

# Witness Protection Act 1995 No 87

[1995-87]



New South Wales

## Status Information

### Currency of version

Current version for 2 December 2024 to date (accessed 13 December 2024 at 15:27)

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Witness Protection Amendment Act 2024 No 89](#), Sch 1[1] [8] [21] [22] [26] [27] [33] and [53] (not commenced)

### Responsible Minister

- Minister for Police and Counter-terrorism

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 2 December 2024

# Witness Protection Act 1995 No 87



New South Wales

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# Witness Protection Act 1995 No 87



New South Wales

An Act to make provision to protect the safety and welfare of witnesses; to amend the [Criminal Procedure Act 1986](#); and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the [Witness Protection Act 1995](#).

### 2 Commencement

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

### 3 Definitions

(1) In this Act—

**approved authority** means—

- (a) the Commissioner of the Australian Federal Police, or
- (b) a Commissioner (however designated) of the police force of another State or a Territory, or
- (c) the Chief Executive Officer of the Australian Crime Commission, or
- (d) the Commissioner of the New South Wales Crime Commission, or
- (e) an authority or body of the Commonwealth, another State or a Territory that—
  - (i) is authorised to conduct inquiries or investigations in relation to conduct that constitutes, or is alleged to constitute, criminal conduct, misconduct or corruption, and
  - (ii) is declared by the Minister by order published in the Gazette to be an approved authority for the purposes of this Act.

**Commission** means the Law Enforcement Conduct Commission.

**communications** includes any transmission of information.

**complementary witness protection law** means a law of the Commonwealth, another State or a Territory that—

- (a) makes provision for the protection of witnesses, and
- (b) is declared by the Minister by order published in the Gazette to be a complementary witness protection law.

**Editorial note.**

For declarations under this definition see the Historical notes at the end of this Act.

**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.

**Editorial note.**

For declarations under this definition see the Historical notes at the end of this Act.

**designated position** means a position of a member of the NSW Police Force that has been declared in writing by the Commissioner of Police to be a designated position for the purposes of this Act.

**document** includes the following—

- (a) a biometric record,
- (b) an educational record,
- (c) a legal record,
- (d) a medical record.

**exercise** a function includes perform a duty.

**former participant**, for Part 3—see section 13A.

**function** includes a power, authority or duty.

**Inspector** has the same meaning as in the [Law Enforcement Conduct Commission Act 2016](#).

**participant** means a witness who is included in a witness protection program, whether temporarily or otherwise.

**register of births** means the register maintained under the [Births, Deaths and Marriages Registration Act 1995](#) in which births are registered.

**register of deaths** means the register maintained under the [Births, Deaths and Marriages Registration Act 1995](#) in which deaths are registered.

**register of marriages** means the register maintained under the *Births, Deaths and Marriages Registration Act 1995* in which marriages are registered.

**witness** has the meaning given by section 4.

**witness protection order** means an order of the Supreme Court referred to in section 15.

**witness protection program** means a witness protection program established and maintained under section 5.

(2) Notes in the text of this Act do not form part of this Act.

#### 4 Meaning of “witness”

(1) For the purposes of this Act, a **witness** is—

(a) a person who has given, or agreed to give, evidence on behalf of the Crown in—

(i) proceedings for an offence, or

(ia) proceedings relating to an application for a serious crime prevention order under the *Crimes (Serious Crime Prevention Orders) Act 2016*, or

(ii) hearings or proceedings before an authority that is declared by the Minister by order published in the Gazette to be an authority to which this paragraph applies, or

(b) a person who has given, or agreed to give, evidence otherwise than as mentioned in paragraph (a) in relation to the commission or possible commission of an offence against a law of New South Wales, the Commonwealth, another State or a Territory, or

(c) a person who has made a statement to the Commissioner of Police, another member of the NSW Police Force or an approved authority in relation to an offence against a law of New South Wales, the Commonwealth, another State or a Territory, or

(d) a person who, for any other reason, may require protection or other assistance under this Act.

(2) A person is taken to be a **witness** for the purposes of this Act if the person, because of the person’s association with a person to whom subsection (1) applies, may require protection or other assistance under this Act.

## **Part 2 Witness protection program**

### **5 Witness protection program**

- (1) The Commissioner of Police, through the establishment and maintenance of a witness protection program, is to take such action as the Commissioner thinks necessary and reasonable to protect the safety and welfare of a participant.
- (2) That action may include the following—
  - (a) making arrangements necessary—
    - (i) to allow the participant to establish a new identity, or
    - (ii) otherwise to protect the participant,
  - (b) relocating the participant,
  - (c) providing accommodation for the participant,
  - (d) providing transport for the property of the participant,
  - (e) providing reasonable financial assistance to the participant,
  - (e1) providing to the participant services in the nature of counselling (such as psychological counselling and drug and alcohol counselling) and vocational training services,
  - (f) (Repealed)
  - (g) doing any other things that the Commissioner of Police considers necessary to ensure the safety of the participant.
- (3) That action may also include doing things as a result of functions conferred on the Commissioner of Police under a complementary witness protection law.

### **6 Inclusion in the witness protection program**

- (1) The Commissioner of Police has the sole responsibility of deciding whether to include a witness in the witness protection program, including cases where an approved authority has requested that a witness be included in the program.
- (2) A witness may be included in the witness protection program only if—
  - (a) the Commissioner of Police has decided that the witness be included, and
  - (b) the witness agrees to be included, and
  - (c) the witness signs a memorandum of understanding in accordance with section 8 or—



- (i) if the witness is under the age of 18—a parent or guardian of the witness signs the memorandum, or
  - (ii) if the witness otherwise lacks legal capacity to sign the memorandum—a guardian or other person who is usually responsible for the care and control of the witness signs the memorandum.
- (3) If the Commissioner decides not to include a witness in the witness protection program, the Commissioner must inform the witness of the witness's rights under subsection (4).
- (4) A witness may appeal to the Commission within 3 days after being informed of a decision not to include the witness in the witness protection program. The Commission must determine the appeal within 7 days after the appeal is received. The Commission, in determining the appeal, may make any decision that could have been made by the Commissioner and the Commission's determination has effect according to its tenor.
- (5) Subsections (3) and (4) have effect despite subsections (1) and (2).
- (6) If—
  - (a) a parent or guardian of a witness signs a memorandum of understanding because the witness was under the age of 18, and
  - (b) the memorandum is still operating after the witness turns 18,the Commissioner of Police may require the witness to sign the memorandum.

## **7 Assessing witness for inclusion in witness protection program**

- (1) The Commissioner of Police, in deciding whether to include a witness in the witness protection program, must have regard to—
  - (a) the seriousness of the offence to which any relevant evidence or statement relates, and
  - (b) the nature and importance of any relevant evidence or statement, and
  - (c) the nature of the perceived danger to the witness, and
  - (d) the nature of the witness's association with other witnesses being assessed for inclusion in the program, and
  - (e) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness's suitability for inclusion in the program—that examination or evaluation, and
  - (f) whether there are viable alternative methods of protecting the witness, and

(g) whether the witness has a criminal record, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the program,

and may have regard to such other matters as the Commissioner of Police considers relevant.

(2) The Commissioner of Police must not include a witness in the witness protection program if the Commissioner does not, in his or her opinion, have enough information to assess the matters referred to in this section in relation to the witness.

## **8 Memorandum of understanding**

(1) A memorandum of understanding is to—

- (a) set out the basis on which a participant is included in the witness protection program and details of the protection and assistance that are to be provided, and
- (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.

(2) A memorandum of understanding in relation to a participant may also contain provisions relating to any one or more of the following—

- (a) any outstanding legal obligations of the participant and how they are to be dealt with,
- (b) any legal obligations that the participant may or may not enter into,
- (c) the surrender and issue of passports,
- (c1) the taking, provision and retention of photographs of the participant,
- (c2) the recording or monitoring of the participant's communications with another person, other than a person referred to in section 9A(2)(a)–(d),
- (d) the issue of any documents relating to the new identity of the participant,
- (e) the prohibition of the participant from engaging in specified activities,
- (f) marriage, family maintenance, taxation, welfare or other social or domestic obligations or relationships,
- (g) any other obligations of the participant,
- (h) consequences of the participant failing to comply with the provisions of the memorandum of understanding,

- (i) any other matter for which it may be necessary or convenient to make provision in the circumstances of the case.
- (3) A memorandum of understanding must contain a statement advising the participant of his or her right to complain to the Commission about the conduct of the Commissioner of Police or another member of the NSW Police Force in relation to the matters dealt with in the memorandum.
- (4) A memorandum of understanding must be signed by or on behalf of the witness in the presence of a member of the NSW Police Force who holds or occupies a designated position.
- (5) A witness becomes included in the witness protection program when the Commissioner of Police signs the memorandum of understanding.
- (6) The Commissioner of Police must, as soon as practicable after signing a memorandum of understanding, notify the relevant participant that it has been signed.

## **9 Variation of memorandum of understanding**

A memorandum of understanding may be varied with the consent of the participant and the Commissioner of Police.

### **9A Recording and monitoring of communications**

- (1) This section applies if a memorandum of understanding in relation to a participant contains a provision of the kind referred to in section 8(2)(c2).
- (2) The Commissioner of Police may record or monitor the participant's communications with another person, other than the following persons—
  - (a) the participant's legal representative,
  - (b) a member of staff of the Commission,
  - (c) the Inspector,
  - (d) a member of the NSW Police Force who is exercising functions in relation to police misconduct investigations.
- (3) The following must not be used in legal proceedings against a person who is not the participant—
  - (a) a recording obtained in accordance with the memorandum of understanding,
  - (b) a transcript or report of the recording.
- (4) Subsection (2) does not authorise the Commissioner of Police to intercept communications passing over a telecommunications system.

## 10 Temporary protection pending full assessment or termination

- (1) The Commissioner of Police may include in the witness protection program on a temporary basis a witness who, in the Commissioner's opinion, is in urgent need of protection.
- (2) The Commissioner of Police may require an interim memorandum of understanding to be signed by or on behalf of the witness.
- (3) Sections 6 and 7 do not prevent the exercise of any function under this section but, in so far as those sections have not been complied with before the witness is included in the witness protection program, they must be complied with as soon as practicable after the witness's inclusion.

## 11 Cessation of protection and assistance

- (1) Protection and assistance provided under the witness protection program to a participant must be terminated by the Commissioner of Police if the participant requests in writing that it be terminated.
- (2) Protection and assistance provided under the witness protection program may be terminated by the Commissioner of Police if—
  - (a) the participant deliberately breaches a term of the memorandum of understanding or a requirement or undertaking relating to the witness protection program, or
  - (b) the participant's conduct or threatened conduct is, in the opinion of the Commissioner, likely to threaten the security or compromise the integrity of the witness protection program, or
  - (c) the circumstances that gave rise to the need for protection and assistance for the participant cease to exist, or
  - (d) the Commissioner is satisfied—
    - (i) the participant has been sentenced to full-time detention after the participant's inclusion in the witness protection program, and
    - (ii) the sentence limits the Commissioner's ability to provide adequate protection to the participant,

and the Commissioner is of the opinion that, in the circumstances of the case, the protection and assistance should be terminated.

- (3) In this section—

**full-time detention** has the same meaning as in the [Crimes \(Sentencing Procedure\) Act 1999](#).

### **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.

### **12 Notice of involuntary termination or suspension and application for review**

- (1) If the Commissioner of Police makes a decision under section 11 (2) or 11A that protection and assistance provided under the witness protection program to a participant be terminated or suspended, the Commissioner must—
  - (a) take reasonable steps to notify the participant of the decision, and
  - (b) notify the relevant approved authority (if any) of the decision.
- (2) A participant who receives such a notification may, within 14 days (in the case of termination) or 2 days (in the case of suspension) after receiving the notice, apply in writing to the Commissioner for a review of the decision.
- (3) If an application is made, the Commissioner—
  - (a) must review the decision, and confirm, reverse or vary it, and
  - (b) before making that decision, must give the participant a reasonable opportunity to state his or her case, and
  - (c) after making that decision, must inform the participant in writing of the decision.
- (4) If the Commissioner confirms a decision to terminate or suspend protection and assistance provided under the witness protection program to a participant, the Commissioner must inform the participant of the participant's rights under subsection (5).
- (5) A participant may appeal to the Commission within 3 days after being informed of the confirmation of a decision to terminate or suspend protection and assistance. The Commission must determine the appeal within 7 days after the appeal is received. The Commission, in determining the appeal, may make any decision that could have been made by the Commissioner and the Commission's determination has effect according to its tenor.

### **13 Date on which involuntary termination or suspension takes effect**

- (1) A decision of the Commissioner of Police under section 11 (2) or 11A that protection and assistance provided under the witness protection program to a participant be terminated or suspended—
  - (a) if the participant’s location is not known and the Commissioner has taken reasonable steps to notify the participant of the decision but has been unable to do so—takes effect at the end of the appropriate review period after those steps were commenced, or
  - (b) if the participant does not apply for a review of the decision in accordance with section 12 (2)—takes effect at the end of the appropriate review period after the participant receives the notification, or
  - (c) if the participant applies for a review of the decision in accordance with section 12 (2) and the Commissioner notifies the participant that the decision has been reversed—has no effect, or
  - (d) if the participant applies for a review of the decision in accordance with section 12 (2) and the Commissioner notifies the participant that the decision has been varied—takes effect on the day specified by the Commissioner, or
  - (e) if the participant applies for a review of the decision in accordance with section 12 (2), the Commissioner notifies the participant that the decision has been confirmed and the participant does not appeal to the Commission under section 12 (5)—takes effect on the expiration of 3 days after the Commissioner notifies the participant of the decision on the review, or
  - (f) if the participant appeals to the Commission under section 12 (5)—has no effect.
- (2) A decision of the Commission under section 12 (5) that protection and assistance provided under the witness protection program to a participant be terminated or suspended takes effect when the Commission notifies the participant of the decision.
- (3) If the Commission has been unable to notify the participant of the decision despite taking reasonable steps to do so, the decision of the Commission takes effect when the Commission notifies the Commissioner of Police that the Commission 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.

## **Part 3 Protecting participants from identification**

### **13A Definition**

In this part—

**former participant** means a person—

- (a) provided with a new identity under the witness protection program, and
- (b) for whom protection and assistance under the witness protection program have been terminated.

### **14 Identifying documents**

Without limiting section 5, the Commissioner of Police may apply for any documents necessary—

- (a) to allow a participant to establish a new identity, or
- (b) otherwise to protect the participant, or
- (c) to restore a participant's previous identity.

### **15 Application for court order**

- (1) Application may be made to the Supreme Court for a court order authorising a specified person or a person of a specified class or description of persons—
  - (a) to make a new entry in the register of births or the register of marriages in respect of a witness, or
  - (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
  - (b) to issue in the witness's new identity a document of a kind previously issued to the witness.
- (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.
- (2) The applicant must provide such evidence as the Supreme Court may require to satisfy itself as to the matters specified in section 17.

### **16 Court proceedings under this Part to be closed to public**

All business of the Supreme Court under this Part is to be conducted in the absence of the public.

## **17 Power of Supreme Court to make order**

The Supreme Court may make a witness protection order if it is satisfied that—

- (a) the person named in the application as a participant—
  - (i) was a witness to or has knowledge of an indictable offence and is or has been a witness in criminal proceedings relating to the indictable offence, or
  - (ii) is a person who, because of the person's association with a person to whom subparagraph (i) applies, may require protection or other assistance under this Act or (in the case of an order applied for by the designated authority for a complementary witness protection law) under that law, and
- (b) the life or safety of the person may be endangered as a result of the person being a witness, and
- (c) the person has entered into—
  - (i) a memorandum of understanding under section 8, or
  - (ii) an interim memorandum of understanding under sections 8 and 10, or
  - (iii) for an order relating to an application made by the designated authority for a complementary witness protection law—a memorandum of understanding under the corresponding provision of that law, and
- (d) the person is likely to comply with the memorandum of understanding.

## **18 Effect of witness protection order**

- (1) On the making of a witness protection order of the kind referred to in section 15 (1)
  - (a) or (a1)—
    - (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
    - (b) the Registrar of Births, Deaths and Marriages is required to give the person access to the relevant register and to give such assistance as the person may require, and
    - (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).
- (2) A witness protection order may be used to change the identity of the participant to whom the order relates—



- (a) if the participant consents, and
- (b) not more than twice.

## **19 Effect of entries made under this Act in register of births, deaths or marriages**

- (1) An entry made under this Act in a register of births, deaths or marriages has effect as if it were a valid entry made under the *Births, Deaths and Marriages Registration Act 1995*.
- (1A) An applicant may apply to the Supreme Court for an order directing the Registrar of Births, Deaths and Marriages to cancel an entry made under this Act in a register of births, deaths or marriages.
- (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 referred to in subsection (1A).
- (3) In this section—  
**applicant** means—
  - (a) the Commissioner of Police, or
  - (b) the designated authority for a complementary witness protection law.

## **20 Special provision in case of marriage of participant**

A participant who has been provided with a new identity under the witness protection program must not marry unless—

- (a) the participant has given to the Commissioner of Police or an approved authority evidence that satisfies the Commissioner or the approved authority of the identity of the participant and that the participant is of marriageable age, and
- (b) if the participant has been married previously—the participant has given to the Commissioner or an approved authority evidence that satisfies the Commissioner or the approved authority that the person's previous spouse has died or that the participant is divorced, and
- (c) the participant has given to the Commissioner or an approved authority a statutory declaration to the effect that there is no legal impediment to the marriage and the Commissioner or the approved authority is not aware of any legal impediment to the marriage.

Maximum penalty—5 penalty units or imprisonment for 6 months.

## **21 Restoration of previous identity**

- (1) The Commissioner of Police may, if the Commissioner considers it appropriate in the circumstances, decide to take action to restore a former participant's previous identity.
- (2) The Commissioner of Police must take reasonable steps to notify the former participant of a decision under subsection (1).
- (3) If the Commissioner of Police proposes to take action to restore the former participant's previous identity, the former participant may apply in writing to the Commissioner for a review of the decision.
- (4) If an application is made, the Commissioner of Police—
  - (a) must review the decision and confirm, reverse or vary it, and
  - (b) before making that decision, must give the participant a reasonable opportunity to state his or her case, and
  - (c) after making that decision, must inform the participant in writing of the decision.
- (5) If the Commissioner of Police—
  - (a) takes action under this section to restore the previous identity of a person who was a participant, and
  - (b) the Commissioner notifies the former participant in writing that he or she is required to return to the Commissioner all documents provided to the former participant that relate to the new identity provided under the witness protection program,

the former participant must not, without reasonable excuse, refuse or fail to return those documents to the Commissioner within 14 days after receiving the notice.

Maximum penalty (subsection (5)): 10 penalty units.

## **22 Offences in relation to documents**

While an entry made under this Act in the register of births or the register of marriages continues in force, a person in respect of whom the entry is made must not use or obtain any document issued by the Registrar of Births, Deaths and Marriages that is based on the previous entry.

Maximum penalty—10 penalty units.

## **23 Information not to be disclosed**

- (1) A person must not, either directly or indirectly, record or disclose any information relating to the making of an entry under this Act in a register of births, deaths or marriages, unless it is necessary to do so—

- (a) for the purposes of this Act or a complementary witness protection law, or
- (b) for the purposes of an investigation by the Commission or the Inspector, or
- (c) to comply with an order of the Supreme Court.

Maximum penalty—imprisonment for 10 years.

- (2) Despite subsection (1), the Commissioner of Police may disclose the previous identity of a participant or former participant for the purpose of obtaining documents relating to the new identity of the participant or former participant.

#### **24 Non-disclosure of previous identity of participant**

- (1) If—

- (a) a participant who has been provided with a new identity under the witness protection program would, apart from this section, be required by or under a law of New South Wales to disclose his or her previous identity for a particular purpose, and
- (b) the Commissioner of Police has given the participant permission, in the form prescribed by the regulations, not to disclose his or her previous identity for that purpose,

the participant is not required to disclose his or her previous identity to any person for that purpose.

- (2) If a participant has been given permission under subsection (1) not to disclose his or her previous identity for a particular purpose, it is lawful for the participant, in any proceedings or for any purpose, under or in relation to the relevant law of New South Wales to claim that his or her previous identity is his or her only identity.
- (3) It is the duty of each person who is or has been associated with the administration of the witness protection program and who has obtained access to information or a document relevant to the witness protection program not to disclose that information or publish that document except as authorised by the Commissioner of Police.
- (4) If, under a complementary witness protection law of the Commonwealth, another State or a Territory, it is lawful for a participant not to disclose his or her previous identity for a purpose approved by the Commissioner of Police, the participant is not required to disclose his or her previous identity to another person for that purpose.
- (5) In addition to prescribing a form for the purposes of a permission under subsection (1), the regulations may prescribe a form for the purposes of a similar permission of the Commissioner of Police under a complementary witness protection law of the Commonwealth, another State or a Territory.

(6) In this section—

**participant** includes a former participant.

## **25 (Repealed)**

## **26 Identity of participant not to be disclosed in legal proceedings**

- (1) If, in any proceedings in a court, a tribunal or a Royal Commission or other commission of inquiry, the identity of a participant is in issue or may be disclosed, the court, tribunal or commission must, unless it considers that the interests of justice require otherwise—
  - (a) hold that part of the proceedings that relates to the identity of the participant in private, and
  - (b) make such order relating to the suppression of publication of evidence given before the court, tribunal or commission as, in its opinion, will ensure that the identity of the participant is not disclosed.
- (2) If in any proceedings in a court, a tribunal or a Royal Commission or other commission of inquiry, a participant who has been provided with a new identity under the witness protection program is giving evidence, the court, tribunal or commission may hold that part of the proceedings in the absence of the public.
- (3) This section does not limit the operation of Part 3A (Proceedings involving persons with new identity).

## **27 Documentation restrictions**

The Commissioner of Police must not obtain documentation for a participant that represents that the participant—

- (a) has a qualification that he or she does not have, or
- (b) is entitled to a benefit that he or she is not entitled to.

## **28 Special commercial arrangements by Commissioner of Police**

The Commissioner of Police may make commercial arrangements with a person under which a participant is able to obtain a benefit under a contract or arrangement without revealing his or her previous identity.

## **29 Dealing with rights and obligations of participant**

- (1) If a participant has any outstanding rights or obligations or is subject to any restrictions, the Commissioner of Police is to take such steps as are reasonably practicable to ensure that—
  - (a) those rights or obligations are dealt with according to law, or

(b) the person complies with those restrictions.

(2) That action may include—

- (a) providing protection for the participant while the participant is attending court, or
- (b) notifying a party or possible party to legal proceedings that the Commissioner of Police will, on behalf of the participant, accept process issued by a court, a tribunal or a Royal Commission or other commission of inquiry and nominating a member of the NSW Police Force for the purpose.

### **30 Avoidance of obligations by participant**

- (1) If the Commissioner of Police is satisfied that a participant who has been provided with a new identity under the witness protection program is using the new identity—
  - (a) to avoid obligations that were incurred before the new identity was established, or
  - (b) to avoid complying with restrictions that were imposed on the person before the new identity was established,

the Commissioner is to give notice in writing to the participant stating that he or she is so satisfied.

- (2) The notice is also to state that, unless the participant satisfies the Commissioner of Police that the obligations will be dealt with according to law or the restrictions will be complied with, the Commissioner will take such action as he or she considers reasonably necessary to ensure that they are dealt with according to law or complied with.
- (3) That action may include informing a person who is seeking to enforce rights against the participant of the details of any property (whether real or personal) owned by the participant under his or her previous identity.

### **31 Payments under witness protection program**

- (1) The Commissioner of Police has a discretion to certify in writing that the whole or part of an amount held by a participant represents payments made to the participant under the witness protection program.
- (2) An amount so certified cannot be confiscated or restrained, and cannot be applied in payment of pecuniary penalties, under the [Confiscation of Proceeds of Crime Act 1989](#).

## **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) if the protected person is involved in a relevant proceeding under the person's new identity—the person's previous identity, or
- (b) if the protected person is involved in a relevant proceeding 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 2009](#),
- (c) a hearing under the [Crime Commission Act 2012](#),
- (d) a hearing under the [Law Enforcement Conduct Commission Act 2016](#).

### **31B Requirement if person given new identity becomes involved in relevant proceeding**

(1) This section applies if a protected person becomes involved in a relevant proceeding before a court, whether under the person's new identity or previous identity, where the person's identity is in issue.

(1A) The protected person must notify the Commissioner of Police of the person's involvement in the proceeding as soon as practicable after becoming involved.

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 in accordance with any requirements prescribed by the regulations.

(2A) Subject to the regulations, a non-disclosure certificate may be given to the court—

- (a) before the relevant proceeding commences, and
- (b) in the absence of a party to the proceeding.

(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

involved 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, and

(d) that the person is entitled to give evidence by audio visual link under section 31G(1), subject to—

(i) a court order under section 31G(2), and

(ii) section 31G(5), and

(e) other information about the person the Commissioner of Police considers necessary or appropriate to include.

- (2) The certificate must not include any information that may enable the protected identity of the person to be revealed, unless the Commissioner of Police is satisfied the inclusion of the information is necessary or appropriate.

### **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 the application of a party or of its own motion, 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—an Australian 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.

## **Part 3B Giving evidence by audio visual link**

### **31F Definitions**

In this Part—

**audio visual link** means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

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

**protected witness** means a person who is, or has been, a participant in a witness protection program.

**relevant proceeding** means any of the following—

- (a) a proceeding before a court,
- (b) an inquest or inquiry under the *Coroners Act 2009*,
- (c) a hearing under the *Crime Commission Act 2012* or the *Special Commissions of Inquiry Act 1983*,
- (d) an inquiry under the *Royal Commissions Act 1923*,
- (e) an examination under the *Law Enforcement Conduct Commission Act 2016*.

### **31G Protected witness to give evidence by audio visual link**

- (1) A protected witness who gives evidence in a relevant proceeding before a court is entitled to give that evidence by means of audio visual link.
- (2) However, a protected witness is not entitled to give evidence by means of audio visual link if the court orders that the protected witness may not give evidence by

means of audio visual link.

- (3) The court may make an order under subsection (2) only if the court is satisfied that it is not in the interests of justice for the protected witness to give evidence by means of audio visual link.
- (4) Without limiting subsection (3), a court may take into account the safety of the protected witness and the nature of the evidence when deciding whether or not to make an order under subsection (2).
- (5) Subsection (1) does not apply unless the necessary audio visual links are available or can reasonably be made available.

### **31H Proceedings may be moved to allow use of audio visual link**

- (1) If the court is not equipped with facilities or technology for the giving of evidence by means of audio visual link, or the court otherwise considers it appropriate, the court may adjourn the relevant proceeding or part of the relevant proceeding to a court or place that is equipped with the facilities or technology to enable a protected witness to give evidence by means of audio visual link.
- (2) If a protected witness gives evidence by means of audio visual link from a location outside a court—
  - (a) the location is taken to be part of the court in which the relevant proceeding is being held, and
  - (b) the court may order that a court officer, or any other person approved by the court, including a police officer, be present at the location.

### **31I Use of audio visual link**

An audio visual link used under this Part for the giving of evidence by a protected witness in a relevant proceeding is to be operated in a way that enables the persons who have an interest in the proceeding to see the protected witness on a television monitor.

### **31J Application of [Evidence \(Audio and Audio Visual Links\) Act 1998](#)**

Sections 5D, 20D and 20E of the [Evidence \(Audio and Audio Visual Links\) Act 1998](#) apply to a relevant proceeding in which a protected witness gives evidence by means of audio visual link under this Part in the same way as they apply to proceedings before a NSW court in which evidence is given by means of audio visual link under that Act.

## **Part 4 Miscellaneous**

### **32 Offence—disclosures concerning participants**

A person must not, except in accordance with this Act or a complementary witness protection law, or in accordance with an order of the Supreme Court under section 34,

disclose information—

- (a) about the identity or location of a person who is or has been—
  - (i) a participant, or
  - (ii) a person on a witness protection program conducted by the Commonwealth, another State or a Territory under a complementary witness protection law, or
- (b) that compromises the security of such a person.

Maximum penalty on indictment: imprisonment for 10 years.

### **33 Offence—disclosure by participants and others**

- (1) A person must not, either directly or indirectly, disclose or record—
  - (a) the fact that the person, or a person with whom the person is associated, has entered into a memorandum of understanding, or
  - (b) details of a memorandum of understanding, or
  - (c) the fact that the person is or was a participant in the witness protection program, or
  - (d) confidential information relating to the witness protection program.

Maximum penalty—imprisonment for 5 years.

- (1A) Subsection (1)(c) does not apply to a person if—
  - (a) the person has a reasonable excuse for recording or disclosing the fact, and
  - (b) the reasonable excuse relates to a health or safety risk.
- (1B) For subsection (1A)(a) and (b), the onus of proof lies with the person seeking to rely on the exemption.

- (2) This section does not apply to a disclosure or recording—
  - (a) that has been authorised by the Commissioner of Police, or
  - (b) that is necessary for the purposes of an investigation by the Commission or the Inspector, or
  - (c) that is necessary to comply with an order of the Supreme Court.

- (3) In this section—

**confidential information**, in relation to the witness protection program, means the following—

- (a) information relating to a thing done by the Commissioner of Police or another member of the NSW Police Force under this Act,
- (b) information about how the witness protection program operates,
- (c) information relating to the identity of a member of the NSW Police Force who is or has been involved in the witness protection program.

**person** means the following—

- (a) a participant,
- (b) a former participant,
- (c) a witness who is being, or has been, assessed for inclusion in the witness protection program.

#### **34 Certain persons not to be required to disclose information**

- (1) This section applies to a person who is or has been—
  - (a) the Commissioner of Police, or
  - (b) a member of the NSW Police Force, or
  - (c) the Registrar of Births, Deaths and Marriages, or
  - (d) a person employed in the administration of the *Registration of Births, Deaths and Marriages Act 1973* or the *Births, Deaths and Marriages Registration Act 1995*, or
  - (e) an officer of the Commission (with the meaning of the *Law Enforcement Conduct Commission Act 2016*), or
  - (f) the Inspector, or
  - (g) an approved authority, or
  - (h) a member of the staff of an approved authority, 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.
- (2) Unless the Supreme Court makes an order that provides to the contrary, or the proceedings relate to an offence under this Act, a person to whom this section applies cannot be required in any proceedings in a court, tribunal or a Royal Commission or other commission of inquiry to produce any document or to divulge or communicate any matter or thing relating to the exercise of functions under this Act or the protection of witnesses included in the witness protection program.

### **35 Restriction on issue of New South Wales identity documents**

- (1) New South Wales identity documents must not be issued for a person who is on a witness protection program being conducted by the Commonwealth, another State or a Territory unless—
  - (a) an arrangement is in force between the Minister and the relevant Commonwealth, State or Territory Minister relating to the issue of New South Wales identity documents for the purposes of that program, and
  - (b) a complementary witness protection law is in force in the Commonwealth, State or Territory.
- (2) Without limiting the matters to which such an arrangement may relate, an arrangement may relate to—
  - (a) the procedures to be adopted for requesting the issue of New South Wales identity documents for the purposes of such a program, and
  - (b) guidelines for the issue of those documents and other documents.

### **36 Arrangements with approved authorities**

- (1) The Commissioner of Police may make arrangements with an approved authority about any matter in connection with the administration of a complementary witness protection law.
- (2) Without limiting the coverage of those arrangements, they—
  - (a) may provide for the Commissioner of Police or a member of the NSW Police Force to exercise functions conferred by a complementary witness protection law, and
  - (b) must include procedures under which the authority shares with the State the costs incurred under those arrangements, and
  - (c) may provide for the authority to make available to the Commissioner of Police such statements, transcripts of evidence and other documents as will assist the Commissioner in deciding—
    - (i) whether to provide protection or assistance to a person under this Act, and
    - (ii) what protection and assistance are appropriate for a person, and
  - (d) may confer functions under complementary witness protection laws on the Commissioner of Police.

### **37 Authorisation of approved authorities**

The Minister, by notice published in the Gazette, may authorise an approved authority to exercise functions conferred on the Commissioner of Police under this Act for the purposes

of any arrangement entered into by the Commissioner under section 36 or the corresponding provision of a complementary witness protection law.

### **38 Provision of information to approved authorities**

(1) If—

- (a) a participant has been provided with a new identity or relocated under this Act, and
- (b) an approved authority notifies the Commissioner of Police that the participant is under investigation for, or has been arrested for or is charged with, an offence against a law of New South Wales, the Commonwealth, another State or a Territory, the maximum penalty for which is or includes imprisonment for a period of more than one year,

the Commissioner of Police may do any one or more of the things in subsection (2).

(2) If subsection (1) applies, the Commissioner of Police may—

- (a) release to the approved authority the new identity or location of the participant,
- (b) provide the approved authority with the criminal record and the fingerprints of the participant,
- (c) release to the approved authority such other information relating to the participant as the Commissioner of Police considers appropriate in the circumstances,
- (d) if the Commissioner of Police considers it appropriate in the circumstances, allow officers of the approved authority to interview members of the NSW Police Force in relation to the participant.

(3) In this section—

***participant*** includes a former participant.

### **39 Delegation**

- (1) The Commissioner of Police may delegate all or any of his or her functions under this Act, other than this power of delegation, to a member of the NSW Police Force who holds or occupies a designated position.
- (2) A member of the NSW Police Force who holds or occupies a designated position may exercise functions delegated to the member by the Commissioner of Police under a complementary witness protection law.

### **40 Immunity from legal proceedings for exercise of functions under Act**

A person is not liable to any action, suit or proceedings (including criminal proceedings) in

respect of an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a function conferred by or under this Act (including an order of the Supreme Court under this Act).

#### **41 Proceedings for offences**

- (1) Proceedings for an offence against this Act, except section 32, are to be dealt with summarily before 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 32.

#### **42 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

#### **43 Exclusion of provisions of *Births, Deaths and Marriages Registration Act 1995***

Divisions 4 and 5 of Part 3, Part 5 and section 59 (2) of the *Births, Deaths and Marriages Registration Act 1995* do not apply to or in respect of anything done under the authority of this Act.

#### **44 Relationship with other witness protection arrangements**

Nothing in this Act affects—

- (a) section 44 (Protection of witnesses) of the *Crime Commission Act 2012*, or
- (b) section 50 of the *Independent Commission Against Corruption Act 1988*, or
- (c) section 26 of the *Royal Commission (Police Service) Act 1994*, or
- (d) section 51 of the *Police Integrity Commission Act 1996*.

#### **45 Special provisions for former participants in NSW Police Witness Protection Plan**

Despite section 17, the Supreme Court is not required to be satisfied of the matters referred to in section 17 (b), (c) and (d) before making a witness protection order if satisfied that—

- (a) the person named in the application as a witness is a former participant in the New South Wales Police Witness Protection Plan in force before the commencement of section 5 or a person who, because of the person's association with a former participant in that Plan, may require protection or other assistance under this Act, and
- (b) the order is sought for the purpose of confirming an identity established while that Plan was in operation.

## **46 Savings, transitional and other provisions**

Schedule 1 has effect.

## **47 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 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Savings, transitional and other provisions**

(Section 46)

## **Part 1 Preliminary**

### **1 Regulations**

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the following Acts—
  - this Act
  - Witness Protection Amendment Act 2002*
  - any other Act that amends this Act
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—
  - (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 NSW Police Witness Protection Plan**

The New South Wales Police Witness Protection Plan in force immediately before the commencement of section 5 is taken to be a witness protection program for the purposes of this Act.

### **3 Memorandum of understanding**

A memorandum of understanding entered into under the New South Wales Police Witness Protection Plan and in force immediately before the commencement of section 8 is taken to be a memorandum of understanding under that section.

### **4 Protected witnesses**

A person who, for his or her safety and welfare has entered into a memorandum of understanding to which clause 3 applies is taken to be a witness for the purposes of this Act.

## **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.

## **Part 4 Provisions consequent on [Law Enforcement Conduct Commission Act 2016](#)**

### **11 Appeals and complaints**

An amendment made to section 6 (4), 8 (3) or 12 (5) by the [Law Enforcement Conduct Commission Act 2016](#) does not apply in respect of an appeal or complaint received by the Ombudsman before the commencement of the amendment and the Ombudsman may deal with the appeal or complaint as if the amendment had not been made.