

[Act 1995 No 87]



New South Wales

# Witness Protection Bill 1995

## Explanatory note

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

## Overview of Bill

The object of this Bill is to authorise the Commissioner of Police to operate a witness protection program in New South Wales.

## Outline of provisions

### Part 1 Preliminary

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

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** contains definitions for the purposes of the proposed Act.

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\* Amended in committee—see table at end of volume.

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**Clause 4** defines who is a *witness* for the purposes of the proposed Act. The definition includes family members of a witness if they require protection or assistance under the proposed Act.

## **Part 2 Witness protection program**

**Clause 5** authorises the Commissioner of Police, through a witness protection program, to provide for the safety and welfare of witnesses.

**Clause 6** gives the Commissioner the sole responsibility of deciding whether to include a witness in the program. A witness must agree to be included and must enter into a memorandum of understanding.

**Clause 7** specifies the things to which the Commissioner must have regard in deciding whether to include a witness in the program.

**Clause 8** specifies the scope and requirements of a memorandum of understanding and makes provision for the manner of its execution.

**Clause 9** enables a memorandum of understanding to be varied with the consent of the witness and the Commissioner.

**Clause 10** enables the provision of temporary protection to a witness pending full assessment for inclusion in the program.

**Clause 11** enables the protection and assistance provided to a witness under the program to be terminated at the request of the witness or by decision of the Commissioner.

**Clause 12** enables a witness to obtain a review of the decision of the Commissioner to terminate the provision to the witness of protection and assistance under the program.

**Clause 13** specifies the time at which a decision of the Commissioner to terminate the protection and assistance provided to a witness under the program takes effect.

## **Part 3 Protecting witnesses from identification**

**Clause 14** empowers the Commissioner to apply for documents that will enable a witness to change his or her identity or that will otherwise protect a witness.

**Clause 15** enables the Commissioner to apply for a Supreme Court order (a *witness protection order*) to make entries in the register of births or the register of marriages or for the issue of identifying documents for a witness in the witness's new identity.

**Clause 16** provides that the Supreme Court is to conduct its proceedings under this Part of the proposed Act in the absence of the public.

**Clause 17** specifies the matters about which the Supreme Court must be satisfied before it can make a witness protection order.

**Clause 18** specifies the action that may or must be taken in order to give effect to a witness protection order.

**Clause 19** validates the making of entries in the register of births or the register of marriages in accordance with a witness protection order and regulates the circumstances in which those entries may be cancelled.

**Clause 20** imposes restrictions on the marriage (or remarriage) of a witness who has been provided with a new identity.

**Clause 21** sets out the procedure by which the former identity of a witness who has been provided with a new identity may be restored.

**Clause 22** makes it an offence to use a document issued by the Registrar of Births, Deaths and Marriages relating to the former identity of a witness who has been provided with a new identity.

**Clause 23** makes it an offence to reveal the change in a witness's identity.

**Clause 24** enables a witness who has been provided with a new identity to refuse to disclose his or her former identity if the witness would otherwise be required by law to do so.

**Clause 25** makes provision for the disclosure to a court in criminal proceedings brought against a witness who has been provided with a new identity of the witness's criminal record under his or her former identity.

**Clause 26** establishes procedures to protect the identity of a witness who is called to give evidence before a court, tribunal or commission.

**Clause 27** prevents new identifying documentation being provided to a witness if it represents that the witness has a qualification that he or she does not have or is entitled to a benefit that he or she is not entitled to.

**Clause 28** enables the Commissioner to make commercial arrangements for a witness so as not to reveal his or her former identity.

**Clause 29** enables the Commissioner to take action to ensure the rights of a witness are protected and that a witness meets his or her legal obligations.

**Clause 30** enables the Commissioner to take action to ensure that a witness does not avoid obligations incurred by, or restrictions imposed on, the witness before the witness was provided with a new identity.

**Clause 31** enables the Commissioner to prevent money paid to a witness under the witness protection program from being taken from the witness under the *Confiscation of Proceeds of Crime Act 1989*.

#### **Part 4     Miscellaneous**

**Clause 32** makes it an offence to disclose information about the identity or location of a person who is, or has been, a witness under protection under the proposed Act or a complementary witness protection law of another Australian jurisdiction or to disclose information that compromises the security of such a person.

**Clause 33** makes it an offence for a person who is, or has been, a witness under protection to disclose that he or she, or a member of his or her family, has entered into a memorandum of understanding under the proposed Act or to disclose information obtained as a result of certain things done under the proposed Act.

**Clause 34** protects persons engaged in the administration of the proposed Act from being compelled to disclose information obtained in the course of their administration.

**Clause 35** controls the issue of New South Wales identity documents to persons on witness protection programs conducted by the Commonwealth, another State or a Territory.

**Clause 36** enables the Commissioner to make arrangements with other police and law enforcement agencies throughout Australia (*approved authorities*) about matters connected with the administration of witness protection laws of other Australian jurisdictions.

**Clause 37** enables the Minister administering the proposed Act to authorise approved authorities to exercise functions conferred on the Commissioner for the purposes of any arrangement made under clause 36.

**Clause 38** enables the Commissioner to give information to approved authorities concerning witnesses who have been provided with a new identity or relocated under the proposed Act.

**Clause 39** enables the Commissioner to delegate functions under the proposed Act to certain members of the Police Service.

**Clause 40** confers an immunity from legal proceedings on persons exercising functions in good faith under the proposed Act.

**Clause 41** enables proceedings for offences (other than for an offence under clause 32) to be dealt with summarily before a Local Court. An offence under clause 32 may be dealt with summarily unless the prosecuting authority or the person charged with the offence elects to have the offence dealt with on indictment.

**Clause 42** enables regulations to be made for the purposes of the proposed Act.

**Clause 43** excludes the application of certain provisions of the *Births, Deaths and Marriages Registration Act 1995* to action taken under the proposed Act to change the identity of a witness.

**Clause 44** provides that the proposed Act does not affect any arrangements for the protection of witnesses under the *New South Wales Crime Commission Act 1985* or the *Independent Commission Against Corruption Act 1988*.

**Clause 45** makes an amendment to the *Criminal Procedure Act 1986* to deal with the disposal of offences under clause 32.

**Clause 46** gives effect to the schedule of savings, transitional and other provisions.

**Clause 47** requires the proposed Act to be reviewed after 5 years to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives.

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.