

Law Enforcement and National Security (Assumed Identities) Act 2010 No 73

[2010-73]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010 No 119](#) (not commenced — to commence on 7.1.2011)

Authorisation

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Contents

Long title	5
Part 1 Preliminary	5
1 Name of Act	5
2 Commencement	5
3 Objects of Act	5
4 Definitions	5
Part 2 Authority for assumed identity	9
5 Application for authority to acquire or use assumed identity	9
6 Determination of applications	10
7 Form of authority	12
8 Period of authority	13
9 Variation or cancellation of authority	13
10 Yearly review of authority	13
11 Making entries in Births, Deaths and Marriages Register	14
12 Eligible Judges	14
13 Cancellation of authority affecting entry in a register of births, deaths and marriages	15
14 Cancelling entries in Births, Deaths and Marriages Register	16
Part 3 Evidence of assumed identity	16
15 Request for evidence of assumed identity	16
16 Government issuing agencies to comply with request	16

17 Non-government issuing agencies may comply with request.....	16
18 Cancellation of evidence of assumed identity	17
19 Protection from liability—officers of issuing agencies.....	17
20 Indemnity for issuing agencies and officers	17
Part 4 Effect of authority	17
21 Assumed identity may be acquired and used.....	17
22 Protection from liability—authorised persons	18
23 Indemnity for authorised persons.....	18
24 Particular qualifications	18
25 Effect of being unaware of variation or cancellation of authority	18
26 Chief officer may make certain representations about authorised person	19
Part 5 Mutual recognition under corresponding laws	19
27 Requests to a participating jurisdiction for evidence of assumed identity.....	19
28 Requests from a participating jurisdiction for evidence of assumed identity	19
29 Directions from a participating jurisdiction to cancel evidence of assumed identity	20
30 Indemnity for issuing agencies and officers	20
31 Application of this Act to authorities under corresponding laws	20
Part 6 Compliance and monitoring	21
Division 1 Misuse of assumed identity and information	21
32 Misuse of assumed identity	21
33 Disclosing information about assumed identity	21
Division 2 Disclosure of identity in legal proceedings	22
34 Identity of certain persons not to be disclosed in legal proceedings	22
Division 3 Reporting and record-keeping	23
35 Reports about authorities for assumed identities etc	23
36 Record keeping	24
37 Audit of records	24
Part 7 General	25
38 Act binds Crown.....	25

39 Delegation of chief officer's functions	25
40 Other Acts not affected	26
41 Proceedings for offences	26
42 Regulations.....	26
43 Review of Act.....	27
44 (Repealed)	27
Schedule 1 Savings and transitional provisions	27
Schedule 2 (Repealed)	28

Law Enforcement and National Security (Assumed Identities) Act 2010 No 73



New South Wales

An Act in relation to assumed identities; to repeal the *Law Enforcement and National Security (Assumed Identities) Act 1998*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Law Enforcement and National Security (Assumed Identities) Act 2010*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Objects of Act

(1) The main purposes of this Act are:

- (a) to facilitate, for law enforcement purposes, investigations and intelligence-gathering in relation to criminal activity, including investigations extending beyond New South Wales, and
- (b) to enable the safe and effective exercise of functions in administering witness protection programs.

(2) The main ways in which those purposes are to be achieved by this Act include:

- (a) providing for the lawful acquisition and use of assumed identities, and
- (b) facilitating mutual recognition of things done in relation to assumed identities under corresponding laws.

4 Definitions

(1) In this Act:

acquire an assumed identity, means acquire evidence of the identity and includes taking steps towards acquiring evidence of the identity.

Australian Crime Commission means the Australian Crime Commission established by the [Australian Crime Commission Act 2002](#) of the Commonwealth.

authorised civilian means a person (other than a law enforcement officer) who is authorised under an authority to acquire or use an assumed identity.

authorised officer means a law enforcement officer who is authorised under an authority to acquire or use an assumed identity.

authorised person means:

- (a) an authorised civilian, or
- (b) an authorised officer.

authority means an authority granted under section 6 to acquire and use an assumed identity, including the authority as varied under section 9.

chief officer of a law enforcement agency means the person for the time being holding office or acting as:

- (a) in relation to the NSW Police Force, the Commissioner of Police, or
- (b) in relation to the Independent Commission Against Corruption, the Commissioner for that Commission, or
- (c) in relation to the New South Wales Crime Commission, the Commissioner for that Commission, or
- (d) in relation to the Police Integrity Commission, the Commissioner for that Commission, or
- (e) in relation to Corrective Services NSW, the Commissioner of Corrective Services, or
- (f) in relation to the Australian Crime Commission, the Chief Executive Officer of the Australian Crime Commission, or
- (g) in relation to an agency prescribed by the regulations as a law enforcement agency for the purposes of this Act, the officer prescribed by the regulations as the chief executive officer of the agency.

chief officer of an issuing agency means the chief officer (however described) of the agency.

conduct includes any act or omission.

corresponding authority means:

- (a) an authority under a corresponding law to acquire or use an assumed identity in

this jurisdiction, or

- (b) an authority under a corresponding law to request the production of evidence of an assumed identity in this jurisdiction.

corresponding law means a law of another jurisdiction that corresponds to this Act or a provision of this Act (as the case may be), and includes a law of another jurisdiction that is declared by the regulations to correspond to this Act or a provision of this Act.

criminal activity means conduct that involves the commission of an offence by one or more persons.

doing a thing includes failing to do the thing.

evidence of identity means a document or other thing (such as a driver licence, birth certificate, credit card or identity card) that evidences or indicates, or can be used to evidence or indicate, a person's identity or any aspect of a person's identity.

exercise a function includes perform a duty.

function includes a power, authority or duty.

government issuing agency, in relation to an authority, means an entity that:

- (a) is named in the authority, and
- (b) issues evidence of identity as part of performing any function of the Government of the State.

Note—

Government issuing agencies may include entities such as the Roads and Traffic Authority and the NSW Police Force.

issuing agency means:

- (a) a government issuing agency, or
- (b) a non-government issuing agency.

jurisdiction means the Commonwealth or a State or Territory of the Commonwealth.

law enforcement agency means the following:

- (a) the NSW Police Force,
- (b) the Independent Commission Against Corruption,
- (c) the New South Wales Crime Commission,

- (d) the Police Integrity Commission,
- (e) Corrective Services NSW,
- (f) the Australian Crime Commission,
- (g) such of the following agencies as may be prescribed by the regulations as law enforcement agencies for the purposes of this Act:
 - (i) the Australian Federal Police,
 - (ii) the Australian Security Intelligence Organisation,
 - (iii) the Australian Secret Intelligence Service,
 - (iv) Customs (within the meaning of the *Customs Administration Act 1985* of the Commonwealth),
 - (v) the Australian Taxation Office.

law enforcement officer means the following:

- (a) in relation to the NSW Police Force, a member of the NSW Police Force,
- (b) in relation to the Independent Commission Against Corruption, an officer of the Commission (within the meaning of the *Independent Commission Against Corruption Act 1988*),
- (c) in relation to the New South Wales Crime Commission, a member of staff of the Commission (within the meaning of the *New South Wales Crime Commission Act 1985*),
- (d) in relation to the Police Integrity Commission, an officer of the Commission (within the meaning of the *Police Integrity Commission Act 1996*),
- (e) in relation to Corrective Services NSW, a correctional officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),
- (f) in relation to the Australian Crime Commission, a member of the staff of the Australian Crime Commission (within the meaning of the *Australian Crime Commission Act 2002* of the Commonwealth),
- (g) in relation to an agency prescribed by the regulations as a law enforcement agency for the purposes of this Act, such members, officers or employees or class of members, officers or employees as may be prescribed by the regulations as law enforcement officers for the purposes of this Act in relation to that agency,

and includes a person who is seconded to a law enforcement agency, including (but not limited to) a member of the police force or police service or a police officer

(however described) of another jurisdiction.

However, (despite the above) the term does not include the chief officer of a law enforcement agency.

non-government issuing agency, in relation to an authority, means an entity, other than a government issuing agency, that:

- (a) is named in the authority, and
- (b) issues evidence of identity.

Note—

Non-government issuing agencies may include entities such as banking institutions and registered clubs.

officer of an agency includes a person employed or engaged in the agency.

participating jurisdiction means a jurisdiction in which a corresponding law is in force.

Registrar means the Registrar of Births, Deaths and Marriages.

supervisor of an authorised civilian means the law enforcement officer who supervises or is to supervise the acquisition or use of an assumed identity by the authorised civilian.

this jurisdiction means New South Wales.

use an assumed identity includes representing (whether expressly or impliedly, or by saying or doing something) the identity to be real when it is not.

witness protection program means a witness protection program established and maintained under the [Witness Protection Act 1995](#).

- (2) Notes included in this Act do not form part of this Act.

Part 2 Authority for assumed identity

5 Application for authority to acquire or use assumed identity

- (1) A law enforcement officer of a law enforcement agency may apply to the chief officer of the agency for an authority for the law enforcement officer or any other person to do either or both of the following:
- (a) acquire an assumed identity,
 - (b) use an assumed identity.
- (2) A separate application must be made in respect of each assumed identity to be acquired or used.

(3) An application:

- (a) must be in writing in the form approved by the chief officer, and
- (b) must contain:
 - (i) the name of the applicant, and
 - (ii) the name of the person to be authorised to acquire or use an assumed identity (if not the applicant), and
 - (iii) if the person referred to in subparagraph (ii) is not a law enforcement officer, the name and rank or position of the person proposed to be appointed as supervisor and an explanation of why it is necessary for a person who is not a law enforcement officer to acquire or use the assumed identity, and
 - (iv) details of the proposed assumed identity, and
 - (v) reasons for the need to acquire or use an assumed identity, and
 - (vi) if the assumed identity is to be used in an investigation or for intelligence-gathering, details of the investigation or intelligence-gathering exercise (to the extent known), and
 - (vii) if the assumed identity is to be used for the purposes of implementing measures to facilitate the conduct of investigations or intelligence-gathering that may take place in the future, details of those measures, and
 - (viii) if the assumed identity is to be used to ensure the effective and safe exercise of functions in administering witness protection programs, details of the functions concerned, and
 - (ix) details of any issuing agencies and the types of evidence to be issued by them in relation to the assumed identity to be acquired or used, and
 - (x) details of any application to be made for an order under section 11 (Making entries in Births, Deaths and Marriages Register) in respect of the assumed identity.

- (4) The chief officer may require the applicant to furnish such additional information concerning the application as is necessary for the chief officer's proper consideration of the application.

6 Determination of applications

- (1) After considering an application for an authority to acquire or use an assumed identity, and any additional information under section 5 (4), the chief officer:
- (a) may grant an authority to acquire or use the assumed identity, either

unconditionally or subject to conditions, or

(b) may refuse the application.

(2) An authority to acquire or use an assumed identity may not be granted unless the chief officer is satisfied on reasonable grounds:

(a) that the assumed identity is necessary for the purposes of:

(i) an investigation or intelligence-gathering in relation to criminal activity, or

(ii) implementing measures to facilitate the conduct of such investigations or intelligence-gathering that may take place in the future, or

(iii) enabling employees of the NSW Police Force to exercise their functions in administering witness protection programs and ensuring their safety while doing so, and

(b) that the risk of abuse of the assumed identity by the authorised person is minimal, and

(c) if the application is for authorisation of an assumed identity for a person who is not a law enforcement officer—that it would be impossible or impracticable in the circumstances for a law enforcement officer to acquire or use the assumed identity for the purpose sought.

(3) If an authority is granted for an authorised civilian, the chief officer must appoint a law enforcement officer of the law enforcement agency to supervise the acquisition or use of the assumed identity by the authorised civilian.

(4) The law enforcement officer appointed as supervisor must be:

(a) in relation to the NSW Police Force, of or above the rank of Sergeant, and

(b) in relation to the Independent Commission Against Corruption, of or above the rank of Senior Investigator, and

(c) in relation to the New South Wales Crime Commission, a New South Wales Crime Commission Investigations Manager, and

(d) in relation to the Police Integrity Commission, a Police Integrity Commission Investigator, and

(e) in relation to Corrective Services NSW, of or above the rank of Assistant Superintendent, and

(f) in relation to the Australian Crime Commission, of or above the rank of senior investigator, and

(g) in relation to an agency prescribed by the regulations as a law enforcement agency for the purposes of this Act, of or above such rank or position as may be prescribed by the regulations for the purposes of this provision in relation to that agency.

(5) An authority may also authorise any one or more of the following:

(a) an application for an order for an entry in the Births, Deaths and Marriages Register under section 11 or a like register under a corresponding law,

(b) a request under section 15 or 27,

(c) the use of an assumed identity in a participating jurisdiction.

(6) A separate authority is required for each assumed identity.

7 Form of authority

(1) An authority must be:

(a) in writing in the form approved by the chief officer, and

(b) signed by the person granting it.

Note—

The functions under this Act of the chief officer of a law enforcement agency (including that of granting authorities) may be delegated under section 39.

(2) An authority must state the following:

(a) the name of the person granting the authority,

(b) the date of the authority,

(c) details of the assumed identity authorised,

(d) details of any evidence of the assumed identity that may be acquired under the authority,

(e) the conditions (if any) to which the authority is subject,

(f) why the authority is granted,

(g) if the authority relates to an authorised officer—the name of the officer,

(h) if the authority relates to an authorised civilian:

(i) the name of the authorised civilian, and

(ii) the name of his or her supervisor under the authority, and

(iii) the period for which the authority will remain in force, being a period not exceeding 3 months.

(3) The authority must also state the following:

- (a) each issuing agency to which a request may be made under section 15 or 27,
- (b) whether it authorises an application for an order for an entry in the Births, Deaths and Marriages Register under section 11 or a like register under a corresponding law,
- (c) each participating jurisdiction in which an assumed identity may be used.

8 Period of authority

- (1) An authority for an authorised officer remains in force until cancelled under section 9.
- (2) An authority for an authorised civilian remains in force until the end of the period specified in the authority in accordance with section 7 (2) (h) (iii), unless the authority is cancelled sooner under section 9.

9 Variation or cancellation of authority

- (1) The chief officer who grants an authority:
 - (a) may vary or cancel the authority at any time, and
 - (b) must cancel the authority if the chief officer is satisfied that use of the assumed identity is no longer necessary.
- (2) The chief officer must give written notice of the variation or cancellation of an authority to:
 - (a) the authorised person to whom it relates, and
 - (b) if the authorised person is an authorised civilian—the authorised person's supervisor.
- (3) The notice must state why the authority is varied or cancelled.
- (4) The variation or cancellation takes effect:
 - (a) on the day the written notice is given to the authorised person, or
 - (b) if a later date of effect is stated in the notice—on the day stated.

10 Yearly review of authority

- (1) The chief officer of a law enforcement agency must periodically review each authority granted by the chief officer under this Act that authorises the use of an assumed identity in a participating jurisdiction.

- (2) A review of an authority under this section is to be conducted at least once every 12 months.
- (3) The purpose of a review is to determine whether use of the assumed identity under the authority is still necessary.
- (4) If the chief officer is satisfied on a review that use of the assumed identity under the authority is no longer necessary, he or she must cancel the authority under section 9.
- (5) If the chief officer is satisfied on a review that use of the assumed identity under the authority is still necessary, he or she must record his or her opinion, and the reasons for it, in writing.

11 Making entries in Births, Deaths and Marriages Register

- (1) An eligible Judge may order the Registrar to make an entry in the Births, Deaths and Marriages Register in relation to the acquisition of an assumed identity under an authority or corresponding authority.
- (2) An eligible Judge may make the order only:
 - (a) on application by:
 - (i) the chief officer of a law enforcement agency of this jurisdiction, or
 - (ii) the chief officer of a law enforcement agency under a corresponding law, and
 - (b) if satisfied the order is justified having regard to the nature of the activities undertaken or to be undertaken by the officer or person under the authority or corresponding authority.
- (3) The application must be heard in closed court.
- (4) The Registrar must give effect to an order:
 - (a) within the period stated in the order, or
 - (b) if no period is stated in the order—within 28 days after the day the order is made.

12 Eligible Judges

- (1) In this section and sections 11 and 14:

eligible Judge means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

Judge means a person who is a Judge of the Supreme Court.

- (2) A Judge may, by instrument in writing, consent to being the subject of a declaration by the Attorney General under subsection (3).

- (3) The Attorney General may, by instrument in writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Act.
- (4) An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by section 11 or 14, the same protection and immunity as a Judge of the Supreme Court has in relation to proceedings in the Supreme Court.
- (5) A Judge who has given consent under this section may, by instrument in writing, revoke the consent.
- (6) A declaration of an eligible Judge under subsection (3) cannot be revoked by the Attorney General. However, the declaration of a Judge as an eligible Judge is revoked if:
 - (a) the eligible Judge revokes his or her consent in accordance with subsection (5) or ceases to be a Judge, or
 - (b) the Chief Justice notifies the Attorney General that the Judge should not continue to be an eligible Judge.
- (7) To avoid doubt, the selection of the eligible Judge to exercise any particular function conferred on eligible Judges is not to be made by the Attorney General or other Minister of the Crown, and the exercise of that particular function is not subject to the control and direction of the Attorney General or other Minister of the Crown.

13 Cancellation of authority affecting entry in a register of births, deaths and marriages

- (1) This section applies if:
 - (a) the chief officer cancels an authority for an assumed identity, and
 - (b) there is an entry in relation to that identity:
 - (i) in the Births, Deaths and Marriages Register because of an order under section 11, or
 - (ii) in a like register of a participating jurisdiction because of an order under a corresponding law of the jurisdiction.
- (2) If subsection (1) (b) (i) applies, the chief officer must apply for an order under section 14 within 28 days after the day the authority is cancelled.
- (3) If subsection (1) (b) (ii) applies, the chief officer must apply for an order under the corresponding law to cancel the entry within 28 days after the day the authority is cancelled.

14 Cancelling entries in Births, Deaths and Marriages Register

- (1) An eligible Judge may order the Registrar to cancel an entry that has been made in the Births, Deaths and Marriages Register under an order under section 11.
- (2) The eligible Judge may make the order on application by the chief officer who applied for the order under section 11.
- (3) The application must be heard in closed court.
- (4) The Registrar must give effect to the order within 28 days after the day the order is made.

Part 3 Evidence of assumed identity

15 Request for evidence of assumed identity

- (1) This section applies if an authority granted under section 6 authorises a request under this section.
- (2) The chief officer who grants the authority may request the chief officer of an issuing agency stated in the authority to:
 - (a) produce evidence of an assumed identity in accordance with the authority, and
 - (b) give evidence of the assumed identity to the authorised person named in the authority.
- (3) The request must state a reasonable period for compliance with the request.
- (4) A request cannot be made under this section for an entry in the Births, Deaths and Marriages Register or a like register of a participating jurisdiction.
- (5) In this section:

evidence means evidence similar to that ordinarily produced or given by the issuing agency.

16 Government issuing agencies to comply with request

The chief officer of a government issuing agency who receives a request under section 15 must comply with the request within the reasonable period stated in the request.

17 Non-government issuing agencies may comply with request

The chief officer of a non-government issuing agency who receives a request under section 15 may comply with the request.

18 Cancellation of evidence of assumed identity

- (1) The chief officer of an issuing agency who produces evidence of an assumed identity must cancel the evidence if directed in writing to do so by the chief officer who granted the authority for the assumed identity.
- (2) In this section:
cancel includes delete or alter an entry in a record of information.

19 Protection from liability—officers of issuing agencies

Anything done by the chief officer, or an officer, of an issuing agency (whether government or non-government) in good faith to comply with a request under section 15 or a direction under section 18 is not unlawful, and does not constitute an offence or corrupt conduct.

20 Indemnity for issuing agencies and officers

- (1) This section applies if the chief officer of a law enforcement agency makes a request under section 15 or gives a direction under section 18 to the chief officer of an issuing agency, whether government or non-government.
- (2) The law enforcement agency must indemnify the issuing agency, or an officer of the agency, for any liability incurred by the agency or officer (including reasonable costs) if:
 - (a) the liability is incurred because of something done by the agency or officer to comply with the request or direction in the course of duty, and
 - (b) any requirements prescribed under the regulations have been met.

Part 4 Effect of authority

21 Assumed identity may be acquired and used

- (1) An authorised officer may acquire or use (or both) an assumed identity if the acquisition or use (or both) are:
 - (a) in accordance with an authority, and
 - (b) in the course of duty.
- (2) An authorised civilian may acquire or use (or both) an assumed identity if the acquisition or use (or both) are in accordance with:
 - (a) an authority, and
 - (b) any direction by the person's supervisor under the authority.

22 Protection from liability—authorised persons

Anything done by an authorised person (whether in this jurisdiction or elsewhere) in the course of acquiring or using an assumed identity is not unlawful, and does not constitute an offence or corrupt conduct if:

- (a) the thing is done in accordance with an authority, and
- (b) the thing is done in the course of the authorised person's duty (in the case of an authorised officer) or in accordance with any direction by the authorised person's supervisor under the authority (in the case of an authorised civilian), and
- (c) doing the thing would not be unlawful or constitute an offence or corrupt conduct if the assumed identity were the person's real identity.

23 Indemnity for authorised persons

- (1) This section applies if the chief officer of a law enforcement agency grants an authority.
- (2) The law enforcement agency must indemnify the authorised person under the authority for any liability incurred by the person (including reasonable costs) because of something done by the person (whether in this jurisdiction or elsewhere) if:
 - (a) the thing is done in the course of acquiring or using an assumed identity in accordance with the authority, and
 - (b) the thing is done:
 - (i) in the case of an authorised officer—in the course of his or her duty, or
 - (ii) in the case of an authorised civilian—in accordance with any direction by his or her supervisor under the authority, and
 - (c) any requirements prescribed under the regulations have been met.

24 Particular qualifications

- (1) Sections 22 and 23 do not apply to anything done by an authorised person if:
 - (a) a particular qualification is needed to do the thing, and
 - (b) the person does not have that qualification.
- (2) Subsection (1) applies whether or not the person has acquired, as evidence of an assumed identity, a document that indicates that he or she has that qualification.

25 Effect of being unaware of variation or cancellation of authority

- (1) If an authority has been varied in a way that limits its scope, this Part continues to

apply to the authorised person to whom it relates as if it had not been varied in that way, for as long as the person:

- (a) is unaware of the variation, and
- (b) is not reckless about the existence of the variation.

(2) If an authority has been cancelled, this Part continues to apply to the authorised person to whom it related as if it had not been cancelled, for as long as the person:

- (a) is unaware of the cancellation, and
- (b) is not reckless about the existence of the cancellation.

(3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority if:

- (a) the person is aware of a substantial risk that the authority has been varied or cancelled, and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

26 Chief officer may make certain representations about authorised person

An authority to acquire or use an assumed identity authorises the chief officer who grants it to make any false or misleading representation about the authorised person to whom it relates, for the purposes of or in connection with the acquisition or use of the assumed identity by the authorised person.

Part 5 Mutual recognition under corresponding laws

27 Requests to a participating jurisdiction for evidence of assumed identity

- (1) This section applies if an authority granted under section 6 authorises a request under this section.
- (2) The chief officer who grants the authority may request the chief officer of an issuing agency of a participating jurisdiction stated in the authority to:
 - (a) produce evidence of the assumed identity in accordance with the authority, and
 - (b) give evidence of the assumed identity to the authorised person named in the authority.

28 Requests from a participating jurisdiction for evidence of assumed identity

- (1) This section applies if:
 - (a) an authority under a corresponding law authorises a request for:

- (i) the production of evidence of an assumed identity in this jurisdiction, and
 - (ii) the giving of evidence of the assumed identity to the authorised person named in the authority, and
- (b) the request is made to the chief officer of an issuing agency of this jurisdiction, and
- (c) the request states a reasonable period for compliance with the request.
- (2) The chief officer of a government issuing agency who receives the request must comply with the request within the reasonable period stated in the request.
- (3) The chief officer of a non-government issuing agency who receives the request may comply with the request.

29 Directions from a participating jurisdiction to cancel evidence of assumed identity

- (1) The chief officer of an issuing agency who produces evidence of an assumed identity must cancel the evidence if directed in writing to do so by the chief officer who granted the authority for the assumed identity.

- (2) In this section:

cancel includes delete or alter an entry in a record of information.

30 Indemnity for issuing agencies and officers

- (1) This section applies if the chief officer of a law enforcement agency makes a request to the chief officer of an issuing agency of a participating jurisdiction under section 27.
- (2) The law enforcement agency must indemnify the issuing agency and any officer of the issuing agency for any liability incurred by the agency or officer (including reasonable costs) if:
- (a) the liability is incurred because of something done (whether in this jurisdiction or elsewhere) by the agency or officer to comply with the request in the course of duty, and
 - (b) any requirements prescribed under the regulations have been met.

31 Application of this Act to authorities under corresponding laws

The following provisions apply to anything done in this jurisdiction in relation to a corresponding authority as if it were an authority granted under section 6:

- (a) section 19 (Protection from liability—officers of issuing agencies),
- (b) section 21 (Assumed identity may be acquired and used),

- (c) section 22 (Protection from liability—authorised persons),
- (d) section 24 (Particular qualifications),
- (e) section 25 (Effect of being unaware of variation or cancellation of authority),
- (f) section 32 (Misuse of assumed identity),
- (g) section 33 (Disclosing information about assumed identity).

Part 6 Compliance and monitoring

Division 1 Misuse of assumed identity and information

32 Misuse of assumed identity

- (1) An authorised officer is guilty of an offence if:
 - (a) he or she intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by his or her authority, and
 - (b) he or she knows that, or is reckless as to whether, the acquisition or use is not:
 - (i) in accordance with his or her authority, or
 - (ii) in the course of duty.

Maximum penalty: imprisonment for 2 years.

- (2) An authorised civilian is guilty of an offence if:
 - (a) he or she intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by his or her authority, and
 - (b) he or she knows that, or is reckless as to whether, the acquisition or use is not in accordance with:
 - (i) his or her authority, or
 - (ii) the directions of his or her supervisor under the authority.

Maximum penalty: imprisonment for 2 years.

33 Disclosing information about assumed identity

- (1) A person is guilty of an offence if:
 - (a) the person intentionally, knowingly or recklessly discloses any information, and
 - (b) the person knows that, or is reckless as to whether, the information reveals, or is likely to reveal, that an assumed identity acquired or used by another person is

not the other person's real identity, and

- (c) the person knows that, or is reckless as to whether, the disclosure is not made:
 - (i) in connection with the administration or execution of this Act or a corresponding law, or
 - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this Act or the regulations or a corresponding law or of any report of any such proceedings, or
 - (iii) in accordance with any requirement imposed by law.

Maximum penalty: imprisonment for 5 years.

- (2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) in circumstances in which the person:
 - (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation or intelligence-gathering in relation to criminal activity or implementation of a witness protection program, or
 - (b) knows that, or is reckless as to whether, the disclosure of the information:
 - (i) endangers or will endanger the health or safety of any person, or
 - (ii) prejudices or will prejudice the effective conduct of an investigation or intelligence-gathering in relation to criminal activity or implementation of a witness protection program.

Maximum penalty: imprisonment for 10 years.

Division 2 Disclosure of identity in legal proceedings

34 Identity of certain persons not to be disclosed in legal proceedings

- (1) If, in proceedings before a court, a tribunal or a Royal Commission or other commission of inquiry, the identity of a person in respect of whom an authority is or was in force is in issue or may be disclosed, the court, tribunal, Royal Commission or other commission must, unless it considers that the interests of justice otherwise require:
 - (a) ensure that such parts of the proceedings as relate to the identity of the person are held in private, and
 - (b) make such orders as to the suppression of evidence given before it as, in its opinion, will ensure that the identity of the person is not disclosed.
- (2) In particular, the court, tribunal, Royal Commission or other commission of inquiry:

- (a) may allow a person in respect of whom an authority is or was in force to appear before it under the assumed name or under a code name or code number, and
 - (b) may make orders prohibiting the publication of any information (including information derived from evidence given before it) that identifies, or might facilitate the identification of, any person who has been or is proposed to be called to give evidence.
- (3) A person must not contravene an order in force under this section.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Division 3 Reporting and record-keeping

35 Reports about authorities for assumed identities etc

- (1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must submit a report to the Minister that includes the following information for the year:
- (a) the number of authorities granted, and the number of authorities cancelled, during the year,
 - (b) a general description of the activities undertaken by authorised persons when using assumed identities under this Act during the year,
 - (c) the number of applications for authorities that were refused during the year,
 - (d) a statement as to whether or not any fraud or other unlawful activity was identified by an audit under section 37 during the year,
 - (e) any other information relating to authorities and assumed identities and the administration of this Act that the Minister considers appropriate.
- (2) The chief officer must advise the Minister of any information in the report that, in the chief officer's opinion, should be excluded from the report before the report is laid before Parliament because the information, if made public, could reasonably be expected to:
- (a) endanger a person's safety, or
 - (b) prejudice an investigation or prosecution, or
 - (c) compromise any law enforcement agency's operational activities or methodologies.
- (3) The Minister must:
- (a) exclude information from the report if satisfied on the advice of the chief officer of

any of the grounds set out in subsection (2), and

(b) cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the day on which the Minister receives the report.

(4) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.

36 Record keeping

(1) The chief officer of a law enforcement agency must cause appropriate records to be kept about the operation of this Act in respect of the agency.

(2) The records must include the following, in respect of authorities granted, varied or cancelled under this Act in respect of the agency:

(a) the date on which an authority was granted, varied or cancelled and the name of the person who granted, varied or cancelled it,

Note—

The functions under this Act of the chief officer of a law enforcement agency (including that of granting authorities) may be delegated under section 39.

(b) the name of the authorised person under the authority, together with details of the assumed identity to which the authority applies,

(c) details of any request made to an issuing agency under section 15 in respect of the authority,

(d) the general nature of the duties undertaken by the authorised person under the assumed identity,

(e) general details of relevant financial transactions entered into using the assumed identity,

(f) details of any review of the authority under section 10.

37 Audit of records

(1) The chief officer of a law enforcement agency must arrange for the records kept under section 36:

(a) for each authority in respect of the agency that authorises the use of an assumed identity in a participating jurisdiction, to be audited:

(i) at least once every 6 months while the authority is in force, and

(ii) once in the 6 months after the cancellation or expiry of the authority, and

(b) for each other authority in respect of the agency, to be audited at least once

every 12 months while the authority is in force.

- (2) The audit is to be conducted by a person appointed by the chief officer.
- (3) The person appointed to conduct the audit:
 - (a) may but need not be an officer of the law enforcement agency, and
 - (b) must not be a person:
 - (i) who granted, varied or cancelled any of the authorities to which the records under section 36 relate, or
 - (ii) who is or was an authorised person under any of the authorities to which those records relate.

Note—

The functions under this Act of the chief officer of a law enforcement agency (including that of granting authorities) may be delegated under section 39.

- (4) The results of an audit are to be reported to the chief officer.

Part 7 General

38 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

39 Delegation of chief officer's functions

- (1) Except as provided by this section (and despite any other Act or law to the contrary) the functions of a chief officer under this Act may not be delegated to any other person.
- (2) A chief officer may delegate to a senior officer of the law enforcement agency any of the chief officer's functions under this Act (except this power of delegation).
- (3) No more than 4 delegations may be in force under this section at any one time in respect of any one law enforcement agency.
- (4) In this section:

senior officer means a person for the time being holding office or acting as:

- (a) in relation to the NSW Police Force, an Assistant Commissioner or a Deputy Commissioner, and
- (b) in relation to the Independent Commission Against Corruption, an Assistant Commissioner, and

- (c) in relation to the New South Wales Crime Commission, the Director of Investigations or the Assistant Director of Investigations, and
- (d) in relation to the Police Integrity Commission, an Assistant Commissioner, the Director of Operations or the Commission Solicitor, and
- (e) in relation to Corrective Services NSW, an Assistant Commissioner or a Deputy Commissioner, and
- (f) in relation to an agency prescribed by the regulations as a law enforcement agency for the purposes of this Act, of or above such rank or position as may be prescribed by the regulations for the purposes of this provision in relation to that agency, and
- (g) in relation to the Australian Crime Commission, any of the following:
 - (i) the Director National Operations,
 - (ii) a Director,
 - (iii) a Head of Investigation or Head of Operation,
 - (iv) an office of the Australian Crime Commission that is prescribed by the regulations.

40 Other Acts not affected

This Act does not limit or otherwise affect the operation of the [Law Enforcement \(Controlled Operations\) Act 1997](#) or the [Witness Protection Act 1995](#).

41 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations, except section 33 (1) or (2), are to be dealt with summarily by the Local Court.
- (2) Chapter 5 of the [Criminal Procedure Act 1986](#) (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 33 (1) or (2).

42 Regulations

- (1) The Governor may make regulations for or with respect to prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.

43 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 3 months after the end of the period of 12 months.

44 (Repealed)

Schedule 1 Savings and transitional provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

appointed day means the day on which the repealed Act is repealed.

repealed Act means the *Law Enforcement and National Security (Assumed Identities) Act*

1998.

3 Existing approvals

- (1) The repealed Act (other than sections 11 and 12), as in force immediately before the appointed day, continues to apply in relation to an assumed identity approval granted under that Act and in force immediately before that day (***an existing approval***) as if that Act had not been repealed.
- (2) Any records kept under section 10 of the repealed Act in respect of an existing approval are taken to be records kept under section 36 of this Act.
- (3) A reference in section 35 of this Act to an authority or to an authorised person is taken to include a reference, respectively, to an existing approval or to a person in respect of whom an existing approval is granted.

4 Pending applications for approvals

- (1) An application made under the repealed Act for an assumed identity approval that, immediately before the appointed day, had not yet been determined, is to continue to be dealt with as if it were an application for an authority under this Act.
- (2) A reference in section 35 (1) (c) of this Act to an application for an authority is taken to include a reference to an application the subject of subclause (1).

5 Eligible Judges

A nomination or consent in force under section 8 of the repealed Act immediately before the appointed day is taken to be a declaration or consent in force under section 12 of this Act.

6 Audit under repealed Act

A reference in section 35 (1) (d) of this Act to an audit under section 37 of this Act is taken to include a reference to an audit under section 11 of the repealed Act if such an audit was carried out in the financial year concerned.

7 References to repealed Act

A reference in any Act (other than this Act), in any instrument made under an Act or in any document to the *Law Enforcement and National Security (Assumed Identities) Act 1998* is to be read:

- (a) as a reference to this Act, unless it relates to a matter that continues to be dealt with by the repealed Act, or
- (b) if it relates to such a matter—as a reference to the repealed Act.

Schedule 2 (Repealed)