

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

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

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);

authorising officer, for a law enforcement agency, means —

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

chief officer, of a law enforcement agency, 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;

- 1 **criminal activity** means conduct that constitutes the commission
2 of an offence by one or more persons;
- 3 **disciplinary proceeding** means a proceeding of a disciplinary
4 nature under a law of any jurisdiction;
- 5 **fisheries department** means the department principally assisting
6 in the administration of the *Fish Resources Management*
7 *Act 1994*;
- 8 **fisheries officer** has the meaning given in the *Fish Resources*
9 *Management Act 1994* section 4(1);
- 10 **government agency** means an authority or body (whether a
11 body corporate or not) established or incorporated for a public
12 purpose by a law of this jurisdiction, a participating jurisdiction
13 or the Commonwealth, and includes a body corporate
14 incorporated under a law of a jurisdiction or of the
15 Commonwealth in which this jurisdiction, a participating
16 jurisdiction or the Commonwealth has a controlling interest;
- 17 **jurisdiction** means a State, a Territory or the Commonwealth;
- 18 **law enforcement agency** means —
- 19 (a) the Police Force; or
- 20 (b) the Australian Crime Commission; or
- 21 (c) the fisheries department;
- 22 **law enforcement officer** means —
- 23 (a) a police officer; or
- 24 (b) a person who is seconded to the Police Force, including
25 (but not limited to) a police officer (however described),
26 of another jurisdiction; or
- 27 (c) a member of staff of the Australian Crime Commission;
- 28 or
- 29 (d) a fisheries officer holding a prescribed office in the
30 fisheries department;

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- 1 **law enforcement operation** means an operation that is
2 conducted, or is intended to be conducted, by a law enforcement
3 agency or other government agency for the purpose of —
- 4 (a) obtaining evidence that may lead to the prosecution of a
5 person for criminal activity; or
- 6 (b) arresting any person suspected of being involved in
7 criminal activity; or
- 8 (c) frustrating criminal activity; or
- 9 (d) carrying out an activity that is reasonably necessary to
10 facilitate the achievement of any purpose referred to in
11 paragraphs (a) to (c);
- 12 **Minister** —
- 13 (a) in relation to the Police Force, means the Minister
14 administering the *Police Act 1892*;
- 15 (b) in relation to the Australian Crime Commission, means
16 the Minister administering the *Australian Crime*
17 *Commission (Western Australia) Act 2004*;
- 18 (c) in relation to the fisheries department, means the
19 Minister administering the *Fish Resources Management*
20 *Act 1994*;
- 21 **Police Force** means the Police Force of Western Australia
22 provided for by the *Police Act 1892*;
- 23 **police officer** means a person appointed under the *Police*
24 *Act 1892* Part I to be a member of the Police Force;
- 25 **prescribed** means prescribed by regulations made under this
26 Act;
- 27 **this jurisdiction** —
- 28 (a) means Western Australia; and
- 29 (b) for the purposes of any suspected criminal activity being
30 investigated by the fisheries department, includes any
31 waters not within the limits of Western Australia that are
32 WA waters as defined in the *Fish Resources*
33 *Management Act 1994* section 5(b) to (d).

1 **4. Crown bound**

2 (1) This Act binds the State and, so far as the legislative power of
3 Parliament permits, the Crown in all its other capacities.

4 (2) Nothing in this Act makes the State, or the Crown in any of its
5 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;

Corruption and Crime Commission means the Corruption and Crime Commission established under the *Corruption and Crime Commission Act 2003*;

- 1 ***cross-border controlled operation*** has the meaning given in
2 section 6;
- 3 ***formal application*** has the meaning given in section 10(2)(a);
4 ***formal authority*** has the meaning given in section 15(1)(a);
5 ***formal variation application*** has the meaning given in
6 section 19(3)(a);
7 ***formal variation of authority*** has the meaning given in
8 section 21(1)(a);
9 ***illicit goods*** means goods the possession of which is a
10 contravention of the law of this jurisdiction in the circumstances
11 of the particular case;
- 12 ***law enforcement participant***, in an authorised operation, means
13 a participant in the operation who is a law enforcement officer;
- 14 ***local controlled operation*** has the meaning given in section 7;
- 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 not covered by paragraph (a) that is
27 prescribed for the purposes of this definition, being an
28 offence under any of the following Acts —
- 29 (i) the *Classification (Publications, Films and*
30 *Computer Games) Enforcement Act 1996*;
- 31 (ii) *The Criminal Code*;
- 32 (iii) the *Firearms Act 1973*;

- 1 (iv) the *Fish Resources Management Act 1994*;
- 2 (v) the *Misuse of Drugs Act 1981*;
- 3 (vi) the *Prostitution Act 2000*;
- 4 (vii) the *Weapons Act 1999*;

5 **sexual offence** means —

- 6 (a) an offence under The Criminal Code Part V
- 7 Chapter XXXI; or
- 8 (b) any other offence of a similar kind prescribed for the
- 9 purposes of this definition;

10 **suspect** means a person reasonably suspected of having

11 committed or being likely to have committed, or of committing

12 or being likely to commit, a relevant offence;

13 **urgent application** has the meaning given in section 10(2)(b);

14 **urgent authority** has the meaning given in section 15(1)(b);

15 **urgent variation application** has the meaning given in

16 section 19(3)(b);

17 **urgent variation of authority** has the meaning given in

18 section 21(1)(b).

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

20 (1) When this Part refers to a **cross-border controlled operation** it

21 means a controlled operation that is conducted, or is intended to

22 be conducted —

- 23 (a) in this jurisdiction and in one or more participating
- 24 jurisdictions; or
- 25 (b) in one or more participating jurisdictions.

26 (2) For the purposes of subsection (1), a controlled operation is to

27 be taken to be conducted, or intended to be conducted, in this

28 jurisdiction if a law enforcement officer of this jurisdiction is, or

29 is to be, authorised under this Part to engage in controlled

30 conduct for the purposes of the operation.

1 **7. Local controlled operation**

2 When this Part refers to a *local controlled operation* it means a
3 controlled operation that is conducted, or is intended to be
4 conducted, wholly in this jurisdiction.

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

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

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

10 (2) In determining whether evidence should be admitted or
11 excluded in any proceedings, the fact that the evidence was
12 obtained as a result of a person engaging in criminal activity is
13 to be disregarded if —

- 14 (a) the person was a participant or corresponding participant
15 acting in the course of an authorised operation or
16 corresponding authorised operation; and
17 (b) the criminal activity was controlled conduct within the
18 meaning of that term in this Part or a corresponding law.

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

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

- 22 (a) the *State Records Act 2000*;
23 (b) the *Freedom of Information Act 1992*, despite
24 section 8(1) of that Act.

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

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

27 (1) A law enforcement officer of a law enforcement agency may
28 apply to the authorising officer for the agency for authority to
29 conduct a controlled operation on behalf of the agency.

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Part 2 Controlled operations

Division 2 Authorisation of controlled operations

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

1 operation as is necessary for the authorising officer's proper
2 consideration of the 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 authorising officer.

6 **11. Determination of applications**

7 After considering an application for authority to conduct a
8 controlled operation, and any additional information furnished
9 under section 10(8), the authorising officer —

- 10 (a) may authorise the operation by granting the authority,
11 either unconditionally or subject to conditions; or
12 (b) may refuse the application.

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

14 (1) An authority to conduct a controlled operation must not be
15 granted unless the authorising officer is satisfied on reasonable
16 grounds —

- 17 (a) that a relevant offence has been, is being or is likely to
18 be committed; and
19 (b) that the authority is within the administrative
20 responsibility of the law enforcement agency; and
21 (c) that any unlawful conduct involved in conducting the
22 operation will be limited to the maximum extent
23 consistent with conducting an effective controlled
24 operation; and
25 (d) that the operation will be conducted in a way that will
26 minimise the risk of more illicit goods being under the
27 control of persons, other than law enforcement officers,
28 at the end of the operation than are reasonably necessary
29 to enable the officers to achieve the purpose of the
30 controlled operation; and
31 (e) that the proposed controlled conduct will be capable of
32 being accounted for in a way that will enable the

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Part 2 Controlled operations

Division 2 Authorisation of controlled operations

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- 1 reporting requirements of Division 4 to be complied
2 with; and
- 3 (f) that the operation does not involve any participant in the
4 operation inducing or encouraging another person to
5 engage in criminal activity of a kind that the other
6 person could not reasonably have been expected to
7 engage in unless so induced or encouraged; and
- 8 (g) that any conduct involved in the operation will not —
- 9 (i) seriously endanger the health or safety of any
10 person; or
- 11 (ii) cause the death of, or serious injury to, any
12 person; or
- 13 (iii) involve the commission of a sexual offence
14 against any person; or
- 15 (iv) result in unlawful loss of or serious damage to
16 property (other than illicit goods).
- 17 (2) A person must not be authorised to participate in a controlled
18 operation unless the authorising officer is satisfied that the
19 person has the appropriate skills or training to participate in the
20 operation.
- 21 (3) A civilian participant —
- 22 (a) must not be authorised to participate in any aspect of a
23 controlled operation unless the authorising officer is
24 satisfied that it is wholly impracticable for a law
25 enforcement participant to participate in that aspect of
26 the operation; and
- 27 (b) must not be authorised to engage in controlled conduct
28 unless the authorising officer is satisfied that it is wholly
29 impracticable for the civilian participant to participate in
30 the aspect of the controlled operation referred to in
31 paragraph (a) without engaging in that conduct.

1 **13. Further matters to be taken into account — cross-border**
2 **controlled operations**

3 In addition to section 12, an authority to conduct a cross-border
4 controlled operation must not be granted unless the authorising
5 officer is satisfied on reasonable grounds —

- 6 (a) that the controlled operation will be, or is likely to be,
7 conducted —
- 8 (i) in this jurisdiction and in one or more
9 participating jurisdictions; or
- 10 (ii) in one or more participating jurisdictions;
- 11 and
- 12 (b) that the nature and extent of the suspected criminal
13 activity are such as to justify the conduct of a controlled
14 operation —
- 15 (i) in this jurisdiction and in one or more
16 participating jurisdictions; or
- 17 (ii) in one or more participating jurisdictions.

18 **14. Further matters to be taken into account — local controlled**
19 **operations**

20 In addition to section 12, an authority to conduct a local
21 controlled operation must not be granted unless the authorising
22 officer is satisfied on reasonable grounds —

- 23 (a) that the controlled operation will be, or is likely to be,
24 conducted wholly in this jurisdiction; and
- 25 (b) that the nature and extent of the suspected criminal
26 activity are such as to justify the conduct of a controlled
27 operation in this jurisdiction.

28 **15. Form of authority**

- 29 (1) An authority to conduct a controlled operation may be
30 granted —
- 31 (a) in writing (a *formal authority*); or

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Part 2 Controlled operations

Division 2 Authorisation of controlled operations

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- 1 (b) orally (an **urgent authority**), if the authorising officer is
2 satisfied that the delay caused by granting a formal
3 authority may affect the success of the operation.
- 4 (2) A formal authority must be in a physical form, signed by the
5 authorising officer.
- 6 (3) However if it is impracticable in the circumstances for a
7 physical document to be delivered to the applicant, a formal
8 authority may take the form of —
- 9 (a) a fax; or
10 (b) an email or other electronic document, in which case the
11 document need not be signed.
- 12 (4) An urgent authority may be granted in person, by telephone or
13 any other electronic means.
- 14 (5) Nothing in this Division prevents an authority being granted in
15 respect of a controlled operation that has been the subject of a
16 previous authority.
- 17 (6) An authority, whether formal or urgent, must do all of the
18 following —
- 19 (a) state the name, and rank or position, of the person
20 granting the authority;
- 21 (b) identify the principal law enforcement officer and, if the
22 principal law enforcement officer is not the applicant for
23 the authority, the name of the applicant;
- 24 (c) state whether the authority is for a cross-border
25 controlled operation or a local controlled operation;
- 26 (d) for a cross-border controlled operation, state whether it
27 is to be, or is likely to be, conducted —
- 28 (i) in this jurisdiction and in one or more
29 participating jurisdictions specified in the
30 authority; or
31 (ii) in one or more participating jurisdictions
32 specified in the authority;

- 1 (e) state whether the authority is a formal authority or an
2 urgent authority;
- 3 (f) identify each person who may engage in controlled
4 conduct for the purposes of the controlled operation;
- 5 (g) identify the nature of the criminal activity (including the
6 suspected relevant offences) in respect of which the
7 controlled conduct is to be engaged in;
- 8 (h) identify —
- 9 (i) with respect to the law enforcement participants,
10 the nature of the controlled conduct that those
11 participants may engage in; and
- 12 (ii) with respect to the civilian participants, the
13 particular controlled conduct, if any, that each
14 such participant may engage in;
- 15 (i) identify (to the extent known) any suspect;
- 16 (j) specify the period of validity of the authority, being a
17 period not exceeding 6 months in the case of a formal
18 authority or 7 days in the case of an urgent authority;
- 19 (k) specify any conditions to which the conduct of the
20 operation is subject;
- 21 (l) state the date and time when the authority is granted;
- 22 (m) identify (to the extent known) —
- 23 (i) the nature and quantity of any illicit goods that
24 will be involved in the operation; and
- 25 (ii) the route through which those goods will pass in
26 the course of the operation.
- 27 (7) A person is sufficiently identified for the purposes of
28 subsection (6)(f) if the person is identified —
- 29 (a) by an assumed name under which the person is
30 operating; or
- 31 (b) by a code name or code number,

1 as long as the assumed name, code name or code number can be
2 matched to the person's identity by reference to records kept by
3 the chief officer.

4 (8) The authorising officer must, as soon as practicable after
5 granting an urgent authority, make a record in writing of the
6 particulars referred to in subsection (6) relating to the authority.

7 **16. Duration of authorities**

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

11 **17. Variation of authority**

12 (1) The authorising officer may vary an authority —

- 13 (a) at any time on the authorising officer's own initiative; or
14 (b) on application under section 19(1).

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

17 (3) The authorising officer must, as soon as practicable after
18 varying an authority, prepare and give to the principal law
19 enforcement officer for the authorised operation a written
20 document that complies with section 21.

21 **18. Variations on authorising officer's own initiative**

22 The authorising officer may vary an authority under
23 section 17(1)(a) for any one or more of the following
24 purposes —

- 25 (a) to extend the period of validity of the authority (except
26 as provided by section 17(2));
27 (b) to authorise additional or alternative persons to engage
28 in controlled conduct for the purposes of the operation;
29 (c) to authorise participants in the operation to engage in
30 additional or alternative controlled conduct;

- 1 (d) to identify additional suspects (to the extent known);
2 (e) if the principal law enforcement officer has changed
3 since the authority was granted, to identify the new
4 principal law enforcement officer.

5 **19. Applications for variation of authority**

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

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

- 1 (c) state whether the variation of authority is a formal
2 variation of authority or an urgent variation of authority;
3 and
4 (d) if the variation is made under section 17(1)(a) —
5 (i) describe the variation having regard to the
6 purposes referred to in section 18 in respect of
7 which the variation is or was made; and
8 (ii) specify the reasons why the variation of authority
9 is or was made;
10 and
11 (e) if the variation is made under section 17(1)(b) —
12 (i) state the name of the applicant; and
13 (ii) describe the variation having regard to the
14 purposes referred to in section 19(1) in respect of
15 which the application for the variation was made;
16 and
17 (f) state the date and time when the variation of authority is
18 or was made.
19 (6) The authorising officer must, as soon as practicable after
20 making an urgent variation of authority, make a record in
21 writing of the particulars referred to in subsection (5) relating to
22 the variation of authority.

23 **22. Cancellation of authorities**

- 24 (1) The authorising officer may, by order in writing given to the
25 principal law enforcement officer for an authorised operation,
26 cancel the authority at any time and for any reason.
27 (2) Without limiting subsection (1), the authorising officer may
28 cancel an authority for an authorised operation at any time at the
29 request of the principal law enforcement officer for the
30 operation.

- 1 (3) Cancellation of an authority for a controlled operation takes
2 effect at the time when the order is made or at the later time
3 specified in the order.
- 4 (4) The order must specify the reasons for the cancellation of the
5 authority.

6 **23. Effect of authorities**

- 7 (1) While it has effect, an authority for a controlled operation —
8 (a) authorises each law enforcement participant to engage in
9 the controlled conduct specified in the authority in
10 respect of the law enforcement participants; and
11 (b) authorises each civilian participant, if any, to engage in
12 the particular controlled conduct, if any, specified in the
13 authority in respect of that participant.
- 14 (2) In the case of a local controlled operation, the authority
15 authorises each participant to engage in the conduct referred to
16 in subsection (1) in this jurisdiction but not in any other
17 jurisdiction.
- 18 (3) In the case of a cross-border controlled operation, the authority
19 authorises each participant to engage in the conduct referred to
20 in subsection (1) —
21 (a) in this jurisdiction and in one or more participating
22 jurisdictions; or
23 (b) in one or more participating jurisdictions,
24 subject to any corresponding law of that participating
25 jurisdiction.
- 26 (4) The authority to engage in controlled conduct given to a
27 participant cannot be delegated to any other person.

1 **24. Defect in authority**

2 An application for authority or variation of authority, and any
3 authority or variation of authority granted or made on the basis
4 of such an application, is not invalidated by any defect, other
5 than a defect that affects the application, authority or variation
6 in a material particular.

7 **25. Retrospective authority**

8 (1) This section applies to local controlled operations but not to
9 cross-border controlled operations.

10 (2) If a participant in an authorised operation engages in unlawful
11 conduct (other than controlled conduct) in the course of the
12 operation, the principal law enforcement officer for the
13 operation may, within 24 hours (or any longer period that the
14 authorising officer may, in exceptional circumstances, allow)
15 after the participant engages in that conduct, apply to the
16 authorising officer for retrospective authority for the conduct.

17 (3) An application under this section may be made in such manner
18 as the authorising officer permits.

19 (4) The authorising officer may require the principal law
20 enforcement officer to furnish such additional information
21 concerning the relevant conduct as is necessary for the
22 authorising officer's proper consideration of the application.

23 (5) After considering an application under subsection (2), and any
24 additional information furnished under subsection (4), the
25 authorising officer —

26 (a) may grant retrospective authority in accordance with the
27 application; or

28 (b) may refuse the application.

- 1 (6) Retrospective authority must not be granted unless the
2 authorising officer is satisfied —
- 3 (a) that the participant who engaged in the conduct believed
4 on reasonable grounds —
- 5 (i) that there was a substantial risk to the success of
6 the authorised operation; or
- 7 (ii) that there was a substantial risk to the health or
8 safety of a participant in the operation, or any
9 other person, as a direct result of the conduct of
10 the authorised operation; or
- 11 (iii) that criminal activity other than the criminal
12 activity in respect of which the authorised
13 operation is being conducted had occurred, or
14 was likely to occur, and that there was a
15 substantial risk that evidence relating to that
16 criminal activity would be lost,
17 and the participant could not avoid that risk otherwise
18 than by engaging in the relevant conduct; and
- 19 (b) that, at all times prior to those circumstances arising, the
20 participant had been acting in good faith; and
- 21 (c) that the participant had not foreseen, and could not
22 reasonably be expected to have foreseen, that those
23 circumstances would arise; and
- 24 (d) that, had it been possible to foresee that those
25 circumstances would arise, authority for the relevant
26 conduct would have been sought; and
- 27 (e) that it was not reasonably possible in those
28 circumstances for the participant to seek a variation of
29 the authority for the operation to authorise the relevant
30 conduct.
- 31 (7) Subsection (6) does not allow retrospective authority to be
32 granted with respect to any conduct that —
- 33 (a) seriously endangered the health or safety of any person;
34 or

- 1 (b) caused the death of, or serious injury to, any person; or
2 (c) involved the commission of a sexual offence against any
3 person; or
4 (d) resulted in unlawful loss of or serious damage to
5 property (other than illicit goods).

6 (8) The authorising officer's power to grant a retrospective
7 authority under this section cannot be delegated to any other
8 person.

9 **26. Corruption and Crime Commission to be notified of**
10 **retrospective authorities**

- 11 (1) An authorising officer who grants a retrospective authority
12 under section 25 must provide the Corruption and Crime
13 Commission with written details of the retrospective authority
14 and the circumstances justifying that authority.
- 15 (2) The details must be provided as soon as practicable after the
16 retrospective authority is granted but, in any case, no later than
17 7 days after it is granted.
- 18 (3) The Corruption and Crime Commission may require the
19 authorising officer to furnish such further information
20 concerning the retrospective authority as is necessary for the
21 Corruption and Crime Commission's proper consideration of it.

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

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

25 **27. Protection from criminal responsibility for controlled**
26 **conduct during authorised operations**

27 Despite any other written law of this jurisdiction, a participant
28 who engages in conduct (whether in this jurisdiction or
29 elsewhere) in an authorised operation in the course of, and for

- 1 the purposes of, the operation is not, if engaging in that conduct
2 is an offence, criminally responsible for the offence if —
- 3 (a) the conduct is authorised by, and is engaged in
4 accordance with, the authority for the operation; and
- 5 (b) the conduct does not involve the participant inducing or
6 encouraging another person to engage in criminal
7 activity of a kind that the other person could not
8 reasonably be expected to engage in unless so induced
9 or encouraged; and
- 10 (c) the conduct does not involve the participant engaging in
11 any conduct that is likely to —
- 12 (i) cause the death of, or serious injury to, any
13 person; or
- 14 (ii) involve the commission of a sexual offence
15 against any person;
- 16 and
- 17 (d) if the participant is a civilian participant, he or she acts
18 in accordance with the instructions of a law enforcement
19 officer.

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

- 21 (1) In this section —
22 *participant* does not include a police officer.
- 23 (2) The chief officer of a law enforcement agency must indemnify a
24 participant in an authorised operation against any civil liability
25 (including reasonable costs) that the participant incurs because
26 of conduct that the participant engages in if —
- 27 (a) the participant engages in the conduct in the course of,
28 and for the purposes of, the operation in accordance with
29 the authority for the operation; and
- 30 (b) the conduct does not involve the participant inducing or
31 encouraging another person to engage in criminal
32 activity of a kind that the other person could not

- 1 reasonably be expected to engage in unless so induced
2 or encouraged; and
- 3 (c) the conduct does not involve the participant engaging in
4 any conduct that is likely to —
- 5 (i) cause the death of, or serious injury to, any
6 person; or
- 7 (ii) involve the commission of a sexual offence
8 against any person;
- 9 and
- 10 (d) if the participant is a civilian participant, he or she acts
11 in accordance with the instructions of a law enforcement
12 officer; and
- 13 (e) the requirements, if any, specified in the regulations
14 have been met.

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

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

- 20 (a) arrest or detention of individuals, except an arrest
21 carried out as a result of an authorised operation;
- 22 (b) searches of individuals;
- 23 (c) entry onto, or searches or inspection of, premises;
- 24 (d) searches, inspections or seizures of other property;
- 25 (e) forensic procedures;
- 26 (f) electronic surveillance devices or telecommunications
27 interception;
- 28 (g) identification procedures;
- 29 (h) the acquisition or use of assumed identities;
- 30 (i) any other matter concerning powers of criminal
31 investigation.

- 1 **30. Effect of being unaware of variation or cancellation of**
2 **authority**
- 3 (1) If an authority for a controlled operation is varied in a way that
4 limits its scope, this Division continues to apply to a participant
5 in the operation as if the authority had not been varied in that
6 way, for as long as —
- 7 (a) the participant is unaware of the variation; and
8 (b) the authorising officer for the relevant agency has taken
9 reasonable measures to ensure the participant is aware of
10 any variation.
- 11 (2) If an authority for a controlled operation is cancelled, this
12 Division continues to apply to a participant in the operation as if
13 the authority had not been cancelled, for as long as —
- 14 (a) the participant is unaware of the cancellation; and
15 (b) the authorising officer has taken reasonable measures to
16 ensure the participant is aware of any cancellation.
- 17 **31. Protection from criminal responsibility for certain ancillary**
18 **conduct**
- 19 (1) This section applies to conduct such as aiding and abetting the
20 commission of an offence or of conspiring to commit an offence
21 (***ancillary conduct***) for which a person may be criminally
22 responsible because it involves conduct engaged in by another
23 person that is conduct for which the other person would (but for
24 section 27) be criminally responsible (the ***related controlled***
25 ***conduct***).
- 26 (2) Despite any other written law of this jurisdiction, a person who
27 engages in ancillary conduct that is an offence (whether or not
28 the person is a participant in a controlled operation) is not
29 criminally responsible for the offence if, at the time the person
30 engaged in the ancillary conduct —
- 31 (a) the person believed that the related controlled conduct
32 was being engaged in, or would be engaged in, by a
33 participant in an authorised operation; and

- 1 (b) the person was a participant in, or was otherwise
2 authorised to know about, the operation.

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

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

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

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

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

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

17 **33. Notification requirements**

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

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

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

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

30 (b) compromise the identity of a participant in the
31 authorised operation; or

- 1 (c) endanger the life or safety of any person; or
2 (d) prejudice any legal proceedings; or
3 (e) otherwise be contrary to the public interest.

4 **Subdivision 3 — Mutual recognition**

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

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

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

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Division 4 — Compliance and monitoring

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

35. Disclosure of operational information

(1) In this section —
operational information means any information relating to a controlled operation for which an authority is or was in force or a corresponding authorised operation.

- (2) A person who has access, or has had access, to operational information must not disclose the information except —
- (a) in connection with the administration or execution of this Part or a corresponding law; or
 - (b) for the purposes of any legal proceeding arising out of or otherwise related to this Part or a corresponding law or of any report of any such proceedings; or
 - (c) for the purpose of reporting to an appropriate authority any criminal activity that is outside the scope of the authority granted in respect of the authorised operation; or
 - (ca) for the purpose of seeking legal advice; or
 - (cb) to a government agency for the purposes of a law enforcement operation conducted by that agency or for intelligence-gathering purposes; or
 - (d) in accordance with any requirement imposed by law.

Penalty: imprisonment for 10 years.
Summary conviction penalty: a fine of \$24 000 or imprisonment for 2 years.

(3) An offence against subsection (2) is an indictable offence.

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Subdivision 2 — Reporting and record-keeping

36. Principal law enforcement officers' reports

- (1) Within 2 months after the completion of an authorised operation, the principal law enforcement officer for the operation must make a report in accordance with this section to the chief officer of the law enforcement agency.
- (2) The report must include all of the following details —
 - (a) the dates and times when the authorised operation began and was completed;
 - (b) whether the operation was a cross-border controlled operation or a local controlled operation;
 - (c) the nature of the controlled conduct engaged in for the purposes of the operation;
 - (d) details of the outcome of the operation;
 - (e) if the operation involved illicit goods, a statement (to the extent known) of —
 - (i) the nature and quantity of the illicit goods; and
 - (ii) the route through which the illicit goods passed in the course of the operation;
 - (f) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the operation;
 - (g) details (to the extent known) of any loss of or serious damage to property, or any personal injuries, occurring as an indirect result of the operation;
 - (h) information as to whether —
 - (i) in the course of the operation, any participant engaged in unlawful conduct (other than controlled conduct that the participant was authorised to engage in for the purposes of the operation); and

- 1 (ii) any unlawful conduct (other than controlled
2 conduct) was engaged in during the operation;
3 and
- 4 (iii) any person is, because of section 31, not
5 criminally responsible for ancillary conduct (as
6 defined in that section); and
- 7 (iv) any variations were made to an authority for the
8 operation; and
- 9 (v) any of those variations were to extend the period
10 of validity of the authority; and
- 11 (vi) any retrospective authority was granted in
12 respect of the operation; and
- 13 (vii) any urgent authority was granted in respect of the
14 operation; and
- 15 (viii) any conditions of an authority for the operation
16 were breached.

17 **37. Chief officers' reports**

- 18 (1) As soon as practicable after 30 June and 31 December in each
19 year, the chief officer of each law enforcement agency must
20 submit a report to the Corruption and Crime Commission setting
21 out the details required by subsection (2) in relation to
22 controlled operations conducted on behalf of the agency during
23 the previous 6 months.
- 24 (2) The report must include all of the following details —
 - 25 (a) the number of formal authorities that have been granted
26 or varied by the authorising officer for the agency, and
27 the number of formal applications for the granting or
28 variation of authorities that have been refused by the
29 authorising officer for the agency, during the period to
30 which the report relates;
 - 31 (b) the number of —
 - 32 (i) urgent authorities that have been granted by the
33 authorising officer for the agency; and

- 1 (ii) urgent variations of authorities made by the
2 authorising officer for the agency; and
- 3 (iii) urgent applications for authorities or urgent
4 variations of authorities that have been refused
5 by the authorising officer for the agency,
6 during the period to which the report relates;
- 7 (c) the nature of the criminal activities against which the
8 authorised operations were directed;
- 9 (d) the nature of the controlled conduct engaged in for the
10 purposes of the authorised operations;
- 11 (e) if any of the authorised operations involved illicit goods,
12 a statement (to the extent known) of —
- 13 (i) the nature and quantity of the illicit goods; and
14 (ii) the route through which the illicit goods passed
15 in the course of the operations;
- 16 (f) details of any loss of or serious damage to property, or
17 any personal injuries, occurring in the course of or as a
18 direct result of the authorised operations;
- 19 (g) the number of authorities cancelled by the authorising
20 officer for the agency, or that have expired during the
21 period to which the report relates;
- 22 (h) any seizure, arrest and prosecution arising from the
23 authorised operations.
- 24 (3) The Corruption and Crime Commission may require the chief
25 officer to furnish additional information in relation to any
26 authorised operation to which a report relates.
- 27 (4) The details mentioned in subsection (2) must be classified into
28 cross-border controlled operations and local controlled
29 operations.
- 30 (5) The report must not disclose any information that identifies any
31 suspect or a participant in an authorised operation or that is
32 likely to lead to such a person or participant being identified.

- 1 (6) Nothing in this section requires particulars of an authorised
2 operation to be included in a report for a period of 6 months if
3 the operation had not been completed during that period, but the
4 particulars must instead be included in the report for the period
5 of 6 months in which the operation is completed.

6 **38. Annual report by Corruption and Crime Commission**

- 7 (1) The Corruption and Crime Commission must, as soon as
8 practicable after 30 June in each year, prepare a report of the
9 work and activities of the law enforcement agencies under this
10 Part for the preceding 12 months and give a copy of the report
11 to the Minister and to the chief officer of each law enforcement
12 agency to which the report relates.
- 13 (2) The chief officer must advise the Minister of any information in
14 the report that, in the chief officer's opinion, should be excluded
15 from the report before the report is laid before each House of
16 Parliament because the information, if made public, could
17 reasonably be expected to —
- 18 (a) endanger a person's safety; or
19 (b) prejudice an investigation or prosecution; or
20 (c) compromise any law enforcement agency's operational
21 activities or methodologies.
- 22 (3) The Minister must —
- 23 (a) exclude information from the report if satisfied on the
24 advice of the chief officer of any of the grounds set out
25 in subsection (2); and
26 (b) insert a statement to the effect that information has been
27 excluded from the report under paragraph (a).
- 28 (4) The Minister is to cause a copy of the report to be laid before
29 each House of Parliament within 15 sitting days from the day on
30 which the report is received by the Minister.
- 31 (5) The report must include, for each law enforcement agency
32 concerned, comments on the comprehensiveness and adequacy

1 of the reports that were provided to the Corruption and Crime
2 Commission by the chief officer of the law enforcement agency.

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

6 (7) Nothing in this section requires particulars of an authorised
7 operation to be included in a report for a year if the operation
8 had not been completed as at 30 June in that year, but the
9 particulars must instead be included in the report for the year in
10 which the operation is completed.

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

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

- 14 (a) each application made by a law enforcement officer of
15 the agency;
- 16 (b) each authority granted to a law enforcement officer of
17 the agency;
- 18 (c) each variation application made by a law enforcement
19 officer of the agency;
- 20 (d) each variation of authority granted or made by the
21 authorising officer for the agency;
- 22 (e) each order cancelling an authority granted to a law
23 enforcement officer of the agency;
- 24 (f) each retrospective authority granted under section 25
25 and details of the application and authority to which the
26 retrospective authority relates;
- 27 (g) each report of a principal law enforcement officer of the
28 agency under section 33(1) or 36.

- 1 **40. General register**
- 2 (1) The chief officer of a law enforcement agency must cause a
- 3 general register to be kept.
- 4 (2) The general register is to specify —
- 5 (a) for each application under this Part made by a law
- 6 enforcement officer of the agency (including an
- 7 application for variation of authority) —
- 8 (i) the date of the application; and
- 9 (ii) whether the application was formal or urgent;
- 10 and
- 11 (iii) whether the application was made for a
- 12 cross-border controlled operation or a local
- 13 controlled operation; and
- 14 (iv) whether the application was for a retrospective
- 15 authority under section 25; and
- 16 (v) whether the application was granted, refused or
- 17 withdrawn; and
- 18 (vi) if the application was refused or withdrawn, the
- 19 date and time of the refusal or withdrawal;
- 20 and
- 21 (b) for each authority under this Part granted to a law
- 22 enforcement officer of the agency —
- 23 (i) the date and time when the authority was
- 24 granted; and
- 25 (ii) whether the authority was formal or urgent; and
- 26 (iii) whether the authority was granted for a
- 27 cross-border controlled operation or a local
- 28 controlled operation; and
- 29 (iv) whether the authority was a retrospective
- 30 authority granted under section 25; and
- 31 (v) the name, and rank or position, of the person
- 32 who granted the authority; and

- 1 (vi) each relevant offence in respect of which
2 controlled conduct under the authority was to be
3 engaged in; and
- 4 (vii) the period of validity of the authority; and
- 5 (viii) if the authority was cancelled, the date and time
6 of cancellation; and
- 7 (ix) the date and time when the authorised operation
8 began and the date of completion of the
9 operation; and
- 10 (x) the date on which the principal law enforcement
11 officer for the operation made a report on the
12 operation under section 36; and
- 13 (xi) if the authorised operation involved illicit goods,
14 to the extent known —
- 15 (I) the nature and quantity of the illicit
16 goods; and
- 17 (II) the route through which the illicit goods
18 passed in the course of the operation;
- 19 and
- 20 (xii) details of any loss of or damage to property, or
21 any personal injuries, occurring in the course of
22 or as a direct result of the operation;
- 23 and
- 24 (c) for each variation of authority under this Part —
- 25 (i) the date and time when the variation was made;
26 and
- 27 (ii) whether the variation was formal or urgent; and
- 28 (iii) the name, and rank or position, of the person
29 who made the variation.

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Subdivision 3 — Inspections

41. Inspection of records by Corruption and Crime Commission

- (1) The Corruption and Crime Commission must, from time to time and at least once every 12 months, inspect the records of a law enforcement agency to determine the extent of compliance with this Part by the agency and law enforcement officers of the agency.
- (2) For the purposes of an inspection under this section, the Corruption and Crime Commission —
 - (a) after notifying the chief officer of the law enforcement agency, may enter at any reasonable time premises occupied by the agency; and
 - (b) is entitled to have full and free access at all reasonable times to all records of the law enforcement agency that are relevant to the inspection; and
 - (c) may require a person employed or engaged in the law enforcement agency to give the Corruption and Crime Commission any information that the Corruption and Crime Commission considers necessary, being information that is in the person’s possession, or to which the person has access, and that is relevant to the inspection.
- (2A) The Corruption and Crime Commission may delegate to an officer of the Commission (as defined in the *Corruption and Crime Commission Act 2003* section 3(1)) a power or duty of the Corruption and Crime Commission under this section and, for that purpose, the *Corruption and Crime Commission Act 2003* section 185(3) to (6) apply as if the delegation were a delegation under section 185.
- (3) The chief officer must ensure that persons employed or engaged in the law enforcement agency give the Corruption and Crime Commission any assistance the Corruption and Crime Commission reasonably requires to enable the Corruption and

1 Crime Commission to perform or exercise functions under this
2 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 an authorising officer or chief officer who
- 5 is the Commissioner of Police — a police officer of or
- 6 above the rank of Commander; or
- 7 (b) in relation to an authorising officer or chief officer who
- 8 is the Chief Executive Officer of the Australian Crime
- 9 Commission —
- 10 (i) an SES employee as defined in the *Australian*
- 11 *Crime Commission Act 2002* (Commonwealth)
- 12 section 4(1); or
- 13 (ii) a person holding a prescribed office in the
- 14 Australian Crime Commission;
- 15 or
- 16 (c) in relation to a chief officer who is the chief executive
- 17 officer of the fisheries department — a fisheries officer
- 18 holding a prescribed office in the department.
- 19 (2) Except as provided by this section, and despite any other written
- 20 law to the contrary, the functions of an authorising officer or
- 21 chief officer under this Part cannot be delegated to any other
- 22 person.
- 23 (3) Except as provided in section 25(8), the authorising officer for,
- 24 or chief officer of, a law enforcement agency may delegate to a
- 25 senior officer any of his or her functions under this Part relating
- 26 to the authorisation of controlled operations (including the
- 27 variation and cancellation of authorities and the giving of
- 28 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 authorising officer for the agency for an authority
15 for the law enforcement officer or any other person to do either
16 or both 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.

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Part 3 Assumed identities

Division 2 Authority for assumed identity

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- 1 (5) However if it is impracticable in the circumstances for a
2 physical document to be delivered to the authorising officer, a
3 formal 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 authorising officer may require the applicant to furnish such
31 additional information concerning the application as is

1 necessary for the authorising officer's proper consideration of
2 the 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 authorising 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 authorising 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 authorising 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 authorising officer is
28 satisfied that the delay caused by granting a formal
29 authority may affect the success of a law enforcement
30 operation.

- 1 (2) A formal authority must be in a physical form, signed by the
2 authorising 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 authorising officer must, as soon as practicable after
14 granting an urgent authority, make a record in writing of the
15 particulars referred to in subsection (5) relating to the 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 authorising officer who grants an authority may vary the
31 authority at any time.

- 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 authorising 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
12 authorising officer is satisfied that the delay caused by
13 making a formal variation of authority may affect the
14 success of a law enforcement operation or is otherwise
15 urgently required.
- 16 (5) A formal variation of authority must be in a physical form,
17 signed by the authorising 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 authorising officer must, as soon as practicable after
- 13 making an urgent variation of authority, make a record in
- 14 writing of the particulars referred to in subsection (9) relating to
- 15 the variation of authority.
- 16 **52. Cancellation of authority**
- 17 (1) The authorising officer who grants an authority must cancel the
- 18 authority if the authorising officer is satisfied, on a review under
- 19 section 53 or otherwise, that use of the assumed identity is no
- 20 longer necessary.
- 21 (2) The authorising officer must give notice of the cancellation
- 22 to —
- 23 (a) the authorised person to whom it relates; and
- 24 (b) if the authorised person is an authorised civilian, the
- 25 authorised person’s supervisor.
- 26 (3) The notice must be given —
- 27 (a) in writing (a *formal cancellation of authority*); or
- 28 (b) orally (an *urgent cancellation of authority*), if the
- 29 authorising officer is satisfied that the delay caused by
- 30 making a formal cancellation of authority may affect the
- 31 success of a law enforcement operation or is otherwise
- 32 urgently required.

- 1 (4) A formal cancellation of authority must be in a physical form,
2 signed by the authorising 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 authorising officer must, as soon as practicable after
26 making an urgent cancellation of authority, make a record in
27 writing of the particulars referred to in subsection (8) relating to
28 the cancellation of authority.

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

2 (1) The authorising officer must periodically review each formal
3 authority granted by the authorising officer or a delegate of the
4 authorising officer under this Part.

5 (2) A review of a formal authority under this section is to be
6 conducted at least once every 12 months.

7 (3) The purpose of a review is to determine whether use of the
8 assumed identity under the formal authority is still necessary.

9 (4) If the authorising officer is satisfied on a review that use of the
10 assumed identity under the formal authority is no longer
11 necessary, he or she must cancel the authority under section 52.

12 (5) If the authorising officer is satisfied on a review that use of the
13 assumed identity under the formal authority is still necessary, he
14 or she must record his or her opinion, and the reasons for it, in
15 writing.

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

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

18 (1) The Supreme Court may order the Registrar to do one or more
19 of the following —

20 (a) make an entry in the Register;

21 (b) issue a certificate of birth, death or marriage in relation
22 to the acquisition of an assumed identity under an
23 authority or corresponding authority.

24 (2) The Registrar may create such other records as the Registrar
25 thinks necessary to support the entry or certificate made or
26 issued in accordance with the order in relation to the acquisition
27 of an assumed identity under an authority or corresponding
28 authority.

- 1 (3) The Court may make the order only —
- 2 (a) on application by —
- 3 (i) the chief officer of a law enforcement agency; or
- 4 (ii) the chief officer (however described) of a law
- 5 enforcement agency under a corresponding law;
- 6 or
- 7 (iii) the chief officer of an intelligence agency (within
- 8 the meaning of paragraph (a) of the definition of
- 9 *chief officer* in the *Crimes Act 1914*
- 10 (Commonwealth) section 15K);
- 11 and
- 12 (b) if satisfied that the order is justified, having regard to the
- 13 nature of the activities undertaken or to be undertaken
- 14 by the person under the authority or corresponding
- 15 authority.
- 16 (4) The application must be heard in closed court.
- 17 (5) The Registrar must give effect to an order —
- 18 (a) within the period stated in the order; or
- 19 (b) if no period is stated in the order, within 28 days after
- 20 the day on which the order is made.

21 **55. Cancellation of authority affecting records of births, deaths**

22 **or marriages**

- 23 (1) This section applies if —
- 24 (a) the authorising officer for a law enforcement agency
- 25 cancels an authority for an assumed identity; and
- 26 (b) there is an entry in relation to that identity —
- 27 (i) in the Register because of an order under
- 28 section 54; or
- 29 (ii) in a register of births, deaths or marriages in a
- 30 participating jurisdiction because of an order
- 31 under a corresponding law of the jurisdiction.

1 (2) If subsection (1)(b)(i) applies, the chief officer of the law
2 enforcement agency must apply for an order under section 56
3 within 28 days after the day on which the authority is cancelled.

4 (3) If subsection (1)(b)(ii) applies, the chief officer of the law
5 enforcement agency must apply for an order under the
6 corresponding law to cancel the entry, within 28 days after the
7 day on which the authority is cancelled.

8 **56. Cancelling entries in Register**

9 (1) The Supreme Court may order the Registrar to cancel an entry
10 in the Register, and any supporting records, made under an
11 order under section 54.

12 (2) The Court may make the order only on application by the chief
13 officer who applied for the order under section 54.

14 (3) The application must be heard in closed court.

15 (4) The Registrar must give effect to the order within 28 days after
16 the day on which the order is made.

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

18 (1) In this section —
19 *relevant proceeding* means —

20 (a) an application under section 54 or 56 for an order to
21 make or cancel an entry in the Register; or

22 (b) an order given under the application.

23 (2) A person is not entitled to search information in the custody of
24 the Supreme Court in relation to a relevant proceeding unless
25 the Supreme Court otherwise orders in the interests of justice.

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

27 (1) In this section —
28 *evidence*, of identity, means evidence similar to that ordinarily
29 produced or given by the issuing agency.

- 1 (2) This section applies if the authorising officer for a law
2 enforcement agency grants an authority under section 48
3 authorising a request under this section.
- 4 (3) The chief officer of the law enforcement agency may request
5 the chief officer of an issuing agency stated in the authority
6 to —
- 7 (a) produce evidence of an assumed identity in accordance
8 with the authority; and
- 9 (b) give evidence of the assumed identity to the authorised
10 person named in the authority or another person
11 specified by the chief officer making the request.
- 12 (4) The request must state a reasonable period for compliance with
13 the request.
- 14 (5) A request must not be made under this section for an entry in
15 the Register or for the issue of a certificate of birth, death or
16 marriage.

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

- 18 (1) The chief officer of a government issuing agency who receives
19 a request under section 58 must comply with the request within
20 the reasonable period stated in the request.
- 21 (2) The chief officer of a government issuing agency must create
22 such records, or make such alterations to existing records, as are
23 necessary to support evidence of the assumed identity produced
24 in response to the request.

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

- 26 (1) The chief officer of a non-government issuing agency who
27 receives a request under section 58 may comply with the
28 request.
- 29 (2) The chief officer of a non-government issuing agency may
30 create such records, or make such alterations to existing records,

1 as the chief officer thinks are necessary to support evidence of
2 the assumed identity produced in response to the request.

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

4 (1) In this section —

5 *cancel* includes delete or alter an entry in a record of
6 information.

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

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

13 (4) The direction must state a reasonable period for compliance
14 with the direction.

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

18 **62. Protection from criminal liability — officers of issuing
19 agencies**

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

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

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

- 1 (2) The chief officer of the law enforcement agency must indemnify
2 the issuing agency, or an officer of the issuing agency, for any
3 liability incurred by the issuing agency or officer (including
4 reasonable costs) if —
- 5 (a) the liability is incurred because of something done by
6 the issuing agency or officer to comply with the request
7 or direction in the course of duty; and
- 8 (b) any prescribed requirements have been met.

9 **Division 4 — Effect of authority**

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

- 11 (1) An authorised officer may acquire or use (or both) an assumed
12 identity if the acquisition or use (or both) are —
- 13 (a) in accordance with an authority; and
- 14 (b) in the course of duty.
- 15 (2) An authorised civilian may acquire or use (or both) an assumed
16 identity if the acquisition or use (or both) are in accordance
17 with —
- 18 (a) an authority; and
- 19 (b) any direction by the person’s supervisor under the
20 authority.
- 21 (3) An authority also authorises —
- 22 (a) the making (by the person to whom the authority applies
23 or by any officer of the relevant law enforcement
24 agency) of any false or misleading representation about
25 the person, for the purposes of or in connection with the
26 acquisition or use of the assumed identity by the person;
27 and
- 28 (b) the use by the person of the assumed identity to obtain
29 evidence of the identity.

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

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

- 6 (a) the thing is done in the course of acquiring or using an
7 assumed identity in accordance with an authority; and
8 (b) the thing is done —
9 (i) in the case of an authorised officer, in the course
10 of his or her duty; or
11 (ii) in the case of an authorised civilian, in
12 accordance with any direction by his or her
13 supervisor under the authority;
14 and
15 (c) doing the thing would not be an offence if the assumed
16 identity were the person's real identity.

17 **66. Indemnity for authorised persons**

18 (1) This section applies if the authorising officer for a law
19 enforcement agency grants an authority.

20 (2) The chief officer of the law enforcement agency must indemnify
21 the authorised person under the authority for any liability
22 incurred by the person (including reasonable costs) because of
23 something done by the person (whether in this jurisdiction or
24 elsewhere) if —

- 25 (a) the thing is done in the course of acquiring or using an
26 assumed identity in accordance with the authority; and
27 (b) the thing is done —
28 (i) in the case of an authorised officer, in the course
29 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) any prescribed requirements have been met.

6 **67. Particular qualifications**

- 7 (1) Sections 65 and 66 do not apply to anything done by an
8 authorised person if —
9 (a) a particular qualification is needed to do the thing; and
10 (b) the person does not have that qualification.
11 (2) Subsection (1) applies whether or not the person has acquired,
12 as evidence of an assumed identity, a document that indicates
13 that he or she has that qualification.

14 **68. Effect of being unaware of variation or cancellation of**
15 **authority**

- 16 (1) If an authority has been varied in a way that limits its scope, this
17 Division continues to apply to the authorised person to whom it
18 relates as if it had not been varied in that way, for as long as the
19 person —
20 (a) is unaware of the variation; and
21 (b) has taken reasonable measures to ensure the person is
22 aware of any variation.
23 (2) If an authority has been cancelled, this Division continues to
24 apply to the authorised person to whom it related as if it had not
25 been cancelled, for as long as the person —
26 (a) is unaware of the cancellation; and
27 (b) has taken reasonable measures to ensure the person is
28 aware of any cancellation.

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

2 **69. Requests to participating jurisdiction for evidence of**
3 **assumed identity**

4 (1) This section applies if the authorising officer for a law
5 enforcement agency grants an authority under section 48
6 authorising a request under this section.

7 (2) The chief officer of the law enforcement agency may request
8 the chief officer (however described) of an issuing agency of a
9 participating jurisdiction stated in the authority to —

10 (a) produce evidence of the assumed identity in accordance
11 with the authority; and

12 (b) give evidence of the assumed identity to the authorised
13 person named in the authority or another person
14 specified by the chief officer making the request; and

15 (c) create or alter such other records as the chief officer of
16 the issuing agency thinks necessary to support the
17 evidence of the assumed identity produced in response
18 to the request.

19 (3) The request must state a reasonable period for compliance with
20 the request.

21 **70. Requests from participating jurisdiction for evidence of**
22 **assumed identity**

23 (1) This section applies if —

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

25 (i) the production of evidence of an assumed
26 identity in this jurisdiction; and

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

29 and

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

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

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

2 (1) This section applies if the chief officer of a law enforcement
3 agency makes a request to the chief officer (however described)
4 of an issuing agency of a participating jurisdiction under
5 section 69.

6 (2) The chief officer of the law enforcement agency must indemnify
7 the issuing agency, and any officer of the issuing agency, for
8 any liability incurred by the agency or officer (including
9 reasonable costs) if —

10 (a) the liability is incurred because of something done
11 (whether in this jurisdiction or elsewhere) by the agency
12 or officer to comply with the request in the course of
13 duty; and

14 (b) any prescribed requirements have been met.

15 **73. Application of Division to authorities under corresponding**
16 **laws**

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

20 (a) section 62 (Protection from criminal liability — officers
21 of issuing agencies);

22 (b) section 64 (Assumed identity may be acquired and
23 used);

24 (c) section 65 (Protection from criminal liability —
25 authorised persons);

26 (d) section 67 (Particular qualifications);

27 (e) section 68 (Effect of being unaware of variation or
28 cancellation of authority);

29 (f) section 74 (Misuse of assumed identity);

30 (g) section 75 (Disclosing information about assumed
31 identity).

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Division 6 — Compliance and monitoring

Subdivision 1 — Misuse of assumed identity and information

74. Misuse of assumed identity

(1) An authorised officer must not acquire evidence of, or use, an assumed identity covered by the officer’s authority except —

- (a) in accordance with his or her authority; and
- (b) in the course of duty.

Penalty: imprisonment for 2 years.

(2) An authorised civilian must not acquire evidence of, or use, an assumed identity covered by the civilian’s authority except in accordance with —

- (a) the civilian’s authority; and
- (b) the directions of the civilian’s supervisor under the authority.

Penalty: imprisonment for 2 years.

75. Disclosing information about assumed identity

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

- (a) in connection with the administration or execution of this Part or a corresponding law; or
- (b) for the purposes of any legal proceeding arising out of or otherwise related to this Part or a corresponding law or of any report of any such proceedings; or
- (c) to a government agency for the purposes of a law enforcement operation conducted by that agency; or
- (d) in accordance with any requirement imposed by law.

Penalty: imprisonment for 10 years.

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

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

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

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

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

- 10 (a) the number of authorities granted during the year;
- 11 (b) a general description of the activities undertaken by
12 authorised persons when using assumed identities under
13 this Part during the year;
- 14 (c) the number of applications for authorities that were
15 refused during the year;
- 16 (d) a statement whether or not any fraud or other unlawful
17 activity was identified by an audit under section 78
18 during the year;
- 19 (e) any other information relating to authorities and
20 assumed identities and the administration of this Part
21 that the Minister considers appropriate.

22 (2) The chief officer must advise the Minister of any information in
23 the report that, in the chief officer's opinion, should be excluded
24 from the report before the report is laid before each House of
25 Parliament because the information, if made public, could
26 reasonably be expected to —

- 27 (a) endanger a person's safety; or
- 28 (b) prejudice an investigation or prosecution; or
- 29 (c) compromise any law enforcement agency's operational
30 activities or methodologies.

- 1 (3) The Minister must —
- 2 (a) exclude information from the report if satisfied on the
- 3 advice of the chief officer of any of the grounds set out
- 4 in subsection (2); and
- 5 (b) insert a statement to the effect that information has been
- 6 excluded from the report under paragraph (a).
- 7 (4) The Minister is to cause a copy of the report to be laid before
- 8 each House of Parliament within 15 sitting days from the day on
- 9 which the report is received by the Minister.

10 **77. Record-keeping**

- 11 (1) The chief officer of a law enforcement agency must cause
- 12 appropriate records to be kept about the operation of this Part in
- 13 respect of the agency.
- 14 (2) The records must include all of the following, in respect of
- 15 authorities granted, varied or cancelled under this Part in respect
- 16 of the agency —
- 17 (a) the date on which an authority was granted, varied or
- 18 cancelled and the name of the person who granted,
- 19 varied or cancelled it;
- 20 (b) the name of the authorised person under the authority,
- 21 together with details of the assumed identity to which
- 22 the authority applies;
- 23 (c) details of any request made to an issuing agency under
- 24 section 58 in respect of the authority;
- 25 (d) the general nature of the duties undertaken by the
- 26 authorised person under the assumed identity;
- 27 (e) general details of relevant financial transactions entered
- 28 into using the assumed identity;
- 29 (f) details of reviews of the authority under section 53.

1 **78. Audit of records**

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

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

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

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

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

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

14 (b) must not be a person —

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

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

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

22 **Division 7 — Miscellaneous**

23 **79. Delegation**

24 (1) In this section —

25 *intelligence agency* has the meaning given in the
26 *Crimes Act 1914* (Commonwealth) section 15K;

27 *senior officer* means —

28 (a) in relation to an authorising officer or chief officer who
29 is the Commissioner of Police — a police officer of or
30 above the rank of superintendent; or

- 1 (b) in relation to an authorising officer or chief officer who
2 is the Chief Executive Officer of the Australian Crime
3 Commission —
- 4 (i) an SES employee as defined in the *Australian*
5 *Crime Commission Act 2002* (Commonwealth)
6 section 4(1); or
- 7 (ii) a person holding a prescribed office in the
8 Australian Crime Commission;
- 9 or
- 10 (c) in relation to a chief officer who is the chief executive
11 officer of the fisheries department — a fisheries officer
12 holding a prescribed office in the department; or
- 13 (d) in relation to an intelligence agency — a senior officer
14 as defined in paragraphs (f) and (g) of the definition of
15 **senior officer** in the *Crimes Act 1914* (Commonwealth)
16 section 15LH(3).
- 17 (2) Except as provided by this section, and despite any other written
18 law to the contrary, the functions of an authorising officer or
19 chief officer under this Part cannot be delegated to any other
20 person.
- 21 (3) An authorising officer for, or chief officer of, a law enforcement
22 agency may delegate to a senior officer any of his or her
23 functions under this Part relating to the granting, variation and
24 cancellation of authorities (including conducting reviews under
25 section 53, making applications under section 54 or 56, or
26 making requests under section 58 or 69).
- 27 (4) A chief officer of an intelligence agency (within the meaning of
28 paragraph (a) of the definition of **chief officer** in the
29 *Crimes Act 1914* (Commonwealth) section 15K) may delegate
30 to a senior officer of the agency any of the chief officer's
31 functions under this Part relating to the making of applications
32 under section 54 or 56.

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Part 4 — Witness identity protection

Division 1 — General

80. Terms used

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

assumed name, of an operative, has the meaning given in section 83(2)(a)(i);

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

corresponding witness identity protection certificate means a certificate given under a provision of a corresponding law that corresponds to section 82;

court includes —

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

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

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

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

- 1 **investigation** means an investigation in relation to criminal
2 activity, including an investigation extending beyond this
3 jurisdiction;
- 4 **lawyer** means an Australian lawyer within the meaning of that
5 term in the *Legal Profession Act 2008* section 3;
- 6 **operative** means a person who is or was —
- 7 (a) a participant in an authorised operation under Part 2; or
8 (b) authorised to acquire and use an assumed identity under
9 Part 3; or
10 (c) a law enforcement officer otherwise using an assumed
11 identity for the purposes of a law enforcement operation;
- 12 **parliamentary committee** means a committee or other body
13 established by either or both Houses of Parliament to inquire
14 into any matter;
- 15 **parliamentary proceeding** means any proceeding before, or
16 inquiry, reference or examination by, a parliamentary
17 committee;
- 18 **party**, to a proceeding, means —
- 19 (a) for a criminal proceeding, the prosecutor and each
20 accused person; or
21 (b) for a civil proceeding, each person who is a party to the
22 proceeding; or
23 (c) for any other proceeding, each person who may appear
24 or give evidence in the proceeding;
- 25 **proceeding** means a court proceeding or a parliamentary
26 proceeding;
- 27 **professional misconduct** means —
- 28 (a) an offence against the discipline of the Police Force
29 under the *Police Act 1892*; or
30 (b) misconduct or a breach of discipline (however
31 described) under a law of another jurisdiction that
32 corresponds to the *Police Act 1892*; or

- 1 (c) misconduct or a breach of discipline (however
2 described) under a law of the Commonwealth that
3 governs the conduct of members of staff of the
4 Australian Crime Commission;
- 5 (d) a breach of discipline as defined in the *Public Sector*
6 *Management Act 1994* section 3(1),
7 as the case requires, but does not include conduct that is the
8 subject of an informal inquiry only;
- 9 **witness identity protection certificate** means a certificate given
10 under section 82.

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

12 For the purposes of this Part —

- 13 (a) anything permitted to be done by a party to a proceeding
14 may be done by the party's lawyer; and
- 15 (b) any requirement to give something to a party to a
16 proceeding is satisfied by giving the thing to, or
17 notifying, the party's lawyer.

18 **Division 2 — Witness identity protection certificates**
19 **for operatives**

20 **82. Witness identity protection certificate — giving**

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

- 1 (2) The chief officer must make all practicable inquiries to enable
2 him or her to ascertain the information required to be included
3 in the certificate by section 83.
- 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 **83. 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

- 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 **Division 2A — Provisions applicable to court proceeding**

16 **84. Application of Division**

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

24 **85. Filing and notification**

- 25 (1) A witness identity protection certificate for an operative in
26 relation to a court proceeding must be filed in the court before
27 the operative gives evidence in the proceeding.
- 28 (2) The person who files the certificate must give a copy of it to the
29 operative and each party to the proceeding at least 14 days (or
30 such shorter period as is agreed to by the party) before the day
31 on which the operative is to give evidence.

1 (3) The court may order the person filing the certificate to give a
2 copy of it to someone else stated in the order.

3 (4) This section applies subject to section 86.

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

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

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

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

13 (1) This section applies if —

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

16 (b) either —

17 (i) a copy of the certificate is given to each party in
18 accordance with section 85(2) and to each person
19 in accordance with an order under section 85(3)
20 (if any); or

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

23 (2) If this section applies —

24 (a) the operative may give evidence in the proceeding under
25 the assumed name, or court name, stated in the
26 certificate; and

27 (b) subject to sections 89 and 90 —

28 (i) a question must not be asked of a witness,
29 including the operative, that may lead to the
30 disclosure of the operative's true identity or
31 where the operative lives; and

- 1 (ii) a witness, including the operative, cannot be
2 required to (and must not) answer a question,
3 give evidence or provide information that
4 discloses, or may lead to the disclosure of, the
5 operative's true identity or where the operative
6 lives; and
- 7 (iii) a person involved in the proceeding must not
8 make a statement that discloses, or may lead to
9 the disclosure of, the operative's true identity or
10 where the operative lives.
- 11 (3) For the purposes of this section, a person involved in a
12 proceeding includes —
- 13 (a) the court; and
- 14 (b) a party to the proceeding; and
- 15 (c) a person given leave to be heard or make submissions in
16 the proceeding; and
- 17 (d) a lawyer representing a person referred to in
18 paragraph (b) or (c) or a lawyer assisting the court in the
19 proceeding; and
- 20 (e) any other officer of the court or person assisting the
21 court in the proceeding; and
- 22 (f) a person acting in the execution of any process or the
23 enforcement of any order in the proceeding.
- 24 **88. Orders to protect operative's true identity or location**
- 25 (1) The court in which a witness identity protection certificate is
26 filed —
- 27 (a) must hear the proceeding (including any application
28 relating to the proceeding, such as an application for an
29 order under paragraph (b) or an application under
30 section 86 or 90) in closed court; and
- 31 (b) may make any order it considers necessary or desirable
32 to protect the true identity of the operative for whom the

1 certificate is given or to prevent the disclosure of where
2 the operative lives.

3 (2) A person must not contravene an order under subsection (1)(b).

4 Penalty: imprisonment for 10 years.

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

7 (3) Subsection (2) does not limit the court's power to punish for
8 contempt.

9 **89. Disclosure of operative's true identity to presiding officer**

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

12 (2) The presiding officer in the proceeding may require the
13 operative to do one or both of the following —

14 (a) to disclose the operative's true identity to the presiding
15 officer;

16 (b) to provide the presiding officer with photographic
17 evidence of that identity.

18 (3) The presiding officer must not —

19 (a) record information disclosed to the presiding officer
20 under subsection (2); or

21 (b) retain or copy a document or other thing provided to the
22 presiding officer under that subsection.

23 **90. Disclosure of operative's true identity or location despite
24 certificate**

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

- 1 (2) A party to the proceeding, or a lawyer assisting the court in the
2 proceeding, may apply to the court —
- 3 (a) for leave —
- 4 (i) to ask a question of a witness, including the
5 operative, that may lead to the disclosure of the
6 operative’s true identity or where the operative
7 lives; or
- 8 (ii) for a person involved in the proceeding to make
9 a statement that discloses, or may lead to the
10 disclosure of, the operative’s true identity or
11 where the operative lives;
- 12 or
- 13 (b) for an order requiring a witness, including the operative,
14 to answer a question, give evidence or provide
15 information that discloses, or may lead to the disclosure
16 of, the operative’s true identity or where the operative
17 lives.
- 18 (3) The court may —
- 19 (a) give leave for the party or lawyer to do anything
20 mentioned in subsection (2)(a); and
- 21 (b) make an order requiring a witness to do anything
22 mentioned in subsection (2)(b).
- 23 (4) However, the court must not give leave or make an order unless
24 satisfied about each of the following —
- 25 (a) there is evidence that, if accepted, would substantially
26 call into question the operative’s credibility;
- 27 (b) it would be impracticable to test properly the credibility
28 of the operative without allowing the risk of disclosure
29 of, or disclosing, the operative’s true identity or where
30 the operative lives;
- 31 (c) it is in the interests of justice for the operative’s
32 credibility to be able to be tested.

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Division 2A Provisions applicable to court proceeding

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- 1 (5) If there is a jury in the proceeding, the application must be heard
2 in the absence of the jury.
- 3 (6) The court must make an order suppressing the publication of
4 anything said when —
5 (a) the application is made; and
6 (b) if leave is given or an order is made, the question is
7 asked (and answered), the evidence is given, the
8 information is provided or the statement is made.
- 9 (7) Nothing in subsection (6) prevents the taking of a transcript of
10 court proceedings, but the court may make an order for how the
11 transcript is to be dealt with, including an order suppressing its
12 publication.
- 13 (8) The court may make any other order it considers appropriate to
14 protect the operative's true identity or to prevent the disclosure
15 of where the operative lives.
- 16 (9) A person must not contravene an order under subsection (6), (7)
17 or (8).
18 Penalty: imprisonment for 10 years.
19 Summary conviction penalty: a fine of \$24 000 or imprisonment
20 for 2 years.
- 21 (10) Subsection (9) does not limit the court's power to punish for
22 contempt.

23 **91. Application for leave — joinder as respondent**

- 24 (1) This section applies if —
25 (a) a witness identity protection certificate for an operative
26 in relation to a proceeding is filed in a court; and
27 (b) a person applies —
28 (i) for leave under section 86 or 90; or
29 (ii) for an order under section 88 or 90.

- 1 (2) The court in which the application is pending may allow a
2 person to join the application as a respondent if —
- 3 (a) the person is —
- 4 (i) the operative in relation to whom the witness
5 identity protection certificate is given; or
- 6 (ii) the chief officer of the agency that gave the
7 witness identity protection certificate;
- 8 and
- 9 (b) the person applies to be joined to the application as a
10 respondent; and
- 11 (c) the person has sufficient interest in the subject matter of
12 the application.
- 13 (3) If a court allows a person to join the application as a respondent
14 under subsection (2), the court must allow the person, or the
15 person’s legal representative, to appear and be heard.

16 **92. Directions to jury**

- 17 (1) This section applies if —
- 18 (a) a witness identity protection certificate for an operative
19 in relation to a proceeding is filed in a court; and
- 20 (b) there is a jury in the proceeding; and
- 21 (c) the operative gives evidence.
- 22 (2) The court must (unless it considers it inappropriate) direct the
23 jury not to give the operative’s evidence any more or less
24 weight, or draw any adverse inferences against the defendant or
25 another party to the proceeding, because —
- 26 (a) there is a witness identity protection certificate for the
27 operative; or
- 28 (b) the court has made an order under section 88
29 or 90(6), (7) or (8).

1 **93. Adjourment for appeal decision**

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

4 (a) the original court gives, or refuses, leave under
5 section 86 or 90 in relation to a witness identity
6 protection certificate for an operative; or

7 (b) the original court makes, or refuses to make, an order
8 under section 88 or 90 in relation to a witness identity
9 protection certificate for an operative.

10 (2) A party to the proceedings may apply to the original court for an
11 adjourment —

12 (a) to appeal against the decision of the original court to
13 give or refuse leave, or to make or refuse to make the
14 order; or

15 (b) to decide whether to appeal or seek leave to appeal
16 against the decision.

17 (3) If an application is made under subsection (2), the original court
18 must grant the adjourment.

19 (4) A court that has jurisdiction to hear and determine appeals from
20 a judgment, order or direction in the proceedings has
21 jurisdiction to hear and determine an appeal against the decision
22 to give or refuse leave, or to make or refuse to make the order.

23 **Division 2B — Provisions applicable to**
24 **parliamentary proceeding**

25 **93A. Application of Division**

26 This Division applies in relation to a parliamentary proceeding
27 in which an operative is, or may be, required to give evidence
28 obtained as an operative.

1 **93B. Witness identity protection certificate to be given to**
2 **Parliament**

- 3 (1) A witness identity protection certificate for an operative in
4 relation to a parliamentary proceeding must be given —
5 (a) to the Clerk of the House of Parliament that established
6 the parliamentary committee concerned; or
7 (b) if the parliamentary committee concerned was
8 established by both Houses of Parliament, to the Clerk
9 of each House of Parliament,
10 before the operative gives evidence in the proceeding.
11 (2) The certificate must be given at least 14 days before the day on
12 which the operative is to give evidence, unless in the
13 circumstances it is not reasonably practicable to do so.
14 (3) The person who gives the certificate must give a copy of it to
15 the operative before the day on which the operative is to give
16 evidence.

17 **93C. Effect of witness identity protection certificate**

- 18 (1) This section applies if a witness identity protection certificate
19 for an operative is given in accordance with section 93B in
20 relation to a parliamentary proceeding.
21 (2) If this section applies —
22 (a) the operative may give evidence in the proceeding under
23 the assumed name, or court name, stated in the
24 certificate; and
25 (b) subject to any resolution passed under section 93D(4) —
26 (i) a question must not be asked of a witness,
27 including the operative, that may lead to the
28 disclosure of the operative's true identity or
29 where the operative lives; and
30 (ii) a witness, including the operative, cannot be
31 required to (and must not) answer a question,

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Division 2B Provisions applicable to parliamentary proceeding

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- 1 give evidence or provide information that
2 discloses, or may lead to the disclosure of, the
3 operative's true identity or where the operative
4 lives; and
- 5 (iii) a person involved in the proceeding must not
6 make a statement that discloses, or may lead to
7 the disclosure of, the operative's true identity or
8 where the operative lives.
- 9 (3) For the purposes of subsection (2)(b)(iii), a person involved in a
10 proceeding includes —
- 11 (a) a member of the parliamentary committee; and
12 (b) a party to the proceeding; and
13 (c) a person given leave to be heard or make submissions in
14 the proceeding; and
15 (d) a lawyer representing a person referred to in
16 paragraph (b) or (c) or a lawyer assisting the
17 parliamentary committee in the proceeding; and
18 (e) any other person assisting the parliamentary committee
19 in the proceeding; and
20 (f) a person acting in the execution of any process or the
21 enforcement of any order in the proceeding.
- 22 (4) If this section applies, any evidence given by the operative in
23 the proceeding must be given in private.

24 **93D. Disclosure of operative's true identity or location despite**
25 **certificate**

- 26 (1) In this section —
- 27 *relevant House*, in relation to a parliamentary committee,
28 means —
- 29 (a) if the parliamentary committee was established by a
30 House of Parliament — that House; or
31 (b) if the parliamentary committee was established by both
32 Houses of Parliament — each House.

- 1 (2) This section applies if a witness identity protection certificate
2 for an operative is given in accordance with section 93B in
3 relation to a parliamentary proceeding.
- 4 (3) The parliamentary committee may seek the authorisation of the
5 relevant House —
- 6 (a) to ask a question of a witness, including the operative,
7 that may lead to the disclosure of the operative’s true
8 identity or where the operative lives; or
- 9 (b) to require a witness, including the operative, to answer a
10 question, give evidence or provide information that
11 discloses, or may lead to the disclosure of, the
12 operative’s true identity or where the operative lives; or
- 13 (c) for a person involved in the proceeding to make a
14 statement that discloses, or may lead to the disclosure
15 of, the operative’s true identity or where the operative
16 lives.
- 17 (4) The relevant House may pass a resolution authorising the doing
18 of anything mentioned in subsection (3)(a), (b) or (c).
- 19 (5) However, the relevant House must not pass a resolution unless
20 satisfied about each of the following —
- 21 (a) there is evidence that, if accepted, would substantially
22 call into question the operative’s credibility;
- 23 (b) it would be impracticable to test properly the credibility
24 of the operative without allowing the risk of disclosure
25 of, or disclosing, the operative’s true identity or where
26 the operative lives.

1 **95. Permission to give information disclosing operative's true**
2 **identity or location**

- 3 (1) This section applies if the chief officer of a law enforcement
4 agency gives a witness identity protection certificate for an
5 operative of the agency in relation to a proceeding.
- 6 (2) The chief officer may, in writing, permit a person to give
7 information (otherwise than in the proceeding) that discloses, or
8 may lead to the disclosure of, the operative's true identity or
9 where the operative lives if the chief officer considers it
10 necessary or appropriate for the information to be given.
- 11 (3) The permission —
- 12 (a) must name the person who may give the information;
13 and
- 14 (b) must name the person to whom the information may be
15 given; and
- 16 (c) must state the information that may be given; and
17 (d) may state how the information may be given.

18 **96. Disclosure offences**

- 19 (1) A person must not do something (the *disclosure action*) that
20 discloses, or is likely to lead to the disclosure of, the true
21 identity of an operative for whom a witness identity protection
22 certificate has been given or where the operative lives unless —
- 23 (a) the certificate has been cancelled under section 94
24 before the person does the disclosure action; or
- 25 (b) the disclosure action is —
- 26 (i) required by section 89; or
27 (ii) authorised by leave or by an order under
28 section 90; or
29 (iii) permitted under section 95.
- 30 Penalty: imprisonment for 10 years.
- 31 Summary conviction penalty: a fine of \$24 000 or imprisonment
32 for 2 years.

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

2 (3) Nothing in this section limits or otherwise affects the operation
3 of the *Parliamentary Privileges Act 1891*.

4 **97. Evidentiary certificates**

5 (1) A chief officer of a law enforcement agency may sign a
6 certificate stating any of the following —

7 (a) that, for the purposes of section 96(1)(a), a witness
8 identity protection certificate for an operative in relation
9 to a proceeding has not been cancelled under section 94;

10 (b) whether, for the purposes of section 96(1)(b)(iii), the
11 conduct that is the subject of the offence was permitted
12 under section 95.

13 (2) In any proceedings, a certificate given under this section is
14 sufficient evidence, in the absence of evidence to the contrary,
15 of the matters certified in it.

16 **98. Reports about witness identity protection certificates**

17 (1) As soon as practicable after the end of each financial year, the
18 chief officer of a law enforcement agency must submit to the
19 Minister a report about witness identity protection certificates
20 given by the chief officer during that year.

21 (2) The report must include all of the following —

22 (a) the number of witness identity protection certificates
23 given;

24 (b) on what basis the chief officer was satisfied about the
25 matters mentioned in section 82(1)(b) for each
26 certificate;

27 (c) if leave was given or an order made under section 90 in
28 a proceeding in which a witness identity protection
29 certificate for an operative of the agency was filed,
30 details of the proceeding that relate to the leave or order;

- 1 (d) if a witness identity protection certificate was cancelled
2 under section 94, the reasons why the certificate was
3 cancelled;
- 4 (e) if a permission was given under section 95, the reasons
5 why the permission was given;
- 6 (f) any other information relating to witness identity
7 protection certificates and the administration of this Part
8 that the Minister considers appropriate.
- 9 (3) A report must not include information that discloses, or may
10 lead to the disclosure of, an operative's true identity, or where
11 the operative lives, unless the witness identity protection
12 certificate for the operative has been cancelled.
- 13 (4) The Minister is to cause a copy of the report to be laid before
14 each House of Parliament within 15 sitting days from the day on
15 which the report is received by the Minister.

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

17 **99. Recognition of witness identity protection certificates under**
18 **corresponding laws**

19 The following provisions apply, with any necessary changes, to
20 a corresponding witness identity protection certificate as if it
21 were a witness identity protection certificate given under
22 section 82 —

- 23 (a) section 85 (Filing and notification);
24 (b) section 86 (Leave for non-compliance);
25 (c) section 87 (Effect of witness identity protection
26 certificate);
27 (d) section 88 (Orders to protect operative's true identity or
28 location);
29 (e) section 89 (Disclosure of operative's true identity to
30 presiding officer);

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.

4

5

6

7

101A. Review of Parts 2 and 3

8

(1) The Minister must carry out a review of the operation and effectiveness of Parts 2 and 3 as soon as is practicable after the end of the period of 5 years beginning on the day on which this Act receives the Royal Assent.

9

10

11

12

(2) The Minister must prepare a report based on the review and must cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared and, in any event, not later than 18 months after the end of the period referred to in subsection (1).

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Part 6 — Savings provisions

102. Term used: commencement day

In this Part —

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

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

(1) In this section —

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

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

104. Savings provision relating to *Prostitution Act 2000*

(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

s. 106A

1 **Part 7A — *Criminal Injuries Compensation***
2 ***Act 2003* amended**

3 **106A. Act amended**

4 This Part amends the *Criminal Injuries Compensation Act 2003*.

5 **106B. Section 13 amended**

6 In section 13(5) delete “section 27.” and insert:

7
8 section 27 or the *Criminal Investigation (Covert Powers)*
9 *Act 2012* section 27, 31 or 34.
10

11 **106C. Section 16 amended**

12 In section 16(5) delete “section 27.” and insert:

13
14 section 27 or the *Criminal Investigation (Covert Powers)*
15 *Act 2012* section 27, 31 or 34.
16

17 **106D. Section 17 amended**

18 In section 17(5) delete “section 27.” and insert:

19
20 section 27 or the *Criminal Investigation (Covert Powers)*
21 *Act 2012* section 27, 31 or 34.
22

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).

s. 110

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 or 34K.

17

18 **122. Part 3 Division 2 heading and Part 3 Division 2**
19 **Subdivision 1 heading inserted**

20 After section 32 insert:

21

22 **Division 2 — Evidence by participants**

23 **Subdivision 1 — Terms Used**

24

s. 123

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 ***court*** includes —

15 (a) a tribunal or other body established or
16 continued under a written law and having a
17 power to obtain evidence or information;

18 (b) a Royal Commission established under the
19 *Royal Commissions Act 1968*;

20 (c) a commission, board, committee or other body
21 established by the Governor or by the
22 Government of the State to inquire into any
23 matter;

24 ***court proceedings*** means any proceedings in a court;

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

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

29 ***parliamentary committee*** means a committee or other
30 body established by either or both Houses of
31 Parliament to inquire into any matter;

- 1 ***parliamentary proceedings*** means any proceedings
2 before a parliamentary committee;
- 3 ***party***, to proceedings, means —
- 4 (a) for criminal proceedings, the prosecutor and
5 each accused person; or
- 6 (b) for civil proceedings, each person who is a
7 party to the proceedings; or
- 8 (c) for any other proceedings, each person who
9 may appear or give evidence in the
10 proceedings;
- 11 ***proceedings*** means court proceedings or parliamentary
12 proceedings;
- 13 ***protected address***, of a protected person, means —
- 14 (a) for proceedings in which the protected person is
15 or may be required to give evidence under the
16 person’s new identity, the last place where the
17 person lived under the person’s former identity;
18 or
- 19 (b) for proceedings in which the protected person is
20 or may be required to give evidence under the
21 person’s former identity, the place where the
22 person lives;
- 23 ***protected identity***, of a protected person, means —
- 24 (a) for proceedings in which the protected person is
25 or may be required to give evidence under the
26 person’s new identity, the person’s former
27 identity; or
- 28 (b) for proceedings in which the protected person is
29 or may be required to give evidence under the
30 person’s former identity, the person’s new
31 identity;
- 32 ***protected person*** means a person who, having been
33 given a new identity under the SWPP, keeps the

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1 identity whether or not the person remains a
2 participant.

3 **Subdivision 2 — Non-disclosure certificates for**
4 **protected persons**

5 **34A. Non-disclosure certificates**

6 (1) In this section —
7 *court* includes a court, within the meaning of that term
8 in this Act, of another jurisdiction.

9 (2) If a protected person is or may be required to give
10 evidence in proceedings in a court or in parliamentary
11 proceedings, whether under the person's new identity
12 or former identity, the person must notify the
13 Commissioner that the person is or may be required to
14 give evidence in the proceedings.

15 (3) The Commissioner may give a certificate for the
16 protected person in relation to the proceedings and —

- 17 (a) file a copy with the court; or
18 (b) give a copy to the Clerk of the House of
19 Parliament that established the parliamentary
20 committee concerned or, if the parliamentary
21 committee concerned was established by both
22 Houses of Parliament, to the Clerk of each
23 House of Parliament,

24 as the case requires.

25 **34B. What non-disclosure certificate must state**

26 (1) A non-disclosure certificate for a protected person must
27 state —

- 28 (a) that the person is, or has been, included in the
29 SWPP; and

- 1 (b) that the person has been given a new identity
2 under the SWPP; and
- 3 (c) that the person has not been convicted or found
4 guilty of any offence other than an offence
5 mentioned in the certificate.
- 6 (2) The non-disclosure certificate must not include
7 information that discloses, or may lead to the
8 disclosure of any of the following —
- 9 (a) the person’s protected identity;
10 (b) the person’s protected address;
11 (c) any other sensitive information as defined in
12 section 32(2).

13 **Subdivision 3 — Provisions applicable to court proceedings**

14 **34CA. Application of Subdivision**

15 This Subdivision applies in relation to court
16 proceedings in which a protected person is, or may be,
17 required to give evidence.

18 **34C. Effect of non-disclosure certificate**

- 19 (1) In this section —
- 20 *person involved*, in proceedings, includes —
- 21 (a) the court; and
22 (b) a party to the proceedings; and
23 (c) a person given leave to be heard or make
24 submissions in the proceedings; and
25 (d) a lawyer representing a person referred to in
26 paragraph (b) or (c) or a lawyer assisting the
27 court in the proceedings; and
28 (e) any other officer of the court or person assisting
29 the court in the proceedings; and

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

- 1 court must also inform the parties of the effect of the
2 certificate.
- 3 (7) This section applies despite any other Act, but subject
4 to section 34D.
- 5 **34D. Disclosure of protected person’s identity despite**
6 **certificate**
- 7 (1) This section applies if a non-disclosure certificate for a
8 protected person in relation to proceedings is filed in a
9 court in this State.
- 10 (2) A party to the proceedings, or a lawyer assisting the
11 court in the proceedings, may apply to the court —
- 12 (a) for leave —
- 13 (i) to ask a question of a witness, including
14 the protected person, that may lead to
15 the disclosure of the protected person’s
16 protected identity or protected address
17 or both; or
- 18 (ii) for a person involved in the proceedings
19 to make a statement that discloses, or
20 may lead to the disclosure of, the
21 protected person’s protected identity or
22 protected address or both;
- 23 or
- 24 (b) for an order requiring a witness, including the
25 protected person, to answer a question, give
26 evidence or provide information that discloses,
27 or may lead to the disclosure of, the protected
28 person’s protected identity or protected address
29 or both.
- 30 (3) The court may —
- 31 (a) give leave for the party or lawyer to do
32 anything mentioned in subsection (2)(a); and

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

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

11 **34E. Directions to jury**

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

- 1 **34F. Adjournment 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 adjournment —
- 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 adjournment.
- 21 **34G. Jurisdiction to hear and determine appeals**
- 22 A court that has jurisdiction to hear and determine
- 23 appeals from a judgment, order or direction in the
- 24 proceedings has jurisdiction to hear and determine an
- 25 appeal against the decision to give or refuse leave, or to
- 26 make or refuse to make the order.
- 27 **34H. Recognition of non-disclosure certificates under**
- 28 **corresponding laws**
- 29 The following provisions apply, with any necessary
- 30 changes, to a corresponding non-disclosure certificate
- 31 that is filed with a court in this State, as if it were a

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

7 **Subdivision 4 — Provisions applicable to**
8 **parliamentary proceedings**

9 **34I. Application of Subdivision**

10 This Subdivision applies in relation to parliamentary
11 proceedings in which a protected person is, or may be,
12 required to give evidence.

13 **34J. Effect of non-disclosure certificate**

- 14 (1) In this section —
- 15 *person involved*, in proceedings, includes —
- 16 (a) a member of the parliamentary committee; and
- 17 (b) a party to the proceedings; and
- 18 (c) a person given leave to be heard or make
19 submissions in the proceedings; and
- 20 (d) a lawyer representing a person referred to in
21 paragraph (b) or (c) or a lawyer assisting the
22 parliamentary committee in the proceedings;
23 and
- 24 (e) any other person assisting the parliamentary
25 committee in the proceedings; and
- 26 (f) a person acting in the execution of any process
27 or the enforcement of any order in the
28 proceedings.

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- 1 (2) This section applies if a non-disclosure certificate for a
2 protected person is given under section 34A(3)(b) in
3 relation to parliamentary proceedings.
- 4 (3) If this section applies, in the proceedings —
- 5 (a) a question must not be asked of a witness,
6 including the protected person, that may lead to
7 the disclosure of the protected person's
8 protected identity or protected address or both;
9 and
- 10 (b) a witness, including the protected person,
11 cannot be required to (and must not) answer a
12 question, give evidence or provide information
13 that discloses, or may lead to the disclosure of,
14 the protected person's protected identity or
15 protected address or both; and
- 16 (c) a person involved in the proceedings must not
17 make a statement that discloses, or may lead to
18 the disclosure of, the protected person's
19 protected identity or protected address or both.
- 20 (4) The parliamentary committee may disclose to each
21 party to the proceedings —
- 22 (a) that a non-disclosure certificate for a person
23 who may be required to give evidence in the
24 proceedings has been given; and
- 25 (b) what the certificate states.
- 26 (5) If the parliamentary committee makes a disclosure
27 about the non-disclosure certificate under
28 subsection (4), the committee must also inform the
29 parties of the effect of the certificate.
- 30 (6) This section applies despite any other Act, but subject
31 to section 34K.

- 1 **34K. Disclosure of protected person’s identity despite**
2 **certificate**
- 3 (1) In this section —
4 *relevant House*, in relation to a parliamentary
5 committee, means —
- 6 (a) if the parliamentary committee was established
7 by a House of Parliament — that House; or
- 8 (b) if the parliamentary committee was established
9 by both Houses of Parliament — each House.
- 10 (2) This section applies if a non-disclosure certificate for a
11 protected person is given under section 34A(3)(b) in
12 relation to parliamentary proceedings.
- 13 (3) The parliamentary committee may seek the
14 authorisation of the relevant House —
- 15 (a) to ask a question of a witness, including the
16 protected person, that may lead to the
17 disclosure of the protected person’s protected
18 identity or protected address or both; or
- 19 (b) to require a witness, including the protected
20 person, to answer a question, give evidence or
21 provide information that discloses, or may lead
22 to the disclosure of, the protected person’s
23 protected identity or protected address or both;
24 or
- 25 (c) for a person involved in the proceedings to
26 make a statement that discloses, or may lead to
27 the disclosure of, the protected person’s
28 protected identity or protected address or both.
- 29 (4) The relevant House may pass a resolution authorising
30 the doing of anything mentioned in subsection (3)(a),
31 (b) or (c).

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- 1 (5) However, the relevant House must not pass a resolution
2 unless satisfied about each of the following —
3 (a) there is evidence that, if accepted, would
4 substantially call into question the protected
5 person’s credibility;
6 (b) it would be impracticable to test properly the
7 credibility of the protected person without
8 allowing the risk of disclosure of, or disclosing,
9 the protected person’s protected identity or
10 protected address or both.

11 **34L. Restrictions on content of reports to Parliament**

12 If a non-disclosure certificate for a protected person is
13 given under section 34A(3)(b) in relation to
14 parliamentary proceedings, the parliamentary
15 committee must not disclose in a report to a House of
16 Parliament —

- 17 (a) the protected person’s protected identity or
18 protected address; or
19 (b) information that may lead to the disclosure of
20 the protected person’s protected identity or
21 protected address.
22

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

24 Before section 34 insert:
25

26 **Division 3 — Miscellaneous**
27

1 **125. Part 5 heading inserted**

2 After section 39 insert:

3

4 **Part 5 — Transitional and savings provisions**

5

6 **126. Section 41 inserted**

7 After section 40 insert:

8

9 **41. Savings provision relating to *Criminal Investigation***
10 ***(Covert Powers) Act 2011***

11 (1) In this section —

12 ***commencement day*** means the day on which the
13 ***Criminal Investigation (Covert Powers) Act 2011***
14 section 126 comes into operation;

15 ***permission*** means a permission under section 33(1)(b)
16 as in force immediately before the commencement day.

17 (2) A permission given to a person for the purposes of
18 particular proceedings is, on and after the
19 commencement day, to be taken to be a non-disclosure
20 certificate as defined in section 33 —

21 (a) for the person; and

22 (b) in relation to the proceedings,

23 and Part 3 Division 3 applies, with any necessary
24 modifications, to that certificate.

25



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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