



# **Witness Protection Act 1994**

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

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taking into account amendments up to Act No. 135 of 2001

The text of any of those amendments not in force  
on that date is appended 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
- (b) the Chair of the National Crime Authority; 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.

**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 by the Minister by notice published in the *Gazette* to be a complementary witness protection law.

**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.

**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.

**participant** means a person who is included in the NWPP.

**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.

**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, such a person may require protection or other assistance under the NWPP.

### **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 composition with creditors, a deed of arrangement or a deed of assignment 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.

## **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).

### **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.

## **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;
  - (c) the participant's address;
  - (d) details of any offences of which the participant has been convicted;
  - (e) the date on which the person ceases to be a 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(2).

## **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 an investigation under Part III or IV of the *Complaints (Australian Federal Police) Act 1981*.
- (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 where a witness is included in the NWPP**

- (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 use assumed names in carrying out their duties in relation to the NWPP and to carry documentation supporting those assumed names; 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 be entitled if the witness were not included in the NWPP.

- (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”.

#### **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 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 former 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 former identity for a particular purpose; and
  - (b) the Commissioner has given the participant permission, in the prescribed form, not to disclose his or her former identity for that purpose;the participant is not required to disclose his or her former identity to any person for that purpose.

- (2) If a participant has been given permission under subsection (1) not to disclose his or her former identity for a particular purpose, it is lawful for the participant, in any proceedings, or for any purpose, under or in relation to the relevant law of the Commonwealth, to claim that his or her new 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 former identity for a purpose approved by the Commissioner, the participant is not required to disclose his or her former 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.
- (6) In this section:  
*participant* includes a person who:
  - (a) was provided with a new identity under the NWPP; and
  - (b) is no longer a participant but retains that identity.

## **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 former identity.

## **18 Cessation of protection and assistance**

- (1) Protection and assistance provided under the NWPP to a participant:
  - (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 protection and assistance for the participant 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 protection and assistance should be terminated.
- (2) If a Deputy Commissioner makes a decision under paragraph (1)(b) that protection and assistance provided under the NWPP to a participant be terminated, 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.
- (3) A participant who receives such a notification 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 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) A decision of a Deputy Commissioner under paragraph (1)(b) that protection and assistance provided under the NWPP to a participant be terminated:
- (a) if:
    - (i) the participant's whereabouts are not known; and
    - (ii) the Deputy Commissioner has taken reasonable steps to notify the participant of the decision but has been unable to do so;takes effect at the end of the period of 28 days after those steps were commenced; or
  - (b) if the participant 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 participant receives the notification; or
  - (c) if the participant applies for a review of the decision in accordance with subsection (3) and the Commissioner notifies the participant that he or she has reversed the decision—has no effect; or
  - (d) if the participant applies for a review of the decision in accordance with subsection (3) and the Commissioner notifies the participant that he or she has confirmed the decision—takes effect when the Commissioner notifies the participant of the decision on the review; or
  - (e) if the participant applies for a review of the decision in accordance with subsection (3) and the Commissioner notifies the participant that he or she has varied the decision—takes effect on the day specified by the Commissioner.
- (6) If:
- (a) protection and assistance provided under the NWPP to a participant is terminated; and

(b) the person was a participant under section 10;  
the Commissioner must notify the Secretary to the Department of Immigration and Ethnic Affairs, or an officer nominated by the Secretary, in writing of the termination.

### **19 Restoration of former identity**

- (1) If:
  - (a) a participant has been provided with a new identity under the NWPP; and
  - (b) protection and assistance under the NWPP to the participant is terminated;a Deputy Commissioner may, if he or she considers it appropriate to do so, take such action as is necessary to restore the former participant's former identity.
- (2) The Deputy Commissioner must take reasonable steps to notify the former participant of a decision under subsection (1).
- (3) If the Deputy Commissioner proposes to take action to restore the former participant's former identity, the former 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:
  - (a) takes action under this section to restore the former identity of a person who was a Commonwealth participant; and



- (b) the Commissioner or a Deputy Commissioner notifies the former participant in writing that he or she is required to return to the Commissioner all documents provided to the former participant that relate to the new identity provided under the NWPP;

the former participant must not refuse or fail to return those documents to the Commissioner within 7 days after receiving the notice.

Penalty: 10 penalty units.

- (6) Subsection (5) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

## **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 new identity or new 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 by this Act.

## **22 Offences**

- (1) A person must not disclose information:
  - (a) about the identity or location of a person who is or has been a Commonwealth participant; or
  - (b) that compromises the security of such a person.

Penalty: Imprisonment for 10 years.

- (2) A person who is or has been a Commonwealth participant, or a person who has undergone assessment for inclusion in the NWPP as such a participant, must not disclose:
  - (a) the fact that he or she is or has been a participant or has undergone assessment for inclusion in the NWPP; or
  - (b) information as to the way in which the NWPP operates; or
  - (c) 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; or
  - (d) the fact that he or she has signed a memorandum of understanding; or

- (e) any details of a memorandum of understanding that he or she has signed;

unless the person has been authorised by the Commissioner to make the disclosure or the disclosure is made for the purpose of making a complaint, or providing information, to the Ombudsman under the *Ombudsman Act 1976* or the *Complaints (Australian Federal Police) Act 1981*.

Penalty for an offence against this subsection: Imprisonment for 5 years.

### **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 *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 subsection (3), 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 and 27 and subsections 12(2) and (3) may only be delegated to a Deputy Commissioner.

## **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 or an approved authority, 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 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 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 or an approved authority, 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;  
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 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 or a former participant if the information is provided in a way that cannot identify the location, or prejudice the safety, of the participant or former participant.

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

- (1) If:
  - (a) a participant is provided with a new identity under the NWPP; and
  - (b) the person, whether or not he or she remains a participant, retains that identity; and
  - (c) the person is to be a witness in a criminal proceeding under that identity; and
  - (d) the person has a criminal record under his or her former identity;the person must notify the Commissioner that the person 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 or former participant.

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

If, in any proceedings in a court, a tribunal or a Royal Commission or other commission of inquiry, the identity of a person who is a Commonwealth participant is in issue or may be disclosed, the court, tribunal or commission must, unless it considers that the interests of justice require otherwise:

- (a) hold that part of the proceedings that relate to the identity of the participant in private; and
- (b) make such order relating to the suppression of publication of evidence given before the court, tribunal or commission as, in its opinion, will ensure that the identity of the participant is not disclosed.

## **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 section 27.

- (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 SCALEplus.

*Administrative Decisions (Judicial Review) Act 1977*

*Australian Federal Police Act 1979*

For access to the wording of the amendments made by this Schedule, click here [*Witness Protection Act 1994* 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), (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	—

## Act Notes

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- (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.

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**Table of Amendments**


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**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
S. 3A.....	ad. No. 24, 2001
S. 4.....	am. No. 9, 2000
S. 9.....	am. No. 9, 2000
Ss. 12, 13.....	am. No. 9, 2000
S. 19.....	am. No. 24, 2001
S. 20.....	am. No. 9, 2000
S. 22.....	am. No. 20, 1997; No. 9, 2000; No. 24, 2001
S. 25.....	am. No. 9, 2000
S. 26.....	am. No. 9, 2000

## Table A

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### 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.

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**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.