

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

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**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*;

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- 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.

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Part 2 — Controlled operations

Division 1 — General

5. Terms used

In this Part, unless the contrary intention appears —

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

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

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

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

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

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

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

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

corresponding participant means a person who is authorised by a corresponding authority to participate in a corresponding authorised operation;

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

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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Part 2 Controlled operations

Division 2 Authorisation of controlled operations

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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

- 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 reasonably requires to enable the Parliamentary Commissioner
2 to perform or exercise functions under this section.

3 (4) For the purposes of this section a record of, or a person
4 employed or engaged in, the department of the Public Service
5 that principally assists the Minister in the administration of the
6 *Police Act 1892* is to be taken to be a record of, or a person
7 employed or engaged in, the Police Force.

8 **Division 5 — Miscellaneous**

9 **42. Evidence of authorities**

10 (1) A document purporting to be an authority granted under
11 section 11 —

- 12 (a) is admissible in any legal proceedings; and
13 (b) in the absence of evidence to the contrary, is proof in
14 any proceedings (not being criminal or disciplinary
15 proceedings against a law enforcement officer) that the
16 person granting the authority was satisfied of the facts of
17 which he or she was required to be satisfied before
18 granting the authority.

19 (2) A document purporting to be an authority within the meaning of
20 that term in a corresponding law granted under a provision of
21 the corresponding law that corresponds to section 11 —

- 22 (a) is admissible in any legal proceedings in this
23 jurisdiction; and
24 (b) in the absence of evidence to the contrary, is proof in
25 any proceedings (not being criminal or disciplinary
26 proceedings against a law enforcement officer) that the
27 person who granted the authority was satisfied of the
28 facts of which he or she was required to be satisfied
29 under the corresponding law before granting the
30 authority.

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 or

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- 1 (iii) the chief officer of an intelligence agency (within
2 the meaning of paragraph (a) of the definition of
3 **chief officer** in the *Crimes Act 1914*
4 (Commonwealth) section 15K);
5 and
6 (b) if satisfied that the order is justified, having regard to the
7 nature of the activities undertaken or to be undertaken
8 by the person under the authority or corresponding
9 authority.
- 10 (4) The application must be heard in closed court.
- 11 (5) The Registrar must give effect to an order —
12 (a) within the period stated in the order; or
13 (b) if no period is stated in the order, within 28 days after
14 the day on which the order is made.
- 15 **55. Cancellation of authority affecting records of births, deaths**
16 **or marriages**
- 17 (1) This section applies if —
18 (a) the chief officer cancels an authority for an assumed
19 identity; and
20 (b) there is an entry in relation to that identity —
21 (i) in the Register because of an order under
22 section 54; or
23 (ii) in a register of births, deaths or marriages in a
24 participating jurisdiction because of an order
25 under a corresponding law of the jurisdiction.
- 26 (2) If subsection (1)(b)(i) applies, the chief officer must apply for
27 an order under section 56 within 28 days after the day on which
28 the authority is cancelled.
- 29 (3) If subsection (1)(b)(ii) applies, the chief officer must apply for
30 an order under the corresponding law to cancel the entry, within
31 28 days after the day on which the authority is cancelled.

1 **56. Cancelling entries in Register**

- 2 (1) The Supreme Court may order the Registrar to cancel an entry
3 in the Register, and any supporting records, made under an
4 order under section 54.
- 5 (2) The Court may make the order only on application by the chief
6 officer who applied for the order under section 54.
- 7 (3) The application must be heard in closed court.
- 8 (4) The Registrar must give effect to the order within 28 days after
9 the day on which the order is made.

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

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

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

- 20 (1) In this section —
21 *evidence*, of identity, means evidence similar to that ordinarily
22 produced or given by the issuing agency.
- 23 (2) This section applies if an authority granted under section 48
24 authorises a request under this section.
- 25 (3) The chief officer who grants the authority may request the chief
26 officer of an issuing agency stated in the authority to —
27 (a) produce evidence of an assumed identity in accordance
28 with the authority; and

1 (b) give evidence of the assumed identity to the authorised
2 person named in the authority or another person
3 specified by the chief officer making the request.

4 (4) The request must state a reasonable period for compliance with
5 the request.

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

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

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

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

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

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

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

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

26 (1) In this section —
27 *cancel* includes delete or alter an entry in a record of
28 information.

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

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

5 (4) The direction must state a reasonable period for compliance
6 with the direction.

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

10 **62. Protection from criminal liability — officers of issuing**
11 **agencies**

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

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

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

22 (2) The chief officer of the law enforcement agency must indemnify
23 the issuing agency, or an officer of the issuing agency, for any
24 liability incurred by the issuing agency or officer (including
25 reasonable costs) if —

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

29 (b) any prescribed requirements have been met.

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Division 4 — Effect of authority

64. Assumed identity may be acquired and used

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

65. Protection from criminal liability — authorised persons

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

- (a) the thing is done in the course of acquiring or using an assumed identity in accordance with an authority; and
- (b) the thing is done —
 - (i) in the case of an authorised officer, in the course of his or her duty; or

- 1 (ii) in the case of an authorised civilian, in
2 accordance with any direction by his or her
3 supervisor under the authority;
4 and
5 (c) doing the thing would not be an offence if the assumed
6 identity were the person's real identity.

7 **66. Indemnity for authorised persons**

- 8 (1) This section applies if the chief officer of a law enforcement
9 agency grants an authority.
10 (2) The chief officer must indemnify the authorised person under
11 the authority for any liability incurred by the person (including
12 reasonable costs) because of something done by the person
13 (whether in this jurisdiction or elsewhere) if —
14 (a) the thing is done in the course of acquiring or using an
15 assumed identity in accordance with the authority; and
16 (b) the thing is done —
17 (i) in the case of an authorised officer, in the course
18 of his or her duty; or
19 (ii) in the case of an authorised civilian, in
20 accordance with any direction by his or her
21 supervisor under the authority;
22 and
23 (c) any prescribed requirements have been met.

24 **67. Particular qualifications**

- 25 (1) Sections 65 and 66 do not apply to anything done by an
26 authorised person if —
27 (a) a particular qualification is needed to do the thing; and
28 (b) the person does not have that qualification.

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

4 **68. Effect of being unaware of variation or cancellation of**
5 **authority**

6 (1) If an authority has been varied in a way that limits its scope, this
7 Division continues to apply to the authorised person to whom it
8 relates as if it had not been varied in that way, for as long as the
9 person —

- 10 (a) is unaware of the variation; and
11 (b) has taken reasonable measures to ensure the person is
12 aware of any variation.

13 (2) If an authority has been cancelled, this Division continues to
14 apply to the authorised person to whom it related as if it had not
15 been cancelled, for as long as the person —

- 16 (a) is unaware of the cancellation; and
17 (b) has taken reasonable measures to ensure the person is
18 aware of any cancellation.

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

20 **69. Requests to participating jurisdiction for evidence of**
21 **assumed identity**

22 (1) This section applies if an authority granted under section 48
23 authorises a request under this section.

24 (2) The chief officer who grants the authority may request the chief
25 officer (however described) of an issuing agency of a
26 participating jurisdiction stated in the authority to —

- 27 (a) produce evidence of the assumed identity in accordance
28 with the authority; and
29 (b) give evidence of the assumed identity to the authorised
30 person named in the authority or another person
31 specified by the chief officer making the request; and

1 (c) create or alter such other records as the chief officer of
2 the issuing agency thinks necessary to support the
3 evidence of the assumed identity produced in response
4 to the request.

5 (3) The request must state a reasonable period for compliance with
6 the request.

7 **70. Requests from participating jurisdiction for evidence of**
8 **assumed identity**

9 (1) This section applies if —

10 (a) a corresponding authority authorises a request for —

11 (i) the production of evidence of an assumed
12 identity in this jurisdiction; and

13 (ii) the giving of evidence of the assumed identity to
14 the authorised person named in the authority;

15 and

16 (b) the request is made to the chief officer of an issuing
17 agency of this jurisdiction; and

18 (c) the request states a reasonable period for compliance
19 with the request.

20 (2) The chief officer of a government issuing agency who receives
21 the request must comply with the request within the reasonable
22 period stated in the request.

23 (3) The chief officer of a non-government issuing agency who
24 receives the request may comply with the request.

25 (4) The chief officer of an issuing agency may create or alter such
26 other records as the chief officer thinks necessary to support
27 evidence of the assumed identity produced in response to the
28 request.

1 **71. Directions from participating jurisdiction to cancel evidence**
2 **of assumed identity**

- 3 (1) In this section —
4 *cancel* includes delete or alter an entry in a record of
5 information.
6 (2) This section applies if the chief officer of an issuing agency (the
7 *issuing chief officer*) who has produced evidence in response to
8 a request under section 70 is directed in writing to cancel the
9 evidence by the chief officer (however described) of the
10 relevant law enforcement agency of the participating
11 jurisdiction.
12 (3) The issuing chief officer must, within any reasonable period
13 stated in the request, cancel —
14 (a) the evidence; and
15 (b) any other records or alterations made to support that
16 evidence.

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

- 18 (1) This section applies if the chief officer of a law enforcement
19 agency makes a request to the chief officer (however described)
20 of an issuing agency of a participating jurisdiction under
21 section 69.
22 (2) The chief officer of the law enforcement agency must indemnify
23 the issuing agency, and any officer of the issuing agency, for
24 any liability incurred by the agency or officer (including
25 reasonable costs) if —
26 (a) the liability is incurred because of something done
27 (whether in this jurisdiction or elsewhere) by the agency
28 or officer to comply with the request in the course of
29 duty; and
30 (b) any prescribed requirements have been met.

1 **73. Application of Division to authorities under corresponding**
2 **laws**

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

- 6 (a) section 62 (Protection from criminal liability — officers
7 of issuing agencies);
- 8 (b) section 64 (Assumed identity may be acquired and
9 used);
- 10 (c) section 65 (Protection from criminal liability —
11 authorised persons);
- 12 (d) section 67 (Particular qualifications);
- 13 (e) section 68 (Effect of being unaware of variation or
14 cancellation of authority);
- 15 (f) section 74 (Misuse of assumed identity);
- 16 (g) section 75 (Disclosing information about assumed
17 identity).

18 **Division 6 — Compliance and monitoring**

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

20 **74. Misuse of assumed identity**

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

25 Penalty: imprisonment for 2 years.

- 26 (2) An authorised civilian must not acquire evidence of, or use, an
27 assumed identity covered by the civilian's authority except in
28 accordance with —
- 29 (a) the civilian's authority; and

1 (b) the directions of the civilian's supervisor under the
2 authority.

3 Penalty: imprisonment for 2 years.

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

5 (1) A person must not disclose any information that reveals, or is
6 likely to reveal, that an assumed identity that another person is
7 authorised to acquire or use under an authority or corresponding
8 authority is not the other person's real identity except —

9 (a) in connection with the administration or execution of
10 this Part or a corresponding law; or

11 (b) for the purposes of any legal proceeding arising out of or
12 otherwise related to this Part or a corresponding law or
13 of any report of any such proceedings; or

14 (c) to a government agency for the purposes of a law
15 enforcement operation conducted by that agency; or

16 (d) in accordance with any requirement imposed by law.

17 Penalty: imprisonment for 10 years.

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

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

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

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

23 (1) As soon as practicable after the end of each financial year, the
24 chief officer of a law enforcement agency must submit a report
25 to the Minister that includes all of the following information for
26 the year —

27 (a) the number of authorities granted during the year;

28 (b) a general description of the activities undertaken by
29 authorised persons when using assumed identities under
30 this Part during the year;

- 1 (c) the number of applications for authorities that were
2 refused during the year;
- 3 (d) a statement whether or not any fraud or other unlawful
4 activity was identified by an audit under section 78
5 during the year;
- 6 (e) any other information relating to authorities and
7 assumed identities and the administration of this Part
8 that the Minister considers appropriate.
- 9 (2) The chief officer must advise the Minister of any information in
10 the report that, in the chief officer's opinion, should be excluded
11 from the report before the report is laid before both Houses of
12 Parliament because the information, if made public, could
13 reasonably be expected to —
- 14 (a) endanger a person's safety; or
15 (b) prejudice an investigation or prosecution; or
16 (c) compromise any law enforcement agency's operational
17 activities or methodologies.
- 18 (3) The Minister must exclude information from the report if
19 satisfied on the advice of the chief officer of any of the grounds
20 set out in subsection (2).
- 21 (4) The Minister is to cause a copy of the report to be laid before
22 each House of Parliament within 15 sitting days from the day on
23 which the report is received by the Minister.

24 **77. Record-keeping**

- 25 (1) The chief officer of a law enforcement agency must cause
26 appropriate records to be kept about the operation of this Part in
27 respect of the agency.

- 1 (2) The records must include all of the following, in respect of
2 authorities granted, varied or cancelled under this Part in respect
3 of the agency —
- 4 (a) the date on which an authority was granted, varied or
5 cancelled and the name of the person who granted,
6 varied or cancelled it;
- 7 (b) the name of the authorised person under the authority,
8 together with details of the assumed identity to which
9 the authority applies;
- 10 (c) details of any request made to an issuing agency under
11 section 58 in respect of the authority;
- 12 (d) the general nature of the duties undertaken by the
13 authorised person under the assumed identity;
- 14 (e) general details of relevant financial transactions entered
15 into using the assumed identity;
- 16 (f) details of reviews of the authority under section 53.

17 **78. Audit of records**

- 18 (1) The chief officer of a law enforcement agency must arrange for
19 the records kept under section 77 for each authority in respect of
20 the agency to be audited —
- 21 (a) at least once every 6 months while the authority is in
22 force; and
- 23 (b) at least once in the 6 months after the cancellation or
24 expiry of the authority.
- 25 (2) The audit is to be conducted by a person appointed by the chief
26 officer.
- 27 (3) The person appointed to conduct the audit —
- 28 (a) may, but need not, be an officer of the law enforcement
29 agency; and

- 1 (b) must not be a person —
- 2 (i) who granted, varied or cancelled any of the
- 3 authorities to which the records under section 77
- 4 relate; or
- 5 (ii) who is or was an authorised person, or the
- 6 supervisor of an authorised civilian, under any of
- 7 the authorities to which those records relate.
- 8 (4) The results of an audit are to be reported to the chief officer.

9 **Division 7 — Miscellaneous**

10 **79. Delegation**

- 11 (1) In this section —
- 12 *intelligence agency* has the meaning given in the
- 13 *Crimes Act 1914* (Commonwealth) section 15K;
- 14 *senior officer* means —
- 15 (a) in relation to the Police Force — a police officer of or
- 16 above the rank of superintendent;
- 17 (b) in relation to the Australian Crime Commission —
- 18 (i) the Director National Operations; or
- 19 (ii) a person holding a prescribed office in the
- 20 Australian Crime Commission;
- 21 (c) in relation to the fisheries department — a fisheries
- 22 officer holding a prescribed office in the department;
- 23 (d) in relation to an intelligence agency — a senior officer
- 24 as defined in paragraphs (f) and (g) of the definition of
- 25 *senior officer* in the *Crimes Act 1914* (Commonwealth)
- 26 section 15LH(3).
- 27 (2) Except as provided by this section, and despite any other written
- 28 law to the contrary, the functions of a chief officer under this
- 29 Part cannot be delegated to any other person.

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- 1 (3) A chief officer of a law enforcement agency may delegate to a
2 senior officer of the agency any of the chief officer's functions
3 under this Part relating to the granting, variation and
4 cancellation of authorities (including conducting reviews under
5 section 53, making applications under section 54 or 56, or
6 making requests under section 58 or 69).
- 7 (4) A chief officer of an intelligence agency (within the meaning of
8 paragraph (a) of the definition of *chief officer* in the
9 *Crimes Act 1914* (Commonwealth) section 15K) may delegate
10 to a senior officer of the agency any of the chief officer's
11 functions under this Part relating to the making of applications
12 under section 54 or 56.

1 **Part 4 — Witness identity protection**

2 **Division 1 — General**

3 **80. Terms used**

4 In this Part, unless the contrary intention appears —

5 ***appeal***, against a decision, includes to seek a review of the
6 decision;

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

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

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

15 ***court*** includes —

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

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

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

30 ***investigation*** means an investigation in relation to criminal
31 activity, including an investigation extending beyond this
32 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.

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- 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*;

- 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

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- 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.

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- 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 (1) This section applies if a witness identity protection certificate
3 for an operative in relation to a proceeding is filed in a court.

4 (2) 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 (3) The presiding officer must not —

11 (a) record information disclosed to the presiding officer
12 under subsection (2); 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

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- 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.

- 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 (1) 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

(1) In this section —

senior officer means —

- (a) in relation to the Police Force — a person holding office as a Deputy Commissioner of Police;
- (b) in relation to the Australian Crime Commission —
 - (i) the Director National Operations; or
 - (ii) a person holding a prescribed office in the Australian Crime Commission;
- (c) in relation to the fisheries department — a fisheries officer holding a prescribed office in the department.

(2) 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.

(3) 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
are required or permitted by this Act to be prescribed, or are
necessary or convenient to be prescribed for giving effect to the
purposes of this Act.

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Part 6 — Savings provisions

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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*

(1) 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.

(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.

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).

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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

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

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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

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

- 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

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- 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

- 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

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- 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

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- 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.

- 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

=====

Defined Terms

Defined Terms

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

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Defined Terms

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