

SOUTH AUSTRALIA

WITNESS PROTECTION ACT 1996

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SCHEDULE*Transitional Provision*

WITNESS PROTECTION ACT 1996

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Witness Protection Act 1996 No. 20 of 1996
[Assented to 24 April 1996]¹

¹ Came into operation 13 January 1997: *Gaz.* 9 January 1997, p. 78.

N.B. The amendments effected to this Act by the *Australian Crime Commission (South Australia) Act 2004* have not been brought into operation.

An Act to establish a program to give protection and assistance to certain witnesses and other persons and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

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

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"approved authority" means—

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Commissioner (however designated) of the police force of another State or a Territory;
- (c) the Chairman of the National Crime Authority; or
- (d) an authority or body of this State, the Commonwealth, another State or a Territory that—
 - (i) is authorised to conduct inquiries or investigations in relation to conduct that constitutes, or is alleged to constitute, criminal conduct, misconduct or corruption; and
 - (ii) is declared by the Minister by notice in the *Gazette* to be an approved authority for the purposes of this Act;

"Commissioner" means the person for the time being holding, or acting in, the office of Commissioner of Police under the *Police Act 1952*;

"Commonwealth Act" means the *Witness Protection Act 1994* of the Commonwealth;

"complementary witness protection law" means—

- (a) the Commonwealth Act; or
- (b) a law of another State or a Territory that—
 - (i) makes provision for the protection of witnesses; and
 - (ii) is declared by the Minister by notice in the *Gazette* to be a complementary witness protection law;

"Deputy Commissioner" means the person for the time being holding, or acting in, the office of Deputy Commissioner of Police under the *Police Act 1952*;

"**designated position**" means a position of a member, the duties of which relate to the Program and that has been declared in writing by the Commissioner to be a designated position for the purposes of this Act;

"**member**" means a member of the police force of this State;

"**participant**" means a person who is included in the Program;

"**prescribed authority**" means—

- (a) the Principal Registrar of Births, Deaths and Marriages; or
- (b) the Registrar of Motor Vehicles; or
- (c) any person or body declared by regulation to be a prescribed authority for the purposes of this Act;

"**prescribed register**" means—

- (a) the register of births kept under the *Births, Deaths and Marriages Registration Act 1966*; or
- (b) the register of motor vehicles kept under the *Motor Vehicles Act 1959*; or
- (c) the register of licences kept under the *Motor Vehicles Act 1959*; or
- (d) any other register or record of information declared by regulation to be a prescribed register for the purposes of this Act;

"**Program**" means the *State Witness Protection Program* established by this Act;

"**witness**" means—

- (a) a person who has given, or who has agreed to give, evidence on behalf of the Crown in right of this State, the Commonwealth, another State or a 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 this State, the Commonwealth, another State or a Territory; or
- (c) a person who has made a statement to the Commissioner, another member or an approved authority in relation to an offence against a law of this State, the Commonwealth, another State or a Territory; or

- (d) a person who, for any other reason, may require protection or other assistance under the Program; 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 Program;

"**witness protection program**" means—

- (a) the Program; or
- (b) a witness protection program operated under a complementary witness protection law.

(2) In this Act, a reference to a Commonwealth Act includes a reference to—

- (a) that Commonwealth Act as amended and in force for the time being; and
- (b) an Act enacted in substitution for that Act.

(3) The Minister may, by notice in the *Gazette*—

- (a) declare an authority or body to be an approved authority for the purposes of this Act; or
- (b) declare a law of another State or a Territory to be a complementary witness protection law; or
- (c) declare an authority to be an authority to which paragraph (a)(ii) of the definition of "**witness**" in subsection (1) applies; or
- (d) vary or revoke any such declaration.

Establishment of State Witness Protection Program

4. (1) The Commissioner must maintain a program, to be known as the *State Witness Protection Program*, under which the Commissioner and members 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.

Inclusion in Program not to be reward for giving evidence

5. The inclusion of a witness in the Program must not be done as a reward.

Arrangements with approved authorities

6. (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 generality of subsection (1), 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 State 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 Program; 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.

Authorisation of approved authorities

7. The Minister may, by notice in the *Gazette*—

- (a) authorise an approved authority to perform functions or exercise powers conferred on the Commissioner under this Act for the purposes of any arrangement entered into by the Commissioner under section 6 or the corresponding provision of a complementary witness protection law; or
- (b) vary or revoke any such authorisation.

Witness to disclose certain matters before inclusion in Program

8. (1) The Commissioner must not include a witness in the Program 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 the Commonwealth, another State or a 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* of the Commonwealth 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 of creditors, a deed of arrangement or a deed of assignment under Part X of the *Bankruptcy Act 1966* of the Commonwealth 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 this State, the Commonwealth, another State or a 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, restitution or compensation 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 this State, the Commonwealth, another State or a 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, licence or home detention 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

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- (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 Program.

Selection for inclusion in Program

9. (1) The Commissioner has the sole responsibility of deciding whether to include a witness in the Program, including cases where an approved authority has requested that a witness be included in the Program.

- (2) A witness may be included in the Program 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 10 or—
 - (i) if the witness is under the age of 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 Program, 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 Program; 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 Program—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 Program,

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

(4) The Commissioner must not include a witness in the Program 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 the age of 18 years; and
- (b) the witness included in the Program remains a participant until after he or she attains the age of 18 years,

the Commissioner may require the participant to sign another memorandum of understanding.

Memorandum of understanding

10. (1) A memorandum of understanding must—

- (a) set out the basis on which a participant is included in the Program 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 Program 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 this State, the Commonwealth, another State or a Territory; or
 - (ii) engages in activities of a kind specified in the memorandum of understanding; or
 - (iii) compromises the integrity of the Program; 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

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- (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; or
 - (iii) allow his or her fingerprints to be taken; or
 - (iv) allow a sample of his or her blood to be taken for DNA analysis; or
 - (v) allow photographs of himself or herself to be taken; 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 Program.

(3) A memorandum of understanding must contain a statement advising the witness of his or her right to complain to the Police Complaints Authority about the conduct of the Commissioner or another member in relation to the matters dealt with in the memorandum.

(4) A memorandum of understanding must be signed by or on behalf of the witness in the presence of a member who holds or occupies a designated position.

(5) A witness becomes included in the Program when the Commissioner signs the memorandum of understanding.

(6) The Commissioner must, as soon as practicable after signing a memorandum of understanding, notify the relevant participant that it has been signed.

(7) Subject to subsection (8), 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.

(8) A variation must not have the effect of removing from the memorandum of understanding the provisions referred to in subsection (1).

Register of participants

11. (1) The Commissioner must maintain a register of participants.

(2) The register may be maintained by electronic means.

(3) The Commissioner must 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 Program—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 must also include in the register details of any permission given by the Commissioner under section 18.

(5) The Commissioner must 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 Program; and
- (c) the original of each permission given by the Commissioner under section 18; and
- (d) any documents returned to the Commissioner as a result of a notification under section 16(2).

Access to register

12. (1) Subject to this section, only the Commissioner and members who hold or occupy designated positions and who are authorised by the Commissioner, may have access to the register and to documents kept in conjunction with the register.

(2) The Commissioner must allow the Police Complaints Authority to have access to all or part of the register or to all or some of the documents kept in conjunction with the register for the purposes of an investigation by the Authority under Part 4 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

(3) If—

- (a) a participant applies to the Commissioner for access to information in the register, or documents kept in conjunction with the register, concerning the participant; and

- (b) the Commissioner is, on such evidence as the Commissioner may require (which may include the applicant's fingerprints), satisfied of the applicant's identity,

the Commissioner must give the participant access to the information or documents.

(4) The Commissioner may, if he or she is of the opinion that it is in the interests of the 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.

(5) If the Commissioner allows another person access under subsection (4), the Commissioner must notify the relevant approved authority (if any) of—

- (a) the name of the person to whom access was allowed; and
- (b) the information the person was allowed access to; and
- (c) the reasons for allowing access.

Action where witness included in Program

13. (1) If a witness is included in the Program, or is being assessed for inclusion in the Program, the Commissioner must take such action as the Commissioner considers necessary and reasonable to protect the witness's safety and welfare while also protecting the safety of members.

(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 members who hold or occupy designated positions to use assumed names in carrying out their duties in relation to the Program 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 Program.

Dealing with rights and obligations of participant

14. (1) If a participant has any outstanding rights or obligations or is subject to any restrictions, the Commissioner must 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 Program 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 must give notice in writing to the participant stating that he or she is so satisfied.

(4) The notice must also 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.

Cessation of protection and assistance

15. (1) Protection and assistance provided under the Program to a participant—

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- (a) must be terminated by the Commissioner if the participant requests in writing that it be terminated; or
- (b) may be terminated by the 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 given information to him or her knowing that it 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 Program; 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 this State, the Commonwealth, another State or a Territory in relation to a matter relevant to the Program; or
 - (vi) the participant refuses or fails to sign a new memorandum of understanding when required to do so under section 10(4); or
 - (vii) there is, in the opinion of the Deputy Commissioner, no reasonable justification for the participant to remain included in the Program,

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

(2) If the Deputy Commissioner makes a decision under subsection (1)(b) that protection and assistance provided under the Program 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 (if any) of the decision.

(3) A participant may, within 28 days after receiving a notice under subsection (2), apply in writing to the Commissioner for a review of the decision of the Deputy Commissioner.

(4) If an application is made under subsection (3), the Commissioner must review the decision and may confirm, vary or reverse it.

(5) Before the Commissioner determines an application under subsection (3), the Commissioner must give the participant a reasonable opportunity to state his or her case.

(6) The Commissioner must inform the participant in writing of his or her decision on a review.

(7) Subject to subsection (8), a decision of a Deputy Commissioner under subsection (1)(b) takes effect—

- (a) at the end of the period of 28 days after the participant receives notice of the decision; or
- (b) if the participant's whereabouts are unknown and the Deputy Commissioner has taken reasonable steps to notify the participant of the decision but has been unable to do so—at the end of the period of 28 days after those steps were commenced.

(8) If the participant applies for a review of the decision of the Deputy Commissioner in accordance with subsection (3), the decision takes effect as follows:

- (a) if the Commissioner notifies the participant that he or she has confirmed the decision—the decision takes effect when the Commissioner notifies the participant of the decision on the review;
- (b) if the Commissioner notifies the participant that he or she has varied the decision—the decision takes effect on the day specified by the Commissioner in the notice;
- (c) if the Commissioner notifies the participant that he or she has reversed the decision—the decision has no effect.

Restoration of former identity

16. (1) If—

- (a) a participant has been provided with a new identity under the Program; and
- (b) protection and assistance under the Program to the participant is terminated,

the 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 Commissioner must take reasonable steps to notify the former participant of a decision under subsection (1).

(3) If the Commissioner—

- (a) takes action under this section to restore the former identity of a person who was a participant in the Program; and
- (b) the Commissioner notifies the former participant in writing that he or she is required to return to the Commissioner all documents provided to the former participant that relate to the new identity provided under the Program,

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

Maximum penalty: \$1 000.

Authorisation for establishment of new identity or restoration of former identity

17. (1) The Supreme Court may, on application by the Commissioner, make an order in accordance with this section in relation to a witness.

(2) The Court may make such orders as it considers necessary for the purpose of—

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- (a) establishing a new identity for the person in respect of whom the order is made; or
- (b) restoring the former identity of a person who has been provided with a new identity pursuant to this section.
- (3) For example, the Court may make an order requiring a prescribed authority—
- (a) to make entries in a prescribed register in relation to a specified person; or
- (b) to issue new documentation to a specified person, including certificates, licences, permits or other authorities.
- (4) An order referred to in subsection (3)(b) cannot authorise the issue of documentation for a person that represents the person—
- (a) to have qualifications that the person does not have; or
- (b) to be entitled to benefits to which the person would not be entitled if the witness were not included in the witness protection program.
- (5) The Court must not make an order for the purpose referred to in subsection (2)(a) unless satisfied that—
- (a) the making of the order is necessary and reasonable to protect the safety and welfare of the witness; and
- (b) the witness has entered into a memorandum of understanding under section 10 or the corresponding provision of a complementary witness protection law; and
- (c) the witness is likely to comply with the memorandum of understanding.
- (6) The Court must not make an order for the purpose referred to in subsection (2)(b) unless satisfied that protection and assistance to the witness under the relevant witness protection program has been terminated.
- (7) If the Court makes an order referred to in subsection (2)(a), the prescribed authority must maintain records showing details of the original entries in relation to the person in respect of whom an entry is made pursuant to the order.
- (8) An entry made in a prescribed register pursuant to an order under this section has effect as if it were a valid entry made under the law of this State that authorises or requires the making of such an entry in the register.
- (9) A document issued to any person pursuant to an order under this section has effect as if it were issued under the law of this State that requires or authorises the issue of such a document.
- (10) A person in respect of whom an order has been made under this section must not use or obtain any document issued by the prescribed authority that is based on the person's former identity (whether original identity or new identity established under this section).

Maximum penalty: \$1 000.

(11) Subsection (10) does not prevent a person whose former identity is restored under this section from using or obtaining a document that is based on the former identity.

(12) Proceedings under this section must be conducted in private.

(13) Except as authorised by the Court, the records of proceedings under this section will not be open to inspection.

Non-disclosure of former identity of participant

18. (1) If—

- (a) a participant who has been provided with a new identity under a witness protection program would, apart from this section, be required by or under a law of this State to disclose his or her former identity for a particular purpose; and
- (b) the Commissioner or an approved authority (as the case may require) 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) Subject to section 24, 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 this State, to claim that his or her new identity is his or her only identity and to deny his or her participation in a witness protection program.

(3) In this section—

"**participant**" includes a person who—

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

Special commercial arrangements by Commissioner

19. 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.

Payments under the Program not able to be confiscated

20. (1) The Commissioner may certify in writing that an amount held by a participant represents payments made to the participant under the Program.

(2) An amount certified under subsection (1) cannot be forfeited or made subject to a restraining order under the *Crimes (Confiscation of Profits) Act 1986*.

Offences

21. (1) A person must not, without lawful authority, disclose information—

- (a) about the identity or location of a person who is or has been a participant in a witness protection program; or

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

Maximum penalty: Imprisonment for 10 years.

(2) A person who is or has been a participant in a witness protection program or a person who has undergone assessment for inclusion in a witness protection program as 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 program; or
- (b) information as to the way in which the program operates; or
- (c) information about any member who is or has been involved, or any person who is assisting or has assisted, in the program; 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.

Maximum penalty: Imprisonment for 5 years.

(3) Subsection (1) or (2) does not prevent a disclosure that—

- (a) has been authorised by the Commissioner or relevant approved authority (if any); or
- (b) is necessary for the purposes of an investigation by the Police Complaints Authority under Part 4 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*; or
- (c) is necessary to comply with, or is authorised by, an order of the Supreme Court.

(4) A person must not, either directly or indirectly, make a record of, disclose or communicate to another person any information relating to action under section 17 to establish a new identity for a person or restore a person's former identity—

- (a) unless authorised to do so by an order of the Supreme Court; or
- (b) unless it is necessary to do so—
- (i) for the purposes of this Act; or
- (ii) for the purposes of an investigation by the Police Complaints Authority under Part 4 of the *Police (Complaints and Disciplinary Proceedings) Act 1985*; or
- (iii) to comply with an order of the Court.

Maximum penalty: Imprisonment for 10 years.

(5) This section does not prevent a disclosure that is necessary for the purpose of action under section 17 to establish a new identity for a person or to restore a person's former identity.

(6) In this section—

"**member**", in relation to a witness protection program, includes—

- (a) a member of the Australian Federal Police; and
- (b) a member of a police force of another State or a Territory;

"**memorandum of understanding**", in relation to a witness protection program, means a memorandum of understanding under this Act or a complementary witness protection law.

Provision of information to approved authorities

22. If—

- (a) a participant has been provided with a new identity or has been relocated under the Program; 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 the law of this State, the Commonwealth, another State or a Territory the maximum penalty for which is or includes imprisonment for a period of more than 12 months,

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 Program 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 members in relation to the participant.

Commissioner and members not to be required to disclose information

23. (1) Subject to subsection (3), the Commissioner, a member or a prescribed authority cannot 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 Police Complaints Authority cannot 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 this State that the judicial officer presiding over the proceedings be advised of—

- (a) the fact that a person is a participant in a witness protection program; or
- (b) the location and circumstances of a participant in a witness protection program,

a person referred to in subsection (1) or (2) must disclose the relevant information to the judicial officer in chambers, but the person must not disclose the information if any person other than the judicial officer and the judicial officer's associate or clerk is present.

(4) The judicial officer must not disclose any information disclosed to the judicial officer 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 former participant in a witness protection program if the information is provided in such a way that cannot identify the location, or prejudice the safety, of the participant or former participant.

Disclosure of information where participant becomes a witness in criminal proceedings

24. (1) If—

- (a) a person is to be a witness in criminal proceedings for an indictable offence or a summary offence punishable by imprisonment ("**the prospective witness**"); and
- (b) —
 - (i) the person is a participant in a witness protection program; or
 - (ii) the person is a former participant in a witness protection program and retains a new identity provided under the program; or
 - (iii) steps have been taken with a view to including the person in a witness protection program,

the information specified in subsection (2) must be disclosed to the Director of Public Prosecutions by the prospective witness and, if the Commissioner is aware of the matters referred to in paragraphs (a) and (b), by the Commissioner.

(2) The information required to be disclosed under subsection (1) is as follows:

- (a) the fact that the prospective witness is a participant or former participant in a witness protection program or that steps have been taken with a view to including the prospective witness in a witness protection program; and
- (b) if the prospective witness is a participant or former participant in a witness protection program—whether he or she has a new identity provided under the program; and
- (c) if the prospective witness has a new identity provided under a witness protection program—whether he or she is to give evidence under his or her former identity or under the new identity; and
- (d) if the prospective witness is to give evidence under a new identity and he or she has a criminal record under his or her former identity—details of that criminal record.

(3) If the Director of Public Prosecutions is provided with information under subsection (1) or otherwise becomes aware of the matters referred to in subsection (1)(a) and (b) in relation to the prospective witness, the Director may, by notice in writing given to the prospective witness, require him or her to disclose any further information as specified in the notice that the Director may reasonably require relating to the prospective witness and his or her participation or possible participation in the witness protection program that may be relevant to the prospective witness's credibility as a witness in the proceedings.

(4) If the prospective witness fails to comply with subsection (1) or a requirement of the Director of Public Prosecutions under subsection (3), he or she is guilty of an offence.

Maximum penalty: \$5 000.

(5) The Director of Public Prosecutions must disclose to the Supreme Court—

- (a) the information provided to the Director under this section; and
- (b) any other information within the knowledge of the Director relating to the prospective witness and his or her participation or possible participation in the witness protection program that may be relevant to—
 - (i) the prospective witness's credibility as a witness in the proceedings; or
 - (ii) the protection of the prospective witness's safety and the integrity of the witness protection program.

(6) If the Court requires any further information relevant to the matters referred to in subsection (5)(b), the Director of Public Prosecutions must institute any necessary enquiries and disclose the results of the enquiries to the Court.

(7) Any enquiries instituted by the Director of Public Prosecutions under subsection (6) may include enquiries directed to—

- (a) the prospective witness by notice or further notice under subsection (3); or
- (b) the Commissioner (and for that purpose the Director is to be afforded all reasonable assistance and co-operation by the Commissioner).

(8) The Court must be constituted of a judge in chambers for the purposes of this section and any disclosures under this section must be made by the Director of Public Prosecutions personally to the judge in the absence of any person other than the judge and the judge's associate.

(9) If the Court is of the opinion that non-disclosure of any information provided by the Director of Public Prosecutions under this section might prejudice the fair trial of a defendant in the proceedings, the Court may make such orders relating to the disclosure of the information to the defendant or the defendant's legal representative and the use of the information as the Court considers necessary in the circumstances of the case, taking into account the need to protect the prospective witness's safety and the integrity of the witness protection program.

(10) No appeal lies against an order under this section or a decision of the Court not to make an order under this section.

(11) In this section—

"**Director of Public Prosecutions**" includes a person acting in the position of Director of Public Prosecutions, the Deputy Director of Public Prosecutions or the Crown Counsel.

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

25. (1) 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 participant in a witness protection program 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.

(2) In this section—

"**participant**" includes a person who—

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

Immunity from personal liability

26. (1) No personal liability attaches to the Commissioner, a member, a prescribed authority or any other person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

Delegation

27. (1) The Commissioner may only delegate a power of the Commissioner under this Act to a member who holds or occupies a designated position.

(2) A power so delegated may not be sub-delegated.

Annual report

28. (1) The Commissioner must keep the Minister informed of the general operations, performance and effectiveness of the Program and, in particular, the exercise of the Commissioner's powers under section 24.

(2) The Minister must, in consultation with the Commissioner, on or before 30 September in each year, prepare a report on the matters referred to in subsection (1) with respect to the year that ended on the preceding 30 June.

(3) The report must be prepared in a manner that does not prejudice the effectiveness or security of the Program.

(4) The Minister must, within six sitting days after completing the report, cause copies to be laid before both Houses of Parliament.

Regulations

29. The Governor may make such regulations as are contemplated by or as are necessary and expedient for the purposes of this Act.

SCHEDULE

Transitional Provision

Transitional provision

1. A person who was, immediately before the commencement of this Act, included in the program operated by the police force of this State and known as the *Witness Protection Program* becomes a participant in the Program on that commencement.