

WITNESS PROTECTION BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Bill

The objective of the Bill is to provide protection for witnesses.

Reasons for the objective

The role of witnesses in providing assistance to law enforcement agencies and courts is essential. The need for government protection of certain witnesses is recognised worldwide, particularly in relation to witnesses giving information and testimony concerning major and organised crime. Witness protection provides security and incentive to give assistance, in the absence of which such assistance may not be forthcoming. Witness protection also recognises the responsibility of government to provide protection for persons who put themselves at great risk to personal safety.

How the objective will be achieved

The protection of witnesses in Queensland will be achieved by extending and providing legislative backing to the current witness protection scheme operated by the Criminal Justice Commission. This will be achieved as follows:

1. The Bill meets the vision of a national coordinated witness protection scheme, launched in 1994 by the Federal Government. Other States have already met legislative implementation.
2. Complementary Queensland legislation is required before Federal Government agencies will provide important Commonwealth identity documents, such as passports and tax file numbers, to Queensland protected witnesses. Without this, the ability of the witness protection division to protect witnesses through re-identification is hampered.

3. The Bill will augment current inadequate legislation on witness protection. Only three provisions in the *Criminal Justice Act 1989* currently deal with witness protection. These provisions essentially define witness protection and establish the witness protection division and provide for its functions. The provisions do not cover important issues that are addressed by the Bill. In summary, the Bill:
- provides a statutory basis for arrangements with witness protection authorities in other jurisdictions;
 - provides an outline of the conditions pursuant to which protection is offered and maintained, including a requirement that a witness accepted onto the program sign a Protection Agreement;
 - sets criteria for the chairperson of the Criminal Justice Commission to consider before accepting a person onto the program;
 - outlines the circumstances in which termination of protection may occur;
 - provides for the ability for interim protection to be offered pending the consideration of an application for full protection;
 - provides that where a witness is assessed as being in need of protection on a long-term basis, steps may be taken to have the identity of the witness changed;
 - allows for the creation of a new birth certificate to assist in the establishment of a new identity;
 - provides for witness anonymity in a proceeding where a protected witness or former protected witness who has been given a new identity is or may be required to give evidence;
 - creates various offences including an offence for a person to disclose information about the program or a witness;
 - authorises the chairperson to disclose a witness's former identity and personal details in circumstances where the interests of justice require this; and
 - exempts decisions made by the chairperson under the Witness Protection Act from the operation of the *Judicial Review Act 1991* and exempts witness protection documents from the operation of the *Freedom of Information Act 1992*.

Alternative way of achieving objectives

Without complementary witness protection legislation the current scheme of witness protection under the *Criminal Justice Act 1989* could continue. This would mean, however, that Queensland would not deliver on its support of the national scheme and that services from other State and the Commonwealth agencies will continue to be denied to witnesses protected on the Queensland witness protection program.

Administrative cost to Government for Implementation

There is a minimal cost of implementing the legislation—approximately \$5,000 associated with the cost of establishing the procedure for creating new identities for protected witnesses.

Consistency with Fundamental Legislative Principles

The Bill is not consistent with fundamental legislative principles as follows:

Limiting the rights and liberties of individuals

Section 4(2) of the *Legislative Standards Act 1992* provides that fundamental legislative principles require that legislation should have sufficient regard to the rights and liberties of individuals. The Bill provides for witness anonymity in the case of a person who has been given a new identity under the legislation. The argument against witness anonymity is that it affects the fundamental right of an accused person in proceedings to confront and cross-examine adverse witnesses on credibility.

The arguments for extending witness anonymity to re-identified persons under a witness protection program are:

- The need for witness anonymity in this circumstance will occur only rarely. Since the introduction in the mid 1990's of the other states' Witness Protection Acts, only two instances in total of this issue arising could be recalled by officers in four states.
- The criminal history, if any, of the witness will still be available to the court and where appropriate the court may make it available to any party to the relevant proceeding.

- The Bill provides that the court may grant leave in certain circumstances, for questions to be asked of a person (including the person named in the non-disclosure certificate) that may disclose the former identity of the person named in the non-disclosure certificate. These circumstances will arise where there is some evidence which, if believed, would call into question the credibility of the witness and it is in the interests of justice that the witness's credibility be tested and it would be impractical to test their credibility without first knowing their actual identity.

The Bill also provides that an applicant for inclusion in the program must disclose to the chairperson a considerable amount of personal information, including information about outstanding debts, marital and domestic circumstances and medical information. Whilst this raises an issue about privacy concerns, it is considered necessary that this information be gathered to enable the chairperson to adequately determine the eligibility of a person wishing to be included in the program and, in the event that person is included in the witness protection program, to protect third parties to whom some obligation (financial or otherwise) may be owed by that person.

Conferring immunity from proceeding or prosecution without adequate justification

The Bill provides protection against civil liability for actions taken by persons acting in good faith and without negligence under the provisions of the Bill. This immunity is justified to protect those who perform certain functions as set out in the Act. For example it is intended to protect officers of the commission and the commission itself from liability in respect of third party interests or rights affected as a result of an action taken under the program, for instance, the hindrance of a civil action by reason of the re-identification of a protected witness.

Judicial Review Act 1991

The Bill provides that decisions made by the chairperson in relation to witness protection are excluded from the operation of the *Judicial Review Act 1991*. This is considered justified as internal levels of assessment within the Criminal Justice Commission are strict and numerous. Also, evidence required to be adduced in a judicial review of a decision involving witness protection, may well disclose processes which could prejudice witness protection methods. That in turn may put at risk witnesses under protection. If an external reviewer is involved there are increased opportunities for unauthorised dissemination of sensitive information.

This approach is consistent with provisions of the Federal *Witness Protection Act 1994*. The chairperson's decisions will still be open to review by the Parliamentary Criminal Justice Committee and the Parliamentary Commissioner in accordance with the *Criminal Justice Act 1989*.

Freedom of Information Act 1992

The Bill provides that documents relating to witness protection are excluded from the operation of the *Freedom of Information Act 1992*. Witness protection documents currently fall within the exemptions that may be claimed under this Act, however, this is not considered sufficient protection as these provisions do not give automatic exemption and could involve review of an exemption claim. Again, for the reasons outlined above, external review processes have the potential to compromise the security of the program and put witnesses at risk.

Consultation

Consultation has taken place with the following bodies and persons—

Criminal Justice Commission; Office of the Queensland Parliamentary Counsel; Parliamentary Criminal Justice Committee; Queensland Crime Commission; Chief Justice Supreme Court; Chief Judge District Court; Chief Stipendiary Magistrate; Department of Justice and Attorney-General; Office of the Court Administrator, Supreme and District Courts; Registrar-General Births, Deaths and Marriages; Department of Housing; Queensland Police Service; Bar Association of Queensland; Queensland Law Society; Office of the Adult Guardian; The Public Trustee of Queensland and the Queensland Council for Civil Liberties.

There is support for the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 provides that the short title for the Act is the *Witness Protection Act 2000*.

Clause 2 states that the Act will commence on a day to be fixed by proclamation.

Clause 3 provides that the dictionary to the Act is found in schedule 2.

Clause 4 provides that the Act binds the State, Commonwealth and other States.

PART 2—WITNESS PROTECTION PROGRAM

Clause 5 provides a definition of “witness protection program”. The witness protection program provides witness protection to persons accepted onto the program and persons on witness protection programs in other states. The witness protection division of the Criminal Justice Commission (the commission) runs the witness protection program.

Clause 6 provides the criteria for eligibility for inclusion in the program. A person must need protection from a danger arising from assistance that was provided to a law enforcement agency. The term “law enforcement agency” is defined in schedule 2 as the commission, the Queensland Crime Commission, a commission of inquiry, the Queensland Police Service, the police service of another state or another entity declared to be so by regulation.

The definition includes persons such as family members who are considered “protected witnesses” under the Act not by virtue of their having given assistance, but by their relationship with another person who has given assistance.

Finally, the chairperson (defined in schedule 2 as the chairperson of the commission) must consider that it is appropriate to include the person in the program. This is to be determined by reference to the criteria set out in subsection 3. The disclosure of relevant information under these criteria allows the chairperson to properly judge whether or not a person should be included in the witness protection program.

The information that the chairperson must have regard to includes information disclosed to the chairperson as required under regulation (see subclause 6(1)(h)). The matters that may be included in the regulation can be seen by reference to clause 8 of the Bill. Clause 8 outlines the matters that may be required to be disclosed in the protection agreement, the

document that is signed by the witness and the chairperson upon acceptance of a person into the witness protection program. Matters included in a protection agreement may include outstanding legal and financial obligations and domestic and family arrangements. The disclosure of such material aids in preventing a protected witness from evading his or her existing legal/financial obligations. Particularly in instances where protection includes a change of identity, this serves to protect innocent third parties who may have an interest in those obligations. Also, personal and domestic matters such as custody and access to children are relevant to the provision of protection to a protected witness and his or her family.

Clause 6 also provides the circumstances in which a person is *not* to be included in the witness protection program. Inclusion of a person in the program is neither intended as a reward for the assistance provided, nor as a means of persuading a person to give assistance. Rather, an offer of protection is made because, as a result of assistance provided, a threat to that person has arisen. Also, if insufficient information is available to the chairperson to make an assessment, then an offer of protection cannot be made. The clause provides that if the chairperson decides not to include the person in the program the chairperson must notify that person. The clause refers by footnote to clause 45, which provides for how notice may be given.

Clause 7 requires the chairperson to prepare a protection agreement if he or she decides that a person is to be included in the witness protection program. A protection agreement is a document setting out the basis upon which a person is to be included in the witness protection program. The clause provides that the protection agreement takes effect when the person and the chairperson have signed the protection agreement.

A protection agreement includes what type of protection and assistance is to be provided. The clause refers by footnote to clause 46, which provides for who may sign documents on behalf of a protected witness who is a minor or person with impaired capacity. The chairperson must notify either the protected witness of their inclusion in the program or the person who signed the protection agreement on behalf of the protected witness as soon as practicable after the agreement has been signed.

Clause 8 outlines some conditions that may be included in a protection agreement. The first condition is a mandatory condition, namely that breach by the protected witness of certain conditions of the protection agreement may lead to termination of the protected witness's involvement in the

witness protection program. The conditions, the breach of which may lead to termination, must be identified as such in the protection agreement. The clause also provides for matters that the person to be included in the witness protection program may be required to disclose in the protection agreement such as lists of aliases the person uses or has used, their outstanding legal obligations and details of their marital, family, taxation, welfare and other obligations.

Clause 9 allows the chairperson to offer interim protection to a person prior to a decision being made by the chairperson as to whether that person should be offered full protection under the Act. Provision for interim protection allows for protection to be provided to a person on an urgent basis. The clause also provides that other clauses that require certain steps to be taken before full protection can be offered do not apply to an offer of interim protection. This means that the type and range of information that must be provided to the chairperson and considered in accordance with clause 6 regarding a decision to offer full protection, are not required in this circumstance. An initial urgent assessment must be made, however, to determine whether the person has provided assistance and whether because of this assistance there is a threat to the person. Upon this basis interim protection can be offered.

The clause requires that a full protection agreement in accordance with clause 8 be entered into if a person is subsequently offered full protection under the witness protection program.

Clause 10 provides that a protection agreement may be amended by agreement between the chairperson and a protected witness. Protection may be an ongoing necessity for a protected witness for many years during which time changes occurring during that person's lifetime may need to be reflected in the protection agreement.

The clause also provides for when such an amendment takes effect. An amendment cannot remove the mandatory condition referred to in clause 8.

Clause 11 provides that the chairperson may decide to amend a protection agreement other than with the agreement of the protected witness. In order to provide natural justice to a protected witness, the chairperson is required to advise the protected witness of his or her intention to amend the protection agreement in order to allow the protected witness the opportunity to be heard on the proposed amendment. Any amendment made by the chairperson must then be notified to the protected witness. The clause also

provides for when an amendment takes effect. An amendment cannot remove the mandatory condition referred to in clause 8.

Clause 12 provides that the chairperson may suspend the protection of a protected witness for a stated reasonable time if the chairperson is satisfied that the protected witness can not be properly protected because of something the protected witness has done or intends to do. The clause provides that the chairperson must give notice to the protected witness if he or she decides to suspend the protection. This clause does not limit the operation of clause 14, which provides that the chairperson may end the protection of the protection witness.

Clause 13 provides that a protected witness may withdraw from the witness protection program by giving written or oral notice to the chairperson. Where the protected witness has given oral notice, the chairperson must take reasonable steps to have the oral notice confirmed in writing, or where the oral notice can not be confirmed in writing, the chairperson must satisfy himself or herself that the oral notice was in fact given by the protected witness. The clause also provides for when the protection ends.

Clause 14 sets out the grounds upon which the chairperson may decide to terminate protection. The first ground is that the chairperson is satisfied that a protected witness has committed an offence that is punishable by more than 1 year's imprisonment. In fairness to a protected witness, the commission of minor offences punishable by less than one year's imprisonment is not a trigger for the termination of protection. Accordingly, the clause does not provide that *any* offence may result in termination.

The second ground is that the chairperson is satisfied that a protected witness has contravened a termination condition of the protection agreement. Again, in fairness to the witness, the contravention must be significant and not with reasonable excuse, such that a minor or excusable breach will not result in termination.

The third ground is that the chairperson is satisfied that the protected witness has withdrawn his/her assistance.

The final ground is that the chairperson considers that it is no longer appropriate for the protected witness to be in the program including because the conduct of the protected witness is a threat to the security of the witness protection program.

Before ending the protection the chairperson must take all reasonable steps to inform the protected witness why the chairperson proposes to terminate the protection and the time when he or she proposes to end the protection. The protected witness must also be given a reasonable opportunity to respond. Clause 14 also provides for when the protection ends. The clause also provides that, where a person who as a protected witness was given financial assistance under a protection agreement, has acknowledged that the protection has ended, the chairperson may continue to provide financial assistance to the person for a period considered appropriate by the chairperson.

PART 3—PROTECTING IDENTITY OF WITNESS

Clause 15 provides that the chairperson may require a person to issue documents to assist in the protection of a witness's identity. Where a protected witness is assessed as being in need of protection on a long-term basis, the most frequent course taken is to relocate that protected witness and his or her immediate family. In some instances arrangements are made for the provision of documents that help to protect the actual identity of the protected witness. This clause enables the chairperson to arrange for the provision of documents, such as driver's licences, to help a protected witness to establish or support an identity other than their actual identity. This clause does not apply to the issue of new birth certificates, which is specifically provided for in later clauses.

The clause provides that the chairperson may, in a way the chairperson considers appropriate, make this requirement of a person to issue a document or make a necessary entry in a record. This is intended to give flexibility to the chairperson so that the chairperson is not put in a position that might jeopardise the integrity of the program. The person must comply with the request.

Clause 16 provides that the chairperson may apply in writing to the authorising officer for a new identity authority in relation to a protected witness. The power to authorise a new identity authority is provided for in clause 17. The new identity authority authorises a named officer of the witness protection division to create a new birth certificate to give a protected witness a new identity. The authorising officer is defined in the dictionary in schedule 2 to the Bill.

A birth certificate is arguably the most important identity document that can be obtained for a protected witness as part of their protection, as it in fact gives that protected witness a new identity. A birth certificate enables a protected witness to obtain a passport in addition to many other forms of identity. The clause provides that an application for a new identity authority must contain sufficient information to enable the authorising officer to properly consider it.

Clause 17 provides that the authorising officer may issue a new identity authority if he or she is satisfied of a number of conditions.

Clause 18 provides that a new identity authority authorises the creation of a new birth certificate by the officer of the witness protection division named in the authority. The clause also provides that the Registrar-General of Births Deaths and Marriages must give the witness protection division officer reasonable assistance to carry out the creation of the new birth certificate. This does not mean that the Registrar-General creates the birth certificate under this Bill. Only the witness protection division officer named in the new identity authority is authorised to create a birth certificate under this Bill. Before the authority can be exercised, however, the officer must produce to the Registrar-General for inspection the new identity authority.

Clause 19 provides that a new identity created under a new identity authority is taken to be the protected witness's true identity for all purposes. This has effect unless the former identity is restored. "Former identity" is defined in the dictionary in schedule 2 to the Bill.

Clause 20 provides protection for persons who are involved in the authorisation and issue of documents that may be used to conceal the actual identity of a protected witness and their personal particulars by making the authorisation and issue of those documents lawful. The clause protects them against offending against any Act or law and against the issue of civil proceedings against them.

The clause also provides that any contract or agreement entered into with a protected witness or former protected witness who has been re-identified under this Act is not invalidated only because that person has used a new identity.

Clause 21 provides that, in the event that protection has ended for a person who has been subject to a change of identity, the chairperson may take steps to restore that person's former identity. The clause provides that the chairperson must have regard to certain things in deciding whether to

restore a person's former identity. The chairperson must take reasonable steps to notify the person of his or her intention to restore their former identity and the reasons why; and give the person a reasonable opportunity to respond. If the chairperson, after considering any response from the person decides to restore their former identity, the chairperson must by notice to the person require them to return to the chairperson the documents referred to in 21(4)(a) and 21(4)(b). The person must comply with this requirement.

The clause provides for a maximum penalty of 60 penalty units.

Clause 22 provides that in the event that the program has ended for a particular witness, and particular documents have been returned to the chairperson under a protection agreement or clause 21, the chairperson must destroy the documents as soon as practicable or arrange for their destruction with the person who issued them. This section will apply whether or not a person has been re-identified under the Act. For example a person who has not been re-identified may still be provided with documents (such as a driver's licence) from time to time for the purpose of protecting their actual identity. The return of these documents will be provided for in the terms of the protection agreement. In circumstances where the program has ended the chairperson must also ensure that those documents are destroyed.

Clause 23 provides that a person for whom a new birth certificate has been created must not use or obtain a document issued by the Registrar-General by use of his or her former identity unless his or her former identity has been restored.

The clause provides for a maximum penalty of 60 penalty units.

Clause 24 applies to a protected witness or former protected witness who has received a change of identity under the witness protection program. The clause provides that such a person must notify the chairperson if the person is or may be required to give evidence in relevant proceedings. The clause provides for a maximum penalty of 60 penalty points. The terms "relevant proceedings" and "relevant entity" are defined in the dictionary in schedule 2 to the Bill. "Relevant proceedings" include court or tribunal proceedings, committal hearings, inquests, hearings and certain investigations under the *Criminal Justice Act 1989* or *Crime Commission Act 1997* and commissions of inquiry. "Relevant entity" means the entity in which the relevant proceedings are held.

In practice, protected witnesses in Queensland will be giving the evidence that has created the need for their protection under their true name, as this is the name under which the accused person, or those who present a threat to the witness, would identify the witness. After this assistance has been given in court it may be necessary to apply for a new birth certificate for the witness in order to establish a new identity and provide proper protection for the witness. It is foreseeable that circumstances may arise some time after the witness is given a new identity where the witness is again giving evidence in proceedings. These proceedings may be in either the criminal or civil jurisdiction, and unrelated to the original matter (for instance, if the protected witness is a witness to a motor vehicle accident).

In these later proceedings, however, if the witness were required to reveal his or her former identity, the witness's security and possibly the integrity of the witness protection program would be compromised. There is an argument that extending witness anonymity to protected witnesses (who are not covert operatives) affects the fundamental right of an accused person in proceedings to confront and cross-examine adverse witnesses on credibility. However, protected witnesses are in sufficient danger as opposed to other witnesses as to require protection by the State and are risking their lives to assist the State in the prosecution of offenders.

Accordingly, clause 24 provides that where the chairperson becomes aware that a person who has been given a new identity is or may be required to give evidence in a relevant proceeding, the chairperson must give to the relevant entity a non-disclosure certificate. The person named in the non-disclosure certificate will be a protected witness or former protected witness who has been given a new identity under the witness protection program. The effect of giving this non-disclosure certificate is that no question may be asked or answered, evidence or information given, or statement made in the relevant proceeding that may disclose the former identity of the person named in the non-disclosure certificate or where they live.

If in the proceeding the relevant entity considers it appropriate, the relevant entity may disclose to each party that it has been given a non-disclosure certificate in respect of that person, and what the certificate states. The relevant entity may only disclose the contents of the certificate in the absence of the public, including the jury. The relevant entity must also inform the parties of the effect of the certificate in the proceeding.

Clause 25 provides that the non-disclosure certificate must state certain information about the person named in the non-disclosure certificate (including their criminal history, if any), without including any information that may disclose their former identity.

Clause 26 provides that the effect of giving to a relevant entity a non-disclosure certificate is that no question may be asked or answered, evidence or information given, or statement made in the relevant proceeding that may disclose the former identity of the person named in the non-disclosure certificate or where they live.

Clause 27 provides that where an application is made in a relevant proceeding, the relevant entity may, if satisfied of a number of conditions, give leave to a relevant party to the proceeding to ask questions of a person, including the person named in the non-disclosure certificate, that may disclose relevant information about the person named in the non-disclosure certificate. If leave is given a person may, in accordance with the leave, ask or answer questions, give information or evidence, or make statements that could disclose or lead to the disclosure of the former identity of the person named in the non-disclosure certificate or where they live.

The clause also provides that where the entity gives leave, that part of the proceeding must be held in the absence of the public. In addition the relevant entity must make an order for suppression of the publication of the evidence to ensure that relevant information is not disclosed beyond that part of the proceeding. In addition the relevant entity may make any order it considers appropriate. The clause also provides a penalty for contravention of an order made by the relevant entity where leave has been given under this clause.

The maximum penalty is 85 penalty units or 1 year's imprisonment.

Clause 28 provides that documents obtained by the chairperson for a protected witness must not grant to the protected witness qualifications or benefits he or she does not already hold, or is not entitled to. For example, a driver's licence cannot be issued as an identity document if the protected witness is not entitled to hold a driver's licence.

Clause 29 provides that the chairperson may make commercial arrangements with a third party, which benefit a protected witness without the protected witness being required to disclose his or her former identity. From time to time it may be necessary for the commission to assist a protected witness who has been given a new identity in commercial matters.

For instance, a protected witness who has been given a new identity may have real difficulties with bank loan applications or employment applications, where the protected witness has no credit or employment history under his or her new identity.

Clause 30 provides that where a protected witness has outstanding rights or obligations, the chairperson must take reasonable steps to ensure that these matters are dealt with according to law. If a protected witness is subject to legal restrictions, the chairperson is to take reasonable steps to ensure that he or she complies with those restrictions.

The clause further provides that the action the chairperson may take where a protected witness has outstanding legal obligations includes providing a protected witness with protection where he or she is to attend court; or notifying a party or possible party to legal proceedings against the protected witness that the chairperson will accept process issued by a court or tribunal for the protected witness.

Clause 31 applies if the chairperson finds that a protected witness is using his or her new identity to avoid obligations incurred under his or her former identity or to avoid complying with restrictions imposed on the protected witness under his or her former identity. In these circumstances the chairperson is to notify the protected witness that unless the protected witness agrees to deal with his or her obligations or comply with any restrictions, the chairperson may take any action the chairperson considers reasonably necessary to ensure that he or she does so. In cases where a person is seeking to enforce rights against the property of a protected witness, the chairperson may inform the person about property owned by the protected witness under his or her former identity.

The intention of the clause is to ensure that the interests of innocent third parties are protected and not adversely affected by virtue of a protected witness receiving protection and re-identification and then seeking to avoid obligations or liabilities incurred under his or her former identity.

Clause 32 enables the chairperson to certify in writing what amount of money has been paid to a person under the witness protection program. This certified amount of money is not subject to confiscation or restraint or for the payment of financial penalties under the *Crimes (Confiscation) Act 1989*.

Clause 33 provides that section 16 applies to approved authorities. Approved authorities are defined in the dictionary in schedule 2 to the Bill.

The clause operates to enable an application to the authorising officer for a new identity authority to be made by an approved authority in circumstances where a person is included in a witness protection program under a complementary witness protection law. For the purposes of making an application for a new identity authority, a protected witness in a witness protection program under a complementary witness protection law is taken to be a protected witness under the Queensland witness protection program, and the approved authority is taken to be the chairperson. A complementary witness protection law is defined in the dictionary in schedule 2 to the Bill.

Clause 34 extends the effect of clause 19 to a person who has been given a new identity by the issue of a birth certificate under a complementary witness protection law. The new identity of that person is taken to be their actual identity for all purposes whilst they are in Queensland.

PART 4—MISCELLANEOUS

Clause 35 makes directions about what must be done to give effect to the witness protection program. This includes the keeping and maintenance of accurate registers of the actual and assumed particulars of persons who have been given new identities under the witness protection program, and of the provision of non-disclosure certificates. It is intended that these records will form part of the records kept by the Criminal Justice Commission.

Clause 36 provides that it is an offence for a person to knowingly disclose or record information or provide or allow access to information about a protected witness or former protected witness, that would compromise the security of that person or the integrity of the witness protection program. The clause provides for circumstances where a disclosure or recording of information will not offend against the provision.

The clause provides for a maximum penalty of 10 years imprisonment.

Clause 37 provides that it is an offence for a protected witness, former protected witness or person who has been assessed for inclusion in the witness protection program to make unauthorised disclosure of the fact that he/she or another person had undergone assessment for inclusion on the witness protection program; that he/she or another person signed a protection agreement; the details of a protection agreement, or information

about the working of the witness protection division, its staff or the chairperson.

The clause provides for a maximum penalty of 5 years imprisonment.

Clause 38 provides that the chairperson and certain other persons are not required to produce any documents or divulge to a court, tribunal, hearing or commission of inquiry, any information that has come to his/her notice in carrying out functions under the Act. This applies except where a judge of the District Court or Supreme Court otherwise orders or if the proceeding in question relates to an offence against the Act.

However this does not prevent a member or officer of the commission from producing documents or disclosing information under the approval of the chairperson for the purposes of the relevant proceeding.

Clause 39 allows the issue of a Queensland identity document to a protected witnesses included in a witness protection program conducted by the Commonwealth or another State if the document is issued under an arrangement under Clause 40.

Clause 40 provides that the chief executive officer of an approved authority may make arrangements with the chairperson about matters relating to the administration of a complementary witness protection law. Approved authority is defined in the dictionary in schedule 2 to the Bill.

Such arrangements must include agreements on cost sharing with the authority. They may also include the provision of information that would enable the chairperson to decide whether the person should be included in the Queensland witness protection program and what protection is appropriate, as well as conferring powers on the chairperson under complementary witness protection laws.

Clause 41 provides that the chief executive officer of an approved authority may be authorised by regulation to exercise functions and powers conferred on the chairperson under the Act (other than under clause 33 of the Bill) for arrangements made under clause 40 or the corresponding provision in a complementary witness protection law.

Clause 42 enables the relevant Queensland Minister to make an arrangement with the Minister responsible for the administration of the *Witness Protection Act 1994 (C'th)* about the issue of Commonwealth identity documents such as passports.

Clause 43 applies where the chairperson is informed that a protected witness, who has been provided with a new identity, or relocated is under investigation or has been arrested or charged with a serious offence for which the maximum penalty is more than one year's imprisonment. In such cases the chairperson may release information to an approved authority, or the commissioner of police or the crime commissioner about the protected witness's new identity, location, criminal history and fingerprints. In addition, the chairperson may also allow officers from the approved authority to interview officers of the witness protection division. A serious offence is defined in the clause.

The clause recognises that the fact of a protected witness's relocation or change in identity should not interfere with the course of justice by obstructing any investigation of alleged criminal conduct by that person.

Clause 44 provides that a person is not liable to civil proceedings for acts performed in carrying out a function under the Act.

The intention of this clause is to protect those who perform certain functions as set out in the Act. For example the clause is intended to protect officers of the commission and the commission itself from liability in respect of third party interests or rights affected as a result of an action taken under the program, for instance, the hindrance of a civil action by reason of the re-identification of a protected witness.

The clause also provides that, except in cases involving officers from the Commonwealth or another state, where the liability can not attach to a person by reason of subsection (1) of the clause, the liability will attach to the State.

Clause 45 limits access to the registers required to be kept under the Act to the chairperson, a commissioner under the *Criminal Justice Act 1989*, the director of the witness protection division, an officer of the witness protection division and the Parliamentary Commissioner under the *Criminal Justice Act 1989*.

Clause 46 provides that where the chairperson is required to provide notice to a person under the Act, then he may do so in an appropriate manner. The Bill specifically does not provide for notice in writing to be sent to the person as this carries a risk of discovery of details about the person or their involvement in a witness protection program. An example is provided in the clause of an appropriate manner in which the chairperson may notify a witness. The clause also provides for those persons to whom

a notice must be given on behalf of a minor or a person with impaired capacity.

Clause 47 makes special provision for the signing of notices, agreements, acknowledgments or other documents under the Act concerning minors or people with impaired capacity.

Clause 48 permits the chairperson to delegate his/her powers under the Act to an officer of the witness protection division who is appropriately qualified. The chairperson cannot delegate his/her most significant decision making powers, that is, the power to offer protection, the power to terminate protection (except where the termination is by agreement with the witness or the witness has given written notice of their intention to leave the witness protection program), or the power to give a non-disclosure certificate.

Clause 49 allows the chairperson to approve forms for use under the Act.

Clause 50 provides that proceedings for an offence against the Act may be taken in a summary way under the *Justices Act 1886*.

Clause 51 allows the Governor in Council to make regulations under the Act.

Clause 52 states that the Acts mentioned in schedule 1 to the Bill are amended.

PART 5—TRANSITIONAL

Clause 53 states that participants on the witness protection program operated under the *Criminal Justice Act 1989* are taken to be in the witness protection program under the Act upon its commencement.

Clause 54 states that a document purporting to be a protection agreement and entered into under the witness protection program operated under the *Criminal Justice Act 1989*, is taken to be a protection agreement entered into under the Act. If such an agreement does not include a mandatory condition about termination as described in clause 8(1) then it is taken to include that condition.

SCHEDULE 1

ACTS AMENDED

Schedule 1 sets out the Acts to be amended by the Bill.

The Bill exempts the application of the *Freedom of Information Act 1992* and the *Judicial Review Act 1991*.

SCHEDULE 2

DICTIONARY

Schedule 2 contains the dictionary to be used in defining certain words and phrases in this Act.