



# **Crimes Legislation Amendment Act (No. 2) 1988**

**No. 66 of 1988**

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# **Crimes Legislation Amendment Act (No. 2) 1988**

**No. 66 of 1988**

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**An Act to amend various Acts relating either to criminal matters or to the National Crime Authority, and for related purposes**

*[Assented to 15 June 1988]*

**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 *Crimes Legislation Amendment Act (No. 2) 1988*.

### **Commencement**

**2. (1)** Sections 1, 2, 3, 12, 20, 21, 22 and 23 commence on the day on which this Act receives the Royal Assent.

**(2)** Sections 4 to 11 (inclusive) commence on the twenty-eighth day after the day on which this Act receives the Royal Assent.

(3) Sections 13 to 19 (inclusive) of this Act commence on a day or days to be fixed by Proclamation.

(4) Section 24 commences, or shall be taken to have commenced, as the case requires, on the commencement of the *Crimes Legislation Amendment Act 1988*.

(5) Part VI of this Act commences, or shall be taken to have commenced, as the case requires, immediately after the commencement of section 21 of the *Telecommunications (Interception) Amendment Act 1987*.

## **PART II—AMENDMENTS OF THE CUSTOMS ACT 1901**

### **Principal Act**

3. In this Part, “Principal Act” means the *Customs Act 1901*<sup>1</sup>.

### **Interpretation**

4. Section 219A of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

“‘chief officer’, in relation to a Commonwealth law enforcement agency, means:

- (a) where the agency is the National Crime Authority—the Chairman of that Authority; and
- (b) where the agency is the Australian Federal Police—the Commissioner of Police;

‘Commonwealth law enforcement agency’ means the National Crime Authority or the Australian Federal Police;

‘official’, in relation to a Commonwealth law enforcement agency, means:

- (a) where the agency is the National Crime Authority—a member of the Authority or a member of the staff of the Authority; and
- (b) where the agency is the Australian Federal Police—a member of the Australian Federal Police or another person under the authority of the Commissioner of Police;

‘prescribed offence’ means a narcotics offence or any other offence against a law of the Commonwealth or of a State or Territory punishable by imprisonment for life or for a period or maximum period of not less than 3 years;

‘relevant proceeding’ means:

- (a) a proceeding by way of prosecution for a prescribed offence;
- (b) a proceeding under a law of the Commonwealth, or of a State or Territory, relating to confiscation or forfeiture of property, or the imposition of a pecuniary

- penalty, in connection with the commission of a prescribed offence;
- (c) a proceeding for the taking of evidence in Australia for transmission to a foreign country for use in any proceeding for the surrender of a person to Australia, in so far as that first-mentioned proceeding relates to a prescribed offence; or
  - (d) a proceeding for the extradition of a person from New Zealand to Australia, or from a State or Territory to another State or Territory in so far as that proceeding relates to a prescribed offence.”;
- (b) by omitting from paragraph (2) (a) “members of the Australian Federal Police” (first occurring) and substituting “officials of a Commonwealth law enforcement agency”;
  - (c) by omitting from paragraph (2) (a) “members of the Australian Federal Police” (second and third occurring) and substituting “officials of the agency”;
  - (d) by omitting from paragraph (2) (a) “and”;
  - (e) by omitting from paragraph (2) (b) “members of the Australian Federal Police” (first occurring) and substituting “officials of a Commonwealth law enforcement agency”;
  - (f) by omitting from paragraph (2) (b) “members of the Australian Federal Police” (second and third occurring) and substituting “officials of the agency”;
  - (g) by adding at the end the following paragraphs:
    - “(c) a reference to a proceeding under a law of the Commonwealth for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence includes a reference to:
      - (i) a proceeding for the condemnation or recovery of a ship or aircraft, or of goods, seized under section 203 in connection with the commission of a narcotics offence;
      - (ii) a proceeding by way of an application for an order under subsection 243B (1); or
      - (iii) a proceeding by way of an application for an order or a warrant under the *Proceeds of Crime Act 1987*; and
    - (d) a reference to a proceeding under a law of a State or Territory for the confiscation or forfeiture of property in connection with the commission of a prescribed offence includes a reference to any proceeding under a law of that State or Territory relating to a restraint of dealing with the proceeds of crime.”.

**Use of listening devices**

**5. Section 219B of the Principal Act is amended:**

- (a) by omitting from subsection (1) “a member of the Australian Federal Police to use for the purposes of narcotics inquiries that are being made by members of the Australian Federal Police” and substituting “an official of a Commonwealth law enforcement agency to use, for the purposes of narcotics inquiries that are being made by officials of the agency”;
- (b) by inserting in paragraph (1) (c) “to the agency” after “warrant issued”;
- (c) by omitting from subsection (2) “a member of the Australian Federal Police to use, for the purposes of narcotics inquiries that are being made by members of the Australian Federal Police” and substituting “an official of a Commonwealth law enforcement agency to use, for the purposes of narcotics inquiries that are being made by officials of the agency”;
- (d) by omitting subsection (3) and substituting the following subsection:

“(3) It is the duty of the chief officer of each Commonwealth law enforcement agency to take reasonable steps to ensure that subsections (1) and (2) are not contravened by officials of the agency.”;
- (e) by omitting from subsection (4) “a member of the Australian Federal Police” (wherever occurring) and substituting “an official of a Commonwealth law enforcement agency”;
- (f) by inserting after subsection (4) the following subsection:

“(4A) Application for the issue of a warrant to a Commonwealth law enforcement agency under this section shall be made on the agency’s behalf by:

  - (a) where the agency is the National Crime Authority—a member of the Authority or a member of a police force who is a member of the staff of the Authority; and
  - (b) where the agency is the Australian Federal Police—a member of the Australian Federal Police.”;
- (g) by omitting from subsection (5) “by a member of the Australian Federal Police for the issue of a warrant” and substituting “for the issue of a warrant to a Commonwealth law enforcement agency”;
- (h) by omitting from subsection (5) “members of the Australian Federal Police” (wherever occurring) and substituting “officials of the agency”;
- (j) by omitting from subsection (7) “by a member of the Australian Federal Police for the issue of a warrant” and substituting “for the issue of a warrant to a Commonwealth law enforcement agency”;
- (k) by omitting from subsection (7) “members of the Australian Federal Police” (wherever occurring) and substituting “officials of the agency”.

**6. (1)** Section 219D of the Principal Act is repealed and the following section is substituted:

**Exercise of powers under warrant**

“219D. (1) The authority conferred by a warrant issued to a Commonwealth law enforcement agency under section 219B shall be exercised only by the chief officer of the agency or by other officials of the agency approved, for the purposes of that warrant or of warrants issued under that section, by the chief officer or by an authorised official of the agency.

“(2) In subsection (1), a reference to an authorised official of a Commonwealth law enforcement agency is a reference to an official of the agency appointed by the chief officer of the agency, by writing, to be an authorised official of the agency for the purposes of this section.”.

(2) The appointment by the Commissioner of Police of a member of the Australian Federal Police as an authorised member of the Australian Federal Police for the purposes of section 219D of the Principal Act, being an appointment that was in force immediately before the day of the repeal of that section, has effect, on and after that day, as if it were an appointment, on the same terms and conditions as the original appointment, of that member as an authorised official of the Australian Federal Police for the purposes of section 219D of the Principal Act as amended by this Act.

(3) The approval of a member of the Australian Federal Police to exercise the authority conferred by a warrant or warrants issued before the day of the repeal of section 219D of the Principal Act, being an approval that was in force immediately before that day, shall be taken to continue in force, so far as that warrant or those warrants are concerned, on and after that day, as if it were an approval under section 219D of the Principal Act as amended by this Act.

**Discontinuance of action before expiration of warrant**

**7.** Section 219E of the Principal Act is amended:

(a) by omitting the words preceding paragraph (a) and substituting the following:

“Where, before a warrant granted to a Commonwealth law enforcement agency under this Division ceases to be in force, the chief officer of that agency is satisfied that the grounds on which the warrant was issued have ceased to exist, he or she shall:”;

(b) by omitting from paragraph (b) “under his hand” and substituting “signed by him or her”.

**Certain information not to be disclosed**

**8.** Section 219F of the Principal Act is amended:

(a) by omitting from subsection (1) “members of the Australian Federal Police” and substituting “officials of a Commonwealth law enforcement agency”;

- (b) by omitting from subsection (1) “a member of the Australian Federal Police” (wherever occurring) and substituting “an official of the agency”;
- (c) by omitting from subsection (2) all the words preceding paragraph (a) and substituting the following:

“Notwithstanding subsection (1), the chief officer of a Commonwealth law enforcement agency may, in accordance with the following paragraphs, personally or by another official of the agency authorised by the chief officer, communicate information obtained by using a listening device for the purposes of narcotics inquiries that are being, or have been, made by officials of the agency.”;
- (d) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) where the information relates, or appears to relate, to the commission, or intended commission, of a prescribed offence—the information may be communicated to an official of that agency, or of the other Commonwealth law enforcement agency, for the purposes of investigations into the offence, or to an officer of the Police Force of a State or Territory; and”;
- (e) by omitting subsection (3) and substituting the following subsection:

“(3) Without limiting the purposes for which a person may, in accordance with subsection (1), divulge information, a person may divulge or communicate information obtained by using a listening device for the purpose of narcotics inquiries that are being, or have been, made by officials of a Commonwealth law enforcement agency, for a purpose connected with:

  - (a) the making by an authority, body or person of a decision whether or not to begin a relevant proceeding; or
  - (b) the conduct of a relevant proceeding.”;
- (f) by omitting from subsection (4) “an offence of a kind referred to in paragraph (a) of subsection (3)” and substituting “a prescribed offence”;
- (g) by omitting from subsection (4) “that subsection” and substituting “subsection (3)”.

**Certain records to be destroyed**

**9. Section 219G of the Principal Act is amended:**

- (a) by omitting the words preceding paragraph (a) and substituting the following:

“Where, by virtue of a warrant issued to a Commonwealth law enforcement agency under this Division, any record or copy has been made and the chief officer of the agency is satisfied.”;



- (b) by omitting “members of the Australian Federal Police” (wherever occurring) and substituting “officials of the agency”;
- (c) by omitting “the Commissioner of Police” (second and third occurring) and substituting “the chief officer of the agency”.

**Warrants etc. to be retained**

10. Section 219H of the Principal Act is amended by omitting “The Commissioner of Police shall cause to be retained in the records of the Australian Federal Police all warrants issued under section 219B” and substituting “The chief officer of a Commonwealth law enforcement agency shall cause to be retained in the records of the agency all warrants issued to the agency under section 219B”.

**Reports to be made to Minister concerning use of listening devices**

11. Section 219K of the Principal Act is amended:

- (a) by omitting from subsection (1) “The Commissioner of Police shall furnish to the Minister a copy of each warrant issued,” and substituting “The chief officer of a Commonwealth law enforcement agency shall furnish to the Minister a copy of each warrant issued to the agency,”;
- (b) by omitting subsection (2) and substituting the following subsection:

“(2) The chief officer of a Commonwealth law enforcement agency shall give the Minister, in respect of each warrant issued to the agency under section 219B, a report in writing with respect to the use, whether the use was for the purposes of narcotics inquiries or otherwise, made by officials of the agency of information obtained by using a listening device under the warrant and the communication of any information so obtained to persons other than officials of the agency.”.

**PART III—AMENDMENTS OF THE MUTUAL ASSISTANCE IN  
CRIMINAL MATTERS ACT 1987**

**Principal Act**

12. In this Part, “Principal Act” means the *Mutual Assistance in Criminal Matters Act 1987*<sup>2</sup>.

**Interpretation**

13. Section 3 of the Principal Act is amended:

- (a) by inserting after paragraph (a) of the definition of “Australian forfeiture order” in subsection (1) the following paragraph:

“(ab) a declaration made under subsection 30 (8A) of the Proceeds of Crime Act;”;
- (b) by inserting “or declaration” after “an order” in paragraph (c) of the definition of “Australian forfeiture order” in subsection (1);

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- (c) by inserting “or declares that property has been forfeited in respect of an offence against Australian law” after “law” in subparagraph (c) (i) of the definition of “Australian forfeiture order” in subsection (1);
- (d) by omitting the definition of “foreign forfeiture order” in subsection (1) and substituting the following definition:
  - “ ‘foreign forfeiture order’ means:
    - (a) an order, made under the law of a foreign country, for the forfeiture of property in respect of an offence against the law of that country; or
    - (b) a declaration, made under the law of a foreign country, evidencing forfeiture of property under the law of that country;”;
- (e) by omitting from subsection (1) the definition of “foreign offence”;
- (f) by inserting in subsection (1) the following definitions:
  - “ ‘foreign law immunity certificate’ means a certificate given, or a declaration made, by a foreign country or under a law of a foreign country, certifying or declaring that, under the law of the foreign country, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required:
    - (a) to answer a specified question; or
    - (b) to produce a specified document;
  - ‘foreign offence’ means an offence against a law of a foreign country;
  - ‘political offence’ has the same meaning as in the *Extradition Act 1988*, but does not include an offence constituted by conduct that, by a mutual assistance treaty (not being a bilateral treaty) in relation to the relevant country or any country, may be the subject of a request for mutual assistance, being an offence declared by regulations for the purposes of this paragraph not to be a political offence in relation to the country or all countries;”.

**Refusal of assistance**

**14.** Section 8 of the Principal Act is amended by omitting from paragraphs (1) (a) and (b) “an offence of a political character” and substituting “a political offence”.

**Requests by foreign countries**

**15.** Section 13 of the Principal Act is amended:

- (a) by omitting from subsection (6) “subsection (7)” and substituting “subsections (7) and (8)”;
- (b) by adding at the end the following subsections:

“(8) For the purposes of this section, a person who is required to give evidence, or produce documents or other articles, for the purposes of a proceeding in relation to a criminal matter in a foreign country, is not compellable to answer a question, or produce a document or article, that the person is not compellable to answer or produce, as the case may be, in the proceeding in the foreign country.

“(9) A duly authenticated foreign law immunity certificate is admissible in proceedings under this section as *prima facie* evidence of the matters stated in the certificate.”.

### **Immunities**

**16.** Section 19 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (d) “request; or” and substituting “request, being a civil suit to which the person could not be subjected if the person were not in Australia;”;
- (b) by adding at the end of subsection (1) the following paragraphs:
  - “(f) be required, in the proceeding to which the request relates (if any), to answer any question that the person would not be required to answer in a proceeding in the foreign country relating to a criminal matter; or
  - (g) be required, in the proceeding to which the request relates (if any), to produce any document or article that the person would not be required to produce in a proceeding in the foreign country relating to a criminal matter.”;
- (c) by inserting after subsection (1) the following subsection:

“(1A) A duly authorised foreign law immunity certificate is admissible in proceedings as *prima facie* evidence of the matters stated in the certificate.”.

### **Status of person prosecuted for offence committed after departure from foreign country**

**17.** Section 20 of the Principal Act is amended by omitting from subsection (1) “by a foreign country”.

### **Requests for giving of evidence at hearings in foreign countries**

**18.** Section 26 of the Principal Act is amended:

- (a) by inserting in subparagraphs (1) (d) (ii) and (2) (d) (ii) “(whether or not unqualified)” after “adequate”;
- (b) by inserting in subparagraph (3) (a) (ii) “, being a civil suit to which the person could not be subjected if the person were not in the foreign country” after “Australia”.

### **Requests for assistance in relation to investigations in foreign countries**

**19.** Section 27 of the Principal Act is amended:

- (a) by inserting in subparagraphs (1) (d) (ii) and (2) (d) (ii) “(whether or not unqualified)” after “adequate”;

- (b) by inserting in subparagraph (3) (a) (ii) “, being a civil suit to which the person could not be subjected if the person were not in the foreign country” after “Australia”.

#### **PART IV—AMENDMENTS OF THE NATIONAL CRIME AUTHORITY ACT 1984**

##### **Principal Act**

**20.** In this Part, “Principal Act” means the *National Crime Authority Act 1984*<sup>3</sup>.

##### **Furnishing of reports and information**

**21.** Section 59 of the Principal Act is amended:

- (a) by omitting from subsection (7) “The Authority” and substituting “Notwithstanding section 11, the Authority”;
- (b) by omitting from subsection (7) “in the course of any investigations conducted by it”;
- (c) by omitting from subsection (8) “The Authority” and substituting “Notwithstanding section 11, the Authority”;
- (d) by omitting from subsection (8) “in the course of any investigations conducted by it”;
- (e) by adding at the end the following subsection:

“(11) Notwithstanding section 11, the Authority may, wherever it appears to the Authority to be appropriate to do so, furnish to the Australian Security Intelligence Organization any information that has come into the Authority’s possession and that is relevant to security as defined in section 4 of the *Australian Security Intelligence Organization Act 1979*.”.

**22.** After section 59 of the Principal Act the following section is inserted:

##### **Delegation**

“59A. The Authority may, by signed instrument, delegate to a member or acting member, or to a member of the staff of the Authority, all or any of its powers under subsection 59 (7), (8) or (11).”.

#### **PART V—AMENDMENTS OF THE NATIONAL CRIME AUTHORITY (STATUS AND RIGHTS OF CHAIRMAN) ACT 1984**

##### **Principal Act**

**23.** In this Part, “Principal Act” means the *National Crime Authority (Status and Rights of Chairman) Act 1984*<sup>4</sup>.

**Application of Judges' Pensions Act**

**24.** Section 8 of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:

- “(c) for the purposes of paragraph 6 (2D) (a) of the *Judges' Pensions Act 1968*, he shall be deemed to be a judge who is to cease to hold office as a judge upon his attaining a particular age being the age:
- (i) if subparagraph (ii) does not apply—that will be attained by him at the expiration of the period of his appointment as Chairman of the National Crime Authority; or
  - (ii) in the event of his re-appointment as such Chairman—at the expiration of the period of such re-appointment.”.

**PART VI—AMENDMENTS OF THE TELECOMMUNICATIONS  
(INTERCEPTION) ACT 1979**

**Principal Act**

**25.** In this Part, “Principal Act” means the *Telecommunications (Interception) Act 1979*<sup>5</sup>.

**Lawfully obtained information**

**26.** Section 6E of the Principal Act is amended:

- (a) by omitting from paragraph (2) (a) “or” (last occurring);
- (b) by adding at the end of subsection (2) the following word and paragraph:

“; or (c) in the case of the Authority—information communicated in accordance with section 65A.”.

**27.** After section 61 of the Principal Act the following section is inserted in Part VI:

**Certified copy of warrant**

“61A. A document certified in writing by a certifying officer of the Australian Federal Police to be a true copy of a warrant shall be received in evidence in an exempt proceeding as if it were the original warrant.”.

**Commission may communicate to Australian Federal Police or Authority**

**28.** Section 65A of the Principal Act is amended:

- (a) by inserting “or the Authority” after “by the Australian Federal Police”;
- (b) by inserting “or an officer of the Authority, as the case may be,” after “of the Australian Federal Police”.

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**NOTES**

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; and Nos. 51, 76, 81 and 104, 1987.
2. No. 85, 1987.
3. No. 41, 1984, as amended. For previous amendments, see Nos. 123 and 165, 1984; Nos. 104 and 193, 1985; Nos. 89 and 141, 1987; and No. 65, 1988.
4. No. 105, 1984.
5. No. 114, 1979, as amended. For previous amendments, see No. 181, 1979; Nos. 114 and 116, 1983; Nos. 6 and 116, 1984; Nos. 8 and 63, 1985; No. 102, 1986; Nos. 89 and 120, 1987; and Nos. 5 and 65, 1988.

*[Minister's second reading speech made in—  
House of Representatives on 24 March 1988  
Senate on 28 April 1988]*