National Crime Authority (Consequential Amendments) Act 1984

No. 42 of 1984

An Act to make certain amendments consequent upon the enactment of the *National Crime Authority Act 1984*

[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 (Consequential Amendments) Act 1984.*

Commencement

**2.** This Act shall come into operation on the day on which the *National Crime Authority Act 1984* comes into operation.

# PART II—AMENDMENTS OF INCOME TAX ASSESSMENT ACT 1936

Interpretation

**3.** The *Income Tax Assessment Act 1936*1is in this Part referred to as the Principal Act.

Officers to observe secrecy

**4.** Section 16 of the Principal Act is amended—

(a) by omitting from paragraph (4) (j) “or” (last occurring);

(b) by adding at the end of sub-section (4) the following word and paragraph:

“; or (m) the National Crime Authority for the purposes of a tax-related investigation.”;

(c) by inserting after paragraph (4a) (b) the following paragraph:

“(ba) the Royal Commission may communicate the information to the National Crime Authority if the Royal Commission is of the opinion that the information relates, or may relate, to a tax-related investigation;”;

(d) by omitting from paragraph (4a) (c) “and (b)” and substituting “, (b) and (ba)”;

(e) by inserting in sub-section (4f) “or (4hj) (e)” after “(4e) (a)”;

(f) by inserting after sub-section (4h) the following sub-sections:

“(4ha) Where—

(a) the National Crime Authority is conducting a special investigation; and

(b) the Authority considers that the Commissioner, under the provisions of this Act or of any previous law of the Commonwealth relating to income tax, may have acquired particular information (in this section referred to as the “requested information”) that is relevant to the special investigation,

a member of the Authority may apply to a Judge of the Federal Court of Australia for an order under sub-section (4hd).

“(4hb) An application under sub-section (4ha) shall be in writing and shall be accompanied by an affidavit made by the applicant that—

(a) sets out details of the special investigation in relation to which the application is made; and

(b) specifies particulars of the requested information.

“(4hc) Where a member of the National Crime Authority makes an application under sub-section (4ha), he shall give notice in writing to the Commissioner of the making of the application and of the particulars of the requested information.

“(4hd) Where an application is made to a Judge of the Federal Court under sub-section (4ha)—

(a) the Judge may order the Commissioner to disclose to the National Crime Authority all of the requested information, or such of the requested information as is specified in the order, that the Commissioner has acquired under the provisions of this Act or of any previous law of the Commonwealth relating to income tax; and

(b) if the Judge makes an order under paragraph (a)—the Judge may make a further order prohibiting the Authority from communicating the information except in such manner as is, and to such persons (being persons to whom the Authority is entitled pursuant to this section to communicate the information) as are, specified in the order, and a Judge of the Federal Court may at any time, on application by a member of the Authority or by the Commissioner, notice of which shall be given to the Commissioner or to the Authority, as the case requires, vary or revoke such a further order.

“(4he) A Judge of the Federal Court shall not make an order under sub-section (4hd) in relation to an application unless—

(a) the Commissioner has been given the opportunity to bring to the notice of the Judge any matter to which the Commissioner considers the Judge should have regard in considering the application;

(b) the applicant has given to the Judge, on oath or by affidavit, such further information (if any) as the Judge requires concerning the special investigation in relation to which the application is made; and

(c) the Judge is satisfied that—

(i) there are reasonable grounds for believing that the information to be specified in the order is relevant to the special investigation in relation to which the application is made; and

(ii) the information to be specified in the order is not readily obtainable by the National Crime Authority from a source other than the Commissioner.

“(4hf) A Judge of the Federal Court, in considering for the purposes of paragraph (4he) (c) whether or not particular information that may be relevant to a special investigation is readily obtainable by the National Crime Authority from a source other than the Commissioner, shall have regard to any prejudice to the conduct of the investigation that may result if the Authority is required to obtain the information from such a source.

“(4hg) Where a Judge of the Federal Court makes an order under sub-section (4hd)—

(a) in the case of an order under paragraph (4hd) (a)—the Commissioner shall comply with the order; or

(b) in the case of an order under paragraph (4hd) (b) that has not been revoked—the National Crime Authority shall, notwithstanding anything in this section, comply with the order or with the order as varied pursuant to paragraph (4hd) (b).

“(4hh) Nothing in sub-section (4a) prevents the National Crime Authority from taking possession of a document or other material of which the Authority is entitled, pursuant to section 56 of the relevant Act, to take possession.

“(4hj) Subject to sub-sections (4hk) and (4hl), where—

(a) information respecting the affairs of a person is communicated to the National Crime Authority under this section; or

(b) the National Crime Authority, pursuant to section 56 of the relevant Act, takes possession of a document or other material that contains information respecting the affairs of a person, being information that was communicated pursuant to paragraph (4) (k) of this section to the Royal Commission referred to in that section,

then—

(c) the Authority may, in a manner that does not identify, and is not reasonably capable of being used to identify, the person to whom the information relates, communicate the information to the Inter-Governmental Committee in a report by the Authority under sub-section 59 (4) of the relevant Act;

(d) the Authority may divulge the information in the course of a hearing before the Authority;

(e) the Authority may communicate the information to the Commissioner of the Australian Federal Police, or to the commanding officer of the Police Force of the State, if the Authority is of the opinion that the information indicates that a person may have committed an offence against a law of the Commonwealth or of a Territory, or against a law of that State, as the case may be, being an offence the punishment, or maximum punishment, for which is or includes imprisonment for life or for a period exceeding 6 months;

(f) in a case where paragraph (a) applies—subject to paragraphs (c), (d) and (e), the Authority shall not divulge or communicate the information except to—

(i) a member of the staff of the Authority;

(ii) a barrister or solicitor appointed by the Attorney-General to assist the Authority; or

(iii) a person assisting a barrister or solicitor so appointed,

for the purposes of, or in connection with—

(iv) in the case of information communicated to the Authority pursuant to paragraph (4) (m) or paragraph (4a) (ba)—a tax-related investigation; or

(v) in the case of information communicated to the Authority pursuant to an order made under sub-section (4hd)—a special investigation;

(g) in a case where paragraph (b) applies—subject to paragraphs (c), (d) and (e), the Authority shall not divulge or communicate the information except to—

(i) a member of the staff of the Authority;

(ii) a barrister or solicitor appointed by the Attorney-General to assist the Authority; or

(iii) a person assisting a barrister or solicitor so appointed,

for the purposes of, or in connection with, the performance by the Authority of any of the functions referred to in paragraphs 11 (1) (b) and (d) and in sub-section 11 (2) of the relevant Act;

(h) a person who has ceased to be a member or acting member of the Authority shall not make a record of the information, or divulge or communicate the information, in any circumstances;

(j) a person to whom information has been communicated in accordance with paragraph (d) shall not make a record of the information, or divulge or communicate the information, in any circumstances;

(k) a person of a kind referred to in sub-paragraph (f) (i), (ii) or (iii) to whom information has been communicated in accordance with paragraph (f) or this paragraph shall not—

(i) while he is such a person—divulge or communicate the information except to another such person, or to the Authority, for the purposes of, or in connection with—

(a) in the case of information that was originally communicated to the Authority pursuant to paragraph (4) (m) or paragraph (4a) (ba)—a tax-related investigation; or

(b) in the case of information that was originally communicated to the Authority pursuant to an order made under sub-section (4hd)—a special investigation; or

(ii) after he ceases to be such a person—make a record of the information, or divulge or communicate the information, in any circumstances; and

(m) a person of a kind referred to in sub-paragraph (g) (i), (ii) or (iii) to whom information has been communicated in accordance with paragraph (g) or this paragraph shall not—

(i) while he is such a person—divulge or communicate the information except to another such person, or to the Authority, for the purposes of, or in connection with, the performance by the Authority of any of the functions referred to in paragraphs 11 (1) (b) and (d) and in sub-section 11 (2) of the relevant Act; or

(ii) after he ceases to be such a person—make a record of the information, or divulge or communicate the information, in any circumstances.

“(4hk) Nothing in sub-section (4hj) prevents the communication of information respecting the affairs of a person to—

(a) if the person to whose affairs the information relates is not a company—that person;

(b) if the person to whose affairs the information relates is a company—any person who is, or has been, directly involved in, or responsible for, the preparation of information furnished to the Commissioner on behalf of the company; or

(c) the person who furnished the information to the Commissioner.

“(4hl) Where sub-section (4hk) permits the communication of information to a person, nothing in sub-section (4hj) prevents the communication of the information to a barrister or solicitor appearing before the National Crime Authority for the purpose of representing the person.

“(4hm) Where information is communicated to a person in accordance with sub-section (4hk) or (4hl), being information that was not furnished to the Commissioner by the person and does not relate to the affairs of the person, the person shall not make a record of the information, or divulge or communicate the information, in any circumstances.

“(4hn) Where information is communicated under paragraph (4hj) (e) to the commanding officer of a Police Force of a State—

(a) that commanding officer shall not divulge or communicate the information except to a person or employee under his control for the purposes of, or in connection with, the performance by that person or employee of the duties of his office or employment;

(b) a person who has ceased to be the commanding officer of the Police Force of that State shall not make a record of the information, or divulge or communicate the information, in any circumstances; and

(c) a person to whom information has been communicated in accordance with paragraph (a) or this paragraph shall not—

(i) while he is a person or employee under the control of the commanding officer of the Police Force of that State—divulge or communicate the information except to that commanding officer, or to another person or employee under the control of that commanding officer, for the purposes of, or in connection with, the performance by that commanding officer of the duties of his office, or the performance by that person or employee of the duties of his office or employment, as the case may be; or

(ii) after he ceases to be a person or employee under the control of the commanding officer of the Police Force of that State—make a record of the information, or divulge or communicate the information, in any circumstances.

“(4hp) Where—

(a) information is communicated to the National Crime Authority under this section; or

(b) the National Crime Authority, pursuant to section 56 of the relevant Act, takes possession of a document or other material that contains information that was communicated pursuant to paragraph (4) (k) of this section to the Royal Commission referred to in that section,

nothing in sub-section (4f), (4hj), (4hm), (4hn) or (4hq) prevents—

(c) the communication of the information to another person for the purposes of, or in connection with, the prosecution of a person for a tax-related offence; or

(d) if the information is admissible in a prosecution of a person for a tax-related offence—the communication of the information to a court in the course of proceedings before that court against the last-mentioned person for that offence.

“(4hq) A person to whom information has been communicated in accordance with paragraph (4hp) (c) shall not make a record of the information, or divulge or communicate the information to another person, except as permitted by this section.

“(4hr) Notwithstanding anything contained in the relevant Act, an officer shall not be required, except pursuant to an order made under sub-section (4hd), to divulge or communicate to the National Crime Authority, to a member or acting member of the Authority or to a member of the staff of the Authority, information in relation to which sub-section (2) applies.

“(4hs) In sub-sections (4), (4a), (4ha) to (4hr) (both inclusive) and (4k) and in this sub-section—

‘acting member’ has the same meaning as that expression has in the relevant Act;

‘Inter-Governmental Committee’ means the Inter-Governmental Committee referred to in section 8 of the relevant Act;

‘member’ has the same meaning as that expression has in the relevant Act;

‘member of the staff of the Authority’ has the same meaning as that expression has in the relevant Act;

‘relevant Act’ means the *National Crime Authority Act 1984;*

‘special investigation’ has the same meaning as that expression has in the relevant Act;

‘State’ includes the Northern Territory;

‘tax-related 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) of the relevant Act, is conducting or co-ordinating, in so far as the investigation relates to a tax-related offence or tax-related offences;

‘tax-related offence’ means an offence against a law of the Commonwealth that deals with the imposition, assessment or collection of income tax;

‘Territory’ does not include the Northern Territory.”;

(g) by omitting from sub-section (4j) “or under sub-section (4a), (4e) or (4f)” and substituting “or (m), under sub-section (4a), (4e), (4f), (4hj), (4hk), (4hl), (4hm), (4hn) or (4hp) or in pursuance of an order by a Judge of the Federal Court under sub-section (4hd)”; and

(h) by inserting after sub-section (4j) the following sub-section:

“(4k) A person who is or has been a member or acting member of the National Crime Authority shall not be required to divulge or communicate to any court information contained in a document or other material of which the Authority has taken possession pursuant to section 56 of the relevant Act, being information that was communicated pursuant to paragraph (4) (k) of this section to the Royal Commission referred to in that section.”.

# PART III—AMENDMENTS OF ROYAL COMMISSIONS ACT 1902

Interpretation

**5.** The *Royal Commissions Act 1902*2 is in this Part referred to as the Principal Act.

Power of Commission in relation to documents and other things

**6.** Section 6f of the Principal Act is amended by omitting from sub-section (2) “(b), (c), (d) or (e)” and substituting “(c), (d) or (e) or sub-section 6p (2) or (2a)”.

Commission may communicate information

**7.** Section 6p of the Principal Act is amended—

(a) by omitting paragraph (1) (b);

(b) by inserting after sub-section (2) the following sub-section:

“(2a) Where, in the course of inquiry into a matter, a Commission—

(a) obtains information;

(b) takes evidence; or

(c) receives a document or thing,

that, in the opinion of the Commission, relates or may relate to an investigation being conducted by the National Crime Authority, the Commission may, if in its opinion it is appropriate so to do, communicate the information or furnish the evidence, document or thing, as the case may be, to the National Crime Authority.”; and

(c) by inserting in sub-section (3) “or (2a)” after “sub-section (2)”.

# NOTES

1. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51 and 54, 1983; and No. 14, 1984.

2. No. 12, 1902, as amended. For previous amendments, see No. 4, 1912; No. 1, 1933; No. 93, 1966; No. 216, 1973; No. 36, 1978; No. 19, 1979; Nos. 26 and 139, 1982; and No. 114, 1983.