



New South Wales

Witness Protection Amendment Act 2002 No 54

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Witness Protection Amendment Act 2002 No 54

Act No 54, 2002

An Act to amend the *Witness Protection Act 1995* to make further provision for the services to be provided to protected witnesses, the obligations of protected witnesses, the role of the Ombudsman, offences under the Act and measures for the protection of witnesses; and for other purposes. [Assented to 4 July 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Witness Protection Amendment Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Witness Protection Act 1995 No 87

The *Witness Protection Act 1995* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order:

designated authority for a complementary witness protection law means the approved authority exercising functions under that law that is declared by the Minister by order published in the Gazette to be the designated authority for that law.

[2] Section 5 Witness protection program

Insert after section 5 (2) (e):

(e1) providing to the witness services in the nature of counselling (such as psychological counselling and drug and alcohol counselling) and vocational training services,

[3] Section 5 (2) (f)

Omit the paragraph.

[4] Section 6 Inclusion in the witness protection program

Omit “72 hours” from section 6 (4). Insert instead “7 days”.

[5] Section 8 Memorandum of understanding

Omit section 8 (1) (b). Insert instead:

(b) contain a provision to the effect that protection and assistance under the program may be terminated if the participant deliberately breaches a term of the memorandum of understanding or a requirement or undertaking relating to the witness protection program.

[6] Section 8 (2) (c1)

Insert after section 8 (2) (c):

- (c1) the taking, provision and retention of photographs of the participant,

[7] Section 11A

Insert after section 11:

11A Suspension of protection and assistance

Protection and assistance provided under the witness protection program to a participant may be suspended by the Commissioner of Police for a reasonable period determined by the Commissioner if the Commissioner is satisfied that the participant has done or intends to do something that limits the ability of the Commissioner to provide adequate protection to the person.

Note. For example, the participant may have done something that results in him or her being in custody, or may intend to travel to a place despite a warning from the Commissioner not to go there because of the risk of harm to the participant.

[8] Section 12 Notice of involuntary termination or suspension and application for review

Omit “under section 11 (2)” from section 12 (1).

Insert instead “under section 11 (2) or 11A”.

[9] Section 12 (1)

Insert “or suspended” after “terminated”.

[10] Section 12 (2)

Omit “28 days”.

Insert instead “14 days (in the case of termination) or 2 days (in the case of suspension)”.

[11] Section 12 (4) and (5)

Insert “or suspend” after “terminate” wherever occurring.

[12] Section 12 (5)

Omit “72 hours”. Insert instead “7 days”.

[13] Section 13 Date on which involuntary termination or suspension takes effect

Omit “under section 11 (2)” from section 13 (1).
Insert instead “under section 11 (2) or 11A”.

[14] Section 13 (1)

Insert “or suspended” after “terminated”.

[15] Section 13 (1) (a) and (b)

Omit “period of 28 days” wherever occurring.
Insert instead “appropriate review period”.

[16] Section 13 (2)

Insert “or suspended” after “terminated”.

[17] Section 13 (3) and (4)

Insert after section 13 (2):

(3) If the Ombudsman has been unable to notify the participant of the decision despite taking reasonable steps to do so, the decision of the Ombudsman takes effect when the Ombudsman notifies the Commissioner of Police that the Ombudsman has been unable to notify the participant of the decision.

(4) In this section:

appropriate review period means:

- (a) if the decision is to terminate protection and assistance—14 days, or
- (b) if the decision is to suspend protection and assistance—2 days.

[18] Section 15 Application for court order

Omit “The Commissioner of Police may apply” from section 15 (1).
Insert instead “Application may be made”.

[19] Section 15 (1) (a1)

Insert after section 15 (1) (a):

- (a1) to make a new entry in the register of deaths in respect of a witness or a relative (by blood or marriage) of a witness, or

[20] Section 15 (1A)

Insert after section 15 (1):

- (1A) Such an application may only be made by:
 - (a) the Commissioner of Police, or
 - (b) the designated authority for a complementary witness protection law.

[21] Section 15 (2)

Omit “Commissioner of Police”. Insert instead “applicant”.

[22] Section 17 Power of Supreme Court to make order

Insert “or (in the case of an order applied for by the designated authority for a complementary witness protection law) under that law” after “this Act” in section 17 (a) (ii).

[23] Section 17 (c)

Omit the paragraph. Insert instead:

- (c) a memorandum of understanding has been entered into between the witness and the Commissioner of Police in accordance with section 8 or (in the case of an order applied for by the designated authority for a complementary witness protection law) between the witness and that designated authority in accordance with the corresponding provision of that law, and

[24] Section 18 Effect of witness protection order

Insert “or (a1)” after “section 15 (1) (a)”.

[25] Section 18 (a)

Omit the paragraph. Insert instead:

- (a) a person authorised to do so by the order may make any entries in a register of births, deaths or marriages that are necessary to give effect to the order, and

[26] Section 18 (c)

Omit the paragraph. Insert instead:

- (c) the Commissioner of Police or (in the case of an order applied for by the designated authority for a complementary witness protection law) that designated authority must maintain records showing details of the original birth, death or marriage of each person in respect of whom an entry is made under paragraph (a).

[27] Section 19 Effect of entries made under this Act

Omit “the register of births or the register of marriages” from section 19 (1).
Insert instead “a register of births, deaths or marriages”.

[28] Section 19 (2)

Omit the subsection. Insert instead:

- (2) An entry made under this Act in a register of births, deaths or marriages can only be cancelled by the Registrar of Births, Deaths and Marriages if the Supreme Court, after being satisfied that the witness is no longer included in the relevant witness protection program, has made a court order on the application of the Commissioner of Police or the designated authority for a complementary witness protection law directing that the entry be cancelled.

[29] Section 23 Information not to be disclosed

Omit “the register of births or the register of marriages” from section 23 (1).
Insert instead “a register of births, deaths or marriages”.

[30] Section 23 (1) (a)

Insert “or a complementary witness protection law” after “this Act”.

[31] Section 25 Requirement where participant becomes witness in criminal proceedings

Omit the section.

[32] Section 26 Identity of participant not to be disclosed in legal proceedings

Insert after section 26 (2):

- (3) This section does not limit the operation of Part 3A (Proceedings involving persons with new identity).

[33] Part 3A

Insert after section 31:

Part 3A Proceedings involving persons with new identity

31A Definitions

In this Part:

court includes tribunal, Royal Commission or other commission of inquiry and the person or body holding or conducting a relevant proceeding.

protected identity of a protected person means:

- (a) in the context of relevant proceedings in which the protected person is or may be required to give evidence under the person’s new identity—the person’s previous identity, or

- (b) in the context of relevant proceedings in which the protected person is or may be required to give evidence under the person's previous identity—the person's new identity.

protected person means a person who, having been provided with a new identity under the witness protection program, retains that identity whether or not he or she remains a participant.

relevant proceeding means each of the following:

- (a) a proceeding before a court,
- (b) an inquest or inquiry under the *Coroners Act 1980*,
- (c) a hearing under the *New South Wales Crime Commission Act 1985*,
- (d) a hearing under the *Police Integrity Commission Act 1996*.

31B Requirement if person given new identity becomes a witness in relevant proceeding

- (1) If a protected person is or may be required to give evidence in a relevant proceeding before a court, whether under the person's new identity or previous identity, the person must notify the Commissioner of Police that the person is or may be required to give evidence in the proceeding.

Maximum penalty: 50 penalty units.

- (2) The Commissioner of Police must give the court concerned a certificate (a ***non-disclosure certificate***) relating to the protected person.
- (3) If the court considers it appropriate in the relevant proceeding, the court may disclose to each party to the proceeding:
 - (a) that the court has been given a non-disclosure certificate relating to a person who may be required to give evidence in the proceeding, and
 - (b) what the certificate states.
- (4) The court may only disclose what the non-disclosure certificate states in the absence of any jury empanelled for the proceeding and the public. When disclosing the certificate's existence, the court must inform the parties of the effect of the certificate.

31C What non-disclosure certificate must state

- (1) The non-disclosure certificate must state:
 - (a) that the person is, or has been, included in the witness protection program, and
 - (b) that the person has been given a new identity under this Act, and
 - (c) that the person has not been convicted of any offence other than an offence stated in the certificate.
- (2) The certificate must not include any information that may enable the protected identity of the person to be revealed.

31D Effect of non-disclosure certificate

- (1) On the giving of a non-disclosure certificate in respect of a protected person:
 - (a) a question may not be asked in the relevant proceeding that may lead to the disclosure of the protected identity of the protected person or where the protected person lives, and
 - (b) a witness in the relevant proceeding, including the protected person, cannot be required to answer a question, give any evidence, or provide any information, that may lead to the disclosure of the protected identity of the protected person or where the protected person lives, and
 - (c) a person involved in the relevant proceeding must not in the relevant proceeding make a statement that discloses or could disclose the protected identity of the protected person or where the protected person lives.
- (2) This section applies despite any other Act but subject to section 31E.

31E Court may grant leave to disclose relevant information

- (1) The court may, on application made to it, give leave to a party to ask questions of a witness, including the protected person, or make a statement that, if answered or made, may disclose the protected person's protected identity or where the protected person lives.

- (2) The only parties to whom such leave may be given are as follows:
 - (a) for a criminal proceeding—the prosecutor and each accused person to whom the relevant proceeding relates or the person’s legal representative,
 - (b) for a civil proceeding—each party to the relevant proceeding or the party’s legal representative,
 - (c) for another proceeding—each person who has been given leave to appear in the relevant proceeding or the person’s legal representative,
 - (d) in any proceedings—a legal practitioner assisting the court.
- (3) The court may direct that the application be heard in the absence of any jury empanelled for the proceeding and the public.
- (4) The court must not give leave to a party under this section unless satisfied:
 - (a) there is some evidence that, if believed, would call into question the credibility of the protected person, and
 - (b) it is in the interests of justice for the party to be able to test the credibility of the protected person, and
 - (c) it would be impractical to test properly the credibility of the protected person without knowing the protected identity of the person.
- (5) If the court gives leave, a person may, in accordance with the leave:
 - (a) ask a question that may lead to the disclosure of the protected identity of the protected person or where the protected person lives, or
 - (b) answer a question, give evidence, or provide information that may lead to the disclosure of the protected identity of the protected person or where the protected person lives, or
 - (c) make a statement that discloses or could disclose the protected identity of the protected person or where the protected person lives.

- (6) If the court gives leave, the court:
 - (a) must hold the relevant part of the proceeding in the absence of the public, and
 - (b) must make an order for the suppression of publication of evidence given before it that it considers will ensure that the protected identity of the protected person and where the protected person lives is not disclosed, and
 - (c) may make any other order the court considers appropriate.
- (7) A person must not contravene an order made under subsection (6).
Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.
- (8) This section does not limit the court's power to punish for contempt.

[34] Section 32 Offence—disclosures concerning participants

Insert “or in accordance with an order of the Supreme Court under section 34,” before “disclose information”.

[35] Section 33 Offence—disclosure by participants and others

Omit “participant or a former participant” from section 33 (1).
Insert instead “person who is or was a participant or a witness considered for inclusion in the witness protection program”.

[36] Section 33 (3)

Insert after section 33 (2):

- (3) A person is a *witness considered for inclusion in the witness protection program* if:
 - (a) the person is a witness who is the subject of consideration under section 6 for inclusion in the witness protection program (even if the Commissioner subsequently decides not to include the witness), or

- (b) the person is a witness included in the witness protection program temporarily under section 10 (even if the witness does not go on to be included in the witness protection program).

[37] Section 34 Certain persons not to be required to disclose information

Insert at the end of section 34 (1) (h):

, or

- (i) a person or body (or an employee of a person or body) providing services to or for a participant at the request of the Commissioner of Police.

[38] Section 34 (2)

Omit “the performance of his or her duties in accordance with this Act”.

Insert instead “the exercise of functions under this Act or the protection of witnesses included in the witness protection program”.

[39] Section 40 Immunity from legal proceedings for exercise of functions under Act

Omit “by this Act”.

Insert instead “by or under this Act (including an order of the Supreme Court under this Act)”.

[40] Schedule 1 Savings, transitional and other provisions

Omit “this Act” from clause 1 (1). Insert instead:

the following Acts:

this Act

Witness Protection Amendment Act 2002

[41] Schedule 1, clause 1 (2)

Omit “this Act”. Insert instead “the Act concerned”.

[42] Schedule 1

Insert at the end of the Schedule:

Part 3 Provisions consequent on Witness Protection Amendment Act 2002

5 Definition

In this Schedule:

2002 amending Act means the *Witness Protection Amendment Act 2002*.

6 Appeals

- (1) An amendment made by the 2002 amending Act to section 6 (4) or 12 (5) does not apply in respect of an appeal received before the commencement of the amendment.
- (2) An amendment made by the 2002 amending Act to section 12 (2) does not apply in respect of a notification received before the commencement of the amendment.
- (3) An amendment made by the 2002 amending Act to section 13 does not apply in respect of a decision made before the commencement of the amendment.

7 Memorandum of understanding

The amendment made by the 2002 amending Act to section 8 (1) does not apply to a memorandum of understanding signed before the commencement of the amendment.

8 Suspension of protection and assistance

Section 11A extends to apply in respect of a witness who became a participant before the commencement of that section.

9 Non-disclosure certificates

Part 3A extends to persons who became protected persons within the meaning of that Part before the commencement of that Part and also extends to apply in respect of the giving of evidence after the commencement of that Part in proceedings that commenced before the commencement of that Part.

10 Information disclosure

An amendment made by the 2002 amending Act to section 34 extends to apply in respect of the provision of services before the commencement of the amendment.

[Second reading speech made in—
Legislative Council on 6 June 2002
Legislative Assembly on 26 June 2002]