



AUSTRALIAN CAPITAL TERRITORY

Witness Protection Act 1996

No. 65 of 1996

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AUSTRALIAN CAPITAL TERRITORY

Witness Protection Act 1996

No. 65 of 1996

An Act to make provision to protect the safety and welfare of witnesses

[Notified in ACT Gazette S321: 3 December 1996]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Witness Protection Act 1996*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. In this Act—

“approved authority” means—

- (a) the Commissioner of Police;
- (b) a Commissioner (however designated) of the police force of a State or another Territory;
- (c) the Chairperson of the National Crime Authority; or
- (d) an authority or body of the Commonwealth, a State or another 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 notice published in the *Gazette* to be an approved authority for the purposes of this Act;

“Chief Police Officer” means the police officer who is responsible for the day-to-day administration and control of police services in the Territory;

“Commonwealth Act” means the *Witness Protection Act 1994* of the Commonwealth;

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

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

“Court” means the Supreme Court;

“designated position” means a position of a police officer that has been declared in writing by the Chief Police Officer to be a designated position for the purposes of this Act;

“participant” means a witness who is included in a witness protection program;

“Register of Births” means the register referred to in section 11 of the *Registration of Births, Deaths and Marriages Act 1963*;

“Register of Marriages” means the register referred to in section 40 of the *Registration of Births, Deaths and Marriages Act 1963*;

“Registrar” means the Registrar of Births, Deaths and Marriages;

“witness” means—

- (a) a person who has given, or agreed to give, evidence on behalf of the Crown in the right of the Territory in—
 - (i) proceedings for an offence; or
 - (ii) hearings or proceedings before an authority that is declared by the Minister by notice published in the *Gazette* to be an authority to which this paragraph applies;
- (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 the Territory, the Commonwealth, a State or another Territory;
- (c) a person who has made a statement to the Chief Police Officer, another police officer or an approved authority in relation to an offence against a law of the Territory, the Commonwealth, a State or another Territory;
- (d) a person who, for any other reason, may require protection or other assistance under this Act; or
- (e) a person who, because of his or her relationship to, or association with, a person referred to in paragraph (a), (b), (c) or (d) may require protection or other assistance under the witness protection program;

“witness protection order” means an order of the Supreme Court under Part III;

“witness protection program” means the National Witness Protection Program established under the Commonwealth Act.

PART II—WITNESS PROTECTION PROGRAM

Witness protection program

4. (1) The Chief Police Officer may make arrangements with the Commissioner of the Australian Federal Police for the provision of services under the witness protection program for the taking of such action as the Chief Police Officer thinks necessary and reasonable to protect the safety and welfare of a witness.

- (2) The action that may be taken under subsection (1) includes—
- (a) making arrangements necessary—
 - (i) to allow the witness to establish a new identity; or
 - (ii) otherwise to protect the witness;
 - (b) relocating the witness;
 - (c) providing accommodation for the witness;
 - (d) providing transport for the property of the witness;
 - (e) providing reasonable financial assistance to the witness;
 - (f) permitting persons involved in the administration of the witness protection program to use assumed names in carrying out their duties and to have documentation supporting those assumed names;
 - (g) doing any other thing permitted under the witness protection program to ensure the safety of the witness; or
 - (h) doing things as a result of functions conferred on the Chief Police Officer under a complementary witness protection law.

Assessing witness for inclusion in witness protection program

5. The assessment and inclusion of a witness in the witness protection program shall be in accordance with the provisions of the Commonwealth Act for the assessment and inclusion of a witness (within the meaning of that Act) in that program as if each reference in sections 7 and 8 of the Commonwealth Act to the Commissioner were a reference to the Chief Police Officer.

PART III—PROTECTING WITNESSES FROM IDENTIFICATION

Identifying documents

6. Without limiting section 4, the Chief Police Officer may apply for any documents necessary—
- (a) to allow a witness to establish a new identity; or
 - (b) otherwise to protect the witness.

Application for court order

7. (1) The Chief Police Officer may apply to the Court for an 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

- (b) to issue in the witness's new identity a document of a kind previously issued to the witness.

(2) The Chief Police Officer shall provide such evidence as the Court may require to satisfy itself as to the matters specified in section 8.

Power of Supreme Court to make order

8. The Court may make a witness protection order if satisfied that—

- (a) the person named in the application as a witness—
 - (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 his or her relationship to, or association with, a person to whom subparagraph (i) applies may require protection or other assistance under this Act;
- (b) the life or safety of the person may be endangered as a result of the person being a witness;
- (c) a memorandum of understanding in accordance with section 9 of the Commonwealth Act has been entered into between the witness and Chief Police Officer; and
- (d) the person is likely to comply with the memorandum of understanding.

Court proceedings under this Part to be closed to public

9. The hearing of an application under this Part is not open to the public.

Effect of witness protection order

10. On the making of a witness protection order of the kind referred to in paragraph 7 (1) (a)—

- (a) a person authorised to do so by the order may make any entries in the Register of Births or the Register of Marriages that are necessary to give effect to the order;
- (b) the Registrar is required to give the person access to the relevant register and to give such assistance as the person may require; and
- (c) the Chief Police Officer shall maintain records showing details of the original birth entry or the original marriage entry of each person in respect of whom an entry is made under paragraph (a).

Effect of entries made in Registers

11. (1) An entry made under this Act in the Register of Births or the Register of Marriages has effect as if it were an entry made under the *Registration of Births, Deaths and Marriages Act 1963*.

(2) An entry made under this Act in the Register of Births or the Register of Marriages can only be cancelled by the Registrar if the Court, after being satisfied that the witness is no longer included in the witness protection program, has made an order on the application of the Chief Police Officer directing that the entry be cancelled.

Offences in relation to documents

12. 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 shall not use or obtain any document issued by the Registrar that is based on the previous entry.

Penalty: 50 penalty units.

Information not to be disclosed

13. (1) A person shall not, either directly or indirectly, make a record of, disclose, or communicate to another person any information relating to the making of an entry under this Act in the Register of Births or the Register of Marriages, unless it is necessary to do so—

- (a) for the purposes of this Act;
- (b) for the purposes of an investigation by the Ombudsman; or
- (c) to comply with an order of the Court.

Penalty: Imprisonment for 10 years.

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

Non-disclosure of former identity of participant

14. (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 the Territory to disclose his or her former identity for a particular purpose; and

- (b) the Chief Police Officer has given the participant permission, in a form approved by the Chief Police Officer, not to disclose his or her former identity for that purpose;

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

(2) If a participant has been given permission under subsection (1) not to disclose his or her former 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 the Territory to claim that his or her new 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 Chief Police Officer.

(4) If, under a complementary witness protection law of the Commonwealth, a State or another Territory, it is lawful for a participant not to disclose his or her former identity for a purpose approved by the Chief Police Officer, the participant is not required to disclose his or her former 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 Chief Police Officer under a complementary witness protection law of the Commonwealth, a State or another Territory.

(6) In this section—

“participant” includes a person who—

- (a) was provided with a new identity under the witness protection program; and
- (b) is no longer a participant but retains that identity.

Requirement where participant becomes a witness in criminal proceedings

15. (1) If—

- (a) a participant is provided with a new identity under the witness protection program;
- (b) the person, whether or not he or she remains a participant, retains that identity;
- (c) the person is to be a witness in a criminal proceeding under that identity; and

(d) the person has a criminal record under his or her former identity; the person shall notify the Chief Police Officer that the person is to be a witness in the proceeding.

(2) After being notified under subsection (1), the Chief Police Officer may take any action he or she considers appropriate in the circumstances, including disclosing to the Court, the prosecutor and the accused person or the accused person's legal representative the criminal record of the participant or former participant.

Identity of participant not to be disclosed in legal proceedings

16. (1) If, in any proceedings in a court, a tribunal or a Royal Commission or Board of Inquiry, the identity of a participant is in issue or may be disclosed, the court, tribunal, Commission or Inquiry shall, 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, Commission or Inquiry that, 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 Board of Inquiry, a participant who has been provided with a new identity under the witness protection program is giving evidence, the court, tribunal, Commission or Inquiry may hold that part of the proceedings in the absence of the public.

Documentation restrictions

17. The Chief Police Officer shall 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.

Special commercial arrangements by Chief Police Officer

18. The Chief Police Officer 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 former identity.

Dealing with rights and obligations of participant

19. (1) If a participant has any outstanding rights or obligations or is subject to any restrictions, the Chief Police Officer 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) The steps that may be taken under subsection (1) 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 Chief Police Officer will, on behalf of the participant, accept process issued by a court, a tribunal or a Royal Commission or Board of Inquiry and nominating a police officer for the purpose.

Avoidance of obligations by participant

20. (1) If the Chief Police Officer 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 Chief Police Officer shall give notice in writing to the participant stating that he or she is so satisfied.

(2) A notice under subsection (1) shall also state that, unless the participant satisfies the Chief Police Officer that the obligations will be dealt with according to law or the restrictions will be complied with, the Chief Police Officer 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) The action that may be taken under subsection (2) includes 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 former identity.

PART IV—MISCELLANEOUS

Offence—disclosures concerning participants

21. A person shall not, except in accordance with this Act or a complementary witness protection law, 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, a State or another Territory under a complementary witness protection law; or

(b) that compromises the security of such a person.

Penalty: Imprisonment for 10 years.

Offence—disclosures by participants

22. (1) Subject to subsection (2), a participant or a former participant shall not, either directly or indirectly, disclose or communicate to another person—

- (a) the fact that he or she or a member of his or her family has entered a memorandum of understanding under section 9 of the Commonwealth Act;
- (b) details of the memorandum of understanding;
- (c) information relating to anything done by the Chief Police Officer or another police officer under this Act; or
- (d) information about any police officer gained by the person as a result of anything done under this Act.

Penalty: Imprisonment for 5 years.

(2) This section does not apply to a disclosure or communication—

- (a) that has been authorised by the Chief Police Officer;
- (b) that is necessary for the purposes of an investigation by the Ombudsman; or
- (c) that is necessary to comply with an order of the Court.

Certain persons not to be required to disclose information

23. (1) This section applies to a person who is or has been—

- (a) the Chief Police Officer;
- (b) any other police officer;
- (c) the Registrar of Births, Deaths and Marriages;
- (d) a person employed in the administration of the *Registration of Births, Deaths and Marriages Act 1963*;
- (e) the Ombudsman;
- (f) a member of the staff of the Ombudsman;
- (g) an approved authority; or
- (h) a member of the staff of an approved authority.

(2) Unless the 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, a tribunal or a Royal Commission or Board of Inquiry to produce any document or to divulge or communicate any matter or thing relating to the performance of his or her duties in accordance with this Act.

Restriction on issue of Territory identity documents

24. (1) Territory identity documents shall not be issued for a person who is on a witness protection program being conducted by the Commonwealth, a State or another Territory unless—

- (a) an arrangement is in force between the Minister and the relevant Commonwealth, State or other Territory Minister relating to the issue of Territory identity documents for the purposes of that program; and
- (b) a complementary witness protection law is in force in the Commonwealth, State or another 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 Territory identity documents for the purposes of such a program; and
- (b) guidelines for the issue of those documents and other documents.

Arrangements with approved authorities

25. (1) The Chief Police Officer 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 the arrangements referred to in subsection (1), the arrangements—

- (a) may provide for the Chief Police Officer or another police officer to exercise functions conferred by a complementary witness protection law;
- (b) shall include procedures under which the authority shares with the Territory the costs incurred under those arrangements; and
- (c) may provide for the authority to make available to the Chief Police Officer such statements, transcripts of evidence and other documents as will assist the Chief Police Officer 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 Chief Police Officer.

Authorisation of approved authorities

26. The Minister may, by notice in the *Gazette*, authorise an approved authority to exercise functions conferred on the Chief Police Officer under this Act for the purposes of any arrangement entered into by the Chief Police Officer under section 25 or the corresponding provision of a complementary witness protection law.

Immunity from legal proceedings for exercise of functions under Act

27. 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 this Act.

Proceedings for offence

28. An offence against this Act, except section 21, is punishable on summary conviction.

Regulations

29. The Executive may make regulations for the purposes of this Act.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 26 September 1996]