



# **Witness Protection Act 1994**

## **Act No. 124 of 1994 as amended**

This compilation was prepared on 26 February 2010  
taking into account amendments up to Act No. 4 of 2010

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act to establish a program to give protection and assistance to certain witnesses and other persons

## 1 Short title [see Note 1]

This Act may be cited as the *Witness Protection Act 1994*.

## 2 Commencement [see Note 1]

- (1) This Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

## 3 Interpretation

In this Act, unless the contrary intention appears:

**AFP employee** has the same meaning as in the *Australian Federal Police Act 1979*.

**approved authority** means:

- (a) a Commissioner (however designated) of the police force of a State or Territory; or
- (aa) the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or
- (b) the Chief Executive Officer of the Australian Crime Commission; or
- (c) an authority or body of the Commonwealth or of a State or 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 in the *Gazette* to be an approved authority for the purposes of this Act.

**Commissioner** means the Commissioner of the Australian Federal Police.

**Commonwealth identity document** means a passport, a tax file number within the meaning of section 202A of the *Income Tax Assessment Act 1936* or another document prescribed for the purposes of this definition.

**Commonwealth officer** has the same meaning as in section 3 of the *Crimes Act 1914*.

**Commonwealth participant** means a person who is a participant:

- (a) in relation to an offence against a law of the Commonwealth; or
- (b) in relation to a Royal Commission under the *Royal Commissions Act 1902* or another commission or inquiry under a law of the Commonwealth; or
- (c) in relation to an inquiry instituted by a House of the Parliament; or
- (d) under section 10 or 10A.

**complementary witness protection law** means a law of a State or Territory that:

- (a) makes provision for the protection of witnesses; and
- (b) is declared under section 3AA to be a complementary witness protection law.

**current NWPP identity**, in relation to a participant at a particular time, means an identity:

- (a) provided to the participant under the NWPP; and
- (b) being used by the participant at that time.

**Deputy Commissioner** means a Deputy Commissioner of the Australian Federal Police.

**designated position** means a position of a Deputy Commissioner, an AFP employee or a special member of the Australian Federal Police:

- (a) the duties of which relate to the NWPP and:
  - (i) require the occupant to have a national security clearance because those duties involve access to

national security information classified as “secret” or “top secret”; or

- (ii) require the occupant to have a position of trust clearance at the level of “highly protected” because those duties involve access to sensitive information; and
- (b) that has been declared in writing by the Commissioner to be a designated position for the purposes of this Act.

**former NWPP identity**, in relation to a participant at a particular time, means an identity that:

- (a) was provided to the person under the NWPP before that time; and
- (b) is not the participant’s current NWPP identity at that time.

**former participant** means a person who has ceased to be included in the NWPP.

**Immigration Secretary** means the Secretary of the Department administered by the Minister who administers the *Migration Act 1958*.

**information**, in relation to the identity of a person includes, but is not limited to, information about one or more of the following in relation to the person:

- (a) appearance;
- (b) voice quality or accent;
- (c) mannerisms;
- (d) address or location;
- (e) particular skills and qualifications;
- (f) personal history.

**member** means a member or special member of the Australian Federal Police.

**national security clearance** means a clearance that enables a person to have access to national security information or to an area that has been designated as secure.

**national security information** means information affecting the defence, security or international relations of Australia.

**NWPP** means the National Witness Protection Program established by this Act.

**original identity**, in relation to a participant, means the identity of the participant at the time immediately before he or she was first provided with an identity under the NWPP.

**parent**: without limiting who is a parent of anyone for the purposes of this Act, a person is the **parent** of another person if the other person is a child of the person within the meaning of the *Family Law Act 1975*.

**participant** means a person included in the NWPP and, unless the contrary intention appears, includes a former participant.

**position of trust clearance** means a clearance that enables a person to have access to sensitive material or to resources of a valuable or attractive nature.

**Registrar** means a person who occupies the position of Registrar of births, deaths and marriages, however described, of a State or Territory.

**sensitive information** includes material and resources (other than national security information) the unauthorised disclosure, loss, compromise, misuse or damage of which could reasonably be expected to:

- (a) cause serious harm to a person, a government or the legitimate activities of an agency; or
- (b) be seriously prejudicial to the establishment and maintenance of lawful methods for the protection of public safety.

**State offence that has a federal aspect** has the meaning given by section 3AB.

**State participant** means a participant:

- (a) in relation to a State offence that has a federal aspect; or
- (b) in relation to a State offence that does not have a federal aspect; or
- (c) in relation to a commission or inquiry under a law of a State.

**Territory participant** means a participant:

- (a) in relation to an offence against a law of a Territory; or
- (b) in relation to a commission or inquiry under a law of a Territory.



*witness* means:

- (a) a person who has given, or who has agreed to give, evidence on behalf of the Crown in right of the Commonwealth or of a State or Territory in:
  - (i) proceedings for an offence; or
  - (ii) hearings or proceedings before an authority that is declared by the Minister by notice in the *Gazette* to be an authority to which this paragraph applies; or
- (b) a person who has given, or who has 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 Commonwealth or of a State or Territory; or
- (c) a person who has made a statement to the Australian Federal Police or an approved authority in relation to an offence against a law of the Commonwealth or of a State or Territory; or
- (d) a person who, for any other reason, may require protection or other assistance under the NWPP; 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 NWPP.

### **3AA Declaration of *complementary witness protection law***

For the purposes of this Act, the Minister may, by legislative instrument, declare a law of a State or Territory to be a *complementary witness protection law*.

### **3AB State offence that has a federal aspect**

An offence against a law of a State is taken, for the purposes of this Act, to be a *State offence that has a federal aspect*:

- (a) in a case where the offence is being investigated by the Australian Federal Police—if it would be taken to be a State offence that has a federal aspect under section 4AA of the *Australian Federal Police Act 1979*; and
- (b) in a case where the offence is being investigated by the Australian Crime Commission—if it would be taken to be a State offence that has a federal aspect under section 4A of the *Australian Crime Commission Act 2002*; and

- (c) in any other case—if it would be taken to be a State offence that has a federal aspect if either of the sections referred to in paragraphs (a) and (b) were to apply.

### **3A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **4 Establishment of the National Witness Protection Program**

- (1) The Commissioner is to maintain a program, to be known as the National Witness Protection Program, under which the Commissioner, and persons who hold or occupy designated positions, arrange or provide protection and other assistance for witnesses.
- (2) That protection and assistance may include things done as a result of powers and functions conferred on the Commissioner under a complementary witness protection law.

### **5 Inclusion in NWPP not to be done as a reward for giving evidence etc.**

The inclusion of a witness in the NWPP is not to be done as a reward or as a means of persuading or encouraging the witness to give evidence or to make a statement.

### **6 Arrangements with approved authorities**

- (1) The Commissioner 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, those arrangements:
  - (a) may provide for the Commissioner or a member to perform functions or exercise powers conferred by a complementary witness protection law; and

- (b) must include procedures under which the authority shares with the Commonwealth the costs incurred in providing those services; and
  - (c) may provide for the authority to make available to the Commissioner such statements, transcripts of evidence and other documents as will assist the Commissioner in deciding:
    - (i) whether to include a witness in the NWPP; and
    - (ii) what protection and assistance is appropriate for a participant; and
  - (d) may confer powers and functions under complementary witness protection laws on the Commissioner.
- (3) The functions of the Commissioner under this Act do not include the provision of services under such an arrangement in relation to a law of a State or Territory unless the provision of those services is authorised to the extent necessary by the State or Territory concerned.

### **7 Witness to disclose certain matters before being included in the NWPP**

- (1) The Commissioner is not to include a witness in the NWPP unless the Commissioner is satisfied that the witness has provided the Commissioner with all information necessary for the Commissioner to decide whether the witness should be included.
- (2) Without limiting the generality of subsection (1), a witness must:
  - (a) disclose to the Commissioner details of all outstanding legal obligations of the witness; and
  - (b) disclose to the Commissioner details of any outstanding debts of the witness, including amounts outstanding for any tax, including a tax under a law of a State or Territory; and
  - (c) disclose to the Commissioner details of the witness's criminal history; and
  - (d) disclose to the Commissioner details of any civil proceedings that have been instituted by or against the witness; and
  - (e) disclose to the Commissioner details of any bankruptcy proceedings that have been instituted against the witness; and
  - (f) inform the Commissioner whether the witness is an undischarged bankrupt under the *Bankruptcy Act 1966* and, if

the witness is, give to the Commissioner copies of all documents relating to the bankruptcy; and

- (g) inform the Commissioner whether the witness has entered into or intends to enter into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* and, if the witness has done or intends to do such a thing, give to the Commissioner copies of all documents relating to that thing; and
- (h) inform the Commissioner whether there are any restrictions on the witness's holding positions in companies, whether public or private and, if there are, give to the Commissioner copies of all documents relating to those restrictions; and
- (i) disclose to the Commissioner details of the witness's immigration status; and
- (j) disclose to the Commissioner details of financial liabilities and assets (whether real or personal) of the witness in relation to which:
  - (i) a record is kept under a law of a State or Territory; or
  - (ii) the witness has entered into a contractual arrangement; and
- (k) disclose to the Commissioner details of any cash held by the witness, whether in accounts or otherwise; and
- (l) disclose to the Commissioner details of any reparation order that is in force against the witness; and
- (m) inform the Commissioner whether any of the witness's property (whether real or personal) is liable to forfeiture or confiscation or is subject to restraint under a law of the Commonwealth or of a State or Territory; and
- (n) inform the Commissioner of the witness's general medical condition; and
- (o) disclose to the Commissioner details of any relevant court orders or arrangements relating to custody or access to children; and
- (p) disclose to the Commissioner details of any business dealings in which the witness is involved; and
- (q) disclose to the Commissioner details of court orders relating to sentences imposed on the witness to which the witness is subject in relation to criminal prosecutions; and
- (r) disclose to the Commissioner details of any parole or licence to which the witness is subject; and

- (s) give to the Commissioner copies of any documents relating to any such orders, parole or licence; and
  - (t) disclose to the Commissioner details of any arrangements that the witness has made for:
    - (i) the service of documents on the witness; or
    - (ii) representation in proceedings in a court; or
    - (iii) enforcement of judgments in the witness's favour; or
    - (iv) compliance with the enforcement of judgments against the witness.
- (3) The Commissioner may also:
- (a) require the witness to undergo:
    - (i) medical tests or examinations; or
    - (ii) psychological or psychiatric examinations; and to make the results available to the Commissioner; or
  - (b) make such other inquiries and investigations as the Commissioner considers necessary;
- for the purposes of assessing whether the witness should be included in the NWPP.

## **8 Selection for inclusion in the NWPP**

- (1) The Commissioner has the sole responsibility of deciding whether to include a witness in the NWPP, including cases where an approved authority has requested that a witness be included in the NWPP.
- (2) A witness may be included in the NWPP only if:
  - (a) the Commissioner 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 9 or:
    - (i) if the witness is under 18 years—a parent or guardian of the witness signs such a 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 such a memorandum.

- (3) The Commissioner must, in deciding whether to include a witness in the NWPP, have regard to:
- (a) 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 NWPP; and
  - (b) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness's suitability for inclusion in the NWPP—that examination or evaluation; and
  - (c) the seriousness of the offence to which any relevant evidence or statement relates; and
  - (d) the nature and importance of any relevant evidence or statement; and
  - (e) whether there are viable alternative methods of protecting the witness; and
  - (f) the nature of the perceived danger to the witness; and
  - (g) the nature of the witness's relationship to other witnesses being assessed for inclusion in the NWPP;
- and may have regard to such other matters as the Commissioner considers relevant.
- (4) The Commissioner must not include a witness in the NWPP if the Commissioner does not, in his or her opinion, have enough information to assess the matters referred to in subsection (3) in relation to the witness.
- (5) If:
- (a) a parent or guardian of a witness signs a memorandum of understanding because the witness was under 18 years; and
  - (b) the witness is included in the NWPP and remains a participant until after he or she turns 18;
- the Commissioner may require the participant to sign another memorandum of understanding.
- (6) In this section:
- participant* does not include a former participant.

## 9 Memorandum of understanding

- (1) A memorandum of understanding is to:
  - (a) set out the basis on which a participant is included in the NWPP and details of the protection and assistance that is to be provided; and
  - (b) contain a provision to the effect that protection and assistance under the NWPP may be terminated if the participant breaches a term of the memorandum of understanding.
- (2) A memorandum of understanding in relation to a participant may also contain:
  - (a) the terms and conditions on which protection and assistance is to be provided to the participant, which may include a condition that protection and assistance may be withdrawn if the participant:
    - (i) commits an offence against a law of the Commonwealth or of a State or Territory; or
    - (ii) engages in activities of a kind specified in the memorandum of understanding; or
    - (iii) compromises the integrity of the NWPP; and
  - (b) an agreement by or on behalf of the participant not to compromise, directly or indirectly, the security of, or any other aspect of, the protection or assistance being provided; and
  - (c) an agreement by or on behalf of the participant that the participant comply with all reasonable directions of the Commissioner in relation to the protection and assistance provided to the participant; and
  - (d) an agreement by or on behalf of the participant that the participant will, if required to do so by the Commissioner:
    - (i) undergo medical, psychological or psychiatric tests or examinations and make the results available to the Commissioner; or
    - (ii) undergo drug or alcohol counselling or treatment; and
  - (e) a list of:
    - (i) the outstanding legal obligations (including family maintenance obligations and taxation obligations) of the participant; and

- (ii) any other obligations of the participant;  
and an agreement by or on behalf of the participant as to how those obligations are to be met; and
  - (f) a financial support arrangement; and
  - (g) an agreement by or on behalf of the participant that the participant will disclose to the Commissioner details of any criminal charges that are made against, and any civil or bankruptcy proceedings that are made in relation to, the participant after the participant is included in the NWPP.
- (3) A memorandum of understanding must be signed by or on behalf of the witness in the presence of a person who holds or occupies a designated position.
- (4) A witness becomes included in the NWPP when the Commissioner signs the memorandum of understanding.
- (5) The Commissioner must, as soon as practicable after signing a memorandum of understanding, notify the relevant participant that it has been signed.
- (6) Subject to subsection (7), the Commissioner may, by notice in writing given to a participant, vary the memorandum of understanding, and a variation takes effect on the day on which the notice is received by the participant.
- (7) A variation must not have the effect of removing from the memorandum of understanding the provisions referred to in subsection (1).
- (8) In this section:  
  
*participant* does not include a former participant.
- (9) To avoid doubt, subsection (8) does not affect any obligation of a former participant under a memorandum of understanding if the obligation continues (whether expressly or impliedly) to have effect after the former participant ceased to be included in the NWPP.



**10 Inclusion of foreign nationals or residents in NWPP at the request of foreign law enforcement agencies**

- (1) If:
  - (a) the Minister receives a request from an appropriate authority of a foreign country (the *agency*) for the inclusion of a person (the *nominated person*) who is a citizen or a resident of that country in the NWPP; and
  - (b) the Minister is satisfied that:
    - (i) the agency has provided all material that is necessary to support the request; and
    - (ii) it is appropriate to do so in all the circumstances;the Minister is to refer the request to the Commissioner.
- (2) The Commissioner is to consider including the nominated person in the NWPP in the same way as the Commissioner would consider including another person in the NWPP.
- (3) The Commissioner may, if he or she thinks it appropriate to do so, seek further information about the nominated person from the agency.
- (4) If:
  - (a) the Commissioner decides that the nominated person is suitable for inclusion in the NWPP; and
  - (b) the Minister, after considering a report from the Commissioner recommending the inclusion of the person in the NWPP, has decided that it is appropriate in all the circumstances that the person be included in the NWPP; and
  - (c) the Commissioner has entered into an arrangement with the agency for the purpose of making services under the NWPP available to the agency; and
  - (d) the nominated person has been granted a visa for entry to Australia;the Commissioner is to include the nominated person in the NWPP.
- (5) An arrangement referred to in paragraph (4)(c) must include procedures under which the agency pays the costs associated with providing protection for the nominated person and any associated persons, including:

- (a) the costs of travel by those persons and the costs of associated travel by members; and
- (b) any costs that will be incurred if protection and assistance under the NWPP to the nominated person is terminated; and
- (c) such other costs as the Commissioner determines.

### **10A Inclusion of persons in NWPP at the request of International Criminal Court**

- (1) If:
  - (a) the Minister receives a request from the International Criminal Court for the inclusion of a person (the *nominated person*) in the NWPP; and
  - (b) the Minister is satisfied that:
    - (i) the Court has provided all material that is necessary to support the request; and
    - (ii) it is appropriate to do so in all the circumstances;the Minister is to refer the request to the Commissioner.
- (2) The Commissioner is to consider including the nominated person in the NWPP in the same way as the Commissioner would consider including another person in the NWPP.
- (3) The Commissioner may, if he or she thinks it appropriate to do so, seek further information about the nominated person from the Court.
- (4) If:
  - (a) the Commissioner decides that the nominated person is suitable for inclusion in the NWPP; and
  - (b) the Minister, after considering a report from the Commissioner recommending the inclusion of the person in the NWPP, has decided that it is appropriate in all the circumstances that the person be included in the NWPP; and
  - (c) the Commissioner has entered into an arrangement with the Court for the purpose of making services under the NWPP available to the Court; and
  - (d) if the person is not an Australian citizen—the nominated person has been granted a visa for entry to Australia;the Commissioner is to include the nominated person in the NWPP.

- (5) An arrangement referred to in paragraph (4)(c) must include procedures under which the Court pays the costs associated with providing protection for the nominated person and any associated persons, including:
  - (a) the costs of travel by those persons and the costs of associated travel by members; and
  - (b) any costs that will be incurred if protection and assistance under the NWPP to the nominated person is terminated; and
  - (c) such other costs as the Commissioner determines.
- (6) In this section:

*International Criminal Court* has the same meaning as in the *International Criminal Court Act 2002*.

## **11 Register of participants**

- (1) The Commissioner is to maintain a Register of participants.
- (2) The Register may be maintained by electronic means.
- (3) The Commissioner is to include the following details in the Register in respect of each participant:
  - (a) the participant's name;
  - (b) if the participant has been provided with a new identity under the NWPP—the participant's new name for each new identity;
  - (c) the participant's address;
  - (d) details of any offences of which the participant has been convicted;
  - (e) in the case of a former participant—the date on which the person became a former participant.
- (4) The Commissioner is also to include in the Register details of any permissions given by the Commissioner under section 16.
- (5) The Commissioner is to keep in conjunction with the Register:
  - (a) the original of each memorandum of understanding; and
  - (b) copies of each new birth certificate that is issued under the NWPP; and
  - (c) the original of each permission given by the Commissioner under section 16; and

- (d) any documents returned to the Commissioner as a result of a notification under subsection 19(6).
- (6) In this section, *participant* and *former participant* do not include a person who is a former participant only because of the operation of subsection 13(6).

## 12 Access to Register

- (1) Subject to this section, only the Commissioner, and persons who hold or occupy designated positions and who are authorised by the Commissioner, are to have access to the Register and to documents kept in conjunction with the Register.
- (2) The Commissioner must allow the Commonwealth Ombudsman, or a person authorised by the Commonwealth Ombudsman who has a national security clearance at the level of “secret” or “top secret” or a position of trust clearance at the level of “highly protected”, to have access to the Register or part of the Register or to some or all of the documents kept in conjunction with the Register for the purposes of:
  - (a) an investigation by the Ombudsman under the *Ombudsman Act 1976*; or
  - (b) an investigation under Part V of the *Australian Federal Police Act 1979*.
- (3) The Commissioner may, if he or she is of the opinion that it is in the interests of the due administration of justice to do so, allow another person to have access to the Register or part of the Register or to some or all of the documents kept in conjunction with the Register.
- (4) If the Commissioner allows another person access under subsection (3), the Commissioner must notify the relevant approved authority of:
  - (a) the name of the person to whom the access was allowed; and
  - (b) the information the person was allowed access to; and
  - (c) the reasons for allowing access.

**13 Action to protect witnesses, participants and former participants etc.**

- (1) If a witness is included in the NWPP, or is being assessed for inclusion in the NWPP, the Commissioner is to take such action as the Commissioner considers necessary and reasonable to protect the witness's safety and welfare while also protecting the safety of the Commissioner, a Deputy Commissioner, AFP employees and special members of the Australian Federal Police.
- (2) That action may include:
  - (a) applying for any documents necessary:
    - (i) to allow the witness to establish a new identity; or
    - (ii) otherwise to protect the witness; and
  - (b) permitting persons who hold or occupy designated positions to acquire and use assumed identities in accordance with Part IAC of the *Crimes Act 1914*; and
  - (c) relocating the witness; and
  - (d) providing accommodation for the witness; and
  - (e) providing transport for the witness's property; and
  - (f) providing payments to the witness for the purpose of meeting the reasonable living expenses of the witness (including, where appropriate, living expenses of the witness's family) and providing, whether directly or indirectly, other reasonable financial assistance; and
  - (g) providing payments to the witness for the purpose of meeting costs associated with relocation; and
  - (h) providing assistance to the witness in obtaining employment or access to education; and
  - (i) providing other assistance to the witness with a view to ensuring that the witness becomes self-sustaining; and
  - (j) doing other things that the Commissioner considers to be necessary to ensure the safety of the witness.
- (3) The Commissioner must not obtain documentation for a witness that represents the witness:
  - (a) to have qualifications that the witness does not have; or
  - (b) to be entitled to benefits to which the witness would not otherwise be entitled.

- (4) A Commonwealth officer must not prepare documentation relating to the establishment of a new identity for a participant unless the officer has a national security clearance at the level of “secret” or “top secret” or a position of trust clearance at the level of “highly protected”.
- (5) The Commissioner may take the actions referred to in subsections (1) and (2) in respect of a former participant, or any other person whose relationship with the former participant is such that the Commissioner is satisfied that it is appropriate to take those actions, as if the former participant or other person were a witness included in the NWPP, if:
  - (a) the Commissioner considers the actions necessary and reasonable for the protection of the former participant or the other person; and
  - (b) the Commissioner has assessed the suitability of taking the actions in respect of the former participant or the other person.
- (6) If the Commissioner takes action under subsection (5) in respect of a person other than a former participant, this Act applies to the person as if the person were a former participant.
- (7) When the Commissioner first takes action under subsection (5) in respect of a former participant who was a participant under section 10 or 10A, the Commissioner must give the Immigration Secretary, or an officer nominated by that Secretary, written notice that he or she has taken that action.

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

If:

- (a) a participant who has been provided with a new identity under the NWPP wishes to marry; and
- (b) the participant has given to the Commissioner or an approved authority evidence that satisfies the Commissioner or the approved authority:
  - (i) that the participant is of marriageable age; and
  - (ii) of the original identity of the participant; and
- (c) 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

- (d) 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;

the Commissioner or the approved authority may give a certificate to a Registrar stating that the Commissioner or the authority has received the evidence referred to in paragraphs (b) and (c) and the statutory declaration referred to in paragraph (d).

### **15 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 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 will accept process issued by a court or tribunal on behalf of the participant, and nominating a member for the purpose.
- (3) If the Commissioner is satisfied that a participant who has been provided with a new identity under the NWPP is using the new identity to:
  - (a) avoid obligations that were incurred before the new identity was established; or
  - (b) 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.
- (4) The notice is also to state that, unless the participant satisfies the Commissioner 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.

- (5) 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 original identity or a former NWPP identity.

## **16 Non-disclosure of former identity of participant**

- (1) If:
  - (a) a participant who has been provided with a new identity under the NWPP would, apart from this section, be required by or under a law of the Commonwealth to disclose his or her original identity or a former NWPP identity for a particular purpose; and
  - (b) the Commissioner has given the participant permission, in the prescribed form, not to disclose the original identity or the former NWPP identity for that purpose;the participant is not required to disclose the original identity or the former NWPP identity to any person for that purpose.
- (2) If a participant has been given permission under subsection (1) not to disclose his or her original identity or any former NWPP 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 Commonwealth, to claim that his or her current NWPP identity is his or her only identity.
- (3) It is the duty of each Commonwealth officer and former Commonwealth officer who has obtained access to information or a document relevant to the NWPP not to disclose that information or publish that document except as authorised by the Commissioner.
- (4) If, under a complementary witness protection law of a State or Territory, it is lawful for a participant not to disclose his or her original identity or any former NWPP identity for a purpose approved by the Commissioner, the participant is not required to disclose his or her original identity or any former NWPP identity to a Commonwealth officer 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 under a complementary witness protection law of a State or Territory.

### **17 Special commercial arrangements by Commissioner**

This Act does not prevent the Commissioner from making commercial arrangements with a person under which a participant is able to obtain benefits under a contract or arrangement without revealing his or her original identity or any former NWPP identity.

### **18 Termination of inclusion in NWPP and other protection and assistance**

#### *Termination of inclusion in NWPP*

- (1) A participant's inclusion in the NWPP:
  - (a) must be terminated by the Commissioner if the participant requests in writing that it be terminated; or
  - (b) may be terminated by a Deputy Commissioner if:
    - (i) the participant deliberately breaches a term of the memorandum of understanding; or
    - (ii) the Deputy Commissioner discovers that the participant had knowingly given information to the Commissioner that is false or misleading in a material particular; or
    - (iii) the participant's conduct or threatened conduct is, in the opinion of the Deputy Commissioner, likely to compromise the integrity of the NWPP; or
    - (iv) the circumstances that gave rise to the need for the participant's inclusion in the NWPP cease to exist; or
    - (v) the participant deliberately breaches an undertaking, including an undertaking to give evidence, given to the Commonwealth, a State or Territory in relation to a matter relevant to the NWPP; or
    - (vi) the participant refuses or fails to sign a new memorandum of understanding when required to do so under subsection 8(5); or

(vii) there is, in the opinion of the Deputy Commissioner, no reasonable justification for the participant to remain included in the NWPP;

and the Deputy Commissioner is of the opinion that, in the circumstances of the case, the participant's inclusion in the NWPP should be terminated.

- (2) If a Deputy Commissioner makes a decision under paragraph (1)(b) that a participant's inclusion in the NWPP be terminated (the *termination decision*), the Deputy Commissioner must:
- (a) take reasonable steps to notify the participant of the decision; and
  - (b) notify the relevant approved authority of the decision.

*Termination of protection and assistance to former participants etc.*

- (2A) Protection and assistance provided under subsection 13(5) to a person (including a former participant):
- (a) must be terminated by the Commissioner if the person requests in writing that it be terminated; or
  - (b) may be terminated by a Deputy Commissioner if:
    - (i) the Deputy Commissioner discovers that the person had knowingly given information to the Commissioner that is false or misleading in a material particular; or
    - (ii) the person's conduct or threatened conduct is, in the opinion of the Deputy Commissioner, likely to compromise the integrity of the NWPP; or
    - (iii) the circumstances that gave rise to the need for protection and assistance for the person cease to exist; or
    - (iv) the person deliberately breaches an undertaking given to the Commonwealth, a State or a Territory that is relevant to the provision of that protection and assistance; or
    - (v) there is, in the opinion of the Deputy Commissioner, no reasonable justification for protection and assistance to continue to be provided to the person;

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

- (2B) If a Deputy Commissioner makes a decision under paragraph (2A)(b) that protection and assistance provided to a person be terminated (the *termination decision*), the Deputy Commissioner must take reasonable steps to notify the person of the decision.

*Review*

- (3) A person who receives notification of a termination decision may, within 28 days after receiving the notice, apply in writing to the Commissioner for a review of the decision of the Deputy Commissioner.
- (4) If an application is made, the Commissioner:
- (a) must review the decision of the Deputy Commissioner, and confirm, reverse or vary it; and
  - (b) before making that decision, must give the person a reasonable opportunity to state his or her case; and
  - (c) after making that decision, must inform the person in writing of the decision.

*When termination decisions take effect*

- (5) A termination decision that relates to a person:
- (a) if:
    - (i) the person's whereabouts are not known; and
    - (ii) the Deputy Commissioner has taken reasonable steps to notify the person of the decision but has been unable to do so;takes effect at the end of the period of 28 days after those steps were commenced; or
  - (b) if the person does not apply for a review of the decision in accordance with subsection (3)—takes effect at the end of the period of 28 days after the person receives the notification; or
  - (c) if the person applies for a review of the decision in accordance with subsection (3) and the Commissioner notifies the person that he or she has reversed the decision—has no effect; or

- (d) if the person applies for a review of the decision in accordance with subsection (3) and the Commissioner notifies the person that he or she has confirmed the decision—takes effect when the Commissioner notifies the person of the decision on the review; or
- (e) if the person applies for a review of the decision in accordance with subsection (3) and the Commissioner notifies the person that he or she has varied the decision—takes effect on the day specified by the Commissioner.

*Notification of Immigration Secretary*

- (6) If:
  - (a) a Deputy Commissioner makes a termination decision in relation to a person; and
  - (b) the person was at any time a participant under section 10 or 10A;the Commissioner must give the Immigration Secretary, or an officer nominated by that Secretary, written notice of that decision.
- (7) In this section:  
*participant* does not include a former participant.

**19 Restoration of former identity**

- (1) If a participant has been provided with a new identity under the NWPP, a Deputy Commissioner may, if he or she considers it appropriate to do so, take such action as is necessary to restore the original identity or any former NWPP identity of the participant.
- (2) The Deputy Commissioner must take reasonable steps to notify the participant of a decision under subsection (1).
- (3) If the Deputy Commissioner proposes to take action to restore the original identity or any former NWPP identity of the participant, the participant may apply in writing to the Commissioner for a review of the decision of the Deputy Commissioner.
- (4) If an application is made, the Commissioner:
  - (a) must review the decision of the Deputy Commissioner 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 or a Deputy Commissioner takes action under this section to restore the original identity or any former NWPP identity of a Commonwealth participant, a State participant or a Territory participant, the Commissioner or a Deputy Commissioner may give a notice to the participant under subsection (6).
- (6) The notice:
- (a) must be in writing; and
  - (b) must require the participant to return to the Commissioner, within 10 days of the giving of the notice, all documents provided to the participant that relate to:
    - (i) the participant's current NWPP identity; and
    - (ii) any former NWPP identity of the participant that is not being restored.
- (7) A person commits an offence if:
- (a) the person is given a notice under subsection (6); and
  - (b) the person refuses or fails to comply with the notice.

Penalty: 10 penalty units.

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

If:

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

the Commissioner may:

- (c) release to the approved authority or the member the current NWPP identity or current location of the participant; and

- (d) provide the approved authority or the member with the criminal record of the participant and the participant's fingerprints; and
- (e) release to the approved authority or the member such other information relating to the NWPP as the Commissioner considers appropriate in the circumstances; and
- (f) if the Commissioner considers it appropriate to do so in the circumstances—allow officers of the approved authority or the member to interview the Commissioner, a Deputy Commissioner, AFP employees or special members of the Australian Federal Police in relation to the participant.

## **21 Officers protected from suit in respect of decisions under Act**

The Commissioner, delegates of the Commissioner and other persons performing functions in relation to the NWPP are not liable to any action, suit or proceedings (including criminal proceedings) in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred, or the performance or purported performance of a function conferred or a duty imposed, by this Act.

## **22 Offences relating to Commonwealth or Territory participants**

### *Disclosure of information about Commonwealth or Territory participant*

- (1) A person commits an offence if:
  - (a) the person discloses information about an individual; and
  - (b) the individual is a participant; and
  - (c) the individual is a Commonwealth participant or a Territory participant; and
  - (d) either or both of the following apply:
    - (i) the individual has a current NWPP identity at the time the information is disclosed and the information is about the original identity or a former NWPP identity of the individual;
    - (ii) there is a risk that disclosure of the information will reveal that the individual is a participant.

Penalty: Imprisonment for 2 years.

*Disclosure of information about individual undergoing assessment as Commonwealth or Territory participant*

- (2) A person commits an offence if:
- (a) the person discloses information about an individual; and
  - (b) the individual is undergoing assessment for inclusion in the NWPP at the time the information is disclosed; and
  - (c) if the individual were included in the NWPP following that assessment, the individual would be a Commonwealth participant or a Territory participant; and
  - (d) there is a risk that disclosure of the information will reveal that the individual is undergoing such assessment.

Penalty: Imprisonment for 2 years.

*Disclosure of information that may compromise security of Commonwealth or Territory participant*

- (3) A person commits an offence if:
- (a) the person discloses information about an individual; and
  - (b) the individual is a participant; and
  - (c) the individual is a Commonwealth participant or a Territory participant; and
  - (d) either or both of the following apply:
    - (i) the individual has a current NWPP identity at the time the information is disclosed and the information is about the original identity or a former NWPP identity of the individual;
    - (ii) there is a risk that disclosure of the information will reveal that the individual is a participant; and
  - (e) there is a risk that disclosure of the information will compromise the security of the individual.

Penalty: Imprisonment for 10 years.

*Disclosure of information that may compromise security of individual undergoing assessment as Commonwealth or Territory participant*

- (4) A person commits an offence if:
- (a) the person discloses information about an individual; and

- (b) the individual is undergoing assessment for inclusion in the NWPP at the time the information is disclosed; and
- (c) if the individual were included in the NWPP following that assessment, the individual would be a Commonwealth participant or a Territory participant; and
- (d) there is a risk that disclosure of the information will reveal that the individual is undergoing such assessment; and
- (e) there is a risk that disclosure of the information will compromise the security of the individual.

Penalty: Imprisonment for 10 years.

- (5) Subsections (1), (2), (3) and (4) do not apply to a disclosure by a person if:
- (a) the person has been authorised by the Commissioner to make the disclosure; or
  - (b) the disclosure is made for the purpose of making a complaint, or providing information, to the Ombudsman under the *Ombudsman Act 1976*; or
  - (c) the disclosure is made for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue; or
  - (d) the disclosure is made for the purpose of:
    - (i) giving information that raises an AFP conduct or practices issue (within the meaning of the *Australian Federal Police Act 1979*); or
    - (ii) investigating or resolving an AFP conduct or practices issue under Part V of that Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Absolute liability applies to paragraphs (1)(c), (2)(c), (3)(c) and (4)(c).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (7) To avoid doubt, a person may be convicted of an offence against subsection (1), (2), (3) or (4) because of a risk that a disclosure will have a particular effect even if the disclosure does not actually have that effect.



## 22A Offences relating to State participants

### *Disclosure of information about State participant*

- (1) A person commits an offence if:
- (a) the person is:
    - (i) a Commonwealth officer; or
    - (ii) a Commonwealth participant; or
    - (iii) a State participant; or
    - (iv) a Territory participant; or
    - (v) any other person; and
  - (b) the person discloses information about an individual; and
  - (c) the individual is a participant; and
  - (d) the individual is a State participant; and
  - (e) either or both of the following apply:
    - (i) the individual has a current NWPP identity at the time the information is disclosed and the information is about the original identity or a former NWPP identity of the individual;
    - (ii) there is a risk that disclosure of the information will reveal that the individual is a participant; and
  - (f) if the person disclosing the information is a person other than a person referred to in subparagraph (a)(i), (ii) or (iv)—there is a risk that disclosure of the information will adversely affect the integrity of the NWPP.

Penalty: Imprisonment for 2 years.

### *Disclosure of information about individual undergoing assessment as State participant*

- (2) A person commits an offence if:
- (a) the person is:
    - (i) a Commonwealth officer; or
    - (ii) a Commonwealth participant; or
    - (iii) a State participant; or
    - (iv) a Territory participant; or
    - (v) any other person; and
  - (b) the person discloses information about an individual; and

- (c) the individual is undergoing assessment for inclusion in the NWPP at the time the information is disclosed; and
- (d) if the individual were included in the NWPP following that assessment, the individual would be a State participant; and
- (e) there is a risk that disclosure of the information will reveal that the individual is undergoing such assessment; and
- (f) if the person disclosing the information is a person other than a person referred to in subparagraph (a)(i), (ii) or (iv)—there is a risk that disclosure of the information will adversely affect the integrity of the NWPP.

Penalty: Imprisonment for 2 years.

*Disclosure of information that may compromise security of State participant*

- (3) A person commits an offence if:
  - (a) the person is:
    - (i) a Commonwealth officer; or
    - (ii) a Commonwealth participant; or
    - (iii) a State participant; or
    - (iv) a Territory participant; or
    - (v) any other person; and
  - (b) the person discloses information about an individual; and
  - (c) the individual is a participant; and
  - (d) the individual is a State participant; and
  - (e) either or both of the following apply:
    - (i) the individual has a current NWPP identity at the time the information is disclosed and the information is about the original identity or a former NWPP identity of the individual;
    - (ii) there is a risk that disclosure of the information will reveal that the individual is a participant; and
  - (f) there is a risk that disclosure of the information will compromise the security of the individual; and
  - (g) if the person disclosing the information is a person other than a person referred to in subparagraph (a)(i), (ii) or (iv)—there is a risk that the disclosure of the information will adversely affect the integrity of the NWPP.

Penalty: Imprisonment for 10 years.

*Disclosure of information that may compromise security of individual undergoing assessment as State participant*

- (4) A person commits an offence if:
- (a) the person is:
    - (i) a Commonwealth officer; or
    - (ii) a Commonwealth participant; or
    - (iii) a State participant; or
    - (iv) a Territory participant; or
    - (v) any other person; and
  - (b) the person discloses information about an individual; and
  - (c) the individual is undergoing assessment for inclusion in the NWPP at the time the information is disclosed; and
  - (d) if the individual were included in the NWPP following that assessment, the individual would be a State participant; and
  - (e) there is a risk that disclosure of the information will reveal that the individual is undergoing such assessment; and
  - (f) there is a risk that disclosure of the information will compromise the security of the individual; and
  - (g) if the person disclosing the information is a person other than a person referred to in subparagraph (a)(i), (ii) or (iv)—there is a risk that disclosure of the information will adversely affect the integrity of the NWPP.

Penalty: Imprisonment for 10 years.

- (5) Subsections (1), (2), (3) and (4) do not apply to a disclosure by a person if:
- (a) the person has been authorised by the Commissioner to make the disclosure; or
  - (b) the disclosure is made for the purpose of making a complaint, or providing information, to the Ombudsman under the *Ombudsman Act 1976*; or
  - (c) the disclosure is made for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue; or
  - (d) the disclosure is made for the purpose of:

- (i) giving information that raises an AFP conduct or practices issue (within the meaning of the *Australian Federal Police Act 1979*); or
- (ii) investigating or resolving an AFP conduct or practices issue under Part V of that Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Absolute liability applies to paragraphs (1)(d), (2)(d), (3)(d) and (4)(d).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

- (7) To avoid doubt, a person may be convicted of an offence against subsection (1), (2), (3) or (4) because of a risk that a disclosure will have a particular effect even if the disclosure does not actually have that effect.

## **22B Offences relating to disclosure of information about the NWPP**

### *Disclosures by participants and persons undergoing assessment*

- (1) A person commits an offence if:
  - (a) the person is, or is undergoing or has undergone assessment for inclusion in the NWPP as, one of the following:
    - (i) a Commonwealth participant;
    - (ii) a Territory participant;
    - (iii) a State participant; and
  - (b) the person discloses any of the following:
    - (i) the fact that he or she is such a participant, or is undergoing or has undergone such assessment;
    - (ii) information about the way in which the NWPP operates;
    - (iii) information about the Commissioner, a Deputy Commissioner, any AFP employee or any special member of the Australian Federal Police who is or has been involved in the NWPP;
    - (iv) the fact that he or she has signed a memorandum of understanding;
    - (v) any details of a memorandum of understanding that he or she has signed.

Penalty: Imprisonment for 5 years.

*Disclosures by other persons*

- (2) A person (other than a person referred to in paragraph (1)(a)) commits an offence if:
- (a) the person discloses information; and
  - (b) the information is either or both of the following:
    - (i) information about the way in which the NWPP operates;
    - (ii) information about the Commissioner, a Deputy Commissioner, any AFP employee or any special member of the Australian Federal Police who is or has been involved in the NWPP; and
  - (c) there is a risk that disclosure of the information will do either or both of the following:
    - (i) adversely affect the integrity of the NWPP;
    - (ii) compromise the security of the Commissioner, a Deputy Commissioner, or an AFP employee or special member of the Australian Federal Police who is or has been involved in the NWPP.

Penalty: Imprisonment for 5 years.

- (3) Subsections (1) and (2) do not apply to a disclosure by a person if:
- (a) the person has been authorised by the Commissioner to make the disclosure; or
  - (b) the disclosure is made for the purpose of making a complaint, or providing information, to the Ombudsman under the *Ombudsman Act 1976*; or
  - (c) the disclosure is made for the purpose of referring to the Integrity Commissioner, under the *Law Enforcement Integrity Commissioner Act 2006*, an allegation or information that raises a corruption issue; or
  - (d) the disclosure is made for the purpose of:
    - (i) giving information that raises an AFP conduct or practices issue (within the meaning of the *Australian Federal Police Act 1979*); or
    - (ii) investigating or resolving an AFP conduct or practices issue under Part V of that Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) To avoid doubt, a person may be convicted of an offence against subsection (2) because of a risk that a disclosure will have a particular effect even if the disclosure does not actually have that effect.

### **22C Disclosures to courts, etc.**

- (1) To avoid doubt, sections 22, 22A and 22B apply to a disclosure of information to:
  - (a) a court or tribunal; or
  - (b) a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry.
- (2) The application of subsection (1) to the disclosure of information as mentioned in that subsection does not affect the operation of subsection 26(3).

### **23 Payments under NWPP not able to be confiscated**

- (1) The Commissioner may certify in writing that an amount held by a participant represents payments made to the participant under the NWPP.
- (2) An amount so certified cannot be confiscated or restrained, and cannot be applied in payment of pecuniary penalties, under Division 3 of Part XIII of the *Customs Act 1901*, the *Proceeds of Crime Act 1987*, the *Proceeds of Crime Act 2002*, the *Crimes (Superannuation Benefits) Act 1989* or the *Australian Federal Police Act 1979*.

### **24 Restriction on issue of Commonwealth identity documents**

- (1) Commonwealth identity documents must not, after the end of 12 months after the commencement of this Act, be issued for a person who is on a witness protection program being conducted by a State or Territory unless:
  - (a) an arrangement is in force between the Minister and the relevant State or Territory Minister relating to the issue of Commonwealth identity documents for the purposes of that program; and
  - (b) a complementary witness protection law is in force in the 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 Commonwealth identity documents for the purposes of such a program; and
  - (b) guidelines for the issue of those documents and other documents.

## **25 Delegation**

- (1) Subject to subsections (3) and (4), the Commissioner may, by writing, delegate all or any of his or her powers under this Act to a person who holds or occupies a designated position.
- (2) A person who holds or occupies a designated position may exercise powers delegated to the person by the Commissioner under a complementary witness protection law.
- (3) The Commissioner's powers under sections 6, 8, 14, 16, 18, 20, 27 and 27A and subsections 12(2) and (3) may only be delegated to a Deputy Commissioner.
- (4) The Commissioner's powers and functions under subsections 13(5) and (7) may only be delegated to a Deputy Commissioner, an Assistant Commissioner, or a person occupying an equivalent or higher rank in the Australian Federal Police.

## **26 Commissioner and members not to be required to disclose information**

- (1) Subject to subsection (3), the Commissioner, a Deputy Commissioner, an AFP employee or a special member of the Australian Federal Police is not to be required:
  - (a) to produce in a court, or before a tribunal, a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry, any document that has come into the custody or control of the person in the course of, or because of, the performance of functions or duties, or the exercise of powers, under this Act; or
  - (b) to divulge or communicate to or before such a body any matter or thing that has come to the notice of the person in

the performance of functions or duties, or the exercise of powers, under this Act; or

- (c) to divulge or communicate to or before such a body information, if:
  - (i) the information is about the identity of, or disclosure of the information is such as to reveal the identity of, an AFP employee or special member of the Australian Federal Police who is involved in the operation of the NWPP; and
  - (ii) the person has the information as a result of the performance of functions or duties, or the exercise of powers, under this Act;

except where it is necessary to do so for the purpose of carrying the provisions of this Act into effect.

- (2) Subject to subsection (3), the Commonwealth Ombudsman or a member of the staff of the Commonwealth Ombudsman is not to be required:

- (a) to produce in a court, or before a tribunal, a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry, any document that has come into the custody or control of the person in relation to this Act; or
- (b) to divulge or communicate to or before such a body any matter or thing that has come to the notice of the person in relation to this Act; or
- (c) to divulge or communicate to or before such a body information, if:
  - (i) the information is about the identity of, or disclosure of the information is such as to reveal the identity of, an AFP employee or special member of the Australian Federal Police who is involved in the operation of the NWPP; and
  - (ii) the person has the information as a result of the performance of functions or duties, or the exercise of powers, in relation to this Act;

except where it is necessary to do so for the purpose of carrying the provisions of this Act into effect.

- (3) If it is essential to the determination of legal proceedings under or in relation to a law of the Commonwealth, a State or a Territory



that the judge or magistrate presiding over the proceedings be advised of a participant's location and circumstances, a person referred to in subsection (1) or (2) is to disclose the relevant information to the judge or magistrate in chambers, but the person must not disclose the information if any person other than the judge or magistrate and the person is present.

- (4) The judge or magistrate must not disclose any information disclosed to the judge or magistrate under subsection (3) otherwise than in accordance with this Act.
- (5) Subsection (1) does not apply to information about a financial support arrangement for a participant if the information is provided in a way that cannot identify the location, or prejudice the safety, of the participant.

## **27 Requirement where participant becomes a witness in criminal proceedings**

- (1) If:
  - (a) a participant is to be a witness, under the participant's current NWPP identity, in a criminal proceeding; and
  - (b) the participant has a criminal record under his or her original identity or any former NWPP identity;the participant must notify the Commissioner that the participant is to be a witness in the proceeding.
- (2) After being notified under subsection (1), the Commissioner 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.

## **27A Requirement where participant involved in civil proceedings**

- (1) If a participant is to be involved, under the participant's current NWPP identity, in a civil proceeding in which his or her identity is in issue, the participant must notify the Commissioner that the participant is involved in the proceeding.
- (2) After being notified under subsection (1), the Commissioner may take any action he or she considers appropriate in the circumstances.

- (3) In this section:

*civil proceeding* means any proceeding in a court, a tribunal or a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry, other than a criminal proceeding, and, to avoid doubt, each of the following is part of a civil proceeding:

- (a) any proceeding on an ex parte application (including an application made before pleadings are filed in a court);
- (b) the discovery, exchange, production, inspection or disclosure of intended evidence, documents and reports of persons intended to be called by a party to give evidence;
- (c) an appeal proceeding;
- (d) any interlocutory or other proceeding prescribed by regulations for the purposes of this paragraph.

## **28 Identity of participant not to be disclosed in court proceedings etc.**

- (1) This section applies if one of more of the following matters is in issue, or may be disclosed, in any proceedings before a court, a tribunal, or a Royal Commission of the Commonwealth, a State or a Territory or any other commission of inquiry:
- (a) the original identity or a former NWPP identity of:
    - (i) a Commonwealth participant; or
    - (ii) a State participant; or
    - (iii) a Territory participant;
  - (b) the fact that a person is such a participant;
  - (c) the fact that a person has undergone or is undergoing assessment for inclusion in the NWPP as such a participant.
- (2) The court, tribunal or commission:
- (a) must, unless it considers that it is not in the interests of justice to do so, hold in private that part of the proceedings that relates to the matter referred to in paragraph (1)(a), (b) or (c); and
  - (b) must make such orders relating to the suppression of publication of evidence given before it as, in its opinion, will ensure that the matter referred to in paragraph (1)(a), (b) or (c) is not made public; and

- (c) must, unless it considers that it is not in the interests of justice to do so, make such other orders as it considers appropriate to ensure that neither of the following is made public:
  - (i) the matter referred to in paragraph (1)(a), (b) or (c);
  - (ii) information that may compromise the security of a person referred to in any of those paragraphs.
- (3) To avoid doubt, paragraph (2)(b) does not prevent the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.

### **28A Offence of contravening an order under section 28**

- (1) A person commits an offence if:
  - (a) an order is in force under section 28; and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes the order.

Penalty: Imprisonment for 2 years.

- (2) To avoid doubt, this section does not limit any other powers of the body that made the order under section 28.

### **29 Transitional**

- (1) An authority that, immediately before the commencement of this Act, was a prescribed authority for the purposes of subsection 8(2A) of the *Australian Federal Police Act 1979* is taken to be declared by the Minister to be an approved authority for the purposes of the definition of ***approved authority*** in section 3 of this Act.
- (2) Persons who were, immediately before the commencement of this Act, included in the program operated by the Australian Federal Police and known as the witness protection program become participants on that commencement.

### **30 Reports and information for the Minister**

- (1) The Commissioner must keep the Minister informed of the general operations, performance and effectiveness of the NWPP and, in particular, the exercise of the Commissioner's powers under sections 27 and 27A.
- (2) In consultation with the Commissioner, the Minister must prepare and cause to be laid before each House of the Parliament, an annual report on the matters referred to in subsection (1) in a manner which does not prejudice the effectiveness or security of the NWPP.

### **31 Amendments of other Acts**

The Acts specified in the Schedule are amended as set out in the Schedule.

### **32 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **Schedule—Amendments of other Acts**

Section 31

**Note:**

The amendments made by this Schedule are incorporated in the compilations on ComLaw.

*Administrative Decisions (Judicial Review) Act 1977*

*Australian Federal Police Act 1979*

*Marriage Act 1961*

For access to the wording of the amendments made by this Schedule *see* Act No. 124, 1994.



**Table of Acts****Notes to the *Witness Protection Act 1994*****Note 1**

The *Witness Protection Act 1994* as shown in this compilation comprises Act No. 124, 1994 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Witness Protection Act 1994</i>	124, 1994	18 Oct 1994	18 Apr 1995	
<i>Crimes and Other Legislation Amendment Act 1997</i>	20, 1997	7 Apr 1997	Schedule 1 (item 29): Royal Assent (a)	—
<i>Australian Federal Police Legislation Amendment Act 2000</i>	9, 2000	7 Mar 2000	2 July 2000 (see <i>Gazette</i> 2000, No. S328)	Sch. 3 (items 20, 34, 35)
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1) and (2) and Schedule 50: (b)	S. 4(1) and (2)
<i>National Crime Authority Legislation Amendment Act 2001</i>	135, 2001	1 Oct 2001	Schedules 1–7 and 9–12: 12 Oct 2001 (see <i>Gazette</i> 2001, No. S428) Schedule 8: 13 Oct 2001 (see <i>Gazette</i> 2001, No. S428) Remainder: Royal Assent	—
<i>International Criminal Court (Consequential Amendments) Act 2002</i>	42, 2002	27 June 2002	Schedules 1–7: 26 Sept 2002 (see s. 2(1) (item 2) and <i>Gazette</i> 2002, No. GN38) Remainder: 28 June 2002	—
<i>Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002</i>	86, 2002	11 Oct 2002	Ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (see s. 2(1) and <i>Gazette</i> 2002, No. GN44)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Crime Commission Establishment Act 2002</i>	125, 2002	10 Dec 2002	Schedule 2 (item 225): 1 Jan 2003	—
<i>Bankruptcy Legislation Amendment Act 2004</i>	80, 2004	23 June 2004	Schedule 1 (items 211–213, 215): 1 Dec 2004 (see <i>Gazette</i> 2004, No. GN34)	Sch. 1 (items 212, 213, 215)
<i>Law Enforcement (AFP Professional Standards and Related Measures) Act 2006</i>	84, 2006	30 June 2006	Schedule 3 (items 65, 66): 30 Dec 2006 (see s. 2(1))	—
<i>Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006</i>	86, 2006	30 June 2006	Schedule 1 (item 97): 30 Dec 2006 (see s. 2(1))	—
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 2 (item 85): 10 Dec 2008	—
<i>Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010</i>	4, 2010	19 Feb 2010	Schedule 3: 20 Feb 2010	Sch. 3 (items 69–71)



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**Act Notes**

- (a) The *Witness Protection Act 1994* was amended by Schedule 1 (item 29) only of the *Crimes and Other Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (b) The *Witness Protection Act 1994* was amended by Schedule 50 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
    - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 3.....	am. No. 9, 2000; No. 135, 2001; Nos. 42 and 125, 2002; No. 86, 2006; No. 144, 2008; No. 4, 2010
Ss. 3AA, 3AB .....	ad. No. 4, 2010
S. 3A .....	ad. No. 24, 2001
S. 4.....	am. No. 9, 2000
S. 7.....	am. No. 80, 2004
S. 8.....	am. No. 4, 2010
S. 9.....	am. No. 9, 2000; No. 4, 2010
S. 10A .....	ad. No. 42, 2002
S. 11.....	am. No. 4, 2010
S. 12.....	am. No. 9, 2000; No. 84, 2006
Heading to s. 13.....	rs. No. 4, 2010
S. 13.....	am. No. 9, 2000; No. 4, 2010
Ss. 14–17 .....	am. No. 4, 2010
Heading to s. 18.....	rs. No. 4, 2010
Subhead. to s. 18(1).....	ad. No. 4, 2010
Subhead. to s. 18(3).....	ad. No. 4, 2010
Subhead. to s. 18(5).....	ad. No. 4, 2010
S. 18.....	am. No. 42, 2002; No. 4, 2010
S. 19.....	am. No. 24, 2001; No. 4, 2010
S. 20.....	am. No. 9, 2000; No. 4, 2010
S. 21.....	am. No. 4, 2010
S. 22.....	am. No. 20, 1997; No. 9, 2000; No. 24, 2001; No. 84, 2006 rs. No. 4, 2010
Ss. 22A–22C .....	ad. No. 4, 2010
S. 23.....	am. No. 86, 2002
Ss. 25, 26 .....	am. No. 9, 2000; No. 4, 2010
S. 27.....	am. No. 4, 2010
S. 27A .....	ad. No. 4, 2010
S. 28.....	rs. No. 4, 2010
S. 28A .....	ad. No. 4, 2010
S. 30.....	am. No. 4, 2010

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Australian Federal Police Legislation Amendment Act 2000* (No. 9, 2000)

**Schedule 3**

**20 Definition**

In this Part:

*commencing time* means the time when this Part commences.

**34 Warrants or writs etc. may continue to be executed**

If, immediately before the commencing time, any warrant, writ, order, permission or other instrument (the *authority*) issued under a law of the Commonwealth, a State or a Territory could be executed by a person who was at that time a member, staff member or special member of the Australian Federal Police, the authority continues to be able to be executed at and after the commencing time by the person in his or her capacity as:

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) an AFP employee; or
- (d) a special member of the Australian Federal Police;

(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Note: A person who is a member or staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee. Similarly, a person who is a special member of the Australian Federal Police immediately before the commencing time is taken to be appointed as a special member. See item 2 of this Schedule.

**35 Regulations dealing with matters of a transitional or saving nature**

- (1) The Governor-General may make regulations, not inconsistent with any other provision of this Schedule, prescribing matters of a transitional or saving nature in relation to the amendments made by Schedule 1 or 2.

**Table A**

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- (2) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

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*Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001* (No. 24, 2001)

**4 Application of amendments**

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Bankruptcy Legislation Amendment Act 2004* (No. 80, 2004)

**Schedule 1****212 Transitional—pre-commencement deeds and compositions**

- (1) For the purposes of this item, if a deed of assignment or a deed of arrangement was executed by a debtor and a trustee under Part X of the *Bankruptcy Act 1966* before the commencement of this item, the deed is a *pre-commencement deed*.
- (2) For the purposes of this item, if a composition was accepted before the commencement of this item by a special resolution of a meeting of creditors under section 204 of the *Bankruptcy Act 1966*, the composition is a *pre-commencement composition*.
- (3) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
- (a) the *Bankruptcy Act 1966* and regulations under that Act; and

**Table A**

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- (b) the Acts amended by Part 2 of this Schedule;
- continue to apply, in relation to:
- (c) a pre-commencement deed; and
  - (d) a pre-commencement composition; and
  - (e) any matter connected with, or arising out of:
    - (i) a pre-commencement deed; or
    - (ii) a pre-commencement composition;
- as if those repeals had not happened and those amendments had not been made.

**213 Transitional—pre-commencement authorities**

- (1) For the purposes of this item, if:
  - (a) an authority given by a debtor under section 188 of the *Bankruptcy Act 1966* became effective before the commencement of this item; and
  - (b) as at the commencement of this item, none of the following had happened:
    - (i) the execution by the debtor and the trustee of a deed of assignment under Part X of the *Bankruptcy Act 1966*;
    - (ii) the execution by the debtor and the trustee of a deed of arrangement under Part X of the *Bankruptcy Act 1966*;
    - (iii) the acceptance of a composition by a special resolution of a meeting of the debtor's creditors under section 204 of the *Bankruptcy Act 1966*;

the authority is a ***pre-commencement authority***.
- (2) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
  - (a) the *Bankruptcy Act 1966* and regulations under that Act; and
  - (b) the Acts amended by Part 2 of this Schedule;

continue to apply, in relation to:

  - (c) a pre-commencement authority; and
  - (d) the control of the debtor's property following a pre-commencement authority becoming effective; and
  - (e) a meeting of the debtor's creditors called under a pre-commencement authority; and
  - (f) whichever of the following is applicable:

**Table A**

- (i) a deed of assignment executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;
- (ii) a deed of arrangement executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;
- (iii) a composition accepted after the commencement of this item by a special resolution of such a meeting; and
- (g) any other matter connected with, or arising out of:
  - (i) a pre-commencement authority; or
  - (ii) a deed of assignment mentioned in subparagraph (f)(i); or
  - (iii) a deed of arrangement mentioned in subparagraph (f)(ii); or
  - (iv) a composition mentioned in subparagraph (f)(iii);

as if those repeals had not happened and those amendments had not been made.

**215 Transitional—regulations**

- (1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Parts 1 and 2 of this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

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*Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010* (No. 4, 2010)

**Schedule 3****69 Saving provision—declarations of complementary witness protection laws**

- (1) A declaration made under paragraph (b) of the definition of *complementary witness protection law* in section 3 of the *Witness Protection Act 1994* before the commencement of this item is not, and is taken never to have been, a legislative instrument.

**Table A**

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- (2) If the declaration was in force just before the commencement of this item, the declaration has effect from that commencement, subject to subitem (1), as if it had been made under section 3AA of that Act as inserted by this Schedule.

**70 Application—action in respect of former participants etc.**

The Commissioner may take action under subsection 13(5) of the *Witness Protection Act 1994*, as inserted by this Schedule, on or after the commencement of this item, whether the former participant concerned became a former participant before, on or after that commencement.

**71 Application—non-disclosure of former identity**

- (1) Section 16 of the *Witness Protection Act 1994*, as amended by this Act, applies on and after the commencement of this item in relation to a pre-commencement permission given to a participant for a particular purpose as if it were a post-commencement permission given for the participant not to disclose his or her original identity for that purpose.

- (2) In this item:

***post-commencement permission*** means a permission given under paragraph 16(1)(b) of the *Witness Protection Act 1994*, as in force at the commencement of this item.

***pre-commencement permission*** means a permission given under paragraph 16(1)(b) of the *Witness Protection Act 1994* before the commencement of this item.