

[Act 1998 No 154]



New South Wales

# **Law Enforcement and National Security (Assumed Identities) Bill 1998**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to provide for the acquisition and use of assumed identities in the course of the performance of official duties by officers of certain State and Federal agencies that have law enforcement and national security functions.

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## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act. An important definition is that of *authorised agency* which means each of the following agencies:

- (a) the Police Service,
- (b) the Independent Commission Against Corruption.
- (c) the New South Wales Crime Commission.
- (d) the Police Integrity Commission.
- (e) such of the following agencies as may be prescribed by the regulations as authorised agencies for the purposes of the proposed Act:
  - (i) the Australian Federal Police.
  - (ii) the National Crime Authority.
  - (iii) the Australian Security Intelligence Organization,
  - (iv) the Australian Secret Intelligence Service.
  - (v) the Australian Customs Service.

### **Part 2 Approval to acquire and use assumed identity**

**Clause 4** authorises the CEO of an authorised agency to give approval (an *assumed identity approval*) for the acquisition and use of an assumed identity by an officer of the agency.

**Clause 5** provides that an assumed identity approval authorises the officer concerned to acquire the assumed identity and use that identity when carrying out the officer's official duties.

**Clause 6** provides for government and private bodies, at the request of the CEO of an authorised agency who has granted an assumed identity approval, to prepare and provide evidence of the assumed identity and make entries under the assumed identity in registers and other records of information. Government bodies are authorised and required to comply with such a request. Private bodies are authorised but not required to comply.

**Clause 7** makes special provision for the making of entries under assumed identities in a register of births or marriages by the Registrar of Births, Deaths and Marriages. Such an entry cannot be made unless an eligible Judge (under clause 8) orders the entry to be made on being satisfied that it is justified having regard to the nature of the duties being undertaken or to be undertaken by an officer under the assumed identity.

**Clause 8** provides for the nomination of Supreme Court Judges as eligible Judges for the purposes of clause 7.

**Clause 9** provides that things done in good faith under the authority of the proposed Act are not unlawful and do not constitute an offence or corrupt conduct.

### **Part 3 Accountability**

**Clause 10** provides for the keeping of records by CEOs of authorised agencies about assumed identity approvals.

**Clause 11** requires a record kept under clause 10 to be audited at least every 12 months.

**Clause 12** requires authorised agencies to include in their annual reports a statement of certain matters concerning assumed identity approvals.

### **Part 4 Miscellaneous**

**Clause 13** provides that the proposed Act binds the Crown.

**Clause 14** imposes restrictions on the disclosure in legal proceedings of the identity of an officer in respect of whom an assumed identity approval is or was in force.

**Clause 15** makes it an offence to make a record of, disclose or communicate information relating to the provision of evidence of identity or the making of an entry in a register or record under the authority of the proposed Act.

**Clause 16** is a power of delegation allowing the CEOs of authorised agencies to delegate functions under the proposed Act. The clause imposes limits on the number of delegations and the officers to whom functions can be delegated.

**Clause 17** makes it clear that the proposed Act does not limit or otherwise affect the *Law Enforcement (Controlled Operations) Act 1997* or the *Witness Protection Act 1995*.

**Clause 18** provides for the taking of proceedings for offences under the proposed Act.

**Clause 19** is a general regulation-making power.

**Clause 20** makes a consequential amendment to the *Criminal Procedure Act 1986*.

**Clause 21** provides for the Minister to review the operation of the proposed Act in 12 months after the commencement of clause 4.