

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Communications and the Arts)

A BILL

FOR

An Act to amend the *Archives Act 1983*

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Archives Amendment Act 1994*.

(2) In this Act, “**Principal Act**” means the *Archives Act 1983*¹.

5 **Commencement**

2.(1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Paragraph 3(c) and sections 6, 7 and 8 are taken to have commenced immediately after the commencement of the *Witness Protection Act 1994*.

(3) The remaining provisions of this Act commence on such day as is, or such days as are, fixed by Proclamation.

(4) If a provision of this Act referred to in subsection (3) does not commence within 6 months after the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period. 5

Definitions

3. Section 3 of the Principal Act is amended:

(a) by omitting paragraph (c) of the definition of “authority of the Commonwealth” in subsection (1) and substituting: 10

“(c) a Commonwealth-controlled company or a Commonwealth-controlled association;”;

(b) by inserting in subsection (1):

“ ‘**Commonwealth-controlled association**’ means an association over which the Commonwealth is in a position to exercise control, but does not include an association that is declared by the regulations not to be a Commonwealth-controlled association; 15

“ ‘**Commonwealth-controlled company**’ means an incorporated company over which the Commonwealth is in a position to exercise control, but does not include a company that is declared by the regulations not to be a Commonwealth-controlled company;” 20

(c) by inserting in subsection (1):

“ ‘**National Witness Protection Program**’ means the Program by that name established by the *Witness Protection Act 1994*;” 25

Insertion of new sections

4. After section 3 of the Principal Act the following sections are inserted:

A company no longer established for a public purpose

“3A. An authority, body, tribunal or organisation, whether incorporated or unincorporated, established for a public purpose is to be taken, for the purposes of this Act, never to have been so established, only if: 30

(a) a legislative provision; or

(b) regulations made for the purpose of this section;

expressly provide that, for the purposes of this Act, the authority, body, tribunal or organisation is to be taken never to have been so established. 35

Commonwealth-controlled companies or associations that are not authorities of the Commonwealth

“3B. If a company or association was, immediately before the commencement of this section:

(a) a Commonwealth-controlled company or a Commonwealth-controlled association that was:

(i) not established for a public purpose; and

(ii) not prescribed under paragraph (c) of the definition of 'authority of the Commonwealth' as then in force; or

(b) a Commonwealth-controlled company or a Commonwealth-controlled association that was:

(i) established for a public purpose; but

(ii) taken, under a provision of an Act, never to have been so established;

then, despite paragraph (c) of the definition of 'authority of the Commonwealth', the company or association is to be taken not to be an authority of the Commonwealth."

Insertion of new section

5. After section 28 of the Principal Act the following section is inserted:

Records of companies or associations that cease to be authorities of the Commonwealth

"28A. If a company or association that is an authority of the Commonwealth ceases, on a particular day, to be such an authority of the Commonwealth, then, despite the company or association so ceasing:

(a) the records of the company or association that were in existence prior to that day continue to be Commonwealth records; and

(b) the Archives may make arrangements with the company or association to enable those records of the company or association to be dealt with in accordance with the provisions of this Part in the same manner as if the company or association had not ceased to be an authority of the Commonwealth."

Exemption of certain records

6. Section 29 of the Principal Act is amended by adding at the end:

"(9) The concurrence of the Director-General is not required for the making of a determination under subsection (1) by the Commissioner of the Australian Federal Police in relation to any record that contains information the release of which would endanger the safety of a person:

(a) who is, or has been, assessed for inclusion in the National Witness Protection Program; or

(b) who is, or has been, a witness within the meaning of the *Witness Protection Act 1994* under that Program."

Exempt records

7. Section 33 of the Principal Act is amended by inserting after subsection (1):

“(1A) For the purposes of subparagraph (1)(e)(ii), a confidential source of information in relation to the enforcement or administration of the law includes:

- (a) a person who is providing, or has provided, confidential information to the National Crime Authority in relation to such a matter; or 5
- (b) a person who is providing, or has provided, confidential information to the Australian Federal Police in relation to such a matter; or
- (c) a person who is, or has been, a witness within the meaning of the *Witness Protection Act 1994* under the National Witness Protection Program.”. 10

Hearing of certain proceedings before the Tribunal

8. Section 47 of the Principal Act is amended:

- (a) by inserting after subparagraph (2)(a)(i) “or”;
- (b) by inserting after subparagraph (2)(a)(iii):

“or (iiia) the Commissioner of the Australian Federal Police, or a member, special member or staff member of the Australian Federal Police, in connection with the National Witness Protection Program;”.

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NOTE

1. No. 79, 1983, as amended. For previous amendments, see No. 165, 1984; Nos. 76 and 102, 1986; Nos. 38, 109 and 126, 1988; Nos. 75 and 80, 1990; No. 196, 1992; and No. 33, 1994.

