.** In this Part, unless the contrary intention appears—
“member” means a member of the Committee;

“the Committee” means the Parliamentary Joint Committee on the National Crime Authority for the time being constituted under this Part.

Joint Committee on the National Crime Authority

53. (1) As soon as practicable after the commencement of this Act and after the commencement of the first session of each Parliament, a joint committee of members of the Parliament to be known as the Parliamentary Joint Committee on the National Crime Authority shall be appointed according to the practice of the Parliament with reference to the appointment of members to serve on joint select committees of both Houses of the Parliament.

(2) The Committee shall consist of 10 members, namely—5 members of the Senate appointed by the Senate, and 5 members of the House of Representatives appointed by that House.

(3) A member of the Parliament is not eligible for appointment as a member of the Committee if he is—

- (a)** a Minister;
- (b)** the President of the Senate;
- (c)** the Speaker of the House of Representatives; or
- (d)** the Deputy-President and Chairman of Committees of the Senate or the Chairman of Committees of the House of Representatives.

(4) A member ceases to hold office—

- (a)** when the House of Representatives expires by effluxion of time or is dissolved;
- (b)** if he becomes the holder of an office specified in any of the paragraphs of sub-section (3);
- (c)** if he ceases to be a member of the House of the Parliament by which he was appointed; or
- (d)** if he resigns his office as provided by sub-section (5) or (6).

(5) A member appointed by the Senate may resign his office by writing signed by him and delivered to the President of the Senate.

(6) A member appointed by the House of Representatives may resign his office by writing signed by him and delivered to the Speaker of that House.

(7) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the Committee appointed by that House.

Powers and proceedings of the Committee

54. All matters relating to the powers and proceedings of the Committee shall be determined by resolution of both Houses of the Parliament.

Duties of the Committee

55. (1) The duties of the Committee are—

- (a) to monitor and to review the performance by the Authority of its functions;
- (b) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the Authority or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed;
- (c) to examine each annual report of the Authority and report to the Parliament on any matter appearing in, or arising out of, any such annual report;
- (d) to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the Authority; and
- (e) to inquire into any question in connection with its duties which is referred to it by either House of the Parliament, and to report to that House upon that question.

(2) Nothing in this Part authorizes the Committee—

- (a) to investigate a matter relating to a relevant criminal activity; or
- (b) to reconsider the findings of the Authority in relation to a particular investigation.

PART IV—MISCELLANEOUS

Transfer of certain materials to the Authority

56. Upon the termination of the Royal Commission that was commissioned, by Letters Patent dated 10 September 1980, to inquire into the activities of the Federated Ship Painters and Dockers Union, the Authority is entitled to take possession of all documents and other materials that relate to the inquiry conducted by the Royal Commission and that are in the possession or under the control of the person conducting the Royal Commission.

Application of Administrative Decisions (Judicial Review) Act

57. Section 11 of the *Administrative Decisions (Judicial Review) Act 1977* has effect in relation to matters arising under this Act as if sub-sections (1) to (5), inclusive, of that section were omitted and the following sub-section were substituted:

“(1) An application to the Court for an order of review in respect of a matter arising under the *National Crime Authority Act 1984*—

- (a) shall be made in such manner, and shall contain such particulars, as are prescribed by Rules of Court and shall contain such other particulars (if any) as the Court directs;
- (b) shall set out the grounds of the application; and

- (c) shall be lodged with a Registry of the Court within the period of 5 days (excluding days on which the Registry is closed) after the day on which the applicant becomes aware of the matter or within such further period as the Court (whether before or after the expiration of the first-mentioned period) in special circumstances allows.”

Administrative arrangements with States

58. (1) The Minister may make an arrangement with the appropriate Minister of the Crown of a State under which the State will, from time to time as agreed upon under the arrangement, do either or both of the following:

- (a) make available a person who is the holder of a judicial or other office, or persons who are the holders of judicial or other offices, of the State to hold office as a member or members;
- (b) make available a person who is an officer or employee of the State or of an authority of the State or a member of the Police Force of the State, or persons who are such officers, employees or members, to perform services for the Authority.

(2) An arrangement under sub-section (1) may provide for the Commonwealth to reimburse a State with respect to the services of a person or persons to whom the arrangement relates.

Furnishing of reports and information

59. (1) The Authority shall keep the Minister informed of the general conduct of its operations in the performance of its functions and, if the Minister requests the Authority to provide to him information concerning a specific matter relating to—

- (a) the Authority’s operations in the performance of its general functions; or
- (b) the Authority’s operations in respect of a reference or references made to the Authority under section 13,

the Authority shall comply with the request.

(2) Where the Authority is performing functions by reason of a reference or references having been made to the Authority by a Minister of the Crown of a State in accordance with section 14, the Authority shall keep that Minister informed of the general conduct of its operations in respect of the reference or references and, if that Minister requests the Authority to furnish to him information concerning a specific matter relating to those operations, shall comply with the request.

(3) Subject to sub-section (5), the Authority—

- (a) shall, when requested by the Inter-Governmental Committee to furnish information to the Committee concerning a specific matter relating to an investigation that has been or is being conducted by the Authority, comply with the request; and
- (b) shall when requested by the Inter-Governmental Committee to do so, and may at such other times as the Authority thinks appropriate,

inform the Committee concerning the general conduct of the operations of the Authority.

(4) Subject to sub-section (5), the Authority shall furnish to the Inter-Governmental Committee, for transmission to the Governments represented on the Committee, a report of the findings of any special investigation conducted by the Authority.

(5) The Authority shall not furnish to the Inter-Governmental Committee any matter the disclosure of which to members of the public could prejudice the safety or reputation of persons or the operations of law enforcement agencies and, if the findings of the Authority in an investigation include any such matter, the Authority shall prepare a separate report in relation to the matter and furnish that report to the Commonwealth Minister or Minister of the Crown of the State by whom the relevant reference was made.

(6) The Authority may include in a report furnished under sub-section (4) a recommendation that the report be laid before each House of the Parliament.

(7) The Authority may, whenever it appears to the Authority to be appropriate to do so, furnish to relevant law enforcement agencies any information concerning the commission or possible commission of offences against the laws of the Commonwealth, of a State or of a Territory that has come into its possession in the course of any investigations conducted by it.

(8) The Authority may, whenever it appears to the Authority to be appropriate to do so, furnish to authorities and persons responsible for taking civil remedies by or on behalf of the Crown in right of the Commonwealth, of a State or of a Territory any information that has come into the possession of the Authority in the course of any investigations conducted by it and that may be relevant for the purposes of so taking such remedies in respect of matters connected with, or arising out of, offences against the laws of the Commonwealth, of a State or of a Territory, as the case may be.

(9) Where any information relating to the performances of the functions of—

- (a) a Department of State of the Commonwealth or of a State;
- (b) the Administration of a Territory; or
- (c) an instrumentality of the Commonwealth, of a State or of a Territory, comes into the possession of the Authority in the course of any investigations conducted by it, the Authority may, if it considers it desirable to do so—
 - (d) furnish that information to the Department, the Administration or the instrumentality; and
 - (e) make to the Department, the Administration or the instrumentality such recommendations (if any) relating to the performance of the functions of the Department, of the Administration or of the instrumentality as the Authority considers appropriate.

(10) A report made by the Authority under this Act that sets out any finding that an offence has been committed, or makes any recommendation for

the institution of a prosecution in respect of an offence, shall not be made available to the public unless the finding or recommendation is expressed to be based on evidence that would be admissible in the prosecution of a person for that offence.

Public sittings and bulletins

60. (1) The Authority may hold sittings in public for the purpose of informing the public of, or receiving submissions in relation to, the general conduct of its operations.

(2) At a sitting held under sub-section (1), the Authority may be constituted by one or more members or acting members.

(3) Subject to sub-section (2), section 46 applies, so far as it is capable of application, in relation to a sitting held under sub-section (1) as if the sitting were a meeting of the Authority.

(4) The Authority may publish bulletins for the purpose of informing the public of the general conduct of its operations.

(5) The Authority shall not—

(a) divulge in the course of a sitting held under sub-section (1); or

(b) include in a bulletin published under sub-section (4),

any matter the disclosure of which to members of the public could 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.

Annual report

61. (1) The Authority shall, as soon as practicable after each 30 June, prepare a report of its operations during the year that ended on that 30 June and furnish the report to the Inter-Governmental Committee for transmission, together with such comments on the report as the Committee thinks fit, to the Commonwealth Minister and to the appropriate Minister of the Crown of each participating State.

(2) A report by the Authority under this section in relation to a year shall include the following:

(a) a description of the matters that were referred during that year to the Authority for investigation;

(b) a description, which may include statistics, of any patterns or trends, and the nature and scope, of any criminal activity that have come to the attention of the Authority during that year in the course of its investigations;

(c) any recommendations for changes in the laws of the Commonwealth, of a participating State or of a Territory, or for administrative action, that, as a result of the performance of its functions, the Authority considers should be made;

(d) the general nature and the extent of any information furnished by the Authority during that year to a law enforcement agency;

- (e) the extent to which its investigations have resulted in the prosecution in that year of persons for offences;
 - (f) particulars of matters in respect of which the Authority has, during that year, made requests under sub-section 10 (1) and, subject to sub-section (5) of this section, of the outcome of such requests; and
 - (g) particulars of the number and results of—
 - (i) applications made to the Federal Court under sub-section 32 (2) for orders of review in respect of decisions of the Authority;
 - (ii) applications made to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* for orders of review in respect of matters arising under this Act; and
 - (iii) other court proceedings involving the Authority,
being applications and proceedings that were determined, or otherwise disposed of, during that year.
- (3) A report by the Authority under this section shall 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.

(4) In any report by the Authority under this section the Authority shall take reasonable care to ensure that the identity of a person is not revealed if to reveal his identity might, having regard to any material appearing in the report, prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

(5) Where the Inter-Governmental Committee resolves that the inclusion in a report by the Authority under this section of particulars of the outcome of a request made by the Authority under sub-section 10 (1) might prejudice the safety or reputation of a person, the operations of law enforcement agencies or the fair trial of a person who has been or may be charged with an offence, the Authority shall not include in such a report particulars of the outcome of the request.

(6) The Minister shall cause a copy of—

- (a) a report of the Authority under this section that is received by him; and
- (b) any comments made on the report by the Inter-Governmental Committee, being comments that accompanied the report,

to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by him.

Regulations

62. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Cessation of operation of Act

63. This Act, unless sooner repealed, shall cease to be in force at the expiration of 5 years after the date of commencement of this Act.

SCHEDULE

Section 20

PRESCRIBED PROVISIONS

Australian Capital Territory Taxation (Administration) Act 1969, section 7
Australian Security Intelligence Organization Act 1979, sections 18, 81 and 92
Bank Account Debits Tax Administration Act 1982, section 7
Census and Statistics Act 1905, section 19
Crimes (Taxation Offences) Act 1980, section 4
Gift Duty Assessment Act 1941, section 10
Income Tax Assessment Act 1936, section 16
Ombudsman Act 1976, section 35
Pay-roll Tax (Territories) Assessment Act 1971, section 8
Sales Tax Assessment Act (No. 1) 1930, section 10
Social Security Act 1947, section 17
Taxation Administration Act 1953, section 14F
Taxation (Interest on Overpayments) Act 1983, section 8
Telecommunications (Interception) Act 1979, section 7
Tobacco Charges Assessment Act 1955, section 10
Wool Tax (Administration) Act 1964, section 8