

[Act 2002 No 54]



New South Wales

## **Witness Protection Amendment Bill 2002**

### **Explanatory note**

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

### **Overview of Bill**

The object of this Bill is to amend the *Witness Protection Act 1995*:

- (a) to specifically permit the provision to protected witnesses of counselling (such as psychological counselling and drug and alcohol counselling) and vocational training services, and
  - (b) to provide for the issue of false death certificates in respect of protected witnesses or their relatives, and
  - (c) to make provision for the issue of non-disclosure certificates in court proceedings to protect the identity of protected witnesses when they give evidence in the proceedings, and
  - (d) to repeal the provision dealing with the issue and use of false identity documents by Witness Protection Unit personnel, and
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- (e) to extend to a person who provides services to or for a protected witness at the request of the Commissioner of Police the protection that prevents a person being required to disclose information as to the identity of a protected witness except by order of the Supreme Court, and
- (f) to allow the memorandum of understanding between the Commissioner and a protected witness to provide for the taking, provision and retention of photographs of the witness, and
- (g) to ensure that the terms required to be contained in the memorandum of understanding concerning the grounds for termination of protection and assistance to the witness fully reflect the provisions of the Act as to the grounds for termination, and
- (h) to permit temporary suspension of a protected witness from the witness protection program if the witness compromises the ability of the Commissioner to provide protection (with requirements for notice to the witness and, if the witness requests it, review of a decision by the Ombudsman), and
- (i) to increase the period within which the Ombudsman is required to determine appeals under the Act from 72 hours to 7 days, and
- (j) to shorten from 28 days to 14 days the period within which a protected witness can request a review of a decision of the Commissioner to terminate protection, and
- (k) to provide for a decision of the Ombudsman confirming a decision of the Commissioner to terminate protection of a protected witness to take effect even if the witness cannot be notified of the decision despite reasonable efforts to do so, and
- (l) to permit authorised persons under complimentary witness protection programs of other Australian jurisdictions to apply directly to the Supreme Court for orders to facilitate new identities for witnesses, and
- (m) to enact savings and transitional provisions.

## Outline of provisions

**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** is a formal provision giving effect to the amendments to the *Witness Protection Act 1995* set out in Schedule 1.

**Schedule 1 [1], [18] and [20]–[23]** provide for certain designated authorities under complimentary witness protection laws to be able to apply directly to the Supreme Court for the issue of orders to facilitate the acquisition of a new identity by a witness. Currently such orders can only be made on the application of the Commissioner of Police. **Schedule 1 [30]** makes a consequential amendment.

**Schedule 1 [2]** broadens the range of actions that can be taken under the witness protection program for the protection of protected witnesses to include the provision to protected witnesses of counselling (such as psychological counselling and drug and alcohol counselling) and vocational training services.

**Schedule 1 [3]** repeals a provision authorising the use of false identities by persons involved in the administration of the witness protection program (on the basis that this is now authorised and regulated under the *Law Enforcement and National Security (Assumed Identities) Act 1998*).

**Schedule 1 [4] and [12]** extend from 72 hours to 7 days the period within which the Ombudsman is required to determine an appeal against a decision to not include a witness in the witness protection program or to terminate protection and assistance to a witness.

**Schedule 1 [5]** modifies the provision of the memorandum of understanding required to be entered into with a protected witness dealing with the grounds for termination of protection and assistance so that the provision properly reflects the grounds on which protection and assistance can be terminated.

**Schedule 1 [6]** extends the matters that the memorandum of understanding between the Commissioner and a protected witness can provide for to include the taking, provision and retention of photographs of the witness.

**Schedule 1 [7]** inserts a provision that allows the Commissioner to temporarily suspend protection and assistance to a protected witness if the Commissioner is satisfied that the witness has done or intends to do something that limits the ability of the Commissioner to provide adequate protection to the person. **Schedule 1 [8]–[11] and [13]–[17]** make consequential amendments and extend to suspensions existing provisions dealing with notice to witnesses of decisions to terminate protection and review of and appeals against those decisions.

**Schedule 1 [10]** shortens from 28 days to 14 days the period within which a protected witness can request a review of a decision of the Commissioner to terminate protection, and provides that a protected witness has 2 days within which to request a review of a decision of the Commissioner to suspend protection.

**Schedule 1 [17]** provides for a decision of the Ombudsman confirming a decision of the Commissioner to terminate protection of a protected witness to take effect even if the witness cannot be notified of the decision despite reasonable efforts to do so. Currently the provision prevents the decision on appeal taking effect until the witness is notified.

**Schedule 1 [19]** extends existing provisions that deal with the issue of false birth and marriage certificates to protected witnesses to provide for the issue of false death certificates in respect of protected witnesses or their relatives. **Schedule 1 [24]–[29]** make consequential amendments.

**Schedule 1 [31]** repeals a provision that will be subsumed by the provisions to be inserted by **Schedule 1 [33]**.

**Schedule 1 [32]** makes a consequential amendment.

**Schedule 1 [33]** inserts a new Part 3A dealing with the issue of non-disclosure certificates in respect of persons given new identities under the witness protection program who are then required to give evidence in proceedings (either under their former identity or their new identity). A person who is or may be required to give evidence must notify the Commissioner of Police accordingly. The Commissioner must then issue a non-disclosure certificate to the court in which the person will give evidence. The effect of such a certificate is to prevent the disclosure in the proceedings of the person's *protected identity* (which may be their new identity or their former identity, depending on the capacity in which they are giving evidence).

**Schedule 1 [34]** makes it clear that an order of the Supreme Court authorising a person to be required to give evidence in proceedings operates as an exception to the provision that makes disclosure of certain information an offence.

**Schedule 1 [35]** and **[36]** amend a provision that prevents participants and former participants in the witness protection program from disclosing certain matters to extend the provision to persons who were refused inclusion in the witness protection program or who were only temporarily included in the program.

**Schedule 1 [37]** extends a provision that prevents certain persons being required to disclose information to a court about the witness protection program to persons or bodies or their employees who provide services to or for a protected witness. **Schedule 1 [38]** is consequential on this amendment.

**Schedule 1 [39]** makes it clear that the immunity from legal proceedings conferred by the Act extends to action taken pursuant to an order of the Supreme Court under the Act.

**Schedule 1 [40]–[42]** enacts savings and transitional provisions.