

**Criminal Investigation (Covert Powers)  
Bill 2011**

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**Defined Terms**





Western Australia

LEGISLATIVE ASSEMBLY

## **Criminal Investigation (Covert Powers) Bill 2011**

**A Bill for**

**An Act to facilitate criminal investigations and intelligence-gathering in relation to criminal activity by providing for —**

- **the authorisation, conduct and monitoring of covert law enforcement operations; and**
- **the acquisition and use of assumed identities by participants in covert law enforcement operations; and**
- **the protection of the identity of participants in covert law enforcement operations,**

**and to amend the *Corruption and Crime Commission Act 2003*, the *Misuse of Drugs Act 1981*, the *Prostitution Act 2000* and the *Witness Protection (Western Australia) Act 1996*, and for related purposes.**

The Parliament of Western Australia enacts as follows:

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**Part 1 — Preliminary**

**1. Short title**

This is the *Criminal Investigation (Covert Powers) Act 2011*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

**3. Terms used**

In this Act, unless the contrary intention appears —

***Australian Crime Commission*** means the Australian Crime Commission established by the *Australian Crime Commission Act 2002* (Commonwealth);

***chief officer*** means —

- (a) in relation to the Police Force — the Commissioner of Police;
- (b) in relation to the Australian Crime Commission — the Chief Executive Officer of the Australian Crime Commission;
- (c) in relation to the fisheries department — the chief executive officer of the department;

***conduct*** includes any act or omission;

***criminal activity*** means conduct that constitutes the commission of an offence by one or more persons;

***disciplinary proceeding*** means a proceeding of a disciplinary nature under a law of any jurisdiction;

***fisheries department*** means the department principally assisting in the administration of the *Fish Resources Management Act 1994*;

- 1           **fisheries officer** has the meaning given in the *Fish Resources*  
2           *Management Act 1994* section 4(1);
- 3           **government agency** means an authority or body (whether a  
4           body corporate or not) established or incorporated for a public  
5           purpose by a law of this jurisdiction, a participating jurisdiction  
6           or the Commonwealth, and includes a body corporate  
7           incorporated under a law of a jurisdiction or of the  
8           Commonwealth in which this jurisdiction, a participating  
9           jurisdiction or the Commonwealth has a controlling interest;
- 10          **jurisdiction** means a State, a Territory or the Commonwealth;
- 11          **law enforcement agency** means —
- 12           (a) the Police Force; or
- 13           (b) the Australian Crime Commission; or
- 14           (c) the fisheries department;
- 15          **law enforcement officer** means —
- 16           (a) a police officer; or
- 17           (b) a person who is seconded to the Police Force, including  
18           (but not limited to) a police officer (however described),  
19           of another jurisdiction; or
- 20           (c) a member of staff of the Australian Crime Commission;  
21           or
- 22           (d) a fisheries officer holding a prescribed office in the  
23           fisheries department;
- 24          **law enforcement operation** means an operation that is  
25          conducted, or is intended to be conducted, by a law enforcement  
26          agency or other government agency for the purpose of —
- 27           (a) obtaining evidence that may lead to the prosecution of a  
28           person for criminal activity; or
- 29           (b) arresting any person suspected of being involved in  
30           criminal activity; or
- 31           (c) frustrating criminal activity; or

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- 1 (d) carrying out an activity that is reasonably necessary to  
2 facilitate the achievement of any purpose referred to in  
3 paragraphs (a) to (c);

4 **Minister** —

- 5 (a) in relation to the Police Force, means the Minister  
6 administering the *Police Act 1892*;
- 7 (b) in relation to the Australian Crime Commission, means  
8 the Minister administering the *Australian Crime*  
9 *Commission (Western Australia) Act 2004*;
- 10 (c) in relation to the fisheries department, means the  
11 Minister administering the *Fish Resources Management*  
12 *Act 1994*;

13 **Police Force** means the Police Force of Western Australia  
14 provided for by the *Police Act 1892*;

15 **police officer** means a person appointed under the *Police*  
16 *Act 1892* Part I to be a member of the Police Force;

17 **prescribed** means prescribed by regulations made under this  
18 Act;

19 **this jurisdiction** —

- 20 (a) means Western Australia; and
- 21 (b) for the purposes of any suspected criminal activity being  
22 investigated by the fisheries department, includes any  
23 waters not within the limits of Western Australia that are  
24 WA waters as defined in the *Fish Resources*  
25 *Management Act 1994* section 5(b) to (d).

26 **4. Crown bound**

- 27 (1) This Act binds the State and, so far as the legislative power of  
28 Parliament permits, the Crown in all its other capacities.
- 29 (2) Nothing in this Act makes the State, or the Crown in any of its  
30 other capacities, liable to be prosecuted for an offence.

1                                    **Part 2 — Controlled operations**

2                                    **Division 1 — General**

3    **5.        Terms used**

4                    In this Part, unless the contrary intention appears —

5                    ***authorised operation*** means a controlled operation for which an  
6                    authority is in force;

7                    ***authority*** means an authority in force under Division 2, and  
8                    includes any variation of such an authority and any retrospective  
9                    authority granted under section 25;

10                   ***civilian participant***, in an authorised operation, means a  
11                   participant in the operation who is not a law enforcement  
12                   officer;

13                   ***controlled conduct*** means conduct for which a person would,  
14                   but for section 27 or 34, be criminally responsible;

15                   ***controlled operation*** means a law enforcement operation that  
16                   involves, or may involve, controlled conduct;

17                   ***corresponding authorised operation*** means any operation in the  
18                   nature of a controlled operation that is authorised by or under  
19                   the provisions of a corresponding law;

20                   ***corresponding authority*** means an authority authorising a  
21                   controlled operation (within the meaning of that term in a  
22                   corresponding law) that is in force under the corresponding law;

23                   ***corresponding law*** means a law of another jurisdiction that  
24                   corresponds to this Part, and includes a prescribed law of  
25                   another jurisdiction;

26                   ***corresponding participant*** means a person who is authorised by  
27                   a corresponding authority to participate in a corresponding  
28                   authorised operation;

29                   ***cross-border controlled operation*** has the meaning given in  
30                   section 6;

31                   ***formal application*** has the meaning given in section 10(2)(a);

- 1                      **formal authority** has the meaning given in section 15(1)(a);
- 2                      **formal variation application** has the meaning given in
- 3                      section 19(3)(a);
- 4                      **formal variation of authority** has the meaning given in
- 5                      section 21(1)(a);
- 6                      **illicit goods** means goods the possession of which is a
- 7                      contravention of the law of this jurisdiction in the circumstances
- 8                      of the particular case;
- 9                      **law enforcement participant**, in an authorised operation, means
- 10                     a participant in the operation who is a law enforcement officer;
- 11                     **local controlled operation** has the meaning given in section 7;
- 12                     **Parliamentary Commissioner** means the Parliamentary
- 13                     Commissioner for Administrative Investigations appointed
- 14                     under the *Parliamentary Commissioner Act 1971*;
- 15                     **participant**, in an authorised operation, means a person who is
- 16                     authorised under this Part to engage in controlled conduct for
- 17                     the purposes of the operation;
- 18                     **participating jurisdiction** means a jurisdiction in which a
- 19                     corresponding law is in force;
- 20                     **principal law enforcement officer**, for an authorised operation,
- 21                     means the law enforcement officer who is responsible for the
- 22                     conduct of the operation;
- 23                     **relevant offence** means —
- 24                     (a) an offence against the law of this jurisdiction punishable
- 25                     by imprisonment for 3 years or more; or
- 26                     (b) an offence against the law of this jurisdiction that is
- 27                     prescribed for the purposes of this definition;
- 28                     **sexual offence** means —
- 29                     (a) an offence under The Criminal Code Part V
- 30                     Chapter XXXI; or
- 31                     (b) any other offence of a similar kind prescribed for the
- 32                     purposes of this definition;

1            **suspect** means a person reasonably suspected of having  
2            committed or being likely to have committed, or of committing  
3            or being likely to commit, a relevant offence;  
4            **urgent application** has the meaning given in section 10(2)(b);  
5            **urgent authority** has the meaning given in section 15(1)(b);  
6            **urgent variation application** has the meaning given in  
7            section 19(3)(b);  
8            **urgent variation of authority** has the meaning given in  
9            section 21(1)(b).

10    **6. Cross-border controlled operations**

11            (1) When this Part refers to a **cross-border controlled operation** it  
12            means a controlled operation that is conducted, or is intended to  
13            be conducted —

- 14                    (a) in this jurisdiction and in one or more participating  
15                    jurisdictions; or  
16                    (b) in one or more participating jurisdictions.

17            (2) For the purposes of subsection (1), a controlled operation is to  
18            be taken to be conducted, or intended to be conducted, in this  
19            jurisdiction if a law enforcement officer of this jurisdiction is, or  
20            is to be, authorised under this Part to engage in controlled  
21            conduct for the purposes of the operation.

22    **7. Local controlled operation**

23            When this Part refers to a **local controlled operation** it means a  
24            controlled operation that is conducted, or is intended to be  
25            conducted, wholly in this jurisdiction.

26    **8. Evidence obtained in controlled operations**

27            (1) Subject to subsection (2), this Part is not intended to limit a  
28            discretion that a court has —

- 29                    (a) to admit or exclude evidence in any proceedings; or  
30                    (b) to stay criminal proceedings in the interests of justice.

- 1 (2) In determining whether evidence should be admitted or  
2 excluded in any proceedings, the fact that the evidence was  
3 obtained as a result of a person engaging in criminal activity is  
4 to be disregarded if —
- 5 (a) the person was a participant or corresponding participant  
6 acting in the course of an authorised operation or  
7 corresponding authorised operation; and
- 8 (b) the criminal activity was controlled conduct within the  
9 meaning of that term in this Part or a corresponding law.

10 **9. Non-application of certain Acts**

11 The following Acts do not apply to investigations, operations,  
12 activities or records under this Part —

- 13 (a) the *State Records Act 2000*;
- 14 (b) the *Freedom of Information Act 1992*, despite  
15 section 8(1) of that Act.

16 **Division 2 — Authorisation of controlled operations**

17 **10. Applications for authorities to conduct controlled operations**

- 18 (1) A law enforcement officer of a law enforcement agency may  
19 apply to the chief officer of the agency for authority to conduct  
20 a controlled operation on behalf of the agency.
- 21 (2) An application for an authority may be made —
- 22 (a) in writing (a *formal application*); or
- 23 (b) orally (an *urgent application*), if the applicant has  
24 reason to believe that the delay caused by making a  
25 formal application may affect the success of the  
26 operation.
- 27 (3) A formal application must be in a physical form, signed by the  
28 applicant.



- 1       (4) However if it is impracticable in the circumstances for a  
2       physical document to be delivered to the chief officer, a formal  
3       application may take the form of —
- 4           (a) a fax; or
- 5           (b) an email or other electronic document, in which case the  
6       document need not be signed.
- 7       (5) An urgent application may be made in person, by telephone or  
8       any other electronic means.
- 9       (6) Nothing in this Division prevents an application for an authority  
10      being made in respect of a controlled operation that has been the  
11      subject of a previous application.
- 12      (7) In any application, whether formal or urgent, the applicant  
13      must —
- 14           (a) provide sufficient information to enable the chief officer  
15           to decide whether or not to grant the application; and
- 16           (b) state whether or not the proposed operation, or any other  
17           controlled operation in respect of the same criminal  
18           activity, has been the subject of an earlier application for  
19           an authority or variation of an authority and, if so,  
20           whether or not the authority or variation was granted.
- 21      (8) The chief officer may require the applicant to furnish such  
22      additional information concerning the proposed controlled  
23      operation as is necessary for the chief officer's proper  
24      consideration of the application.
- 25      (9) As soon as practicable after making an urgent application, the  
26      applicant must make a record in writing of the application and  
27      give a copy of it to the chief officer.

1     **11.     Determination of applications**

2             After considering an application for authority to conduct a  
3             controlled operation, and any additional information furnished  
4             under section 10(8), the chief officer —

- 5             (a)    may authorise the operation by granting the authority,  
6                        either unconditionally or subject to conditions; or  
7             (b)    may refuse the application.

8     **12.     Matters to be taken into account — all controlled operations**

9             (1)    An authority to conduct a controlled operation must not be  
10            granted unless the chief officer is satisfied on reasonable  
11            grounds —

- 12            (a)    that a relevant offence has been, is being or is likely to  
13                        be committed; and  
14            (b)    that the authority is within the administrative  
15                        responsibility of the law enforcement agency; and  
16            (c)    that any unlawful conduct involved in conducting the  
17                        operation will be limited to the maximum extent  
18                        consistent with conducting an effective controlled  
19                        operation; and  
20            (d)    that the operation will be conducted in a way that will  
21                        minimise the risk of more illicit goods being under the  
22                        control of persons, other than law enforcement officers,  
23                        at the end of the operation than are reasonably necessary  
24                        to enable the officers to achieve the purpose of the  
25                        controlled operation; and  
26            (e)    that the proposed controlled conduct will be capable of  
27                        being accounted for in a way that will enable the  
28                        reporting requirements of Division 4 to be complied  
29                        with; and  
30            (f)    that the operation does not involve any participant in the  
31                        operation inducing or encouraging another person to  
32                        engage in criminal activity of a kind that the other  
33                        person could not reasonably have expected to engage in  
34                        unless so induced or encouraged; and

- 1           (g) that any conduct involved in the operation will not —
- 2               (i) seriously endanger the health or safety of any
- 3               person; or
- 4               (ii) cause the death of, or serious injury to, any
- 5               person; or
- 6               (iii) involve the commission of a sexual offence
- 7               against any person; or
- 8               (iv) result in unlawful loss of or serious damage to
- 9               property (other than illicit goods).
- 10       (2) A person must not be authorised to participate in a controlled
- 11       operation unless the chief officer is satisfied that the person has
- 12       the appropriate skills or training to participate in the operation.
- 13       (3) A civilian participant —
- 14           (a) must not be authorised to participate in any aspect of a
- 15           controlled operation unless the chief officer is satisfied
- 16           that it is wholly impracticable for a law enforcement
- 17           participant to participate in that aspect of the operation;
- 18           and
- 19           (b) must not be authorised to engage in controlled conduct
- 20           unless the chief officer is satisfied that it is wholly
- 21           impracticable for the civilian participant to participate in
- 22           the aspect of the controlled operation referred to in
- 23           paragraph (a) without engaging in that conduct.
- 24       **13. Further matters to be taken into account — cross-border**
- 25       **controlled operations**
- 26       In addition to section 12, an authority to conduct a cross-border
- 27       controlled operation must not be granted unless the chief officer
- 28       is satisfied on reasonable grounds —
- 29           (a) that the controlled operation will be, or is likely to be,
- 30           conducted —
- 31               (i) in this jurisdiction and in one or more
- 32               participating jurisdictions; or

- 1 (ii) in one or more participating jurisdictions;  
2 and  
3 (b) that the nature and extent of the suspected criminal  
4 activity are such as to justify the conduct of a controlled  
5 operation —  
6 (i) in this jurisdiction and in one or more  
7 participating jurisdictions; or  
8 (ii) in one or more participating jurisdictions.

9 **14. Further matters to be taken into account — local controlled**  
10 **operations**

11 In addition to section 12, an authority to conduct a local  
12 controlled operation must not be granted unless the chief officer  
13 is satisfied on reasonable grounds —

- 14 (a) that the controlled operation will be, or is likely to be,  
15 conducted wholly in this jurisdiction; and  
16 (b) that the nature and extent of the suspected criminal  
17 activity are such as to justify the conduct of a controlled  
18 operation in this jurisdiction.

19 **15. Form of authority**

- 20 (1) An authority to conduct a controlled operation may be  
21 granted —  
22 (a) in writing (a *formal authority*); or  
23 (b) orally (an *urgent authority*), if the chief officer is  
24 satisfied that the delay caused by granting a formal  
25 authority may affect the success of the operation.  
26 (2) A formal authority must be in a physical form, signed by the  
27 chief officer.  
28 (3) However if it is impracticable in the circumstances for a  
29 physical document to be delivered to the applicant, a formal  
30 authority may take the form of —  
31 (a) a fax; or

- 1           (b) an email or other electronic document, in which case the  
2           document need not be signed.
- 3           (4) An urgent authority may be granted in person, by telephone or  
4           any other electronic means.
- 5           (5) Nothing in this Division prevents an authority being granted in  
6           respect of a controlled operation that has been the subject of a  
7           previous authority.
- 8           (6) An authority, whether formal or urgent, must do all of the  
9           following —
- 10           (a) state the name, and rank or position, of the person  
11           granting the authority;
- 12           (b) identify the principal law enforcement officer and, if the  
13           principal law enforcement officer is not the applicant for  
14           the authority, the name of the applicant;
- 15           (c) state whether the authority is for a cross-border  
16           controlled operation or a local controlled operation;
- 17           (d) for a cross-border controlled operation, state whether it  
18           is to be conducted —
- 19               (i) in this jurisdiction and in one or more  
20               participating jurisdictions specified in the  
21               authority; or
- 22               (ii) in one or more participating jurisdictions  
23               specified in the authority;
- 24           (e) state whether the authority is a formal authority or an  
25           urgent authority;
- 26           (f) identify each person who may engage in controlled  
27           conduct for the purposes of the controlled operation;
- 28           (g) identify the nature of the criminal activity (including the  
29           suspected relevant offences) in respect of which the  
30           controlled conduct is to be engaged in;

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- 1 (h) identify —
- 2 (i) with respect to the law enforcement participants,
- 3 the nature of the controlled conduct that those
- 4 participants may engage in; and
- 5 (ii) with respect to the civilian participants, the
- 6 particular controlled conduct, if any, that each
- 7 such participant may engage in;
- 8 (i) identify (to the extent known) any suspect;
- 9 (j) specify the period of validity of the authority, being a
- 10 period not exceeding 6 months in the case of a formal
- 11 authority or 7 days in the case of an urgent authority;
- 12 (k) specify any conditions to which the conduct of the
- 13 operation is subject;
- 14 (l) state the date and time when the authority is granted;
- 15 (m) identify (to the extent known) —
- 16 (i) the nature and quantity of any illicit goods that
- 17 will be involved in the operation; and
- 18 (ii) the route through which those goods will pass in
- 19 the course of the operation.
- 20 (7) A person is sufficiently identified for the purposes of
- 21 subsection (6)(f) if the person is identified —
- 22 (a) by an assumed name under which the person is
- 23 operating; or
- 24 (b) by a code name or code number,
- 25 as long as the assumed name, code name or code number can be
- 26 matched to the person's identity by reference to records kept by
- 27 the chief officer.
- 28 (8) The chief officer must ensure that written notes are kept of the
- 29 particulars referred to in subsection (6) for each urgent
- 30 authority.

1 **16. Duration of authorities**

2 Unless it is sooner cancelled, an authority has effect for the  
3 period of validity specified in it in accordance with  
4 section 15(6)(j).

5 **17. Variation of authority**

6 (1) The chief officer may vary an authority —

- 7 (a) at any time on the chief officer's own initiative; or  
8 (b) on application under section 19(1).

9 (2) However, a variation cannot be made that has the effect of  
10 extending the period of validity of an urgent authority.

11 (3) The chief officer must, as soon as practicable after varying an  
12 authority, prepare and give to the principal law enforcement  
13 officer for the authorised operation a written document that  
14 complies with section 21.

15 **18. Variations on chief officer's own initiative**

16 The chief officer may vary an authority under section 17(1)(a)  
17 for any one or more of the following purposes —

- 18 (a) to extend the period of validity of the authority (except  
19 as provided by section 17(2));  
20 (b) to authorise additional or alternative persons to engage  
21 in controlled conduct for the purposes of the operation;  
22 (c) to authorise participants in the operation to engage in  
23 additional or alternative controlled conduct;  
24 (d) to identify additional suspects (to the extent known);  
25 (e) if the principal law enforcement officer has changed  
26 since the authority was granted, to identify the new  
27 principal law enforcement officer.

- 1     **19.     Applications for variation of authority**
- 2            (1)     The principal law enforcement officer for an authorised  
3            operation, or any other law enforcement officer on behalf of the  
4            principal law enforcement officer, may apply to the chief officer  
5            for a variation of authority for any one or more of the following  
6            purposes —
- 7                    (a)     to extend the period of validity of the authority (except  
8                    as provided by section 17(2));
- 9                    (b)     to authorise additional or alternative persons to engage  
10                   in controlled conduct for the purposes of the operation;
- 11                   (c)     to authorise participants in the operation to engage in  
12                   additional or alternative controlled conduct;
- 13                   (d)     to identify additional suspects (to the extent known);
- 14                   (e)     if the principal law enforcement officer has changed  
15                   since the authority was granted, to identify the new  
16                   principal law enforcement officer.
- 17            (2)     More than one application for a variation may be made in  
18            respect of the same authority, but no single variation may  
19            extend the period of validity of an authority for more than  
20            6 months at a time.
- 21            (3)     An application for a variation of an authority may be made —
- 22                    (a)     in writing (a **formal variation application**); or
- 23                    (b)     orally (an **urgent variation application**), if the applicant  
24                   has reason to believe that the delay caused by making a  
25                   formal variation application may affect the success of  
26                   the operation.
- 27            (4)     A formal variation application must be in a physical form,  
28            signed by the applicant.
- 29            (5)     However if it is impracticable in the circumstances for a  
30            physical document to be delivered to the chief officer, a formal  
31            variation application may take the form of —
- 32                    (a)     a fax; or



1           (b) an email or other electronic document, in which case the  
2           document need not be signed.

3           (6) An urgent variation application may be made in person, by  
4           telephone or any other electronic means.

5           (7) The chief officer may require the applicant to furnish such  
6           additional information concerning the proposed variation as is  
7           necessary for the chief officer's proper consideration of the  
8           application.

9           (8) As soon as practicable after making an urgent variation  
10          application, the applicant must make a record in writing of the  
11          application and give a copy of it to the chief officer.

12   **20.     Determining applications for variation of authority**

13          (1) After considering an application for a variation of authority, and  
14          any additional information furnished under section 19(7), the  
15          chief officer —

16               (a) may vary the authority in accordance with the  
17               application, or part of the application, either  
18               unconditionally or subject to conditions; or

19               (b) may refuse the application.

20          (2) Sections 12, 13 and 14 apply to an application for a variation of  
21          authority under this section in the same way as they apply to an  
22          application for authority under section 11.

23          (3) Without limiting subsection (2), a variation of authority must  
24          not be granted unless the chief officer is satisfied on reasonable  
25          grounds that the variation will not authorise a significant  
26          alteration of the nature of the authorised operation concerned.

27   **21.     Form of variation of authority**

28          (1) A variation of authority may be made —

29               (a) in writing (a *formal variation of authority*) to the  
30               principal law enforcement officer for the authorised  
31               operation, or another law enforcement officer on behalf

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- 1 of the principal law enforcement officer, as the case  
2 requires; or
- 3 (b) orally (an *urgent variation of authority*) to the principal  
4 law enforcement officer for the authorised operation, or  
5 another law enforcement officer on behalf of the  
6 principal law enforcement officer, as the case requires, if  
7 the person making the variation is satisfied that the  
8 delay caused by making a formal variation of authority  
9 may affect the success of the operation.
- 10 (2) A formal variation of authority must be in a physical form,  
11 signed by the chief officer.
- 12 (3) However if it is impracticable in the circumstances for a  
13 physical document to be delivered to the principal law  
14 enforcement officer for the authorised operation, or another law  
15 enforcement officer on behalf of the principal law enforcement  
16 officer, as the case requires, a formal variation of authority may  
17 take the form of —
- 18 (a) a fax; or  
19 (b) an email or other electronic document, in which case the  
20 document need not be signed.
- 21 (4) An urgent variation of authority may be made in person, by  
22 telephone or any other electronic means.
- 23 (5) A variation of authority must —
- 24 (a) identify the authorised operation for which the authority  
25 is in force; and  
26 (b) state the name, and rank or position, of the person  
27 making the variation of authority; and  
28 (c) state whether the variation of authority is a formal  
29 variation of authority or an urgent variation of authority;  
30 and

- 1           (d) if the variation is made under section 17(1)(a) —  
2               (i) describe the variation having regard to the  
3               purposes referred to in section 18 in respect of  
4               which the variation is or was made; and  
5               (ii) specify the reasons why the variation of authority  
6               is or was made;  
7               and  
8           (e) if the variation is made under section 17(1)(b) —  
9               (i) state the name of the applicant; and  
10              (ii) describe the variation having regard to the  
11              purposes referred to in section 19(1) in respect of  
12              which the application for the variation was made;  
13              and  
14           (f) state the date and time when the variation of authority is  
15              or was made.
- 16       (6) The chief officer must ensure that written notes are kept of the  
17       particulars referred to in subsection (5) for each urgent variation  
18       of authority.

19       **22. Cancellation of authorities**

- 20       (1) The chief officer may, by order in writing given to the principal  
21       law enforcement officer for an authorised operation, cancel the  
22       authority at any time and for any reason.
- 23       (2) Without limiting subsection (1), the chief officer may cancel an  
24       authority for an authorised operation at any time at the request  
25       of the principal law enforcement officer for the operation.
- 26       (3) Cancellation of an authority for a controlled operation takes  
27       effect at the time when the order is made or at the later time  
28       specified in the order.
- 29       (4) The order must specify the reasons for the cancellation of the  
30       authority.

1 **23. Effect of authorities**

2 (1) While it has effect, an authority for a controlled operation —

3 (a) authorises each law enforcement participant to engage in  
4 the controlled conduct specified in the authority in  
5 respect of the law enforcement participants; and

6 (b) authorises each civilian participant, if any, to engage in  
7 the particular controlled conduct, if any, specified in the  
8 authority in respect of that participant.

9 (2) In the case of a local controlled operation, the authority  
10 authorises each participant to engage in the conduct referred to  
11 in subsection (1) in this jurisdiction but not in any other  
12 jurisdiction.

13 (3) In the case of a cross-border controlled operation, the authority  
14 authorises each participant to engage in the conduct referred to  
15 in subsection (1) —

16 (a) in this jurisdiction and in one or more participating  
17 jurisdictions specified in the authority; or

18 (b) in one or more participating jurisdictions specified in the  
19 authority,

20 subject to any corresponding law of that participating  
21 jurisdiction.

22 (4) The authority to engage in controlled conduct given to a  
23 participant cannot be delegated to any other person.

24 **24. Defect in authority**

25 An application for authority or variation of authority, and any  
26 authority or variation of authority granted or made on the basis  
27 of such an application, is not invalidated by any defect, other  
28 than a defect that affects the application, authority or variation  
29 in a material particular.

1 **25. Retrospective authority**

- 2 (1) This section applies to local controlled operations but not to  
3 cross-border controlled operations.
- 4 (2) If a participant in an authorised operation engages in unlawful  
5 conduct (other than controlled conduct) in the course of the  
6 operation, the principal law enforcement officer for the  
7 operation may, within 24 hours after the participant engages in  
8 that conduct, apply to the chief officer for retrospective  
9 authority for the conduct.
- 10 (3) An application under this section may be made in such manner  
11 as the chief officer permits.
- 12 (4) The chief officer may require the principal law enforcement  
13 officer to furnish such additional information concerning the  
14 relevant conduct as is necessary for the chief officer's proper  
15 consideration of the application.
- 16 (5) After considering an application under subsection (2), and any  
17 additional information furnished under subsection (4), the chief  
18 officer —
- 19 (a) may grant retrospective authority in accordance with the  
20 application; or  
21 (b) may refuse the application.
- 22 (6) Retrospective authority must not be granted unless the chief  
23 officer is satisfied —
- 24 (a) that the participant who engaged in the conduct believed  
25 on reasonable grounds —
- 26 (i) that there was a substantial risk to the success of  
27 the authorised operation; or  
28 (ii) that there was a substantial risk to the health or  
29 safety of a participant in the operation, or any  
30 other person, as a direct result of the conduct of  
31 the authorised operation; or

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- 1 (iii) that criminal activity other than the criminal  
2 activity in respect of which the authorised  
3 operation is being conducted had occurred, or  
4 was likely to occur, and that there was a  
5 substantial risk that evidence relating to that  
6 criminal activity would be lost,  
7 and the participant could not avoid that risk otherwise  
8 than by engaging in the relevant conduct; and  
9 (b) that, at all times prior to those circumstances arising, the  
10 participant had been acting in good faith; and  
11 (c) that the participant had not foreseen, and could not  
12 reasonably be expected to have foreseen, that those  
13 circumstances would arise; and  
14 (d) that, had it been possible to foresee that those  
15 circumstances would arise, authority for the relevant  
16 conduct would have been sought; and  
17 (e) that it was not reasonably possible in those  
18 circumstances for the participant to seek a variation of  
19 the authority for the operation to authorise the relevant  
20 conduct.
- 21 (7) Subsection (6) does not allow retrospective authority to be  
22 granted with respect to any conduct that —  
23 (a) seriously endangered the health or safety of any person;  
24 or  
25 (b) caused the death of, or serious injury to, any person; or  
26 (c) involved the commission of a sexual offence against any  
27 person; or  
28 (d) resulted in unlawful loss of or serious damage to  
29 property (other than illicit goods).
- 30 (8) The chief officer's power to grant a retrospective authority  
31 under this section cannot be delegated to any other person.

1   **26.    Parliamentary Commissioner to be notified of retrospective**  
2   **authorities**

- 3       (1)   A chief officer who grants a retrospective authority under  
4       section 25 must provide the Parliamentary Commissioner with  
5       written details of the retrospective authority and the  
6       circumstances justifying that authority.
- 7       (2)   The details must be provided as soon as practicable after the  
8       retrospective authority is granted but, in any case, no later than  
9       7 days after it is granted.
- 10      (3)   The Parliamentary Commissioner may require the chief officer  
11      to furnish such further information concerning the retrospective  
12      authority as is necessary for the Parliamentary Commissioner's  
13      proper consideration of it.

14                   **Division 3 — Conduct of controlled operations**

15                   **Subdivision 1 — Controlled conduct engaged in for purposes of**  
16                   **controlled operations authorised by Division 2**

17   **27.    Protection from criminal responsibility for controlled**  
18   **conduct during authorised operations**

19           Despite any other written law of this jurisdiction, a participant  
20           who engages in conduct (whether in this jurisdiction or  
21           elsewhere) in an authorised operation in the course of, and for  
22           the purposes of, the operation is not, if engaging in that conduct  
23           is an offence, criminally responsible for the offence if —

- 24           (a)   the conduct is authorised by, and is engaged in  
25           accordance with, the authority for the operation; and
- 26           (b)   the conduct does not involve the participant inducing or  
27           encouraging another person to engage in criminal  
28           activity of a kind that the other person could not  
29           reasonably be expected to engage in unless so induced  
30           or encouraged; and

- 1 (c) the conduct does not involve the participant engaging in  
2 any conduct that is likely to —  
3 (i) cause the death of, or serious injury to, any  
4 person; or  
5 (ii) involve the commission of a sexual offence  
6 against any person;  
7 and  
8 (d) if the participant is a civilian participant, he or she acts  
9 in accordance with the instructions of a law enforcement  
10 officer.

11 **28. Indemnification of participants against civil liability**

- 12 (1) In this section —  
13 *participant* does not include a police officer.  
14 (2) The chief officer of a law enforcement agency must indemnify a  
15 participant in an authorised operation against any civil liability  
16 (including reasonable costs) that the participant incurs because  
17 of conduct that the participant engages in if —  
18 (a) the participant engages in the conduct in the course of,  
19 and for the purposes of, the operation in accordance with  
20 the authority for the operation; and  
21 (b) the conduct does not involve the participant inducing or  
22 encouraging another person to engage in criminal  
23 activity of a kind that the other person could not  
24 reasonably be expected to engage in unless so induced  
25 or encouraged; and  
26 (c) the conduct does not involve the participant engaging in  
27 any conduct that is likely to —  
28 (i) cause the death of, or serious injury to, any  
29 person; or  
30 (ii) involve the commission of a sexual offence  
31 against any person;  
32 and



- 1 (d) if the participant is a civilian participant, he or she acts  
2 in accordance with the instructions of a law enforcement  
3 officer; and  
4 (e) the requirements, if any, specified in the regulations  
5 have been met.

6 **29. Effect of sections 27 and 28 on other laws relating to**  
7 **criminal investigation**

8 Sections 27 and 28 do not apply to a person's conduct that is, or  
9 could have been, authorised under a law of this jurisdiction  
10 relating to one or more of the following —

- 11 (a) arrest or detention of individuals, except an arrest  
12 carried out as a result of an authorised operation;  
13 (b) searches of individuals;  
14 (c) entry onto, or searches or inspection of, premises;  
15 (d) searches, inspections or seizures of other property;  
16 (e) forensic procedures;  
17 (f) electronic surveillance devices or telecommunications  
18 interception;  
19 (g) identification procedures;  
20 (h) the acquisition or use of assumed identities;  
21 (i) any other matter concerning powers of criminal  
22 investigation.

23 **30. Effect of being unaware of variation or cancellation of**  
24 **authority**

- 25 (1) If an authority for a controlled operation is varied in a way that  
26 limits its scope, this Division continues to apply to a participant  
27 in the operation as if the authority had not been varied in that  
28 way, for as long as —  
29 (a) the participant is unaware of the variation; and

1                      (b) the chief officer of the relevant agency has taken  
2                                      reasonable measures to ensure the participant is aware of  
3                                      any variation.

4                      (2) If an authority for a controlled operation is cancelled, this  
5                                      Division continues to apply to a participant in the operation as if  
6                                      the authority had not been cancelled, for as long as —

7                                      (a) the participant is unaware of the cancellation; and

8                                      (b) the chief officer has taken reasonable measures to ensure  
9                                      the participant is aware of any cancellation.

10                      **31. Protection from criminal responsibility for certain ancillary**  
11                                      **conduct**

12                      (1) This section applies to conduct such as aiding and abetting the  
13                                      commission of an offence or of conspiring to commit an offence  
14                                      (***ancillary conduct***) for which a person may be criminally  
15                                      responsible because it involves conduct engaged in by another  
16                                      person that is conduct for which the other person would (but for  
17                                      section 27) be criminally responsible (the ***related controlled***  
18                                      ***conduct***).

19                      (2) Despite any other written law of this jurisdiction, a person who  
20                                      engages in ancillary conduct that is an offence (whether or not  
21                                      the person is a participant in a controlled operation) is not  
22                                      criminally responsible for the offence if, at the time the person  
23                                      engaged in the ancillary conduct —

24                                      (a) the person believed that the related controlled conduct  
25    was being engaged in, or would be engaged in, by a  
26    participant in an authorised operation; and

27                                      (b) the person was a participant in, or was otherwise  
28    authorised to know about, the operation.

1       **Subdivision 2 — Compensation and notification of third parties**

2       **32.       Compensation for property loss or damage**

3       (1) If a person suffers loss of or damage to property as a direct  
4       result of an authorised operation, the State is liable to pay to the  
5       person compensation as agreed between the State and the person  
6       or, in default of agreement, as determined by action against the  
7       State in a court of competent jurisdiction.

8       (2) Subsection (1) does not apply if —

9               (a) the person suffered the loss or damage in the course of,  
10              or as a direct result of, engaging in any criminal activity  
11              (other than criminal activity that is controlled conduct);  
12              or

13             (b) the person was a participant involved in the authorised  
14              operation at the time of suffering the loss or damage.

15       **33.       Notification requirements**

16       (1) If any loss of or damage to property occurs in the course of or as  
17       a direct result of an authorised operation (other than property of  
18       the State that is under the management or control of a  
19       participating law enforcement officer), the principal law  
20       enforcement officer for the operation must report the loss or  
21       damage to the chief officer as soon as practicable.

22       (2) The chief officer must take all reasonable steps to notify the  
23       owner of the property of the loss or damage.

24       (3) The chief officer is not required to notify the owner of property  
25       under this section until the chief officer is satisfied that  
26       notification would not —

27             (a) compromise or hinder the authorised operation; or

28             (b) compromise the identity of a participant in the  
29              authorised operation; or

30             (c) endanger the life or safety of any person; or

31             (d) prejudice any legal proceedings; or

1                      (e) otherwise be contrary to the public interest.

2    **Subdivision 3 — Mutual recognition**

3     **34.        Mutual recognition of corresponding authorities**

4                      The following provisions apply, with any necessary changes, to  
5                      a corresponding authority under a corresponding law, and to a  
6                      corresponding authorised operation under that law, as if the  
7                      corresponding authority were an authority given under  
8                      section 11 —

- 9                      (a) section 23 (Effect of authorities);  
10                     (b) section 24 (Defect in authority);  
11                     (c) section 27 (Protection from criminal responsibility for  
12                     controlled conduct during authorised operations);  
13                     (d) section 28 (Indemnification of participants against civil  
14                     liability);  
15                     (e) section 29 (Effect of sections 27 and 28 on other laws  
16                     relating to criminal investigation);  
17                     (f) section 30 (Effect of being unaware of variation or  
18                     cancellation of authority);  
19                     (g) section 31 (Protection from criminal responsibility for  
20                     certain ancillary conduct).

21    **Division 4 — Compliance and monitoring**

22     **Subdivision 1 — Restrictions on use, communication and publication**  
23    **of information**

24     **35.        Disclosure of operational information**

25                      (1) In this section —

26    *operational information* means any information relating to an  
27    authorised operation or a corresponding authorised operation.

- 1 (2) A person who has access, or has had access, to operational  
2 information must not disclose the information except —
- 3 (a) in connection with the administration or execution of  
4 this Part or a corresponding law; or
- 5 (b) for the purposes of any legal proceeding arising out of or  
6 otherwise related to this Part or a corresponding law or  
7 of any report of any such proceedings; or
- 8 (c) for the purpose of reporting to an appropriate authority  
9 any criminal activity that is outside the scope of the  
10 authority granted in respect of the authorised operation;  
11 or
- 12 (d) in accordance with any requirement imposed by law.
- 13 Penalty: imprisonment for 10 years.
- 14 Summary conviction penalty: a fine of \$24 000 or imprisonment  
15 for 2 years.
- 16 (3) An offence against subsection (2) is an indictable offence.

17 **Subdivision 2 — Reporting and record-keeping**

18 **36. Principal law enforcement officers' reports**

- 19 (1) Within 2 months after the completion of an authorised  
20 operation, the principal law enforcement officer for the  
21 operation must make a report in accordance with this section to  
22 the chief officer of the law enforcement agency.
- 23 (2) The report must include all of the following details —
- 24 (a) the dates and times when the authorised operation began  
25 and was completed;
- 26 (b) whether the operation was a cross-border controlled  
27 operation or a local controlled operation;
- 28 (c) the nature of the controlled conduct engaged in for the  
29 purposes of the operation;
- 30 (d) details of the outcome of the operation;

- 1 (e) if the operation involved illicit goods, a statement (to the  
2 extent known) of —
- 3 (i) the nature and quantity of the illicit goods; and  
4 (ii) the route through which the illicit goods passed  
5 in the course of the operation;
- 6 (f) details of any loss of or serious damage to property, or  
7 any personal injuries, occurring in the course of or as a  
8 direct result of the operation.

9 **37. Chief officers' reports**

- 10 (1) As soon as practicable after 30 June and 31 December in each  
11 year, the chief officer of each law enforcement agency must  
12 submit a report to the Parliamentary Commissioner setting out  
13 the details required by subsection (2) in relation to controlled  
14 operations conducted on behalf of the agency during the  
15 previous 6 months.
- 16 (2) The report must include all of the following details —
- 17 (a) the number of formal authorities that have been granted  
18 or varied by the chief officer, and the number of formal  
19 applications for the granting or variation of authorities  
20 that have been refused by the chief officer, during the  
21 period to which the report relates;
- 22 (b) the number of —
- 23 (i) urgent authorities that have been granted by the  
24 chief officer; and  
25 (ii) urgent variations of authorities made by the chief  
26 officer; and  
27 (iii) urgent applications for authorities or urgent  
28 variations of authorities that have been refused  
29 by the chief officer,  
30 during the period to which the report relates;
- 31 (c) the nature of the criminal activities against which the  
32 authorised operations were directed;

- 1 (d) the nature of the controlled conduct engaged in for the  
2 purposes of the authorised operations;
- 3 (e) if any of the authorised operations involved illicit goods,  
4 a statement (to the extent known) of —
- 5 (i) the nature and quantity of the illicit goods; and  
6 (ii) the route through which the illicit goods passed  
7 in the course of the operations;
- 8 (f) details of any loss of or serious damage to property, or  
9 any personal injuries, occurring in the course of or as a  
10 direct result of the authorised operations;
- 11 (g) the number of authorities cancelled by the chief officer  
12 or that have expired during the period to which the  
13 report relates;
- 14 (h) any seizure, arrest and prosecution arising from the  
15 authorised operations.

16 (3) The Parliamentary Commissioner may require the chief officer  
17 to furnish additional information in relation to any authorised  
18 operation to which a report relates.

19 (4) The details mentioned in subsection (2) must be classified into  
20 cross-border controlled operations and local controlled  
21 operations.

22 (5) The report must not disclose any information that identifies any  
23 suspect or a participant in an authorised operation or that is  
24 likely to lead to such a person or participant being identified.

25 (6) Nothing in this section requires particulars of an authorised  
26 operation to be included in a report for a period of 6 months if  
27 the operation had not been completed during that period, but the  
28 particulars must instead be included in the report for the period  
29 of 6 months in which the operation is completed.

30 **38. Annual report by Parliamentary Commissioner**

31 (1) The Parliamentary Commissioner must, as soon as practicable  
32 after 30 June in each year, prepare a report of the work and

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- 1                    activities of the law enforcement agencies under this Part for the  
2                    preceding 12 months and give a copy of the report to the  
3                    Minister and to the chief officer of each law enforcement  
4                    agency to which the report relates.
- 5                    (2)    The chief officer must advise the Minister of any information in  
6                    the report that, in the chief officer's opinion, should be excluded  
7                    from the report before the report is laid before each House of  
8                    Parliament because the information, if made public, could  
9                    reasonably be expected to —
- 10                    (a)    endanger a person's safety; or  
11                    (b)    prejudice an investigation or prosecution; or  
12                    (c)    compromise any law enforcement agency's operational  
13                    activities or methodologies.
- 14                    (3)    The Minister must exclude information from the report if  
15                    satisfied on the advice of the chief officer of any of the grounds  
16                    set out in subsection (2).
- 17                    (4)    The Minister is to cause a copy of the report to be laid before  
18                    each House of Parliament within 15 sitting days from the day on  
19                    which the report is received by the Minister.
- 20                    (5)    The report must include, for each law enforcement agency  
21                    concerned, comments on the comprehensiveness and adequacy  
22                    of the reports that were provided to the Parliamentary  
23                    Commissioner by the chief officer of the law enforcement  
24                    agency.
- 25                    (6)    The report must not disclose any information that identifies any  
26                    suspect or a participant in an authorised operation, or that is  
27                    likely to lead to such a person or participant being identified.
- 28                    (7)    Nothing in this section requires particulars of an authorised  
29                    operation to be included in a report for a year if the operation  
30                    had not been completed as at 30 June in that year, but the  
31                    particulars must instead be included in the report for the year in  
32                    which the operation is completed.



1   **39.    Keeping documents connected with authorised operations**

2           The chief officer of a law enforcement agency must cause all of  
3           the following to be kept —

- 4           (a)   each application made by a law enforcement officer of  
5                the agency;
- 6           (b)   each authority granted to a law enforcement officer of  
7                the agency;
- 8           (c)   each variation application made by a law enforcement  
9                officer of the agency;
- 10          (d)   each variation of authority granted or made by the chief  
11                officer;
- 12          (e)   each order cancelling an authority granted to a law  
13                enforcement officer of the agency;
- 14          (f)   each retrospective authority granted under section 25  
15                and details of the application and authority to which the  
16                retrospective authority relates;
- 17          (g)   each report of a principal law enforcement officer of the  
18                agency under section 33(1) or 36.

19   **40.    General register**

20          (1)   The chief officer of a law enforcement agency must cause a  
21                general register to be kept.

22          (2)   The general register is to specify —

- 23           (a)   for each application under this Part made by a law  
24                enforcement officer of the agency (including an  
25                application for variation of authority) —
- 26                (i)   the date of the application; and
- 27                (ii)  whether the application was formal or urgent;  
28                    and
- 29                (iii) whether the application was made for a  
30                    cross-border controlled operation or a local  
31                    controlled operation; and

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- 1                    (iv) whether the application was for a retrospective  
2                    authority under section 25; and
- 3                    (v) whether the application was granted, refused or  
4                    withdrawn; and
- 5                    (vi) if the application was refused or withdrawn, the  
6                    date and time of the refusal or withdrawal;
- 7                    and
- 8                    (b) for each authority under this Part granted to a law  
9                    enforcement officer of the agency —
- 10                    (i) the date and time when the authority was  
11                    granted; and
- 12                    (ii) whether the authority was formal or urgent; and
- 13                    (iii) whether the authority was granted for a  
14                    cross-border controlled operation or a local  
15                    controlled operation; and
- 16                    (iv) whether the authority was a retrospective  
17                    authority granted under section 25; and
- 18                    (v) the name, and rank or position, of the person  
19                    who granted the authority; and
- 20                    (vi) each relevant offence in respect of which  
21                    controlled conduct under the authority was to be  
22                    engaged in; and
- 23                    (vii) the period of validity of the authority; and
- 24                    (viii) if the authority was cancelled, the date and time  
25                    of cancellation; and
- 26                    (ix) the date and time when the authorised operation  
27                    began and the date of completion of the  
28                    operation; and
- 29                    (x) the date on which the principal law enforcement  
30                    officer for the operation made a report on the  
31                    operation under section 36; and

- 1 (xi) if the authorised operation involved illicit goods,  
2 to the extent known —  
3 (I) the nature and quantity of the illicit  
4 goods; and  
5 (II) the route through which the illicit goods  
6 passed in the course of the operation;  
7 and  
8 (xii) details of any loss of or damage to property, or  
9 any personal injuries, occurring in the course of  
10 or as a direct result of the operation;  
11 and  
12 (c) for each variation of authority under this Part —  
13 (i) the date and time when the variation was made;  
14 and  
15 (ii) whether the variation was formal or urgent; and  
16 (iii) the name, and rank or position, of the person  
17 who made the variation.

18 **Subdivision 3 — Inspections**

19 **41. Inspection of records by Parliamentary Commissioner**

- 20 (1) The Parliamentary Commissioner must, from time to time and  
21 at least once every 12 months, inspect the records of a law  
22 enforcement agency to determine the extent of compliance with  
23 this Part by the agency and law enforcement officers of the  
24 agency.  
25 (2) The *Parliamentary Commissioner Act 1971* section 11 and  
26 Part III apply, with any necessary changes, to an inspection  
27 under this section as if the inspection were an investigation  
28 under that Act.  
29 (3) The chief officer must ensure that persons employed or engaged  
30 in the law enforcement agency give the Parliamentary  
31 Commissioner any assistance the Parliamentary Commissioner



1   **43.    Delegation**

2       (1) In this section —

3       *senior officer* means —

4           (a) in relation to the Police Force — a police officer of or  
5               above the rank of Commander;

6           (b) in relation to the Australian Crime Commission, any of  
7               the following —

8               (i) the Director National Operations;

9               (ii) a person holding a prescribed office in the  
10                Australian Crime Commission;

11           (c) in relation to the fisheries department — a fisheries  
12               officer holding a prescribed office in the department.

13       (2) Except as provided by this section, and despite any other written  
14        law to the contrary, the functions of a chief officer under this  
15        Part cannot be delegated to any other person.

16       (3) Except as provided in section 25(8), the chief officer of a law  
17        enforcement agency may delegate to a senior officer of the  
18        agency any of the chief officer's functions under this Part  
19        relating to the authorisation of controlled operations (including  
20        the variation and cancellation of authorities and the giving of  
21        notification under section 33(2)).

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**Part 3 — Assumed identities**

**Division 1 — General**

**44. Terms used**

In this Part, unless the contrary intention appears —

**acquire** an assumed identity, means acquire evidence of the identity and includes taking steps towards acquiring evidence of the identity;

**authorised civilian** means a person (other than a law enforcement officer) who is authorised under an authority to acquire or use an assumed identity;

**authorised officer** means a law enforcement officer who is authorised under an authority to acquire or use an assumed identity;

**authorised person** means —

- (a) an authorised civilian; or
- (b) an authorised officer;

**authority** means an authority granted under section 48 to acquire or use an assumed identity, including the authority as varied under section 51;

**chief officer**, of an issuing agency, means the chief executive officer (however described) of the agency;

**corresponding authority** means —

- (a) an authority under a corresponding law to acquire or use an assumed identity in this jurisdiction; or
- (b) an authority under a corresponding law to request the production of evidence of an assumed identity in this jurisdiction;

**corresponding law** means a law of another jurisdiction that corresponds to this Part, and includes a prescribed law of another jurisdiction;

**doing** a thing includes failing to do the thing;

1           **evidence**, of identity, means a document or other thing (such as  
2           a driver's licence, birth certificate, credit card or identity card)  
3           that evidences, indicates or supports, or can be used to evidence,  
4           indicate or support, a person's identity or any aspect of a  
5           person's identity;

6           **formal authority** has the meaning given in section 49(1)(a);

7           **government issuing agency**, in relation to an authority, means a  
8           government agency named in the authority that issues evidence  
9           of identity;

10          **issuing agency** means —

11           (a) a government issuing agency; or

12           (b) a non-government issuing agency;

13          **non-government issuing agency**, in relation to an authority,  
14          means a person, body or entity (other than a government issuing  
15          agency) named in the authority that issues evidence of identity;

16          **officer**, of an issuing agency, includes a person employed or  
17          engaged in the agency;

18          **participating jurisdiction** means a jurisdiction in which a  
19          corresponding law is in force;

20          **Register** has the meaning given in the *Births, Deaths and*  
21          *Marriages Registration Act 1998*;

22          **Registrar** means the Registrar of Births, Deaths and Marriages  
23          referred to in the *Births, Deaths and Marriages Registration*  
24          *Act 1998* section 5;

25          **supervisor**, of an authorised civilian, means the law  
26          enforcement officer who supervises or is to supervise the  
27          acquisition or use of an assumed identity by the authorised  
28          civilian;

29          **use** an assumed identity, includes representing (whether  
30          expressly or impliedly, or by saying or doing something) the  
31          identity to be real when it is not.

1 **45. Non-application of certain Acts**

2 The following Acts do not apply to activities or records under  
3 this Part —

- 4 (a) the *State Records Act 2000*;
- 5 (b) the *Freedom of Information Act 1992*, despite  
6 section 8(1) of that Act.

7 **46. Relationship to other laws relating to assumed identities**

8 This Part does not affect the operation of any other written law  
9 of this jurisdiction that authorises the acquisition or use of an  
10 assumed identity.

11 **Division 2 — Authority for assumed identity**

12 **47. Application for authority to acquire or use assumed identity**

13 (1) A law enforcement officer of a law enforcement agency may  
14 apply to the chief officer of the agency for an authority for the  
15 law enforcement officer or any other person to do either or both  
16 of the following —

- 17 (a) acquire an assumed identity;
- 18 (b) use an assumed identity.

19 (2) A separate application must be made in respect of each assumed  
20 identity to be acquired or used.

21 (3) An application may be made —

- 22 (a) in writing (a *formal application*); or
- 23 (b) in relation to the use of an assumed identity but not the  
24 acquisition of an assumed identity — orally (an *urgent*  
25 *application*), if the applicant has reason to believe that  
26 the delay caused by making a formal application may  
27 affect the success of a law enforcement operation.

28 (4) A formal application must be in a physical form, signed by the  
29 applicant.



- 1 (5) However if it is impracticable in the circumstances for a  
2 physical document to be delivered to the chief officer, a formal  
3 application may take the form of —
- 4 (a) a fax; or
- 5 (b) an email or other electronic document, in which case the  
6 document need not be signed.
- 7 (6) An urgent application may be made in person, by telephone or  
8 any other electronic means.
- 9 (7) An application must provide all of the following information —
- 10 (a) the name of the applicant;
- 11 (b) the name of the person (or if there is more than one,  
12 each person) to be authorised to acquire or use an  
13 assumed identity (if not the applicant);
- 14 (c) if the person referred to in paragraph (b) is not a law  
15 enforcement officer, the name, and rank or position, of  
16 the person proposed to be appointed as supervisor and  
17 an explanation of why it is necessary for a person who is  
18 not a law enforcement officer to acquire or use the  
19 assumed identity;
- 20 (d) details of the proposed assumed identity;
- 21 (e) reasons for the need to acquire or use an assumed  
22 identity;
- 23 (f) details of the investigation or intelligence-gathering  
24 exercise in which the assumed identity will be used (to  
25 the extent known);
- 26 (g) details of any issuing agencies and the types of evidence  
27 of identity to be issued by them;
- 28 (h) details of any application to be made for an order under  
29 section 54 in respect of the assumed identity.
- 30 (8) The chief officer may require the applicant to furnish such  
31 additional information concerning the application as is

1 necessary for the chief officer's proper consideration of the  
2 application.

3 (9) As soon as practicable after making an urgent application, the  
4 applicant must make a record in writing of the application and  
5 give a copy of it to the chief officer.

6 **48. Determination of application**

7 (1) After considering an application for an authority to acquire or  
8 use an assumed identity, and any additional information  
9 furnished under section 47(8), the chief officer —

10 (a) may grant an authority to acquire or use the assumed  
11 identity, either unconditionally or subject to conditions;  
12 or

13 (b) may refuse the application.

14 (2) An authority to acquire or use an assumed identity must not be  
15 granted unless the chief officer is satisfied on reasonable  
16 grounds —

17 (a) that the assumed identity is necessary for one or more of  
18 the following purposes —

19 (i) investigation of, or intelligence-gathering in  
20 relation to, criminal activity (whether a particular  
21 criminal activity or criminal activity generally);

22 (ii) the training of persons for the purposes  
23 mentioned in subparagraph (i);

24 (iii) any administrative function in support of a  
25 purpose mentioned in subparagraph (i) or (ii);

26 and

27 (b) that the risk of abuse of the assumed identity by the  
28 authorised person is minimal; and

29 (c) if the application is for authorisation of an assumed  
30 identity for a person who is not a law enforcement  
31 officer, that it would be impossible or impracticable in  
32 the circumstances for a law enforcement officer to

- 1                   acquire or use the assumed identity for the purpose  
2                   sought.
- 3       (3) If an authority is granted for an authorised civilian, the chief  
4       officer must appoint a law enforcement officer of the law  
5       enforcement agency to supervise the acquisition or use of the  
6       assumed identity by the authorised civilian.
- 7       (4) The law enforcement officer appointed as supervisor must be —  
8           (a) in relation to the Police Force — a police officer of or  
9           above the rank of sergeant;  
10          (b) in relation to the Australian Crime Commission — a  
11          person of or above the rank of senior investigator;  
12          (c) in relation to the fisheries department — a person  
13          holding a prescribed office.
- 14       (5) An authority may also authorise any one or more of the  
15       following —  
16           (a) an application for an order for an entry in the Register  
17           under section 54 or in a register of births, deaths or  
18           marriages (however described) under a corresponding  
19           law;  
20           (b) a request under section 58 or 69;  
21           (c) the use of an assumed identity in a participating  
22           jurisdiction.
- 23       (6) A separate authority is required for each assumed identity.

24   **49. Form of authority**

- 25       (1) An authority must be —  
26           (a) in writing (a *formal authority*); or  
27           (b) orally (an *urgent authority*), if the chief officer is  
28           satisfied that the delay caused by granting a formal  
29           authority may affect the success of a law enforcement  
30           operation.

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- 1 (2) A formal authority must be in a physical form, signed by the  
2 chief officer.
- 3 (3) However if it is impracticable in the circumstances for a  
4 physical document to be delivered to the applicant, a formal  
5 authority may take the form of —
- 6 (a) a fax; or  
7 (b) an email or other electronic document, in which case the  
8 document need not be signed.
- 9 (4) An urgent authority may be granted in person, by telephone or  
10 any other electronic means.
- 11 (5) An authority, whether formal or urgent, must state all of the  
12 following —
- 13 (a) the name of the person granting the authority;  
14 (b) the date of the authority;  
15 (c) whether the authority is a formal authority or an urgent  
16 authority;  
17 (d) if the authority is an urgent authority, the period of  
18 validity of the authority, being a period not exceeding  
19 7 days;  
20 (e) details of the assumed identity authorised;  
21 (f) details of any evidence of the assumed identity that may  
22 be acquired under the authority;  
23 (g) the conditions (if any) to which the authority is subject;  
24 (h) why the authority is granted;  
25 (i) if the authority relates to an authorised officer, the name  
26 of the officer (or if there is more than one, the name of  
27 each officer);  
28 (j) if the authority relates to an authorised civilian —  
29 (i) the name of the authorised civilian; and  
30 (ii) the name of his or her supervisor under the  
31 authority; and

1 (iii) in the case of a formal authority, the period of  
2 validity of the authority, being a period not  
3 exceeding 3 months.

4 (6) The authority must also state all of the following —

5 (a) each issuing agency to which a request may be made  
6 under section 58 or 69;

7 (b) whether it authorises an application for an order for an  
8 entry in the Register under section 54 or in a register of  
9 births, deaths or marriages (however described) under a  
10 corresponding law;

11 (c) each participating jurisdiction in which an assumed  
12 identity may be used.

13 (7) The chief officer must ensure that written notes are kept of the  
14 particulars referred to in subsection (5) for each urgent  
15 authority.

16 **50. Duration of authority**

17 (1) A formal authority for an authorised officer remains in force  
18 until cancelled under section 52.

19 (2) A formal authority for an authorised civilian remains in force  
20 until the end of the period of validity specified in it in  
21 accordance with section 49(5)(j)(iii), unless the authority is  
22 cancelled sooner under section 52.

23 (3) A fresh formal authority may be issued to an authorised civilian  
24 before or after the end of the period of validity specified in the  
25 initial authority.

26 (4) An urgent authority remains in force until the end of the period  
27 of validity specified in it in accordance with section 49(5)(d),  
28 unless the authority is cancelled sooner under section 52.

29 **51. Variation of authority**

30 (1) The chief officer who grants an authority may vary the authority  
31 at any time.

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- 1 (2) However, a variation cannot be made that has the effect of  
2 extending the period of validity of —
- 3 (a) a formal authority for an authorised civilian; or  
4 (b) an urgent authority.
- 5 (3) The chief officer must give notice of the variation to —
- 6 (a) the authorised person to whom it relates; and  
7 (b) if the authorised person is an authorised civilian, the  
8 authorised person’s supervisor.
- 9 (4) The notice must be given —
- 10 (a) in writing (a *formal variation of authority*); or  
11 (b) orally (an *urgent variation of authority*), if the chief  
12 officer is satisfied that the delay caused by making a  
13 formal variation of authority may affect the success of a  
14 law enforcement operation or is otherwise urgently  
15 required.
- 16 (5) A formal variation of authority must be in a physical form,  
17 signed by the chief officer.
- 18 (6) However if it is impracticable in the circumstances for a  
19 physical document to be given to the authorised person or the  
20 authorised person’s supervisor (as the case requires), a formal  
21 variation of authority may take the form of —
- 22 (a) a fax; or  
23 (b) an email or other electronic document, in which case the  
24 document need not be signed.
- 25 (7) An urgent variation of authority may be made in person, by  
26 telephone or any other electronic means.
- 27 (8) A variation of authority takes effect —
- 28 (a) in the case of a formal variation of authority in which a  
29 date of effect is stated — on the day stated; or  
30 (b) in any other case — when it is given to the authorised  
31 person.

- 1       (9) A variation of authority must —
- 2           (a) identify the authorised person to whom the authority
- 3           relates and, if the authorised person is an authorised
- 4           civilian, the authorised person’s supervisor; and
- 5           (b) state whether it is a formal variation of authority or an
- 6           urgent variation of authority; and
- 7           (c) describe the variation; and
- 8           (d) specify the reasons why the variation of authority is or
- 9           was made; and
- 10          (e) state the date and time when the variation of authority is
- 11          or was made.
- 12       (10) The chief officer must ensure that written notes are kept of the
- 13       particulars referred to in subsection (9) for each urgent variation
- 14       of authority.

15       **52. Cancellation of authority**

- 16       (1) The chief officer who grants an authority must cancel the
- 17       authority if the chief officer is satisfied, on a review under
- 18       section 53 or otherwise, that use of the assumed identity is no
- 19       longer necessary.
- 20       (2) The chief officer must give notice of the cancellation to —
- 21           (a) the authorised person to whom it relates; and
- 22           (b) if the authorised person is an authorised civilian, the
- 23           authorised person’s supervisor.
- 24       (3) The notice must be given —
- 25           (a) in writing (a *formal cancellation of authority*); or
- 26           (b) orally (an *urgent cancellation of authority*), if the chief
- 27           officer is satisfied that the delay caused by making a
- 28           formal cancellation of authority may affect the success
- 29           of a law enforcement operation or is otherwise urgently
- 30           required.

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- 1 (4) A formal cancellation of authority must be in a physical form,  
2 signed by the chief officer.
- 3 (5) However if it is impracticable in the circumstances for a  
4 physical document to be given to the authorised person or the  
5 authorised person's supervisor (as the case requires), a formal  
6 cancellation of authority may take the form of —
- 7 (a) a fax; or  
8 (b) an email or other electronic document, in which case the  
9 document need not be signed.
- 10 (6) An urgent cancellation of authority may be made in person, by  
11 telephone or any other electronic means.
- 12 (7) A cancellation of authority takes effect —
- 13 (a) in the case of a formal cancellation of authority in which  
14 a date of effect is stated — on the day stated; or  
15 (b) in any other case — when it is given to the authorised  
16 person.
- 17 (8) A cancellation of authority must —
- 18 (a) identify the authorised person to whom the authority  
19 relates and, if the authorised person is an authorised  
20 civilian, the authorised person's supervisor; and  
21 (b) state whether it is a formal cancellation of authority or  
22 an urgent cancellation of authority; and  
23 (c) state the date and time when the cancellation of  
24 authority is or was made.
- 25 (9) The chief officer must ensure that written notes are kept of the  
26 particulars referred to in subsection (8) for each urgent  
27 cancellation of authority.

28 **53. Yearly review of formal authority**

- 29 (1) The chief officer must periodically review each formal authority  
30 granted by the chief officer or a delegate of the chief officer  
31 under this Part.



- 1 (2) A review of a formal authority under this section is to be  
2 conducted at least once every 12 months.
- 3 (3) The purpose of a review is to determine whether use of the  
4 assumed identity under the formal authority is still necessary.
- 5 (4) If the chief officer is satisfied on a review that use of the  
6 assumed identity under the formal authority is no longer  
7 necessary, he or she must cancel the authority under section 52.
- 8 (5) If the chief officer is satisfied on a review that use of the  
9 assumed identity under the formal authority is still necessary, he  
10 or she must record his or her opinion, and the reasons for it, in  
11 writing.

12 **Division 3 — Evidence of assumed identity**

13 **54. Making records of births, deaths or marriages**

- 14 (1) The Supreme Court may order the Registrar to do one or more  
15 of the following —
- 16 (a) make an entry in the Register;
- 17 (b) issue a certificate of birth, death or marriage in relation  
18 to the acquisition of an assumed identity under an  
19 authority or corresponding authority.
- 20 (2) The Registrar may create such other records as the Registrar  
21 thinks necessary to support the entry or certificate made or  
22 issued in accordance with the order in relation to the acquisition  
23 of an assumed identity under an authority or corresponding  
24 authority.
- 25 (3) The Court may make the order only —
- 26 (a) on application by —
- 27 (i) the chief officer of a law enforcement agency; or  
28 (ii) the chief officer (however described) of a law  
29 enforcement agency under a corresponding law;
- 30 and

- 1 (b) if satisfied that the order is justified, having regard to the  
2 nature of the activities undertaken or to be undertaken  
3 by the person under the authority or corresponding  
4 authority.
- 5 (4) The application must be heard in closed court.
- 6 (5) The Registrar must give effect to an order —  
7 (a) within the period stated in the order; or  
8 (b) if no period is stated in the order, within 28 days after  
9 the day on which the order is made.

10 **55. Cancellation of authority affecting records of births, deaths**  
11 **or marriages**

- 12 (1) This section applies if —  
13 (a) the chief officer cancels an authority for an assumed  
14 identity; and  
15 (b) there is an entry in relation to that identity —  
16 (i) in the Register because of an order under  
17 section 54; or  
18 (ii) in a register of births, deaths or marriages in a  
19 participating jurisdiction because of an order  
20 under a corresponding law of the jurisdiction.
- 21 (2) If subsection (1)(b)(i) applies, the chief officer must apply for  
22 an order under section 56 within 28 days after the day on which  
23 the authority is cancelled.
- 24 (3) If subsection (1)(b)(ii) applies, the chief officer must apply for  
25 an order under the corresponding law to cancel the entry, within  
26 28 days after the day on which the authority is cancelled.

27 **56. Cancelling entries in Register**

- 28 (1) The Supreme Court may order the Registrar to cancel an entry  
29 in the Register, and any supporting records, made under an  
30 order under section 54.

- 1       (2) The Court may make the order only on application by the chief  
2       officer who applied for the order under section 54.
- 3       (3) The application must be heard in closed court.
- 4       (4) The Registrar must give effect to the order within 28 days after  
5       the day on which the order is made.

6       **57. Restriction about access to application for entry in Register**

- 7       (1) In this section —  
8       *relevant proceeding* means —  
9       (a) an application under section 54 or 56 for an order to  
10       make or cancel an entry in the Register; or  
11       (b) an order given under the application.
- 12       (2) A person is not entitled to search information in the custody of  
13       the Supreme Court in relation to a relevant proceeding unless  
14       the Supreme Court otherwise orders in the interests of justice.

15       **58. Request for evidence of assumed identity**

- 16       (1) In this section —  
17       *evidence*, of identity, means evidence similar to that ordinarily  
18       produced or given by the issuing agency.
- 19       (2) This section applies if an authority granted under section 48  
20       authorises a request under this section.
- 21       (3) The chief officer who grants the authority may request the chief  
22       officer of an issuing agency stated in the authority to —  
23       (a) produce evidence of an assumed identity in accordance  
24       with the authority; and  
25       (b) give evidence of the assumed identity to the authorised  
26       person named in the authority or another person  
27       specified by the chief officer making the request.
- 28       (4) The request must state a reasonable period for compliance with  
29       the request.

1 (5) A request must not be made under this section for an entry in  
2 the Register or for the issue of a certificate of birth, death or  
3 marriage.

4 **59. Government issuing agencies to comply with request**

5 (1) The chief officer of a government issuing agency who receives  
6 a request under section 58 must comply with the request within  
7 the reasonable period stated in the request.

8 (2) The chief officer of a government issuing agency must create  
9 such records, or make such alterations to existing records, as are  
10 necessary to support evidence of the assumed identity produced  
11 in response to the request.

12 **60. Non-government issuing agencies may comply with request**

13 (1) The chief officer of a non-government issuing agency who  
14 receives a request under section 58 may comply with the  
15 request.

16 (2) The chief officer of a non-government issuing agency may  
17 create such records, or make such alterations to existing records,  
18 as the chief officer thinks are necessary to support evidence of  
19 the assumed identity produced in response to the request.

20 **61. Cancellation of evidence of assumed identity**

21 (1) In this section —  
22 *cancel* includes delete or alter an entry in a record of  
23 information.

24 (2) This section applies if the chief officer of an issuing agency  
25 complies with a request under section 58.

26 (3) The chief officer who made the request may in writing direct the  
27 chief officer of the issuing agency to cancel evidence produced  
28 in response to the request and cancel any other records or  
29 alterations made to support that evidence.

1 (4) The direction must state a reasonable period for compliance  
2 with the direction.

3 (5) The chief officer of an issuing agency who receives a direction  
4 under subsection (3) must comply with the direction within the  
5 reasonable period stated in the direction.

6 **62. Protection from criminal liability — officers of issuing**  
7 **agencies**

8 The chief officer, or an officer, of an issuing agency (whether  
9 government or non-government) who does something that, apart  
10 from this section, would be an offence is not criminally  
11 responsible for the offence if the thing is done to comply with a  
12 request under section 58 or a direction under section 61.

13 **63. Indemnity for issuing agencies and officers**

14 (1) This section applies if the chief officer of a law enforcement  
15 agency makes a request under section 58 or gives a direction  
16 under section 61 to the chief officer of an issuing agency,  
17 whether government or non-government.

18 (2) The chief officer of the law enforcement agency must indemnify  
19 the issuing agency, or an officer of the issuing agency, for any  
20 liability incurred by the issuing agency or officer (including  
21 reasonable costs) if —

22 (a) the liability is incurred because of something done by  
23 the issuing agency or officer to comply with the request  
24 or direction in the course of duty; and

25 (b) any prescribed requirements have been met.

26 **Division 4 — Effect of authority**

27 **64. Assumed identity may be acquired and used**

28 (1) An authorised officer may acquire or use (or both) an assumed  
29 identity if the acquisition or use (or both) are —

30 (a) in accordance with an authority; and

- 1 (b) in the course of duty.
- 2 (2) An authorised civilian may acquire or use (or both) an assumed  
3 identity if the acquisition or use (or both) are in accordance  
4 with —
- 5 (a) an authority; and
- 6 (b) any direction by the person’s supervisor under the  
7 authority.
- 8 (3) An authority also authorises —
- 9 (a) the making (by the person to whom the authority applies  
10 or by any officer of the relevant law enforcement  
11 agency) of any false or misleading representation about  
12 the person, for the purposes of or in connection with the  
13 acquisition or use of the assumed identity by the person;  
14 and
- 15 (b) the use by the person of the assumed identity to obtain  
16 evidence of the identity.

17 **65. Protection from criminal liability — authorised persons**

18 If an authorised person does something (whether in this  
19 jurisdiction or elsewhere) that, apart from this section, would be  
20 an offence, the person is not criminally responsible for the  
21 offence if —

- 22 (a) the thing is done in the course of acquiring or using an  
23 assumed identity in accordance with an authority; and
- 24 (b) the thing is done —
- 25 (i) in the case of an authorised officer, in the course  
26 of his or her duty; or
- 27 (ii) in the case of an authorised civilian, in  
28 accordance with any direction by his or her  
29 supervisor under the authority;
- 30 and
- 31 (c) doing the thing would not be an offence if the assumed  
32 identity were the person’s real identity.

1   **66.    Indemnity for authorised persons**

2       (1) This section applies if the chief officer of a law enforcement  
3       agency grants an authority.

4       (2) The chief officer must indemnify the authorised person under  
5       the authority for any liability incurred by the person (including  
6       reasonable costs) because of something done by the person  
7       (whether in this jurisdiction or elsewhere) if —

8           (a) the thing is done in the course of acquiring or using an  
9           assumed identity in accordance with the authority; and

10          (b) the thing is done —

11              (i) in the case of an authorised officer, in the course  
12              of his or her duty; or

13              (ii) in the case of an authorised civilian, in  
14              accordance with any direction by his or her  
15              supervisor under the authority;

16              and

17              (c) any prescribed requirements have been met.

18   **67.    Particular qualifications**

19       (1) Sections 65 and 66 do not apply to anything done by an  
20       authorised person if —

21           (a) a particular qualification is needed to do the thing; and

22           (b) the person does not have that qualification.

23       (2) Subsection (1) applies whether or not the person has acquired,  
24       as evidence of an assumed identity, a document that indicates  
25       that he or she has that qualification.

26   **68.    Effect of being unaware of variation or cancellation of**  
27   **authority**

28       (1) If an authority has been varied in a way that limits its scope, this  
29       Division continues to apply to the authorised person to whom it

- 1 relates as if it had not been varied in that way, for as long as the  
2 person —
- 3 (a) is unaware of the variation; and  
4 (b) has taken reasonable measures to ensure the person is  
5 aware of any variation.
- 6 (2) If an authority has been cancelled, this Division continues to  
7 apply to the authorised person to whom it related as if it had not  
8 been cancelled, for as long as the person —
- 9 (a) is unaware of the cancellation; and  
10 (b) has taken reasonable measures to ensure the person is  
11 aware of any cancellation.

12 **Division 5 — Mutual recognition under corresponding laws**

13 **69. Requests to participating jurisdiction for evidence of**  
14 **assumed identity**

- 15 (1) This section applies if an authority granted under section 48  
16 authorises a request under this section.
- 17 (2) The chief officer who grants the authority may request the chief  
18 officer (however described) of an issuing agency of a  
19 participating jurisdiction stated in the authority to —
- 20 (a) produce evidence of the assumed identity in accordance  
21 with the authority; and  
22 (b) give evidence of the assumed identity to the authorised  
23 person named in the authority or another person  
24 specified by the chief officer making the request; and  
25 (c) create or alter such other records as the chief officer of  
26 the issuing agency thinks necessary to support the  
27 evidence of the assumed identity produced in response  
28 to the request.
- 29 (3) The request must state a reasonable period for compliance with  
30 the request.



- 1   **70.    Requests from participating jurisdiction for evidence of**  
2    **assumed identity**
- 3       (1) This section applies if —
- 4           (a) a corresponding authority authorises a request for —
- 5               (i) the production of evidence of an assumed  
6               identity in this jurisdiction; and
- 7               (ii) the giving of evidence of the assumed identity to  
8               the authorised person named in the authority;
- 9           and
- 10          (b) the request is made to the chief officer of an issuing  
11          agency of this jurisdiction; and
- 12          (c) the request states a reasonable period for compliance  
13          with the request.
- 14       (2) The chief officer of a government issuing agency who receives  
15       the request must comply with the request within the reasonable  
16       period stated in the request.
- 17       (3) The chief officer of a non-government issuing agency who  
18       receives the request may comply with the request.
- 19       (4) The chief officer of an issuing agency may create or alter such  
20       other records as the chief officer thinks necessary to support  
21       evidence of the assumed identity produced in response to the  
22       request.
- 23   **71.    Directions from participating jurisdiction to cancel evidence**  
24    **of assumed identity**
- 25       0. In this section —
- 26       0.*cancel* includes delete or alter an entry in a record of  
27       information.
- 28       (1) This section applies if the chief officer of an issuing agency (the  
29       *issuing chief officer*) who has produced evidence in response to  
30       a request under section 70 is directed in writing to cancel the  
31       evidence by the chief officer (however described) of the

1 relevant law enforcement agency of the participating  
2 jurisdiction.

3 (2) The issuing chief officer must, within any reasonable period  
4 stated in the request, cancel —

5 (a) the evidence; and

6 (b) any other records or alterations made to support that  
7 evidence.

8 **72. Indemnity for issuing agencies and officers**

9 (1) This section applies if the chief officer of a law enforcement  
10 agency makes a request to the chief officer (however described)  
11 of an issuing agency of a participating jurisdiction under  
12 section 69.

13 (2) The chief officer of the law enforcement agency must indemnify  
14 the issuing agency, and any officer of the issuing agency, for  
15 any liability incurred by the agency or officer (including  
16 reasonable costs) if —

17 (a) the liability is incurred because of something done  
18 (whether in this jurisdiction or elsewhere) by the agency  
19 or officer to comply with the request in the course of  
20 duty; and

21 (b) any prescribed requirements have been met.

22 **73. Application of Division to authorities under corresponding**  
23 **laws**

24 The following provisions apply, with any necessary changes, to  
25 anything done in this jurisdiction in relation to a corresponding  
26 authority as if it were an authority granted under section 48 —

27 (a) section 62 (Protection from criminal liability — officers  
28 of issuing agencies);

29 (b) section 64 (Assumed identity may be acquired and  
30 used);

- 1 (c) section 65 (Protection from criminal liability —  
2 authorised persons);  
3 (d) section 67 (Particular qualifications);  
4 (e) section 68 (Effect of being unaware of variation or  
5 cancellation of authority);  
6 (f) section 74 (Misuse of assumed identity);  
7 (g) section 75 (Disclosing information about assumed  
8 identity).

9 **Division 6 — Compliance and monitoring**

10 **Subdivision 1 — Misuse of assumed identity and information**

11 **74. Misuse of assumed identity**

- 12 (1) An authorised officer must not acquire evidence of, or use, an  
13 assumed identity covered by the officer's authority except —  
14 (a) in accordance with his or her authority; and  
15 (b) in the course of duty.

16 Penalty: imprisonment for 2 years.

- 17 (2) An authorised civilian must not acquire evidence of, or use, an  
18 assumed identity covered by the civilian's authority except in  
19 accordance with —  
20 (a) the civilian's authority; and  
21 (b) the directions of the civilian's supervisor under the  
22 authority.

23 Penalty: imprisonment for 2 years.

24 **75. Disclosing information about assumed identity**

- 25 (1) A person must not disclose any information that reveals, or is  
26 likely to reveal, that an assumed identity that another person is  
27 authorised to acquire or use under an authority or corresponding  
28 authority is not the other person's real identity except —  
29 (a) in connection with the administration or execution of  
30 this Part or a corresponding law; or

- 1 (b) for the purposes of any legal proceeding arising out of or  
2 otherwise related to this Part or a corresponding law or  
3 of any report of any such proceedings; or  
4 (c) to a government agency for the purposes of a law  
5 enforcement operation conducted by that agency; or  
6 (d) in accordance with any requirement imposed by law.  
7 Penalty: imprisonment for 10 years.  
8 Summary conviction penalty: a fine of \$24 000 or imprisonment  
9 for 2 years.  
10 (2) An offence against subsection (1) is an indictable offence.

11 **Subdivision 2 — Reporting and record-keeping**

12 **76. Reports about authorities for assumed identities**

- 13 0. As soon as practicable after the end of each financial year, the  
14 chief officer of a law enforcement agency must submit a report  
15 to the Minister that includes all of the following information for  
16 the year —  
17 0. the number of authorities granted during the year;  
18 0. a general description of the activities undertaken by  
19 authorised persons when using assumed identities under  
20 this Part during the year;  
21 0. the number of applications for authorities that were  
22 refused during the year;  
23 (a) a statement whether or not any fraud or other unlawful  
24 activity was identified by an audit under section 78  
25 during the year;  
26 0. any other information relating to authorities and  
27 assumed identities and the administration of this Part  
28 that the Minister considers appropriate.  
29 (2) The chief officer must advise the Minister of any information in  
30 the report that, in the chief officer's opinion, should be excluded  
31 from the report before the report is laid before both Houses of

1 Parliament because the information, if made public, could  
2 reasonably be expected to —

- 3 (a) endanger a person's safety; or  
4 (b) prejudice an investigation or prosecution; or  
5 (c) compromise any law enforcement agency's operational  
6 activities or methodologies.

7 (3) The Minister must exclude information from the report if  
8 satisfied on the advice of the chief officer of any of the grounds  
9 set out in subsection (2).

10 (4) The Minister is to cause a copy of the report to be laid before  
11 each House of Parliament within 15 sitting days from the day on  
12 which the report is received by the Minister.

13 **77. Record-keeping**

14 (1) The chief officer of a law enforcement agency must cause  
15 appropriate records to be kept about the operation of this Part in  
16 respect of the agency.

17 (2) The records must include all of the following, in respect of  
18 authorities granted, varied or cancelled under this Part in respect  
19 of the agency —

- 20 (a) the date on which an authority was granted, varied or  
21 cancelled and the name of the person who granted,  
22 varied or cancelled it;
- 23 (b) the name of the authorised person under the authority,  
24 together with details of the assumed identity to which  
25 the authority applies;
- 26 (c) details of any request made to an issuing agency under  
27 section 58 in respect of the authority;
- 28 (d) the general nature of the duties undertaken by the  
29 authorised person under the assumed identity;
- 30 (e) general details of relevant financial transactions entered  
31 into using the assumed identity;

1 (f) details of reviews of the authority under section 53.

2 **78. Audit of records**

3 (1) The chief officer of a law enforcement agency must arrange for  
4 the records kept under section 77 for each authority in respect of  
5 the agency to be audited —

6 (a) at least once every 6 months while the authority is in  
7 force; and

8 (b) at least once in the 6 months after the cancellation or  
9 expiry of the authority.

10 (2) The audit is to be conducted by a person appointed by the chief  
11 officer.

12 (3) The person appointed to conduct the audit —

13 (a) may, but need not, be an officer of the law enforcement  
14 agency; and

15 (b) must not be a person —

16 (i) who granted, varied or cancelled any of the  
17 authorities to which the records under section 77  
18 relate; or

19 (ii) who is or was an authorised person, or the  
20 supervisor of an authorised civilian, under any of  
21 the authorities to which those records relate.

22 (4) The results of an audit are to be reported to the chief officer.

23 **Division 7 — Miscellaneous**

24 **79. Delegation**

25 0. In this section —

26 0.*senior officer* means —

27 0. in relation to the Police Force — a police officer of or  
28 above the rank of superintendent;

- 1           0. in relation to the Australian Crime Commission —  
2                 0. the Director National Operations; or  
3                 0. a person holding a prescribed office in the  
4                     Australian Crime Commission;  
5           0. in relation to the fisheries department — a fisheries  
6                 officer holding a prescribed office in the department.
- 7           0. Except as provided by this section, and despite any other written  
8                 law to the contrary, the functions of a chief officer under this  
9                 Part cannot be delegated to any other person.
- 10          (1) A chief officer of a law enforcement agency may delegate to a  
11                 senior officer of the agency any of the chief officer's functions  
12                 under this Part relating to the granting, variation and  
13                 cancellation of authorities (including conducting reviews under  
14                 section 53, making applications under section 54 or 56, or  
15                 making requests under section 58 or 69).

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**Part 4 — Witness identity protection**

**Division 1 — General**

**80.        Terms used**

In this Part, unless the contrary intention appears —  
*appeal*, against a decision, includes to seek a review of the decision;

*assumed name*, of an operative, has the meaning given in section 84(2)(a)(i);

*corresponding law* means a law of another jurisdiction that corresponds to this Part, and includes a prescribed law of another jurisdiction;

*corresponding witness identity protection certificate* means a certificate given under a provision of a corresponding law that corresponds to section 83;

*court* includes —

- (a) a tribunal or other body established or continued under a written law and having a power to obtain evidence or information;
- (b) a Royal Commission established under the *Royal Commissions Act 1968*;
- (c) a commission, board, committee or other body established by the Governor or by either or both Houses of Parliament or by the Government of the State to inquire into any matter;

*court name*, for an operative in relation to a proceeding, means a name (other than the operative’s real name) or code used to identify the operative in the proceeding;

*false representation* does not include a representation made under an authority under Part 2 or 3;

*investigation* means an investigation in relation to criminal activity, including an investigation extending beyond this jurisdiction;



1           **lawyer** means an Australian lawyer within the meaning of that  
2 term in the *Legal Profession Act 2008* section 3;

3           **operative** means a person who is or was —

- 4           (a) a participant in an authorised operation under Part 2; or  
5           (b) authorised to acquire and use an assumed identity under  
6           Part 3; or  
7           (c) a law enforcement officer otherwise using an assumed  
8           identity for the purposes of a law enforcement operation;

9           **party**, to a proceeding, means —

- 10           (a) for a criminal proceeding, the prosecutor and each  
11           accused person; or  
12           (b) for a civil proceeding, each person who is a party to the  
13           proceeding; or  
14           (c) for any other proceeding, each person who may appear  
15           or give evidence in the proceeding;

16           **proceeding** means any criminal, civil or other proceeding  
17           before, or inquiry, reference or examination by, a court, and  
18           includes an arbitration;

19           **professional misconduct** means —

- 20           (a) an offence against the discipline of the Police Force  
21           under the *Police Act 1892*; or  
22           (b) misconduct or a breach of discipline (however  
23           described) under a law of another jurisdiction that  
24           corresponds to the *Police Act 1892*; or  
25           (c) misconduct or a breach of discipline (however  
26           described) under a law of the Commonwealth that  
27           governs the conduct of members of staff of the  
28           Australian Crime Commission;  
29           (d) a breach of discipline as defined in the *Public Sector*  
30           *Management Act 1994* section 3(1),

31           as the case requires, but does not include conduct that is the  
32           subject of an informal inquiry only;

1            *witness identity protection certificate* means a certificate given  
2            under section 83.

3    **81. Things done by, or given to, party's lawyer**

4            For the purposes of this Part —

- 5            (a) anything permitted to be done by a party to a proceeding  
6            may be done by the party's lawyer; and  
7            (b) any requirement to give something to a party to a  
8            proceeding is satisfied by giving the thing to, or  
9            notifying, the party's lawyer.

10           **Division 2 — Witness identity protection certificates**  
11           **for operatives**

12    **82. Application of Division**

- 13           (1) This Division applies to a proceeding in which an operative is,  
14           or may be, required to give evidence obtained as an operative.  
15           (2) To remove any doubt, this Division does not affect the operation  
16           of the common law in relation to the protection of the identity of  
17           a person who is not an operative who gives or intends to give  
18           evidence in a proceeding.

19    **83. Witness identity protection certificate — giving**

- 20           (1) The chief officer of a law enforcement agency may give a  
21           certificate for an operative of the agency in relation to a  
22           proceeding if —  
23           (a) the operative is, or may be required, to give evidence in  
24           the proceeding; and  
25           (b) the chief officer is satisfied on reasonable grounds that  
26           the disclosure in the proceeding of the operative's true  
27           identity or where the operative lives is likely to —  
28           (i) endanger the safety of the operative or someone  
29           else; or  
30           (ii) prejudice any investigation.

- 1 (2) The chief officer must make all practicable inquiries to enable  
2 him or her to ascertain the information required to be included  
3 in the certificate by section 84.
- 4 (3) A decision to give a witness identity protection certificate —  
5 (a) is final; and  
6 (b) cannot be impeached for informality or form; and  
7 (c) cannot be appealed against, called into question,  
8 quashed or invalidated in any court.
- 9 (4) Subsection (3) does not prevent a decision to give a witness  
10 identity protection certificate being called into question in the  
11 course of any disciplinary proceeding against the person who  
12 made the decision.
- 13 (5) Subsection (3) does not limit judicial review for jurisdictional  
14 error.

15 **84. Form of witness identity protection certificate**

- 16 (1) For the purposes of this section —  
17 (a) a charge against a person for an offence is *outstanding*  
18 until the charge is finally dealt with in any of the  
19 following ways —  
20 (i) the charge is withdrawn;  
21 (ii) the charge is dismissed by a court;  
22 (iii) the person is discharged by a court;  
23 (iv) the person is acquitted or found guilty of the  
24 offence by a court;  
25 and  
26 (b) an allegation of professional misconduct against a  
27 person is *outstanding* if the allegation has not been  
28 finally dealt with under —  
29 (i) in relation to a police officer — the  
30 *Police Act 1892*;

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- 1 (ii) in relation to a member of staff of the Australian  
2 Crime Commission — the *Australian Crime*  
3 *Commission Act 2002* (Commonwealth);
- 4 (iii) in relation to a fisheries officer — the *Public*  
5 *Sector Management Act 1994*.
- 6 (2) A witness identity protection certificate for an operative of a  
7 law enforcement agency in relation to a proceeding must state  
8 all of the following —
- 9 (a) if the operative —
- 10 (i) is known to a party to the proceeding by a name  
11 other than the operative's real name, that name  
12 (the *assumed name*); or
- 13 (ii) is not known to any party to the proceeding by  
14 the assumed name, the operative's court name  
15 for the proceeding;
- 16 (b) the name of the agency;
- 17 (c) the date of the certificate;
- 18 (d) the grounds for giving the certificate;
- 19 (e) whether the operative has been convicted or found guilty  
20 of an offence, in this jurisdiction or elsewhere, and, if  
21 so, particulars of each offence;
- 22 (f) whether any charges against the operative for an offence  
23 are outstanding, in this jurisdiction or elsewhere, and, if  
24 so, particulars of each charge;
- 25 (g) if the operative is or was a law enforcement officer —
- 26 (i) whether the operative has been found guilty of  
27 professional misconduct and, if so, particulars of  
28 each finding; and
- 29 (ii) whether any allegations of professional  
30 misconduct against the operative are outstanding  
31 and, if so, particulars of each allegation;
- 32 (h) whether, to the knowledge of the person giving the  
33 certificate, a court has made any adverse comment about

- 1                   the operative’s credibility and, if so, particulars of the  
2                   comment;
- 3                   (i) whether, to the knowledge of the person giving the  
4                   certificate, the operative has made a false representation  
5                   when the truth was required and, if so, particulars of the  
6                   representation;
- 7                   (j) if there is anything else known to the person giving the  
8                   certificate that may be relevant to the operative’s  
9                   credibility, particulars of the thing.
- 10               (3) A witness identity protection certificate for an operative must  
11               not contain information that may allow the operative’s true  
12               identity, or where the operative lives, to be revealed.
- 13               (4) The *Spent Convictions Act 1988* does not apply to the disclosure  
14               of information under subsection (2)(e) or (f).

15   **85.     Filing and notification**

- 16               (1) A witness identity protection certificate for an operative in  
17               relation to a proceeding must be filed in the court before the  
18               operative gives evidence in the proceeding.
- 19               (2) The person who files the certificate must give a copy of it to the  
20               operative and each party to the proceeding at least 14 days (or  
21               such shorter period as is agreed to by the party) before the day  
22               on which the operative is to give evidence.
- 23               (3) The court may order the person filing the certificate to give a  
24               copy of it to someone else stated in the order.
- 25               (4) This section applies subject to section 86.

26   **86.     Leave for non-compliance**

- 27               (1) The person who has filed, or proposes to file, a witness identity  
28               protection certificate may apply to the court for leave not to  
29               comply with the requirement under section 85(2) in relation to  
30               the time within which a copy of the certificate is to be given.

1 (2) However, the court must not give such leave unless it is  
2 satisfied that it was not reasonably practicable to comply with  
3 the requirement referred to in subsection (1).

4 **87. Effect of witness identity protection certificate**

5 (1) This section applies if —

6 (a) a witness identity protection certificate for an operative  
7 is filed in accordance with section 85(1); and

8 (b) either —

9 (i) a copy of the certificate is given to each party in  
10 accordance with section 85(2) and to each person  
11 in accordance with an order under section 85(3)  
12 (if any); or

13 (ii) the court gives leave for this section to apply  
14 despite non-compliance with section 85(2) or (3).

15 (2) If this section applies —

16 (a) the operative may give evidence in the proceeding under  
17 the assumed name, or court name, stated in the  
18 certificate; and

19 (b) subject to sections 89 and 90 —

20 (i) a question must not be asked of a witness,  
21 including the operative, that may lead to the  
22 disclosure of the operative's true identity or  
23 where the operative lives; and

24 (ii) a witness, including the operative, cannot be  
25 required to (and must not) answer a question,  
26 give evidence or provide information that  
27 discloses, or may lead to the disclosure of, the  
28 operative's true identity or where the operative  
29 lives; and

30 (iii) a person involved in the proceeding must not  
31 make a statement that discloses, or may lead to  
32 the disclosure of, the operative's true identity or  
33 where the operative lives.

- 1       (3) For the purposes of this section, a person involved in a  
2       proceeding includes —
- 3           (a) the court; and
- 4           (b) a party to the proceeding; and
- 5           (c) a person given leave to be heard or make submissions in  
6           the proceeding; and
- 7           (d) a lawyer representing a person referred to in  
8           paragraph (b) or (c) or a lawyer assisting the court in the  
9           proceeding; and
- 10          (e) any other officer of the court or person assisting the  
11          court in the proceeding; and
- 12          (f) a person acting in the execution of any process or the  
13          enforcement of any order in the proceeding.

14       **88. Orders to protect operative’s true identity or location**

- 15       (1) The court in which a witness identity protection certificate is  
16       filed —
- 17           (a) must hear the proceeding (including any applications  
18           relating to the proceeding, such as those referred to in  
19           sections 86, 88 and 90) in closed court; and
- 20           (b) may make any order it considers necessary or desirable  
21           to protect the true identity of the operative for whom the  
22           certificate is given or to prevent the disclosure of where  
23           the operative lives.
- 24       (2) A person must not contravene an order under subsection (1)(b).  
25       Penalty: imprisonment for 10 years.  
26       Summary conviction penalty: a fine of \$24 000 or imprisonment  
27       for 2 years.
- 28       (3) Subsection (2) does not limit the court’s power to punish for  
29       contempt.

- 1 **89. Disclosure of operative's true identity to presiding officer**
- 2 0. This section applies if a witness identity protection certificate
- 3 for an operative in relation to a proceeding is filed in a court.
- 4 (1) The presiding officer in the proceeding may require the
- 5 operative to do one or both of the following —
- 6 (a) to disclose the operative's true identity to the presiding
- 7 officer;
- 8 (b) to provide the presiding officer with photographic
- 9 evidence of that identity.
- 10 (2) The presiding officer must not —
- 11 (a) record information disclosed to the presiding officer
- 12 under subsection (1); or
- 13 (b) retain or copy a document or other thing provided to the
- 14 presiding officer under that subsection.
- 15 **90. Disclosure of operative's true identity or location despite**
- 16 **certificate**
- 17 (1) This section applies if a witness identity protection certificate
- 18 for an operative in relation to a proceeding is filed in a court.
- 19 (2) A party to the proceeding, or a lawyer assisting the court in the
- 20 proceeding, may apply to the court —
- 21 (a) for leave —
- 22 (i) to ask a question of a witness, including the
- 23 operative, that may lead to the disclosure of the
- 24 operative's true identity or where the operative
- 25 lives; or
- 26 (ii) for a person involved in the proceeding to make
- 27 a statement that discloses, or may lead to the
- 28 disclosure of, the operative's true identity or
- 29 where the operative lives;
- 30 or



- 1 (b) for an order requiring a witness, including the operative,  
2 to answer a question, give evidence or provide  
3 information that discloses, or may lead to the disclosure  
4 of, the operative's true identity or where the operative  
5 lives.
- 6 (3) The court may —
- 7 (a) give leave for the party or lawyer to do anything  
8 mentioned in subsection (2)(a); and
- 9 (b) make an order requiring a witness to do anything  
10 mentioned in subsection (2)(b).
- 11 (4) However, the court must not give leave or make an order unless  
12 satisfied about each of the following —
- 13 (a) there is evidence that, if accepted, would substantially  
14 call into question the operative's credibility;
- 15 (b) it would be impracticable to test properly the credibility  
16 of the operative without allowing the risk of disclosure  
17 of, or disclosing, the operative's true identity or where  
18 the operative lives;
- 19 (c) it is in the interests of justice for the operative's  
20 credibility to be able to be tested.
- 21 (5) If there is a jury in the proceeding, the application must be heard  
22 in the absence of the jury.
- 23 (6) The court must make an order suppressing the publication of  
24 anything said when —
- 25 (a) the application is made; and
- 26 (b) if leave is given or an order is made, the question is  
27 asked (and answered), the evidence is given, the  
28 information is provided or the statement is made.
- 29 (7) Nothing in subsection (6) prevents the taking of a transcript of  
30 court proceedings, but the court may make an order for how the  
31 transcript is to be dealt with, including an order suppressing its  
32 publication.

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- 1 (8) The court may make any other order it considers appropriate to  
2 protect the operative's true identity or to prevent the disclosure  
3 of where the operative lives.
- 4 (9) A person must not contravene an order under subsection (6), (7)  
5 or (8).  
6 Penalty: imprisonment for 10 years.  
7 Summary conviction penalty: a fine of \$24 000 or imprisonment  
8 for 2 years.
- 9 (10) Subsection (9) does not limit the court's power to punish for  
10 contempt.
- 11 **91. Application for leave — joinder as respondent**
- 12 (1) This section applies if —  
13 (a) a witness identity protection certificate for an operative  
14 in relation to a proceeding is filed in a court; and  
15 (b) a person applies —  
16 (i) for leave under section 86 or 90; or  
17 (ii) for an order under section 88 or 90.
- 18 (2) The court in which the application is pending may allow a  
19 person to join the application as a respondent if —  
20 (a) the person is —  
21 (i) the operative in relation to whom the witness  
22 identity protection certificate is given; or  
23 (ii) the chief officer of the agency that gave the  
24 witness identity protection certificate;  
25 and  
26 (b) the person applies to be joined to the application as a  
27 respondent; and  
28 (c) the person has sufficient interest in the subject matter of  
29 the application.

1       (3) If a court allows a person to join the application as a respondent  
2       under subsection (2), the court must allow the person, or the  
3       person's legal representative, to appear and be heard.

4       **92. Directions to jury**

5       (1) This section applies if —

- 6           (a) a witness identity protection certificate for an operative  
7           in relation to a proceeding is filed in a court; and  
8           (b) there is a jury in the proceeding; and  
9           (c) the operative gives evidence.

10       (2) The court must (unless it considers it inappropriate) direct the  
11       jury not to give the operative's evidence any more or less  
12       weight, or draw any adverse inferences against the defendant or  
13       another party to the proceeding, because —

- 14           (a) there is a witness identity protection certificate for the  
15           operative; or  
16           (b) the court has made an order under section 88  
17           or 90(6), (7) or (8).

18       **93. Adjournment for appeal decision**

19       (1) This section applies if, in proceedings before a court (the  
20       *original court*) —

- 21           (a) the original court gives, or refuses, leave under  
22           section 86 or 90 in relation to a witness identity  
23           protection certificate for an operative; or  
24           (b) the original court makes, or refuses to make, an order  
25           under section 88 or 90 in relation to a witness identity  
26           protection certificate for an operative.

27       (2) A party to the proceedings may apply to the original court for an  
28       adjournment —

- 29           (a) to appeal against the decision of the original court to  
30           give or refuse leave, or to make or refuse to make the  
31           order; or

- 1 (b) to decide whether to appeal or seek leave to appeal  
2 against the decision.
- 3 (3) If an application is made under subsection (2), the original court  
4 must grant the adjournment.
- 5 (4) A court that has jurisdiction to hear and determine appeals from  
6 a judgment, order or direction in the proceedings has  
7 jurisdiction to hear and determine an appeal against the decision  
8 to give or refuse leave, or to make or refuse to make the order.

9 **94. Witness identity protection certificate — cancellation**

- 10 (1) This section applies if the chief officer of a law enforcement  
11 agency gives a witness identity protection certificate for an  
12 operative of the agency in relation to a proceeding.
- 13 (2) The chief officer may cancel the witness identity protection  
14 certificate if the chief officer considers that it is no longer  
15 necessary or appropriate to prevent the disclosure of the  
16 operative's true identity or where the operative lives.
- 17 (3) If the chief officer cancels the certificate after it has been filed  
18 in a court and before the matter has been finalised by the court,  
19 the chief officer must immediately give written notice to the  
20 court and each party to the proceeding that the certificate has  
21 been cancelled.

22 **95. Permission to give information disclosing operative's true  
23 identity or location**

- 24 (1) This section applies if the chief officer of a law enforcement  
25 agency gives a witness identity protection certificate for an  
26 operative of the agency in relation to a proceeding.
- 27 (2) The chief officer may, in writing, permit a person to give  
28 information (otherwise than in the proceeding) that discloses, or  
29 may lead to the disclosure of, the operative's true identity or  
30 where the operative lives if the chief officer considers it  
31 necessary or appropriate for the information to be given.

- 1       (3) The permission —  
2           (a) must name the person who may give the information;  
3           and  
4           (b) must name the person to whom the information may be  
5           given; and  
6           (c) must state the information that may be given; and  
7           (d) may state how the information may be given.

8       **96. Disclosure offences**

- 9       (1) A person must not do something (the *disclosure action*) that  
10       discloses, or is likely to lead to the disclosure of, the true  
11       identity of an operative for whom a witness identity protection  
12       certificate has been given or where the operative lives unless —  
13           (a) the certificate has been cancelled under section 94  
14           before the person does the disclosure action; or  
15           (b) the disclosure action is —  
16               (i) required by section 89; or  
17               (ii) authorised by leave or by an order under  
18               section 90; or  
19               (iii) permitted under section 95.

20       Penalty: imprisonment for 10 years.

21       Summary conviction penalty: a fine of \$24 000 or imprisonment  
22       for 2 years.

- 23       (2) An offence against subsection (1) is an indictable offence.

24       **97. Evidentiary certificates**

- 25       0. A chief officer of a law enforcement agency may sign a  
26       certificate stating any of the following —  
27           (a) that, for the purposes of section 96(1)(a), a witness  
28           identity protection certificate for an operative in relation  
29           to a proceeding has not been cancelled under section 94;

- 1 (b) whether, for the purposes of section 96(1)(b)(iii), the  
2 conduct that is the subject of the offence was permitted  
3 under section 95.
- 4 (2) In any proceedings, a certificate given under this section is  
5 sufficient evidence, in the absence of evidence to the contrary,  
6 of the matters certified in it.
- 7 **98. Reports about witness identity protection certificates**
- 8 (1) As soon as practicable after the end of each financial year, the  
9 chief officer of a law enforcement agency must submit to the  
10 Minister a report about witness identity protection certificates  
11 given by the chief officer during that year.
- 12 (2) The report must include all of the following —
- 13 (a) the number of witness identity protection certificates  
14 given;
- 15 (b) on what basis the chief officer was satisfied about the  
16 matters mentioned in section 83(1)(b) for each  
17 certificate;
- 18 (c) if leave was given or an order made under section 90 in  
19 a proceeding in which a witness identity protection  
20 certificate for an operative of the agency was filed,  
21 details of the proceeding that relate to the leave or order;
- 22 (d) if a witness identity protection certificate was cancelled  
23 under section 94, the reasons why the certificate was  
24 cancelled;
- 25 (e) if a permission was given under section 95, the reasons  
26 why the permission was given;
- 27 (f) any other information relating to witness identity  
28 protection certificates and the administration of this Part  
29 that the Minister considers appropriate.
- 30 (3) A report must not include information that discloses, or may  
31 lead to the disclosure of, an operative's true identity, or where

1           the operative lives, unless the witness identity protection  
2           certificate for the operative has been cancelled.

3           (4) The Minister is to cause a copy of the report to be laid before  
4           each House of Parliament within 15 sitting days from the day on  
5           which the report is received by the Minister.

6           **Division 3 — Mutual recognition under corresponding laws**

7           **99. Recognition of witness identity protection certificates under**  
8           **corresponding laws**

9           The following provisions apply, with any necessary changes, to  
10          a corresponding witness identity protection certificate as if it  
11          were a witness identity protection certificate given under  
12          section 83 —

- 13           (a) section 85 (Filing and notification);
- 14           (b) section 86 (Leave for non-compliance);
- 15           (c) section 87 (Effect of witness identity protection  
16           certificate);
- 17           (d) section 88 (Orders to protect operative's true identity or  
18           location);
- 19           (e) section 89 (Disclosure of operative's true identity to  
20           presiding officer);
- 21           (f) section 90 (Disclosure of operative's true identity or  
22           location despite certificate);
- 23           (g) section 91 (Application for leave — joinder as  
24           respondent);
- 25           (h) section 92 (Directions to jury);
- 26           (i) section 93 (Adjournment for appeal decision);
- 27           (j) section 96 (Disclosure offences);
- 28           (k) section 97 (Evidentiary certificates).

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**Division 4 — Miscellaneous**

**100. Delegation**

0. In this section —

0. *senior officer* means —

0. in relation to the Police Force — a person holding office as a Deputy Commissioner of Police;

0. in relation to the Australian Crime Commission —

0. the Director National Operations; or

0. a person holding a prescribed office in the Australian Crime Commission;

0. in relation to the fisheries department — a fisheries officer holding a prescribed office in the department.

0. Except as provided by this section, and despite any other written law to the contrary, the functions of a chief officer under this Part cannot be delegated to any other person.

0. A chief officer of a law enforcement agency may delegate any of the chief officer's functions under this Part (except this power of delegation) to a senior officer of the agency.



1

**Part 5 — Miscellaneous**

2

**101. Regulations**

3

The Governor may make regulations prescribing all matters that

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are required or permitted by this Act to be prescribed, or are

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necessary or convenient to be prescribed for giving effect to the

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purposes of this Act.

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**Part 6 — Savings provisions**

**102. Term used: commencement day**

In this Part —

*commencement day* means the day on which this Part comes into operation.

**103. Savings provision relating to *Misuse of Drugs Act 1981***

(1) In this section —

*former authorisation* means an authorisation under the *Misuse of Drugs Act 1981* section 31(1) as in force immediately before the day on which Part 8 comes into operation.

(2) A former authorisation in force immediately before the commencement day, is, on and after the commencement day, to be taken to be an authority as defined in section 5 granted on the commencement day and Part 2 applies, with any necessary modifications, to that authority.

**104. Savings provision relating to *Prostitution Act 2000***

0. In this section —

*former authorisation* means an authorisation under the *Prostitution Act 2000* section 35(1) as in force immediately before the day on which Part 9 comes into operation.

(1) A former authorisation in force immediately before the commencement day, is, on and after the commencement day, to be taken to be an authority as defined in section 5 granted on the commencement day and Part 2 applies, with any necessary modifications, to that authority.

1 **Part 7 — *Corruption and Crime Commission***  
2 ***Act 2003* amended**

3 **105. Act amended**

4 This Part amends the *Corruption and Crime Commission*  
5 *Act 2003*.

6 **106. Section 91 amended**

7 In section 91(2)(n) after “issued to” insert:

8

9 officers of

10

1 **Part 8 — Misuse of Drugs Act 1981 amended**

2 **107. Act amended**

3 This Part amends the *Misuse of Drugs Act 1981*.

4 **108. Section 3 amended**

5 In section 3(1) insert in alphabetical order:

6

7 ***undercover officer*** means a participant or a  
8 corresponding participant as those terms are defined in  
9 the *Criminal Investigation (Covert Powers) Act 2011*  
10 section 5;

11 ***undercover operation*** means an authorised operation  
12 or corresponding authorised operation as those terms  
13 are defined in the *Criminal Investigation (Covert*  
14 *Powers) Act 2011* section 5;

15

16 **109. Section 26 amended**

17 (1) In section 26(2):

18 (a) delete paragraph (a) and insert:

19

20 (a) while he or she is an undercover officer acting  
21 in the course of an undercover operation,  
22 acquires a prohibited drug or prohibited plant;  
23 or

24

25 (b) in paragraph (b) delete “an authorised person” and  
26 insert:

27

28 an undercover officer

29

30 (2) Delete section 26(3).

1 **110. Section 31 replaced**

2 Delete section 31 and insert:

3

4 **31. Undercover officers**

5 (1) An undercover officer who is not a police officer  
6 commits a simple offence if, after having been warned  
7 under subsection (2), the officer acquires a prohibited  
8 drug or prohibited plant while acting in the course of  
9 an undercover operation and does not deliver the  
10 prohibited drug or prohibited plant to a police officer as  
11 soon as is reasonably practicable after that acquisition.

12 (2) The Commissioner must warn in writing an undercover  
13 officer who is not a police officer that if, having  
14 acquired a prohibited drug or prohibited plant whilst  
15 acting in the course of an undercover operation, that  
16 undercover officer does not deliver the prohibited drug  
17 or prohibited plant to a police officer as soon as is  
18 reasonably practicable after that acquisition, that  
19 undercover officer commits a simple offence under  
20 subsection (1).

21

22 **111. Section 34 amended**

23 In section 34(1)(e) delete “or 31(4)” and insert:

24

25 or 31(1)

26

1                      **Part 9 — *Prostitution Act 2000* amended**

2    **112. Act amended**

3                      This Part amends the *Prostitution Act 2000*.

4    **113. Section 35 deleted**

5                      Delete section 35.

6    **114. Section 36 amended**

7                      In section 36 delete “a function given by section 35(6) or”.

8    **115. Section 53 deleted**

9                      Delete section 53.

1 **Part 10 — *Witness Protection (Western Australia)***  
2 ***Act 1996* amended**

3 **116. Act amended**

4 This Part amends the *Witness Protection (Western Australia)*  
5 *Act 1996*.

6 **117. Section 22A inserted**

7 After section 21 insert:  
8

9 **22A. Effect of new identity order**

10 A person who has a new identity under a new identity  
11 order is entitled to claim that identity as the person's  
12 only identity if the person is required under a law of  
13 this State to disclose the person's former identity for a  
14 purpose unrelated to any proceedings.  
15

16 **118. Section 25 amended**

17 In section 25(2):

18 (a) in paragraph (h) delete "SWPP," and insert:  
19

20 SWPP;  
21

22 (b) after paragraph (h) insert:  
23

24 (i) the participant fails to comply with  
25 section 34A(2),  
26

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1 (c) after each of paragraphs (a) to (f) insert:

2

3 or

4

5 **119. Part 3 Division 1 heading inserted**

6 At the beginning of Part 3 insert:

7

8 **Division 1 — General**

9

10 **120. Sections 30 and 31 deleted**

11 Delete sections 30 and 31.

12 **121. Section 32 amended**

13 Before section 32(1) insert:

14

15 (1A) This section does not apply to the disclosure of a  
16 protected person's identity under section 34D.

17

18 **122. Part 3 Division 2 heading inserted**

19 After section 32 insert:

20

21 **Division 2 — Evidence by participants**

22



1   **123.   Section 33 replaced**

2           Delete section 33 and insert:

3

4           **33.       Terms used**

5           In this Division —

6           ***another jurisdiction*** means another State, a Territory  
7           or the Commonwealth;

8           ***corresponding law*** means a law of another jurisdiction  
9           that corresponds to this Division, and includes a  
10          prescribed law of another jurisdiction;

11          ***corresponding non-disclosure certificate*** means a  
12          certificate given under a provision of a corresponding  
13          law that corresponds to section 34A(3);

14          ***lawyer*** means an Australian lawyer within the meaning  
15          of that term in the *Legal Profession Act 2008* section 3;

16          ***non-disclosure certificate*** means a certificate given  
17          under section 34A(3);

18          ***party***, to proceedings, means —

19           (a) for criminal proceedings, the prosecutor and  
20           each accused person; or

21           (b) for civil proceedings, each person who is a  
22           party to the proceedings; or

23           (c) for any other proceedings, each person who  
24           may appear or give evidence in the  
25           proceedings;

26          ***protected address***, of a protected person, means —

27           (a) for proceedings in which the protected person is  
28           or may be required to give evidence under the  
29           person's new identity, the last place where the  
30           person lived under the person's former identity;  
31           or

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---

1 (b) for proceedings in which the protected person is  
2 or may be required to give evidence under the  
3 person's former identity, the place where the  
4 person lives;

5 ***protected identity***, of a protected person, means —

6 (a) for proceedings in which the protected person is  
7 or may be required to give evidence under the  
8 person's new identity, the person's former  
9 identity; or

10 (b) for proceedings in which the protected person is  
11 or may be required to give evidence under the  
12 person's former identity, the person's new  
13 identity;

14 ***protected person*** means a person who, having been  
15 given a new identity under the SWPP, keeps the  
16 identity whether or not the person remains a  
17 participant.

18 **34A. Non-disclosure certificates**

19 (1) In this section —  
20 ***court*** includes a court, within the meaning of that term  
21 in this Act, of another jurisdiction.

22 (2) If a protected person is or may be required to give  
23 evidence in proceedings in a court, whether under the  
24 person's new identity or former identity, the person  
25 must notify the Commissioner that the person is or may  
26 be required to give evidence in the proceedings.

27 (3) The Commissioner may give a certificate for the  
28 protected person in relation to the proceedings, and file  
29 a copy with the court.

- 1           **34B.    What non-disclosure certificate must state**
- 2           (1) A non-disclosure certificate for a protected person must
- 3           state —
- 4               (a) that the person is, or has been, included in the
- 5               SWPP; and
- 6               (b) that the person has been given a new identity
- 7               under the SWPP; and
- 8               (c) that the person has not been convicted or found
- 9               guilty of any offence other than an offence
- 10              mentioned in the certificate.
- 11          (2) The non-disclosure certificate must not include
- 12          information that discloses, or may lead to the
- 13          disclosure of any of the following —
- 14              (a) the person’s protected identity;
- 15              (b) the person’s protected address;
- 16              (c) any other sensitive information as defined in
- 17              section 32(2).
- 18          **34C.    Effect of non-disclosure certificate**
- 19          (1) In this section —
- 20          *person involved*, in proceedings, includes —
- 21              (a) the court; and
- 22              (b) a party to the proceedings; and
- 23              (c) a person given leave to be heard or make
- 24              submissions in the proceedings; and
- 25              (d) a lawyer representing a person referred to in
- 26              paragraph (b) or (c) or a lawyer assisting the
- 27              court in the proceedings; and
- 28              (e) any other officer of the court or person assisting
- 29              the court in the proceedings; and

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- 1 (f) a person acting in the execution of any process  
2 or the enforcement of any order in the  
3 proceedings.
- 4 (2) This section applies if a non-disclosure certificate for a  
5 protected person in relation to proceedings is filed in a  
6 court in this State.
- 7 (3) If this section applies, in the proceedings —
- 8 (a) a question must not be asked of a witness,  
9 including the protected person, that may lead to  
10 the disclosure of the protected person’s  
11 protected identity or protected address or both;  
12 and
- 13 (b) a witness, including the protected person,  
14 cannot be required to (and must not) answer a  
15 question, give evidence or provide information  
16 that discloses, or may lead to the disclosure of,  
17 the protected person’s protected identity or  
18 protected address or both; and
- 19 (c) a person involved in the proceedings must not  
20 make a statement that discloses, or may lead to  
21 the disclosure of, the protected person’s  
22 protected identity or protected address or both.
- 23 (4) The court may disclose to each party to the  
24 proceedings —
- 25 (a) that the court has been given a non-disclosure  
26 certificate for a person who may be required to  
27 give evidence in the proceedings; and
- 28 (b) what the certificate states.
- 29 (5) The court may only disclose what the non-disclosure  
30 certificate states in the absence of the jury (if any) and  
31 the public.
- 32 (6) If the court makes a disclosure about the  
33 non-disclosure certificate under subsection (4), the

1 court must also inform the parties of the effect of the  
2 certificate.

3 (7) This section applies despite any other Act, but subject  
4 to section 34D.

5 **34D. Disclosure of protected person's identity despite**  
6 **certificate**

7 (1) This section applies if a non-disclosure certificate for a  
8 protected person in relation to proceedings is filed in a  
9 court in this State.

10 (2) A party to the proceedings, or a lawyer assisting the  
11 court in the proceedings, may apply to the court —

12 (a) for leave —

13 (i) to ask a question of a witness, including  
14 the protected person, that may lead to  
15 the disclosure of the protected person's  
16 protected identity or protected address  
17 or both; or

18 (ii) for a person involved in the proceedings  
19 to make a statement that discloses, or  
20 may lead to the disclosure of, the  
21 protected person's protected identity or  
22 protected address or both;

23 or

24 (b) for an order requiring a witness, including the  
25 protected person, to answer a question, give  
26 evidence or provide information that discloses,  
27 or may lead to the disclosure of, the protected  
28 person's protected identity or protected address  
29 or both.

30 (3) The court may —

31 (a) give leave for the party or lawyer to do  
32 anything mentioned in subsection (2)(a); and

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- 1                   (b) make an order requiring a witness to do  
2                   anything mentioned in subsection (2)(b).
- 3           (4) However, the court must not give leave or make an  
4           order unless satisfied about each of the following —
- 5                   (a) there is evidence that, if accepted, would  
6                   substantially call into question the protected  
7                   person’s credibility;
- 8                   (b) it would be impracticable to test properly the  
9                   credibility of the protected person without  
10                  allowing the risk of disclosure of, or disclosing,  
11                  the protected person’s protected identity or  
12                  protected address or both;
- 13                  (c) it is in the interests of justice for the protected  
14                  person’s credibility to be able to be tested.
- 15           (5) If there is a jury in the proceedings, the application  
16           must be heard in the absence of the jury.
- 17           (6) Unless the court considers that the interests of justice  
18           require otherwise, the court must be closed when —
- 19                   (a) the application is made; and
- 20                   (b) if leave is given or an order is made, the  
21                   question is asked (and answered), the evidence  
22                   is given, the information is provided or the  
23                   statement is made.
- 24           (7) The court must make an order suppressing the  
25           publication of anything said when —
- 26                   (a) the application is made; and
- 27                   (b) if leave is given or an order is made, the  
28                   question is asked (and answered), the evidence  
29                   is given, the information is provided or the  
30                   statement is made.
- 31           (8) Nothing in subsection (7) prevents the taking of a  
32           transcript of court proceedings, but the court may make

- 1                   an order for how the transcript is to be dealt with,  
2                   including an order suppressing its publication.
- 3           (9)   The court may make any other order it considers  
4           appropriate to protect the protected person's protected  
5           identity or protected address or both.
- 6           (10)  A person must not contravene an order under  
7           subsection (7), (8) or (9).  
8           Penalty: imprisonment for 2 years.
- 9           (11)  Subsection (10) does not limit the court's power to  
10          punish for contempt.

11       **34E.   Directions to jury**

- 12          (1)   This section applies if —
- 13               (a)   a non-disclosure certificate for a protected  
14               person in relation to proceedings is filed in a  
15               court; and
- 16               (b)   there is a jury in the proceedings; and
- 17               (c)   the protected person gives evidence.
- 18          (2)   The court must (unless it considers it inappropriate)  
19          direct the jury not to give the protected person's  
20          evidence any more or less weight, or draw any adverse  
21          inferences against the defendant or another party to the  
22          proceedings, because —
- 23               (a)   there is a non-disclosure certificate for the  
24               protected person; or
- 25               (b)   the court has made an order under section 32  
26               or 34D(7), (8) or (9).

- 1           **34F.    Adjourment for appeal decision**
- 2           (1) This section applies if, in proceedings before a court
- 3           (the *original court*) —
- 4                 (a) the original court gives, or refuses, leave under
- 5                 section 34D(3)(a) in relation to a
- 6                 non-disclosure certificate for a protected
- 7                 person; or
- 8                 (b) the original court makes, or refuses to make, an
- 9                 order under section 34D(3)(b) in relation to a
- 10                non-disclosure certificate for a protected
- 11                person.
- 12           (2) A party to the proceedings may apply to the original
- 13           court for an adjourment —
- 14                 (a) to appeal against the decision of the original
- 15                 court to give or refuse leave, or to make or
- 16                 refuse to make the order; or
- 17                 (b) to decide whether to appeal or seek leave to
- 18                 appeal against the decision.
- 19           (3) If an application is made under subsection (2), the
- 20           original court must grant the adjourment.
- 21           **34G.    Jurisdiction to hear and determine appeals**
- 22           A court that has jurisdiction to hear and determine
- 23           appeals from a judgment, order or direction in the
- 24           proceedings has jurisdiction to hear and determine an
- 25           appeal against the decision to give or refuse leave, or to
- 26           make or refuse to make the order.
- 27           **34H.    Recognition of non-disclosure certificates under**
- 28           **corresponding laws**
- 29           The following provisions apply, with any necessary
- 30           changes, to a corresponding non-disclosure certificate
- 31           that is filed with a court in this State, as if it were a



- 1 non-disclosure certificate given under  
2 section 34A(3) —  
3 (a) section 34C (Effect of non-disclosure  
4 certificate);  
5 (b) section 34D (Disclosure of protected person’s  
6 identity despite certificate).  
7

8 **124. Part 3 Division 3 heading inserted**

9 Before section 34 insert:  
10

11 **Division 3 — Miscellaneous**  
12

13 **125. Part 5 heading inserted**

14 After section 39 insert:  
15

16 **Part 5 — Transitional and savings provisions**  
17

18 **126. Section 41 inserted**

19 After section 40 insert:  
20

21 **41. Savings provision relating to *Criminal Investigation***  
22 ***(Covert Powers) Act 2011***

- 23 (1) In this section —  
24 ***commencement day*** means the day on which the  
25 ***Criminal Investigation (Covert Powers) Act 2011***  
26 section 126 comes into operation;  
27 ***permission*** means a permission under section 33(1)(b)  
28 as in force immediately before the commencement day.

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- 1            (2) A permission given to a person for the purposes of  
2            particular proceedings is, on and after the  
3            commencement day, to be taken to be a non-disclosure  
4            certificate as defined in section 33 —  
5                   (a) for the person; and  
6                   (b) in relation to the proceedings,  
7            and Part 3 Division 3 applies, with any necessary  
8            modifications, to that certificate.  
9

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## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
acquire.....	44
ancillary conduct.....	31(1)
appeal.....	80
assumed name.....	80, 84(2)
Australian Crime Commission.....	3
authorised civilian.....	44
authorised officer.....	44
authorised operation.....	5
authorised person.....	44
authority.....	5, 44
cancel.....	61(1), 71(1)
chief officer.....	3, 44
civilian participant.....	5
commencement day.....	102
conduct.....	3
controlled conduct.....	5
controlled operation.....	5
corresponding authorised operation.....	5
corresponding authority.....	5, 44
corresponding law.....	5, 44, 80
corresponding participant.....	5
corresponding witness identity protection certificate.....	80
court.....	80
court name.....	80
criminal activity.....	3
cross-border controlled operation.....	5, 6(1)
disciplinary proceeding.....	3
disclosure action.....	96(1)
doing.....	44
evidence.....	44, 58(1)
false representation.....	80
fisheries department.....	3
fisheries officer.....	3
formal application.....	5, 10(2), 47(3)
formal authority.....	5, 15(1), 44, 49(1)
formal cancellation of authority.....	52(3)
formal variation application.....	5, 19(3)
formal variation of authority.....	5, 21(1), 51(4)
former authorisation.....	103(1), 104(1)

**Defined Terms**

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government agency .....	3
government issuing agency .....	44
illicit goods .....	5
investigation .....	80
issuing agency .....	44
issuing chief officer .....	71(2)
jurisdiction .....	3
law enforcement agency .....	3
law enforcement officer .....	3
law enforcement operation .....	3
law enforcement participant .....	5
lawyer .....	80
local controlled operation .....	5, 7
Minister .....	3
non-government issuing agency .....	44
officer .....	44
operational information .....	35(1)
operative .....	80
original court .....	93(1)
outstanding .....	84(1)
Parliamentary Commissioner .....	5
participant .....	5, 28(1)
participating jurisdiction .....	5, 44
party .....	80
Police Force .....	3
police officer .....	3
prescribed .....	3
principal law enforcement officer .....	5
proceeding .....	80
professional misconduct .....	80
Register .....	44
Registrar .....	44
related controlled conduct .....	31(1)
relevant offence .....	5
relevant proceeding .....	57(1)
senior officer .....	43(1), 79(1), 100(1)
sexual offence .....	5
supervisor .....	44
suspect .....	5
this jurisdiction .....	3
urgent application .....	5, 10(2), 47(3)
urgent authority .....	5, 15(1), 49(1)
urgent cancellation of authority .....	52(3)
urgent variation application .....	5, 19(3)
urgent variation of authority .....	5, 21(1), 51(4)

**Defined Terms**

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use .....	44
witness identity protection certificate .....	80