

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

WITNESS PROTECTION BILL 1996

EXPLANATORY MEMORANDUM

Minister for Police and Emergency Services

Gary Humphries MLA

WITNESS PROTECTION BILL 1996

GENERAL OUTLINE

The Witness Protection Bill has the following main purposes.

- enable formal participation by the ACT in the Commonwealth Government's National Witness Protection Program (NWPP);
- satisfy the requirements of s 24 of the *Witness Protection Act 1994* (C'th), in the absence of satisfactory arrangements for which, the issue of Commonwealth identity documents is restricted (after 18 April 1996);
- confer certain powers to the ACT Chief Police Officer to enable that office holder to determine whether to include an ACT witness (and specified dependents) in the NWPP and the level of protection and assistance that is appropriate for a witness;
- provide legislative authority for the ACT Registrar-General to issue (and revoke) birth and marriage certificates for use in the NWPP;
- satisfy the requirements of other states (such as NSW, Victoria and South Australia) which require complementary legislation in order to issue documents for protected witnesses in other jurisdictions;
- provide for an independent body such as the Supreme Court to have responsibility for hearing applications and ordering the issue of identification for protected witnesses within the satisfaction of certain stipulated criteria;
- to impose ACT requirements, and satisfy those of other jurisdictions (the Commonwealth and the States), which make it an offence to disclose information about a protected witness under the ACT's, or a complementary, witness protection law;

Financial Impact

Under the AFP National Witness Protection Program the cost varies depending on the level of protection required. The management of the program is the responsibility of the Australian Federal Police.

DETAILS OF THE BILL

Part I Preliminary

Clause 1 Short Title

This clause sets out the name also called the short title of the proposed Act

Clause 2 Commencement

This clause provides that the proposed Act will commence on a day or days by Gazette notice

Clause 3 Interpretation

This clause contains definitions for the purposes of the proposed Act

Part II Witness Protection Program

Clause 4 Witness Protection Program

This clause authorises the Chief Police Officer, through a witness protection program, to provide for the safety and welfare of witnesses, including things done as a result of powers and functions conferred on the Chief Police Officer under a complementary witness protection law

Clause 5 Assessing witness for inclusion in witness protection program

This clause requires that the assessment and inclusion of a witness will comply with the Commonwealth legislation relating to witness protection

Part III Protecting Witnesses from Identification

Clause 6 Identifying documents

This clause empowers the Chief Police Officer to apply for documents that will enable a witness to change his or her identity or that will otherwise protect a witness

Clause 7 Application for court order

This clause enables the Chief Police Officer to apply for a Supreme Court order, to make entries in the register of births or the register of marriages or for the issue of identifying documents for a witness in the witness' new identity

Clause 8 Power of Supreme Court to make order

This clause specifies the matters about which the Supreme Court must be satisfied before it can make a witness protection order. These matters include satisfaction that the person in question was a witness or has relevant information or has a relationship with a witness; the endangerment to the safety of the person that arises from their status as a witness; that a memorandum of understanding has been entered into by the witness and the Chief Police Officer; and that the court is satisfied that the person is likely to comply with the memorandum of understanding.

Clause 9 Court proceedings under this Part to be closed to the public

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

Clause 10 Effect of witness protection order

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

Clause 11 Effect of entries made in Registers

This clause further specifies the action that may or must be taken in order to give effect to a witness protection order. Such actions include: the making of entries in the register of births or the register of marriages as necessary to give effect to the order; and the maintenance by the Chief Police Officer of records detailing the original birth entry or the original marriage entry.

Clause 12 Offences in relation to documents

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

Clause 13 Information not to be disclosed

This clause makes it an offence to reveal the change in a witness' identity unless it is done pursuant to the exceptions set out within the clause.

Clause 14 Non-disclosure of former identity of participant

This clause enables a witness who has been provided with a new identity to refuse to disclose his or her former identity if the witness would otherwise be required by law to do so, if the Chief Police Officer or an approved authority has given them permission to do so. It also makes it lawful for the person to claim in legal proceedings that the new identity is their only identity.

Clause 15 Requirement where participant becomes a witness in criminal proceedings

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

Clause 16 Identity of participant not to be disclosed in legal proceedings

This clause establishes procedures to protect the identity of a witness who is called to give evidence before a court, tribunal or commission, including the conduct of proceedings in private and the suppression of the publication of evidence which may identify the participant.

Clause 17 Documentation restrictions

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

Clause 18 Special commercial arrangements by the Chief Police Officer

This clause enables the Chief Police Officer to make commercial arrangements for a witness so as not to reveal his or her former identity

Clause 19 Dealing with rights and obligations of participant

This clause enables the Chief Police Officer to take action to ensure the rights of a witness are protected and that a witness meets his or her legal obligations

Clause 20 Avoidance of obligations by participant

This clause enables the Chief Police Officer to take action to ensure that a witness does not avoid obligations incurred by, or restrictions imposed on, the witness before the witness was provided with a new identity

Part IV Miscellaneous**Clause 21 Offence-disclosures concerning participants**

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

Clause 22 Offence-disclosures by participants

This clause makes it an offence for a person who is, or has been, a witness under protection to disclose that he or she, or a member of his or her family, has entered into a memorandum of understanding under the proposed Act

or to disclose information obtained as a result of certain things done under the proposed Act.

Subclause (2) provides for exemption from the non-disclosure clause where authorisation has been provided by the Chief Police Officer; the information is required for the purposes of an investigation by the Ombudsman; or it is necessary to comply with an order of the Supreme Court.

Clause 23 Certain persons not to be required to disclose information

This clause protects persons engaged in the administration of the proposed Act from being compelled to disclose information obtained in the course of their administration, unless a Supreme Court makes an order to the contrary.

Clause 24 Restriction on issue of Territory identity documents

This clause controls the issue of ACT identity documents to persons on witness protection programs conducted by the Commonwealth, a State or the Northern Territory where arrangements at ministerial level are in force.

Clause 25 Arrangements with approved authorities

This clause enables the Chief Police Officer to make arrangements with other police and law enforcement agencies throughout Australia about matters connected with the administration of witness protection laws of other Australian jurisdictions. The arrangements include the exercise of functions conferred by a complementary witness protection law; procedures for reimbursement of costs incurred under the scheme; access to documentation which may assist the Chief Police Officer in deciding whether to include a witness in the program.

Clause 26 Authorisation of approved authorities

This clause enables the Minister administering the proposed Act to authorise an approved authority to exercise functions conferred on the Chief Police Officer.

Clause 27 Immunity from legal proceedings for exercise of functions under the Act

This clause confers an immunity from legal proceedings on persons exercising functions in good faith under the proposed Act.

Clause 28 Proceedings for offence

This clause provides that offences under this proposed Act with the exception of clause 21 are punishable on summary conviction.

Clause 29 Regulations

This clause enables regulations to be made for the purposes of the proposed Act.