



Witness Protection Act 2000

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Queensland

Witness Protection Act 2000

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Witness Protection Act 2000

An Act about witness protection in Queensland, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Witness Protection Act 2000*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Dictionary

The dictionary in schedule 2 defines terms used in this Act.

4 Act binds State, Commonwealth and other States

This Act binds the State and, as far as the legislative authority of the Parliament permits, the Commonwealth and the other States.

Part 2 Witness protection program

5 Witness protection program

The *witness protection program* is a program, run by the commission, to provide witness protection for—

- (a) persons included in the program under this Act; and
- (b) persons who are being protected under a witness protection program under a complementary witness protection law.

6 Person may be included in program

(1) The chairperson may include a person in the program on the chairperson's own initiative, or on the application of a law enforcement agency, if the chairperson considers—

- (a) the person needs protection from a danger arising—
 - (i) because the person has helped, or is helping, a law enforcement agency in the performance of its functions; or
 - (ii) because of the person's relationship or association with a person who has helped, or is helping, a law enforcement agency in the performance of its functions; and
- (b) it is appropriate to include the person in the program.

Example for paragraph (a)(ii)—

a family member or an associate of a person who has helped a law enforcement agency in a criminal investigation

(2) An application of a law enforcement agency other than the commission may be signed by the agency's chief executive officer or an officer authorised by the agency's chief executive officer to sign the application.

(3) In deciding whether to include the person in the program, the chairperson must have regard to the following—

- (a) the person's criminal history;

- (b) medical, psychiatric or psychological information about the person made available to the chairperson with the person's consent or under an arrangement under section 40;
 - (c) if the person has helped, or is helping, a law enforcement agency in the performance of its functions—the seriousness of any offence in relation to which the person has given, or is giving help;
 - (d) the extent of the help the person can offer, or has offered;
 - (e) any other available way of protecting the person;
 - (f) the nature of any threat to the person considered by the person or the chairperson to exist;
 - (g) whether the person has applied previously for protection under any of the following and, if the person was given protection, the nature of the protection and the circumstances in which the protection ended—
 - (i) this Act;
 - (ii) the *Criminal Justice Act 1989* or the *Crime and Corruption Act 2001*;
 - (iii) a corresponding witness protection law;
 - (h) any information disclosed to the chairperson of a type required under a regulation.
- (4) The chairperson must not include the person in the program—
- (a) if the chairperson considers there is not enough information available to the chairperson to decide whether to include the person in the program; or
 - (b) as a reward for giving evidence or making a statement.
- (5) If the chairperson decides not to include the person in the program, the chairperson must notify the person of the decision.

Note—

For how notice may be given, see section 46.

7 Protection agreement

- (1) If the chairperson decides to include a person in the program, the chairperson must prepare an agreement (***protection agreement***) about the person's inclusion in the program.
- (2) The person must sign the protection agreement in the presence of a witness protection officer.

Note—

For who can sign documents for a minor or an adult with impaired capacity, see section 47.

- (3) The person is included in the program and becomes a protected witness when the protection agreement has been signed by the chairperson and the person.
- (4) As soon as practicable after the protection agreement has been signed by the protected witness and the chairperson, the chairperson must—
 - (a) if the protected witness signed the agreement personally—notify the protected witness of his or her inclusion in the program; or
 - (b) otherwise—notify the person who signed the agreement for the protected witness of the inclusion of the protected witness in the program.

8 Content of protection agreement

- (1) A protection agreement must include a condition (***mandatory condition***) to the effect that the chairperson may, under section 14, end a person's involvement in the program as a protected witness if the person contravenes a termination condition.
- (2) A protection agreement may include other conditions the chairperson considers appropriate including, but not limited to, the following conditions—
 - (a) a condition that the person must not—
 - (i) contravene a law of the Commonwealth or of a State; or

- (ii) engage in a stated kind of activity; or
 - (iii) threaten the integrity of the program; or
 - (iv) directly or indirectly threaten the security, or any other aspect of, the protection or help being given to the person;
 - (b) a condition that the person must comply with all reasonable directions of the chairperson about the protection and help given to the person;
 - (c) a condition that the person will, if required by the chairperson, undergo any of the following and make the results available to the chairperson—
 - (i) medical, psychological or psychiatric tests or examinations;
 - (ii) drug or alcohol counselling or treatment;
 - (d) a condition about the issue and surrender of passports and other documents relating to the person's identity including, if the person is given a new identity under this Act, documents relating to the person's new identity;
 - (e) a condition that, while the person is included in the program, the person will disclose to the chairperson details of—
 - (i) any criminal charges made against the person; and
 - (ii) any civil proceeding, including any bankruptcy proceeding, started against the person;
 - (f) a condition that, if the person intends to marry and adopt a new name on marriage, the person will inform the chairperson of the person's intention to marry, before marrying;
 - (g) a condition that the person must notify the chairperson that the person is or may be required to give evidence in a proceeding.
- (3) In addition, a protection agreement may include 1 or more of the following—

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- (a) a list of any aliases the person uses, or has used;
- (b) a list of the person's outstanding legal obligations, including, for example, family and taxation obligations;
- (c) an agreement about how obligations mentioned in paragraph (b) are to be met;
- (d) a financial support arrangement;
- (e) details of marriage, family, taxation, welfare and other domestic or relationship obligations.

9 Interim protection

- (1) This section applies if—
 - (a) the chairperson considers a person is in urgent need of the protection available under the program; and
 - (b) the chairperson has not decided whether to include the person in the program.
- (2) The chairperson may, under section 7, make a protection agreement (*interim protection agreement*) with the person as if the chairperson had decided to include the person in the program.
- (3) As soon as practicable after making the interim protection agreement, the chairperson must decide under section 6 whether to include the person in the program.
- (4) If the chairperson decides to include the person in the program, the chairperson must make a protection agreement with the person under section 7 to replace the interim protection agreement.
- (5) If the chairperson decides not to include the person in the program, the chairperson must end the protection under the interim protection agreement by notice to the person.

10 Variation of protection agreement by agreement

- (1) A protection agreement, including an interim protection agreement, may be varied by agreement (*variation*

agreement) between the chairperson and the protected witness under the agreement.

- (2) The variation agreement must not have the effect of omitting the mandatory condition from the protection agreement.
- (3) The agreement takes effect on the day stated in the variation agreement or, if no day is stated, the day after the variation agreement is made.

11 Variation by chairperson of protection agreement

- (1) The chairperson may vary a protection agreement, including an interim protection agreement, other than by agreement with the protected witness under the agreement.
- (2) Before the chairperson varies the agreement, the chairperson must—
 - (a) notify the protected witness of the proposed variation and the reason for the variation; and
 - (b) give the protected witness a reasonable opportunity to comment on the proposed variation.
- (3) If, after considering any comments, the chairperson still proposes to vary the agreement, the chairperson may vary the agreement by notice given to the protected witness.
- (4) The variation must not have the effect of omitting the mandatory condition from the protection agreement.
- (5) The variation takes effect on the day after the notice is received by the protected witness.

12 Suspension of protection agreement

- (1) This section applies if the chairperson is satisfied that, because of something a protected witness has done or intends to do—
 - (a) the integrity of the program or other witness protection activities of the commission are threatened; or

Example—

The protected witness discloses information about the methodology of the program or the identity of witness protection officers.

- (b) the protected witness can not be properly protected under the program.

Examples—

- 1 The protected witness may be temporarily in custody in a watch-house.
 - 2 The protected witness may be imprisoned for an offence.
 - 3 The protected witness may intend to travel to a place despite the chairperson having advised the person not to go there because of the risk of harm to the person.
- (2) The chairperson may suspend the protection agreement for a stated reasonable time by notice given to the protected witness.
- (3) This section does not limit section 14.

13 Voluntary withdrawal from program

- (1) A protected witness may withdraw from the program by written or oral notice given to the chairperson.
- (2) If the notice is given orally, the chairperson must take reasonable steps to have the notice confirmed in writing.
- (3) If the protected witness is unwilling or unable to confirm the notice in writing, the chairperson must satisfy himself or herself that the oral notice was in fact given by the protected witness.
- (4) If the chairperson is satisfied the person did give notice of withdrawal from the program, the chairperson may end the protection—
 - (a) if the notice was written—on the day stated in the notice or, if no day is stated, the day after the chairperson receives the notice; or
 - (b) if the notice was given orally—on the day after the chairperson is satisfied the oral notice was in fact given.

14 When chairperson may end protection under program

- (1) The chairperson may end the protection of a protected witness if—
 - (a) the chairperson is satisfied—
 - (i) the protected witness has committed an offence against a law of the Commonwealth or a State that is punishable by at least 1 year’s imprisonment; or
 - (ii) the protected witness has contravened a termination condition without reasonable excuse and the contravention is significant; or
 - (iii) the protected witness has withdrawn his or her help mentioned in section 6(1)(a)(i); or
 - (b) the chairperson considers it is no longer appropriate for the protected witness to be included in the program, including, for example, because—
 - (i) the integrity of the program or other witness protection activities of the commission are threatened because of something the protected witness has done or intends to do; or
 - (ii) the protected witness can not be properly protected under the program because of something the protected witness has done or intends to do.
- (2) Before ending the protection, the chairperson must take the steps the chairperson considers are reasonably necessary—
 - (a) to inform the protected witness—
 - (i) why it is proposed to end the protection; and
 - (ii) when the protection will end; and
 - (b) to give the person a reasonable opportunity to state why the protection should not end.
- (3) After considering any response, the chairperson may end the protection on the date stated under subsection (2)(a)(ii) or decide not to end the protection.
- (4) If—

[s 14A]

- (a) the chairperson ends the protection; and
- (b) the person acknowledges that the protection has ended; and
- (c) immediately before the protection ended, the person was receiving financial help under the protection agreement made for the person;

the chairperson may, continue to provide financial help to the person for the time the chairperson considers appropriate.

Part 2A Arrangements for short-term protection

14A Application of pt 2A

- (1) This part applies to a person if—
 - (a) the person is not included, or being considered for inclusion, in the program; but
 - (b) the chairperson considers—
 - (i) the person needs the type of protection available under the program for a specific purpose and for a specific period because of a danger arising from a circumstance mentioned in subsection (2); and
Example—

The chairperson may consider that a person needs protection to safely attend court to give evidence.
 - (ii) it is appropriate to provide the protection.
- (2) For subsection (1)(b)(i), the circumstances are that the person—
 - (a) has helped, or is helping, a law enforcement agency in the performance of its functions; or

-
- (b) has a relationship or association with a person who has helped, or is helping, a law enforcement agency in the performance of its functions.

Example for paragraph (b)—

a family member or an associate of a person who has helped a law enforcement agency in a criminal investigation

- (3) In deciding under subsection (1)(b)(ii) whether it is appropriate to provide the protection, the chairperson—
- (a) may have regard to any of the matters mentioned in section 6(3); and
- (b) must consider whether it would be more appropriate to include the person in the program and, if necessary, make an interim protection agreement with the person.

14B Arrangements for short-term protection

- (1) The chairperson may enter into an arrangement for a specific purpose and for a specific period (a *short-term protection arrangement*) with a person to whom this part applies.
- (2) The arrangement must state the purpose and period for which it is made.
- (3) The arrangement may include conditions of a kind mentioned in section 8 that the chairperson considers appropriate.
- (4) Unless it is sooner ended under section 14E or 14F, the arrangement ends on the day the earlier of the following happens—
- (a) the purpose is completed;
- (b) the period ends.

14C Variation of short-term protection arrangement

- (1) A short-term protection arrangement may be varied—
- (a) by agreement between the chairperson and the person protected under the arrangement (the *short-term protected person*); or

- (b) by the chairperson.
- (2) If the arrangement is varied by agreement, the variation takes effect on the day stated in the agreement or, if no day is stated, the day after the agreement is made.
- (3) However, if the chairperson proposes to vary the arrangement without agreement, the chairperson must, before varying the arrangement—
 - (a) notify the short-term protected person of the proposed variation and the reason for the variation; and
 - (b) give the person a reasonable opportunity to comment on the proposed variation.
- (4) If, after considering any comments, the chairperson still proposes to vary the arrangement, the chairperson may vary the arrangement by notice given to the short-term protected person.
- (5) The variation takes effect on the day after the notice is received by the short-term protected person.

14D Suspension of short-term protection arrangement

- (1) This section applies if the chairperson is satisfied that, because of something a short-term protected person has done or intends to do—
 - (a) the integrity of the program or other witness protection activities of the commission are threatened; or
 - (b) the short-term protected person can not be properly protected under the short-term protection arrangement.
- (2) The chairperson may suspend the short-term protection arrangement for a stated reasonable time by notice given to the short-term protected person.
- (3) This section does not limit section 14F.

14E Voluntary ending of short-term protection arrangement

- (1) A short-term protected person may end the person's short-term protection arrangement by written or oral notice given to the chairperson.
- (2) If the notice is given orally, the chairperson must take reasonable steps to have the notice confirmed in writing.
- (3) If the short-term protected person is unwilling or unable to confirm the notice in writing, the chairperson must satisfy himself or herself that the oral notice was in fact given by the person.
- (4) If the chairperson is satisfied the short-term protected person did give notice of the ending of the arrangement, the chairperson may end the arrangement—
 - (a) if the notice was written—on the day stated in the notice or, if no day is stated, the day after the chairperson receives the notice; or
 - (b) if the notice was given orally—on the day after the chairperson is satisfied the oral notice was in fact given.

14F When chairperson may end short-term protection arrangement

- (1) The chairperson may end a short-term protection arrangement if—
 - (a) the chairperson is satisfied—
 - (i) the short-term protected person has committed an offence against a law of the Commonwealth or a State that is punishable by at least 1 year's imprisonment; or
 - (ii) the short-term protected person has, without reasonable excuse, contravened a condition identified in the arrangement as a condition that, if contravened, may result in the ending of the arrangement; or

- (b) the chairperson considers it is no longer appropriate for the short-term protected person to be protected, including, for example—
 - (i) because—
 - (A) the integrity of the program or other witness protection activities of the commission are threatened because of something the person has done or intends to do; or
 - (B) the person can not be properly protected under the arrangement because of something the person has done or intends to do; or
 - (ii) because the circumstances, mentioned in section 14A(2), for which the arrangement was made have changed or no longer exist.
- (2) Before ending the arrangement, the chairperson must take the steps the chairperson considers are reasonably necessary—
 - (a) to inform the short-term protected person—
 - (i) why it is proposed to end the arrangement; and
 - (ii) when the arrangement will end; and
 - (b) to give the short-term protected person a reasonable opportunity to state why the arrangement should not end.
- (3) After considering any response, the chairperson may end the arrangement on the date stated under subsection (2)(a)(ii) or decide not to end the arrangement.
- (4) If—
 - (a) the chairperson ends the arrangement; and
 - (b) the short-term protected person acknowledges that the arrangement has ended; and
 - (c) immediately before the arrangement ended, the short-term protected person was receiving financial help under the arrangement;

the chairperson may continue to provide financial help to the person for the period the chairperson considers appropriate.

Part 3 Protecting identities

Division 1 Identifying documents

15 Identifying documents

- (1) The chairperson may, in the way the chairperson considers appropriate, require a person responsible for issuing an identity document—
 - (a) to issue a document that is reasonably necessary—
 - (i) to allow a protected witness to establish a new identity; or
 - (ii) to otherwise protect a protected witness; or
 - (iii) to restore a former protected witness's former identity; and
 - (b) to make any necessary entry in a record kept by the person relating to identity documents issued by the person.
- (2) The person must comply with the requirement.
- (3) This section has effect despite any other Act or law.

16 Application for new identity authority

- (1) The chairperson may apply to the authorising officer for a new identity authority for a protected witness.
- (2) The application must be written and include enough information to enable the authorising officer to properly consider whether the protected witness should be given a new identity.

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- (3) The authorising officer may refuse to consider the application until the chairperson gives the authorising officer all the information the authorising office requires about the application in the way the authorising officer requires.

Example—

The authorising officer may require additional information about the application to be given by statutory declaration.

17 Power of authorising officer to issue new identity authority

- (1) This section applies if the authorising officer is satisfied—
- (a) a person is a protected witness; and
 - (b) the protected witness is likely to comply with his or her protection agreement; and
 - (c) it is necessary to change the protected witness's identity to protect the protected witness.
- (2) The authorising officer may issue an authority (*new identity authority*) stating that a named witness protection officer is authorised to create a birth certificate to give the protected witness to whom the certificate relates a new identity.

18 Giving effect to new identity authority

On the production of a new identity authority to the registrar-general, for inspection—

- (a) the officer named in the authority may create a birth certificate showing the new identity for the protected witness; and
- (b) the registrar-general must give the officer the help the officer reasonably requires for the purpose.

19 Effect of creation of birth certificate under new identity authority

If a protected witness is given a new identity by creating a birth certificate under a new identity authority, the new identity is taken, for all purposes, to be the person's actual identity, unless the person's former identity is restored under this Act.

20 Special provisions about concealing identities

- (1) This section applies despite any other Act or law.
- (2) It is lawful for a person responsible for issuing a relevant document to issue, at the request of the chairperson or in accordance with a new identity authority, a document that helps a protected witness conceal his or her actual identity and personal particulars, including, for example, his or her date and place of birth.
- (3) The chairperson, the authorising officer, the person authorised to create a relevant document, the person responsible for issuing the document, and anyone helping to issue the document—
 - (a) does not commit an offence against any Act or law by authorising, issuing or helping to issue the document; and
 - (b) no civil proceeding may be started or continued against the person only because of the issue of the document.
- (4) Also, any contract or agreement made with a person given a new identity under this Act is not invalid only because of the use by the person of the new identity while the person is authorised under this Act to use the new identity.
- (5) In this section—

relevant document means a document that—

 - (a) may lawfully be issued under an Act; and
 - (b) may be used to identify a person or authorise a person to do a lawful act.

20A New identity for witness protection officer

- (1) The chairperson may authorise a witness protection officer to use a new identity if the chairperson is satisfied the use is reasonably necessary—
 - (a) for the proper administration of the program; or
 - (b) to ensure the officer's safety while administering the program.
- (2) If the chairperson gives an authorisation under subsection (1), the chairperson may, in the way the chairperson considers appropriate, require a person responsible for issuing an identity document—
 - (a) to issue a document that is reasonably necessary—
 - (i) to allow the officer to establish a new identity; or
 - (ii) to otherwise protect the officer; or
 - (iii) to restore the officer's former identity; and
 - (b) to make any necessary entry in a record kept by the person relating to identity documents issued by the person.
- (3) The person must comply with the requirement.
- (4) Also, if the chairperson gives an authorisation under subsection (1), section 20 applies as if a reference to a protected witness were a reference to the officer.
- (5) This section has effect despite any other Act or law.

21 Restoration of former identity

- (1) This section applies if—
 - (a) protection given to a person who has been given a new identity under the program has ended; and
 - (b) the chairperson considers it appropriate, having regard to the following, to restore the person's former identity—

- (i) the length of time the person has been known under the new identity;
 - (ii) the circumstances in which the protection was provided;
 - (iii) the effect restoring the person's former identity may have on the person and members of the person's family, including on the safety of those persons.
- (2) The chairperson must—
 - (a) take reasonable steps to notify the person of the proposed action and the reasons for taking the proposed action; and
 - (b) give the person a reasonable opportunity to comment on the proposal.
- (3) If after considering any comments made by the person, the chairperson considers it is still appropriate to restore the person's former identity, the chairperson may take the action the chairperson considers necessary to restore the person's former identity.
- (4) If the chairperson decides to restore the person's former identity, the chairperson must, by notice to the person, require the person to return to the chairperson at a stated place and within a stated time, of at least 14 days, any documents given to the person—
 - (a) to allow the person to establish a new identity; or
 - (b) to give the person a new identity.
- (5) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

22 Particular documents to be destroyed

- (1) This section applies to a document returned to the chairperson under a protection agreement or section 21.

- (2) The chairperson must—
 - (a) destroy the document as soon as practicable after receiving it; or
 - (b) make arrangements with the person responsible for issuing the document for the destruction of the document.
- (3) Subsection (2) applies despite the Public Records Act.

23 Offence in relation to documents

A person for whom a birth certificate is created under this Act must not use or obtain a document issued by the registrar-general based on the person's former identity, unless the person's former identity is restored.

Maximum penalty—60 penalty units.

Division 2 Proceedings involving protected witnesses

Subdivision 1 Preliminary

24 Definitions for div 2

In this division—

corresponding non-disclosure certificate means a certificate given under a provision of a complementary witness protection law that corresponds to section 25(2).

non-disclosure certificate means a certificate given under section 25(2)(a).

party, to a proceeding, means—

- (a) for a criminal proceeding—the prosecutor and each accused person; or

-
- (b) for a civil proceeding—each person who is a party to the proceeding; or
 - (c) for another proceeding—each person who has been given leave to appear in the proceeding.

protected identity, of a protected witness, means—

- (a) for a proceeding in which the protected witness is or may be required to give evidence under the person's new identity—the person's former identity; or
- (b) for a proceeding in which the protected witness is or may be required to give evidence under the person's former identity—the person's new identity.

protected witness means a person who, having been given a new identity under the program, keeps that identity, even if the person is no longer included in the program.

24A Application of div 2 to lawyer of party to a proceeding

For this division—

- (a) anything permitted to be done by a party to a proceeding may be done by the party's lawyer; and
- (b) any requirement to give something to a party to a proceeding is satisfied by giving the thing to the party's lawyer.

Subdivision 2 Proceedings involving protected witnesses

25 Requirement if protected witness becomes a witness in a proceeding

- (1) If a protected witness is or may be required to give evidence in a proceeding in a court, whether under the person's new identity or former identity, the person must notify the chairperson that the person is or may be required to give evidence in the proceeding.

- (2) The chairperson must—
 - (a) give a certificate for the protected witness in relation to the proceeding; and
 - (b) file a copy of the certificate with the court.
- (3) A protected witness commits an offence if the protected witness—
 - (a) knows that, or is reckless as to whether, the protected witness is or may be required to give evidence in a proceeding in a court; and
 - (b) intentionally, knowingly or recklessly fails to notify the chairperson under subsection (1).

Maximum penalty—50 penalty units.

- (4) In this section—

court includes a court, within the meaning of this Act, of another State or the Commonwealth.

26 What non-disclosure certificate must state

- (1) A non-disclosure certificate for a protected witness must state—
 - (a) the person is, or has been, included in the program; and
 - (b) the person has been given a new identity under this Act; and
 - (c) the person has not been convicted of any offence, other than an offence mentioned in the certificate.
- (2) The non-disclosure certificate must not include information that discloses, or may lead to the disclosure of, the protected witness's protected identity or where the person lives.

27 Effect of non-disclosure certificate

- (1) This section applies if a non-disclosure certificate for a protected witness in relation to a proceeding is filed with a court in Queensland.

- (2) Subject to section 27A, in the proceeding—
 - (a) a question must not be asked of a witness, including the protected witness, that may lead to the disclosure of the protected witness's protected identity or where the protected witness lives; and
 - (b) a witness, including the protected witness, can not be required to, and must not, answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the protected witness's protected identity or where the protected witness lives; and
 - (c) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the protected witness's protected identity or where the protected witness lives.
- (3) For this section, a person involved in the proceeding includes the following—
 - (a) the court;
 - (b) a party to the proceeding;
 - (c) a person given leave to be heard or make submissions in the proceeding;
 - (d) a lawyer representing a person mentioned in paragraph (b) or (c), or a lawyer assisting the court in the proceeding;
 - (e) any other officer of the court or person assisting the court in the proceeding;
 - (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.
- (4) The court may disclose to each party to the proceeding—
 - (a) that the court has been given a non-disclosure certificate for a person who may be required to give evidence in the proceeding; and
 - (b) what the certificate states.

[s 27A]

- (5) The court may only disclose what the non-disclosure certificate states in the absence of any jury empanelled for the proceeding and the public.
- (6) If the court makes a disclosure about the non-disclosure certificate under subsection (4), the court must also inform the parties of the effect of the certificate.
- (7) This section applies despite any other Act.

27A Disclosure of protected witness's identity despite certificate

- (1) If a non-disclosure certificate for a protected witness in relation to a proceeding is filed in a court in Queensland, a party to the proceeding, or a lawyer assisting the court in the proceeding, may apply to the court—
 - (a) for leave—
 - (i) to ask a question of a witness, including the protected witness, that may lead to the disclosure of the protected witness's protected identity or where the protected witness lives; or
 - (ii) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the protected witness's protected identity or where the protected witness lives; or
 - (b) for an order requiring a witness, including the protected witness, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the protected witness's protected identity or where the protected witness lives.
- (2) The court may—
 - (a) give leave for the party or lawyer to do anything mentioned in subsection (1)(a); or
 - (b) make an order requiring a witness to do anything mentioned in subsection (1)(b).

- (3) However, the court must not give leave or make an order unless satisfied about each of the following—
 - (a) there is evidence that, if accepted, would substantially call into question the protected witness's credibility;
 - (b) it would be impractical to test properly the credibility of the protected witness without allowing the risk of disclosure of, or disclosing, the protected witness's protected identity or where the protected witness lives;
 - (c) it is in the interests of justice for the protected witness's credibility to be able to be tested.
- (4) If there is a jury in the proceeding, the application must be heard in the absence of the jury.
- (5) Unless the court considers that the interests of justice require otherwise, the court must be closed when—
 - (a) the application is made; and
 - (b) if leave is given or an order is made—the question is asked and answered, the evidence is given, the information is provided or the statement is made.
- (6) The court must make an order suppressing the publication of anything said when—
 - (a) the application is made; and
 - (b) if leave is given or an order is made—the question is asked and answered, the evidence is given, the information is provided or the statement is made.
- (7) Nothing in subsection (6) prevents the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.
- (8) The court may make any other order it considers appropriate to protect the protected witness's protected identity or to prevent the disclosure of where the protected witness lives.
- (9) A person is guilty of an offence if—

[s 27B]

- (a) the person knows that, or is reckless as to whether, an order has been made under subsection (6), (7) or (8); and
- (b) the person intentionally, knowingly or recklessly contravenes the order.

Maximum penalty—2 years imprisonment.

- (10) Subsection (9) does not limit the court's power to punish for contempt.

27B Recognition of corresponding non-disclosure certificate

Sections 27 and 27A apply, with any necessary changes, to a corresponding non-disclosure certificate that is filed with a court in Queensland, as if it were a non-disclosure certificate given under section 25(2)(a).

Division 3 Other provisions about protecting identity

28 Documentation restrictions

The chairperson must not obtain a document for a protected witness representing that the protected witness—

- (a) has a qualification the protected witness does not have; or
- (b) is entitled to a benefit the protected witness would not be entitled to if the protected witness were not included in the program.

29 Special commercial arrangements by chairperson

The chairperson may make a commercial arrangement with a person under which a protected witness may obtain a benefit under a contract or arrangement without revealing his or her former identity.

30 Dealing with rights, obligations and restrictions of protected witness

- (1) The chairperson must take any reasonably practicable steps to ensure—
 - (a) all outstanding rights and obligations of a protected witness are dealt with according to law; and
 - (b) a protected witness complies with all restrictions applying to the protected witness.
- (2) The steps the chairperson may take include the following—
 - (a) providing protection for the protected witness while the protected witness is attending court;
 - (b) notifying a party or possible party to a proceeding that the chairperson will, on behalf of the protected witness, accept process issued by a court, and nominating a witness protection officer for the purpose.

31 Avoidance of obligations by protected witness

- (1) If the chairperson is satisfied a protected witness who has been given a new identity under the program is using the new identity to avoid obligations incurred or restrictions imposed before the new identity was established, the chairperson must give the protected witness notice of the fact.
- (2) The notice must also state that, unless the protected witness satisfies the chairperson the obligations will be dealt with according to law or the restrictions will be complied with, the chairperson will take the action the chairperson considers reasonably necessary to ensure the obligations are dealt with or the restrictions are complied with.
- (3) The action may include informing a person who is seeking to enforce rights against the protected witness of the details of any real or personal property owned by the protected witness under his or her former identity.

32 Payments under witness protection program

- (1) The chairperson may certify in writing that all or part of an amount paid to a person represents payments made to the person under the witness protection program.
- (2) The amount can not be confiscated or restrained, and can not be applied in payment of pecuniary penalties, under the *Criminal Proceeds Confiscation Act 2002*.

33 Application of s 16 to approved authorities

- (1) This section applies if—
 - (a) a person is included in a witness protection program under a complementary witness protection law; and
 - (b) the chief executive officer of an approved authority considers it is necessary for the chief executive officer to apply to the authorising officer for a new identity authority under this Act.
- (2) Section 16 applies to the person as if—
 - (a) the person were included in the witness protection program under this Act; and
 - (b) the chief executive officer were the chairperson.
- (3) A reference in this part to a protection agreement is taken to include a reference to a document that is the equivalent of a protection agreement under a complementary witness protection law.

34 Effect of issue of birth certificate under complementary witness protection law

- (1) This section applies if a person is given a new identity under a complementary witness protection law by issuing a document equivalent to a birth certificate under the complementary witness protection law.
- (2) While the person is in Queensland, the new identity is taken, for all purposes, to be the person's actual identity, unless the

person's former identity is restored under the complementary witness protection law.

Part 4 Miscellaneous

35 Development of training programs etc.

- (1) For giving effect to the witness protection program, the chairperson—
 - (a) must develop appropriate training programs and ensure persons involved in providing witness protection are appropriately trained to perform the duties of witness protection; and
 - (b) must develop ways of providing adequate witness protection to persons generally or in particular cases; and
 - (c) must keep an accurate register of—
 - (i) the factual particulars and assumed particulars of persons who have assumed new identities under the witness protection program; and
 - (ii) non-disclosure certificates given under this Act; and
 - (d) may do anything else the chairperson considers reasonably necessary to give effect to the program.
- (2) A register mentioned in subsection (1)(c) may form part of another register kept by the chairperson under the *Crime and Corruption Act 2001*.

36 Offence of disclosure about particular persons or the program

- (1) A person must not knowingly, directly or indirectly, disclose or record information about a relevant person or the witness protection program that may threaten—
- (a) the security of a relevant person; or
 - (b) the integrity of the program or other witness protection activities of the commission.

Maximum penalty—10 years imprisonment.

- (2) Subsection (1) does not apply to a disclosure or record that—
- (a) is necessary to provide witness protection; or
 - (b) is made with the chairperson's consent; or
 - (c) is otherwise required for the administration of this Act or the *Crime and Corruption Act 2001*; or
 - (d) is either—
 - (i) permitted by leave given under section 27 before the commencement of section 27A (as inserted by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*); or
 - (ii) permitted by leave, or required by an order, given under section 27A.

- (3) In this section—

disclose information, includes allow access to the information.

relevant person means a person who is, or has been—

- (a) included in the witness protection program; or
- (b) protected under an interim protection agreement; or
- (c) protected under a short-term protection arrangement; or
- (d) a witness protection officer for whom an authorisation has been given under section 20A(1).

37 Offence of disclosure by prescribed persons

- (1) A prescribed person must not, directly or indirectly, disclose or communicate to another person—
- (a) that the prescribed person or someone else known to the prescribed person has—
 - (i) undergone assessment for inclusion in the program; or
 - (ii) signed a protection agreement; or
 - (iii) undergone assessment for an interim protection agreement or short-term protection arrangement; or
 - (iv) signed an interim protection agreement or entered into a short-term protection arrangement; or
 - (b) details of a protection agreement signed by the prescribed person or someone else known to the prescribed person; or
 - (c) details of an interim protection agreement signed by the protected person or someone else known to the protected person; or
 - (d) details of a short-term protection arrangement entered into by the protected person or someone else known to the protected person; or
 - (e) information about anything done under this Act by—
 - (i) a person who was the chairperson of the Criminal Justice Commission under the *Criminal Justice Act 1989* or an officer of the witness protection division of that commission; or
 - (ii) the chairperson or a witness protection officer; or
 - (f) information gained by the person because of something done under this Act and about—
 - (i) a person who was an officer of the witness protection division of the Criminal Justice

Commission under the *Criminal Justice Act 1989*;
or

(ii) a witness protection officer.

Maximum penalty—1 year's imprisonment.

- (2) Subsection (1) does not apply to a disclosure or communication—
- (a) authorised by the chairperson; or
 - (b) necessary to give effect to a new identity authority; or
 - (c) that is either—
 - (i) permitted by leave given under section 27 before the commencement of section 27A (as inserted by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*); or
 - (ii) permitted by leave, or required by an order, given under section 27A; or
 - (d) to the parliamentary committee.
- (3) In this section—

prescribed person means—

- (a) a protected witness; or
- (b) a former protected witness; or
- (c) a person who has undergone assessment for inclusion in the program; or
- (d) a person who is, or has been, given protection under section 9 or part 2A; or

Note—

Section 9 deals with interim protection and part 2A deals with arrangements for short-term protection.

- (e) a person who has undergone assessment for protection under section 9 or part 2A.

38 Certain persons not to be required to disclose information

- (1) This section applies to a person (*relevant person*) who is or has been—
 - (a) a member of the commission, including the chairperson; or
 - (b) an officer of the commission; or
 - (c) the registrar-general; or
 - (d) a person employed in the administration of the *Births, Deaths and Marriages Registration Act 2003*; or
 - (e) the chief executive officer of an approved authority; or
 - (f) a member of the staff of an approved authority; or
 - (g) an authorising officer; or
 - (h) an officer of an entity providing services to or for a protected witness at the request of the chairperson; or
 - (i) a member of the parliamentary committee under the *Crime and Corruption Act 2001*; or
 - (j) the parliamentary commissioner under the *Crime and Corruption Act 2001*.
- (2) In a proceeding, a relevant person can not be required to produce a document or to disclose anything relating to the performance of duties or the protection of persons under this Act, unless—
 - (a) a District Court judge or Supreme Court judge otherwise orders; or
 - (b) the proceeding relates to an offence against this Act.
- (3) Subsection (2) does not prevent a member or officer of the commission producing documents or disclosing information under an approval given by the chairperson for the proceeding.

39 Restriction on issue of Queensland identity documents

A person responsible for issuing a Queensland identity document must not issue an identity document for a person included in a witness protection program being conducted by the Commonwealth or another State unless the document is issued under an arrangement under section 40.

40 Arrangements with approved authorities

- (1) The chairperson may make an arrangement with the chief executive officer of an approved authority about any matter relating to the administration of a complementary witness protection law.
- (2) Without limiting subsection (1), the arrangement—
 - (a) may provide for the exercise by the chairperson of functions conferred under the complementary witness protection law; and
 - (b) must include procedures under which the approved authority shares with the State the costs incurred under the arrangements; and
 - (c) may provide for the approved authority to make available to the chairperson the statements, transcripts of evidence and other documents necessary to help the chairperson decide—
 - (i) whether to provide protection or help to a person under this Act; and
 - (ii) what protection and help are appropriate for a person.

41 Approved authorities

A regulation may authorise the chief executive officer of an approved authority to exercise powers conferred on the chairperson under this Act, other than under section 33, for an arrangement made under section 40 or the corresponding provision of a complementary witness protection law.

42 Arrangements for Commonwealth identity documents

The Minister may, for the State, enter into an arrangement with the Minister responsible for the administration of the *Witness Protection Act 1994* (Cwlth) about the issue of Commonwealth identity documents within the meaning of that Act.

43 Providing information to approved authorities

- (1) This section applies if—
 - (a) a person has been given a new identity or relocated under this Act; and
 - (b) any of the following entities notifies the chairperson that the person is under investigation for, has been arrested for, or has been charged with, a serious offence—
 - (i) an approved authority;
 - (ii) the commissioner of the police service;
 - (iii) the senior executive officer (crime) under the *Crime and Corruption Act 2001*.
- (2) The chairperson may do any 1 or more of the following things—
 - (a) release to the entity notifying the chairperson under subsection (1)(b) (*notifying entity*) the person's new identity or location;
 - (b) provide the notifying entity with the person's criminal history and fingerprints;
 - (c) if the chairperson considers it appropriate in the circumstances—
 - (i) release to the notifying entity information relating to the person; or
 - (ii) allow officers of the notifying entity to interview witness protection officers in relation to the protected witness.
- (3) In this section—

serious offence means an offence against a law of Queensland, the Commonwealth, or another State, that is punishable by at least 1 year's imprisonment.

44 Immunity from legal proceedings for exercise of functions under Act

- (1) A person is not liable to any action, suit or proceedings for an act done or omitted to be done by the person in good faith and without negligence in the exercise or purported exercise of a function conferred by this Act.
- (2) If subsection (1) prevents a liability attaching to a person, liability attaches instead to the State.
- (3) Subsection (2) does not apply to an officer of an approved authority.

45 Access to registers

A person other than the following is not entitled to inspect a register kept under this Act—

- (a) the chairperson;
- (b) a commissioner under the *Crime and Corruption Act 2001*;
- (c) a senior executive officer under the *Crime and Corruption Act 2001*;
- (d) a witness protection officer;
- (e) the parliamentary commissioner.

46 Notifying persons of decisions

- (1) This section applies if the chairperson is required under this Act to notify a person about the person's involvement in the witness protection program.
- (2) The chairperson may notify the person of the decision in the way the chairperson considers appropriate.

Example for subsection (2)—

The chairperson may arrange for the person to be shown a written notice stating the decision and asked to sign an acknowledgement of having read and understood the notice.

- (3) A notice to be given to a minor may be given to a parent or guardian of the minor.
- (4) A notice to be given to an adult with impaired capacity may be given to—
 - (a) a person who may exercise powers in relation to personal matters for the adult under a power of attorney under the *Powers of Attorney Act 1998*; or
 - (b) a guardian for the adult under the *Guardianship and Administration Act 2000*.

47 Special provision about minors and adults with impaired capacity

- (1) This section applies to a notice, agreement, acknowledgement or another document to be signed by a protected witness who is a minor or a person with impaired capacity.
- (2) A document to be signed by a minor may be signed by a parent or guardian of the minor.
- (3) A document to be signed by an adult with impaired capacity may be signed by—
 - (a) a person who may exercise powers in relation to personal matters for the adult under a power of attorney under the *Powers of Attorney Act 1998*; or
 - (b) a guardian of the adult under the *Guardianship and Administration Act 2000*.

48 Delegation

- (1) The chairperson may delegate powers of the chairperson under this Act to an appropriately qualified witness protection officer.

- (2) However, the chairperson must not delegate—
- (a) the power to decide to offer protection other than interim protection or protection under a short-term protection arrangement; or
 - (b) the power to end protection—
 - (i) without a protected witness’s agreement; or
 - (ii) after being given oral notice of a protected witness’s withdrawal from the program; or
 - (c) the power to give a certificate under section 25(2)(a).
- (3) In this section—
- appropriately qualified*, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

49 Approval of forms

The chairperson may approve forms for use under this Act.

50 Proceedings

Proceedings for an offence against this Act may be taken in a summary way under the *Justices Act 1886*.

51 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 5 Transitional provisions

Division 1 Transitional provisions for Act No. 56 of 2000

53 Existing witness protection program

On the commencement of this section, a person included in the witness protection program under the *Criminal Justice Act 1989* immediately before the commencement is taken to be included in the witness protection program under this Act.

54 Existing memorandum of understanding

- (1) On the commencement of this section, a document signed by a person included in the witness protection program under the *Criminal Justice Act 1989* and purporting to be a memorandum of understanding that is in force is taken to be a protection agreement signed by a protected witness under this Act.
- (2) If the memorandum of understanding does not include a condition to the effect of the mandatory condition, the memorandum is taken to include the mandatory condition.

Division 2 Transitional provisions for Cross-Border Law Enforcement Legislation Amendment Act 2005

55 Definitions for div 2

In this division—

amendment Act means the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

commencement day means the day on which part 4 of the amendment Act commences.

former, of a provision mentioned in this division, means the provision to which the reference relates is a provision of the pre-amended Act.

new, of a provision mentioned in this division, means the provision to which the reference relates is a provision of the post-amended Act.

pre-amended Act means this Act as in force immediately before the commencement day.

post-amended Act means this Act as in force from the commencement day.

56 Existing non-disclosure certificates

- (1) This section applies to a non-disclosure certificate given to an entity under former section 24(2) (an *existing non-disclosure certificate*).
- (2) The existing non-disclosure certificate is taken to be a non-disclosure certificate given, and filed with the entity, under new section 25(2).
- (3) The person in relation to whom the existing non-disclosure certificate was given is taken to be a protected witness under new part 3, division 2.
- (4) If, before the commencement, the entity has given leave, under former section 27(1), to a person to ask questions of a witness or make a statement, the leave is taken to be leave given to the person under new section 27A(2)(a).

57 Provision about notice under pre-amended Act

- (1) This section applies if, before the commencement day—
 - (a) a person has notified the chairperson, under former section 24(1), that the person is or may be required to give evidence; and
 - (b) the chairperson has not given an entity a non-disclosure certificate relating to the person under former section 24(2).

- (2) The person is taken to be a protected witness who has notified the chairperson under new section 25(1).

Schedule 2 Dictionary

section 3

approved authority means—

- (a) the Australian Federal Police; or
- (b) a police force or service of another State; or
- (c) another entity—
 - (i) established under a law of the Commonwealth or another State; and
 - (ii) authorised under the law of the Commonwealth or other State to investigate or inquire into criminal conduct, misconduct or corruption; and
 - (iii) declared by regulation to be an approved authority for this Act.

approved form see section 49.

authorising officer means the independent member of the controlled operations committee under the *Police Powers and Responsibilities Act 2000*.

chairperson means chairperson of the commission.

chief executive officer, of an approved authority, means—

- (a) for a police force or service of another State or the Commonwealth, the commissioner of the police force or service; or
- (b) for another entity, the chief executive officer of the entity, however described.

commission means the Crime and Corruption Commission.

commission of inquiry means a commission of inquiry under the *Commissions of Inquiry Act 1950*.

complementary witness protection law means a law of the Commonwealth or another State declared by regulation to be a complementary witness protection law for this Act.

corresponding non-disclosure certificate, for part 3, division 2, see section 24.

court includes any tribunal or person authorised by law or consent of parties to receive evidence.

criminal history, of a protected witness, means the protected witness's criminal history under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

former identity, of a person given a new identity under this Act or a complementary witness protection law, means the identity the person had before being given the new identity.

identity document means a document, other than a birth certificate, that identifies or helps identify a person.

impaired capacity means capacity that is impaired capacity under the *Guardianship and Administration Act 2000*.

interim protection agreement see section 9.

law enforcement agency means—

- (a) the commission; or
- (b) a commission of inquiry; or
- (d) the police service; or
- (e) the Australian Federal Police; or
- (f) a police force or service of another State; or
- (g) an entity declared under a regulation to be a law enforcement agency for this Act.

mandatory condition see section 8.

new identity authority see section 17.

non-disclosure certificate see section 24.

other witness protection activities, of the commission, means activities of the commission under this Act relating to interim protection agreements or short-term protection arrangements.

party, for part 3, division 2, see section 24.

proceeding means any civil, criminal or other proceeding or inquiry, reference or examination in which by law or consent of parties evidence is or may be given, and includes an arbitration.

Examples—

- an examination of witnesses under the *Justices Act 1886* in relation to an indictable offence
- an inquest under the *Coroners Act 2003*
- a hearing under the *Crime and Corruption Act 2001*
- a hearing under a commission of inquiry
- an investigation by the parliamentary commissioner under the *Crime and Corruption Act 2001*

program means the witness protection program.

protected identity, for part 3, division 2, see section 24.

protected witness—

- (a) for part 3, division 2, see section 24; or
- (b) otherwise—means a person who is included in a witness protection program.

protection agreement see section 7.

Public Records Act means—

- (a) until the commencement of the *Public Records Act 2000*, section 14—the *Libraries and Archives Act 1988*; or
- (b) from the commencement of the *Public Records Act 2000*, section 14—the *Public Records Act 2000*.

registrar-general means the registrar under the *Births, Deaths and Marriages Registration Act 2003*.

relevant information means information about—

- (a) a person's former identity; or
- (b) a person's location; or
- (c) a person's inclusion or involvement in the program.

short-term protected person see section 14C(1).

short-term protection arrangement see section 14B(1).

termination condition means a condition identified in a protection agreement as a condition that, if contravened, may result in the ending of a person's involvement in the witness protection program.

witness protection means protection of a person's personal safety, including, for example, by giving the person a new identity, relocating the person or helping the person find new employment.

witness protection officer means an officer of the commission appointed by the chairperson to administer the witness protection program.

witness protection program see section 5.