

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL CRIME AUTHORITY (MISCELLANEOUS AMENDMENTS) BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of
The Special Minister of State
The Hon Michael J. Young MP)

OUTLINE

The National Crime Authority (Miscellaneous Amendments) Bill 1985 (the Bill) which amends the National Crime Authority Act 1984, the Taxation Administration Act 1953 and the Income Tax Assessment Act 1936 has three principal purposes:

- (1) Part 11 - to amend the National Crime Authority Act 1984 to:
 - . provide a prescribed officer of an agency (including a court or a tribunal but excluding the Australian Taxation Office) with a discretion to comply with a request by the Authority for information and documents;
 - . to specifically exclude information and documents held under taxation secrecy provisions from the Authority's powers under section 20 of the Act (rather than by inclusion in the Schedule to the Principal Act); and
 - . to add certain secrecy provisions to the Schedule of provisions exempt from the Authority's power, under section 20 of the Act, to require information and documents from Commonwealth agencies.
- (2) Part 111 - to amend the Taxation Administration Act 1953 to introduce consolidated arrangements, extending to the various taxation legislation administered by the Commissioner of Taxation, authorising the Commissioner to communicate taxation information to the Authority:
 - . for the purpose of a tax-related investigation; and
 - . where the Authority is conducting a special investigation, on the order of a Federal Court Judge.

That is to extend the access arrangements set in place for information under the Income Tax Assessment Act 1936, to the taxation Acts within the meaning of the Taxation Administration Act 1953 definition of "taxation law"; viz, those taxation Acts currently listed in the Schedule to section 20 of the National Crime Authority Act 1984.

- (3) Part 1V - to make amendments to the Income Tax Assessment Act 1936 consequential upon the consolidation in the Taxation Administration Act 1953 of arrangements for access by the Authority to taxation information.

The Bill will have minimal financial impact.

NOTES ON CLAUSES

Clause 1

Formal

Clause 2

Provides that the Act will come into effect upon receiving the Royal Assent and that sub-section 13(1) will be deemed to have come into effect on 1 July 1984.

Part 11 - Amendments to the National Crime Authority Act 1984.

Clause 3

Defines the National Crime Authority Act 1984 as the Principal Act.

Clause 4

Amends section 4 of the Principal Act by incorporating a number of definitions associated with the substantive amendments made by the following clauses.

Clause 5

Inserts a new section, 19A, to provide a prescribed officer of an Agency (including a court or a tribunal but excluding the Australian Taxation Office) with a discretion to comply with requests by the NCA for information and documents relevant to a prescribed investigation by the Authority. In the case of the Security Appeals Tribunal, the discretion rests with the President of the Tribunal.

The purpose of these amendments is to enable the Authority to request information or documents from agencies which are immune from the Authority's power under section 20 of the Principal Act to require the production of such information or documents (either because the relevant legislation is scheduled in the Principal Act or because they are not an agency within the meaning of the Principal Act).

The effect of sub-section 19A(6) is that the discretion in respect of requests made to the Security Appeals Tribunal, in so far as they relate to information which originated with the Australian Security Intelligence Organisation (ASIO) and which is protected by section 81 of the Australian Security Intelligence Organisation Act 1979, rests with the Director-General of ASIO in accordance with the provisions of section 19(A).

Clause 6

Amends section 20 of the Principal Act to specifically exclude information and documents covered by taxation secrecy provisions from the Authority's power to require Commonwealth agencies to produce information and documents. (Previously, such information and documents were excluded by virtue of the relevant taxation secrecy provisions being included in the Schedule to the Principal Act.) In addition, section 20 is amended to provide that the Authority may direct past officers and employees of agencies to provide information.

Clause 7

Amends section 48 of the Principal Act to remove the requirement that the Chairman of the Authority seek the approval of the responsible Minister or an authorised person before engaging consultants.

Clause 8

Editorial amendment to section 53 of the Principal Act.

Clause 9

Repeals the existing Schedule to the Principal Act and substitutes the Schedule to this Act in its place.

Part 111 - Amendment of Taxation Administration Act 1953.

Clause 10

Defines the Taxation Administration Act 1953 as the Principal Act.

Clause 11

Introductory Note

New section 3D, which will be inserted in the Principal Act by clause 11, will provide that taxation information held by the Commissioner of Taxation under the various taxation laws and income tax information obtained by a Royal Commission may be communicated to the National Crime Authority.

Where the Authority requests from the Commissioner of Taxation information for the purposes of a tax-related investigation such information may be directly communicated. However, where the taxation information is required for the purposes of a "special investigation" (within the meaning of the National Crime Authority Act 1984) being conducted by the Authority, other than a tax related investigation, the information will only be available after obtaining an order from a Judge of the Federal Court.

A more detailed explanation of the provisions of section 3D follow.

Sub-section (1) authorises the Commissioner of Taxation to communicate to the National Crime Authority taxation information, but only for the purposes of a tax-related investigation which is defined, in proposed sub-section (22), to mean an investigation relating to an offence or offences against a Commonwealth taxation law.

By proposed sub-section (2) Royal Commissions entitled to receive income tax information pursuant to paragraph 16(4)(k) of the Income Tax Assessment Act 1936 will be able to supply taxation information to the Authority, but only if the relevant Royal Commission is of the view that the information is or may be relevant to a tax-related investigation.

New sub-section (3) will make it clear that nothing in sub-section 16(4A) of the Income Tax Assessment Act 1936 prohibits the Authority from taking possession of information to which it becomes entitled to take possession under section 56 of the National Crime Authority Act 1984.

Sub-section (4) of the Principal Act will allow the Authority, if it considers that the Commissioner of Taxation may have acquired information that could be relevant to a special investigation being conducted by the Authority, to apply to a Judge of the Federal Court for an order requiring the Commissioner to communicate such information to the Authority.

Proposed sub-section (5) outlines the conditions precedent to the making of a valid application under sub-section (4). Those conditions are:

- (i) the application is to be in writing; and
- (ii) supported by an affidavit made by the applicant, which:
 - (a) sets out details of the special investigation in relation to which the application is made - paragraph (5)(a); and
 - (b) specifies particulars of the requested information - paragraph (5)(b).

Under sub-section (6) a person who makes an application of the kind referred to in sub-section (4) is required to give written notification to the Commissioner of Taxation of the making of that application and, in addition, to provide the Commissioner with particulars of the requested information.

Paragraph (7)(a) empowers the Judge, to which an application of the kind mentioned in sub-section (4) has been made, to make an order requiring the Commissioner of Taxation to communicate to the Authority all or part of the requested information of which the Commissioner has possession.

By paragraph (7)(b) the Judge may impose restrictions as to communication of the information by the Authority to other persons, but this may be varied or revoked on application by the Authority or the Commissioner.

New sub-section (8) contains further safeguards, which ensure that:

- (i) the Commissioner of Taxation is to be given an opportunity to bring to the Judge's notice any matter considered relevant to the application made pursuant to sub-section (4) - paragraph (8)(a);
- (ii) the Judge may require further information - paragraph (8)(b); and
- (iii) an order cannot be made unless the Judge is satisfied that the information sought is relevant to the investigation and is not readily obtainable from any other sources - paragraph (8)(c).

Where an application has been made under sub-section (4), and in accordance with paragraph (8)(c) the Judge is required to consider whether or not particular information that may be relevant to a "special investigation" is readily obtainable by the Authority from a source other than the Commissioner of Taxation, the Judge is also expressly required by sub-section (9) to have regard to any possible prejudice to the conduct of the investigation that

may result if the Authority is required to obtain the information from such a source.

New sub-section (10) makes it clear that when a Federal Court Judge makes an order under sub-section (7) that order takes precedence over any taxation secrecy provision and ensures that:

- (i) in the case of an order made under paragraph (7)(a), the Commissioner of Taxation will comply with the terms of that order - paragraph (10)(a); and
- (ii) in the case of an order made under paragraph (7)(b), the Authority shall comply with that order or the order as varied by the Judge - paragraph (10)(b).

Proposed sub-section (11) governs the on-communication by the Authority of taxation information.

By paragraph (11)(c) information which does not reveal the identity of persons may be communicated in the Authority's report to the Inter-Governmental Committee established under section 8 of the National Crime Authority Act 1984. Paragraph (11)(d) provides that the information may be divulged during the course of a hearing before the Authority. Under paragraph (11)(e), information which reveals the committal of an offence that is punishable by a term of 6 months imprisonment or more may be communicated to the Commissioner of the Australian Federal Police or the commanding officer of the relevant State Police Force.

Paragraph (11)(f) prohibits the communication by the Authority of such information to its staff and counsel assisting it, except where the information was obtained for the purposes of a tax-related investigation, a special investigation or a prescribed investigation, terms which are defined in proposed sub-section (22).

New paragraph (11)(g) is a safeguarding provision designed to prohibit the recording or disclosure of information by a person who is no longer a member or acting member of the Authority.

Like paragraph (11)(g), proposed paragraph (11)(h) is also a safeguarding provision which ensures that a person to whom the Authority has communicated information in the course of a hearing before the Authority is similarly prohibited from recording or disclosing the communicated information.

As a further safeguarding measure, paragraph (11)(j) ensures that a member of the staff of the Authority, a barrister or solicitor appointed by the Attorney-General to assist the Authority or a person assisting such a barrister or solicitor will not be permitted to divulge or communicate taxation information except in connection with a tax-related investigation by the Authority, a special investigation or a prescribed investigation. Once a person has ceased to be a person of the kind mentioned in sub-paragraph f(i), (ii) or (iii), that person is then prohibited from recording or divulging that information, in any circumstances.

New sub-section (12) ensures that sub-section (11) does not prevent the communication by the Authority of taxation information in its possession to:

- (i) in the case of a natural person, the particular person to whom the information relates - paragraph (12)(a);

- (ii) in the case of a company, any person who is, or has been, directly involved in, or responsible for, the preparation of information supplied to the Commissioner of Taxation on behalf of that company - paragraph (12)(b); and
- (iii) the person who provided the information to the Commissioner of Taxation - paragraph (12)(c).

The effect of this sub-section is to allow the Authority to examine a person specified in paragraph 12(a), (b) or (c) in relation to tax information with which that person is familiar or connected.

Proposed sub-section (13) ensures that where sub-section (12) has authorised the supply of information to certain persons specified in sub-section (12), sub-section (11) does not operate to prevent the Authority from communicating that taxation information to a barrister or solicitor appearing before the Authority and who is acting on behalf of a person specified in sub-section (12).

As another safeguarding measure, sub-section (14) ensures that where a person has received information in accordance with sub-sections (12) or (13), and that information was not originally supplied to the Commissioner of Taxation by that person, and does not relate to the affairs of that person, then that person is prohibited from recording or divulging that information in any circumstances.

Proposed sub-section (15) prohibits the recording or disclosure, by a commanding officer of a Police Force, of taxation information received from the Authority, except within that Police Force for the purposes of carrying out the duties of that force.

Under sub-section (16) taxation information disclosed to the Authority will be permitted to be further communicated in connection with a taxation prosecution.

Sub-section (17) ensures that where information has been communicated to a person in connection with a taxation related prosecution, that person shall not divulge or communicate the information otherwise than as authorised by section 3D.

Sub-section (18) makes it clear that neither the Commissioner of Taxation nor taxation officers are required to divulge or communicate taxation information to the Authority or its staff where, but for sub-section (1), taxation secrecy provisions would prohibit such a disclosure.

Proposed sub-section (19) is designed to make it clear that a person who, in consequence of the disclosure of confidential taxation information to the Authority, has received such information, cannot be compelled to disclose that information in any court.

By virtue of sub-section (20) a person who has been a member or acting member of the Authority or a staff member of the Authority will not be compelled to disclose to any court information that was communicated to the Authority and which is contained in a document or other material that came into the possession of the Authority under section 56 of the National Crime Authority Act 1984.

By virtue of new sub-section (21) where a person, in contravention of this section, records, divulges or communicates information, that person, upon conviction, is liable to a fine not exceeding \$5000 or imprisonment for a term not exceeding 12 months, or both.

Sub-section (22) ascribes particular meanings to a number of expressions that are used in the section.

Clause 12

Defines the Income Tax Assessment Act 1936 as the Principal Act.

Clause 13

Sub-clause 13(1) proposes several amendments which are designed to correct some technical drafting errors in the Principal Act that do not affect the substantive operation of those provisions. By virtue of sub-clause 2(2), these amendments are to be deemed to have come into operation on 1 July 1984, the same date on which the provisions in which the errors presently exist came into operation.

Sub-clause 13(2) contains a number of consequential amendments to the Principal Act that are designed to take into account the amendments of the Taxation Administration Act 1953 being made by Part 111.

Sub-clause 13(3) makes it clear that where before the commencement of the amendments made by this sub-clause, information has been either communicated to the National Crime Authority under section 16 of the Principal Act or the Authority has taken possession of documents or other material containing information originally provided by the Commissioner of Taxation to a Royal Commission of the kind specified in paragraph 16(4)(k) of the Principal Act, then, irrespective of the amendments made by sub-clause 13(2), section 16 of the Principal Act, as amended by sub-clause 13(1), continues to apply in relation to that information after the commencement of the amendments made by sub-clause 13(2).