

Passed by both Houses



New South Wales

Witness Protection Amendment Bill 2024

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Witness Protection Act 1995 No 87	3
Schedule 2	Amendment of Surveillance Devices Act 2007 No 64	12

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2024



New South Wales

Witness Protection Amendment Bill 2024

Act No _____, 2024

An Act to amend the *Witness Protection Act 1995* to provide additional protection for and assistance to participants and former participants in the witness protection program and to provide for the disclosure and secure management of certain information relating to the program; to make consequential amendments to the *Surveillance Devices Act 2007*; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Witness Protection Amendment Act 2024*.

2 Commencement

This Act commences as follows—

- (a) for Schedule 1[1], [8], [21], [22], [26], [27], [33] and [53]—on the earlier of the following days—
 - (i) a day or days to be appointed by proclamation,
 - (ii) the day that is 12 months after the date of assent to this Act,
- (b) otherwise—on the date of assent to this Act.

Schedule 1 Amendment of Witness Protection Act 1995 No 87

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

agency—see section 4A.

identity record means a document that may assist in identifying a person, other than a document forming part of the Births, Deaths and Marriages Register.

Note— The Births, Deaths and Marriages Register is the register maintained under the *Births, Deaths and Marriages Registration Act 1995*, section 43.

interstate entity means a person or body in a State or Territory other than New South Wales.

[2] Section 3(1)

Insert in alphabetical order—

communications includes any transmission of information.

document includes the following—

- (a) a biometric record,
- (b) an educational record,
- (c) a legal record,
- (d) a medical record.

former participant, for Part 3—see section 13A.

Inspector has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

register of deaths means the register maintained under the *Births, Deaths and Marriages Registration Act 1995* in which deaths are registered.

[3] Section 3(1), definition of “participant”

Insert “, whether temporarily or otherwise” after “witness protection program”.

[4] Section 3(1), definition of “witness protection order”

Omit “under Part 3”. Insert instead “referred to in section 15”.

[5] Section 4, heading

Omit the heading. Insert instead—

4 Meaning of “witness”

[6] Section 4(1)(a)(ia)

Insert after section 4(1)(a)(i)—

- (ia) proceedings relating to an application for a serious crime prevention order under the *Crimes (Serious Crime Prevention Orders) Act 2016*, or

[7] Section 4(2)

Omit “his or her relationship to, or association with, a person to whom subsection (1) applies”.

Insert instead “the person’s association with a person to whom subsection (1) applies”.

[8] Sections 4A and 4B

Insert after section 4—

4A Meaning of “agency”

- (1) For this Act, an *agency* means the following—
 - (a) a government sector agency within the meaning of the *Government Sector Employment Act 2013*,
 - (b) a statutory body representing the Crown,
 - (c) a State owned corporation or subsidiary of a State owned corporation,
 - (d) a local government authority,
 - (e) a court or tribunal,
 - (f) a body, whether incorporated or unincorporated, established for a public purpose under an Act or statutory instrument,
 - (g) a person or body prescribed by the regulations to be an agency for this Act.
- (2) In this section—

local government authority means the following under the *Local Government Act 1993*—

 - (a) a council,
 - (b) a county council,
 - (c) a joint organisation.

4B Legal personality and responsibilities of heads of agencies and interstate entities

- (1) If this Act confers or imposes a function on an agency or interstate entity that the agency or entity is incapable of exercising because the agency or entity is not a person, the function is taken to be conferred or imposed on the head of the agency or entity.
- (2) In this section—

head, of an agency or interstate entity, means the following—

 - (a) for a government sector agency—the head of the agency under the *Government Sector Employment Act 2013*,
 - (b) for another agency or an interstate entity—
 - (i) the individual who constitutes the agency or entity, or
 - (ii) the chief executive officer of the agency or entity, or
 - (iii) the principal officer of the agency or entity, or
 - (iv) the person responsible for managing the affairs of the agency or entity.

[9] Section 5 Witness protection program

Omit “safety and welfare of a witness” from section 5(1).

Insert instead “safety and welfare of a participant”.

[10] Sections 5(2)(a)–(e1) and (g), 14(a) and (b) and 38

Omit “witness” wherever occurring. Insert instead “participant”.

[11] Section 7 Assessing witness for inclusion in witness protection program

Omit “relationship to” from section 7(1)(d). Insert instead “association with”.

[12] Section 8 Memorandum of understanding

Insert after section 8(2)(c1)—

- (c2) the recording or monitoring of the participant’s communications with another person, other than a person referred to in section 9A(2)(a)–(d),

[13] Section 9A

Insert after section 9—

9A Recording and monitoring of communications

- (1) This section applies if a memorandum of understanding in relation to a participant contains a provision of the kind referred to in section 8(2)(c2).
- (2) The Commissioner of Police may record or monitor the participant’s communications with another person, other than the following persons—
 - (a) the participant’s legal representative,
 - (b) a member of staff of the Commission,
 - (c) the Inspector,
 - (d) a member of the NSW Police Force who is exercising functions in relation to police misconduct investigations.
- (3) The following must not be used in legal proceedings against a person who is not the participant—
 - (a) a recording obtained in accordance with the memorandum of understanding,
 - (b) a transcript or report of the recording.
- (4) Subsection (2) does not authorise the Commissioner of Police to intercept communications passing over a telecommunications system.

[14] Section 10, heading

Insert “or termination” after “full assessment”.

[15] Section 11 Cessation of protection and assistance

Insert at the end of section 11(2)(c)—

or

- (d) the Commissioner is satisfied—
 - (i) the participant has been sentenced to full-time detention after the participant’s inclusion in the witness protection program, and
 - (ii) the sentence limits the Commissioner’s ability to provide adequate protection to the participant,

[16] Section 11(3)

Insert after section 11(2)—

- (3) In this section—
full-time detention has the same meaning as in the *Crimes (Sentencing Procedure) Act 1999*.

[17] Part 3, heading

Omit “**witnesses**”. Insert instead “**participants**”.

[18] Section 13A

Insert before section 14—

13A Definition

In this part—

former participant means a person—

- (a) provided with a new identity under the witness protection program, and
- (b) for whom protection and assistance under the witness protection program have been terminated.

[19] Section 14 Identifying documents

Omit “a former” from section 14(c). Insert instead “a”.

[20] Sections 14(c), 21, heading, (3) and (5)(a), 23(2), 24, 28 and 30(3)

Omit “former identity” wherever occurring. Insert instead “previous identity”.

[21] Section 15 Application for court order

Omit section 15(1) and (1A). Insert instead—

- (1) An applicant may apply to the Supreme Court for an order authorising a specified person or class of persons to do the following—
 - (a) make a new entry in the following registers in relation to a participant—
 - (i) the register of births,
 - (ii) the register of deaths,
 - (iii) the register of marriages,
 - (b) in relation to an identity record of a participant held by an agency to which the order relates—
 - (i) remove the identity record, or
 - (ii) create a new identity record in the participant’s new identity,
 - (c) issue a document of a kind previously issued to the participant in the participant’s new identity.
- (1A) An application under subsection (1)(b)(i) must specify the type of identity record to be removed.

[22] Section 15(3)

Insert after section 15(2)—

(3) In this section—

applicant means—

- (a) the Commissioner of Police, or
- (b) the designated authority for a complementary witness protection law.

[23] Section 17 Power of Supreme Court to make order

Omit “the application as a witness” from section 17(a).

Insert instead “the application as a participant”.

[24] Section 17(a)(ii)

Omit “his or her relationship to, or association with, a person to whom subparagraph (i) applies”.

Insert instead “the person’s association with a person to whom subparagraph (i) applies,”

[25] Section 17(c)

Omit the paragraph. Insert instead—

- (c) the person has entered into—
 - (i) a memorandum of understanding under section 8, or
 - (ii) an interim memorandum of understanding under sections 8 and 10, or
 - (iii) for an order relating to an application made by the designated authority for a complementary witness protection law—a memorandum of understanding under the corresponding provision of that law, and

[26] Section 17(e)

Omit “understanding.” from section 17(d). Insert instead—

understanding, and

- (e) for an order to remove an identity record under section 15(1)(b)(i)—there is a risk of the identity record linking the participant’s previous identity and new identity.

[27] Section 18 Effect of witness protection order

Omit “of the kind referred to in section 15 (1) (a) or (a1)”.

Insert instead “referred to in section 15(1)(a)”.

[28] Section 18(2)

Insert at the end of the section—

- (2) A witness protection order may be used to change the identity of the participant to whom the order relates—
 - (a) if the participant consents, and
 - (b) not more than twice.

[29] Section 19, heading

Insert “in register of births, deaths or marriages” after “this Act”.

[30] Section 19(1A)

Insert after section 19(1)—

- (1A) An applicant may apply to the Supreme Court for an order directing the Registrar of Births, Deaths and Marriages to cancel an entry made under this Act in a register of births, deaths or marriages.

[31] Section 19(2)

Omit “on the application of the Commissioner of Police or the designated authority for a complementary witness protection law directing that the entry be cancelled”.

Insert instead “referred to in subsection (1A)”.

[32] Section 19(3)

Insert after section 19(2)—

- (3) In this section—
- applicant* means—
- (a) the Commissioner of Police, or
 - (b) the designated authority for a complementary witness protection law.

[33] Sections 19A and 19B

Insert after section 19—

19A Identity records held by interstate entities

- (1) This section applies if—
- (a) an interstate entity holds an identity record of a participant, and
 - (b) there is a risk of the identity record linking the participant's previous identity and new identity.
- (2) The Commissioner of Police may ask the interstate entity to do the following—
- (a) remove the identity record,
 - (b) create a new identity record in the participant's new identity.

19B Removed identity records to be kept on request

- (1) This section applies if an authorised person or interstate entity removes an identity record in accordance with—
- (a) for an authorised person—a witness protection order, or
 - (b) for an interstate entity—a request made under section 19A.
- (2) The authorised person or interstate entity may ask the Commissioner of Police to keep the removed identity record for the purposes of restoring a previous identity.
- (3) The Commissioner of Police must comply with a request made under subsection (2).
- (4) The regulations may prescribe requirements in relation to the making of a request under this section.
- (5) In this section—
- authorised person* means a person authorised by a witness protection order to remove an identity record.

[34] Section 21(1)

Omit the subsection. Insert instead—

- (1) The Commissioner of Police may, if the Commissioner considers it appropriate in the circumstances, decide to take action to restore a former participant's previous identity.

[35] Section 23 Information not to be disclosed

Omit “make a record of, disclose, or communicate to another person” from section 23(1).
Insert instead “record or disclose”.

[36] Sections 23(1)(b) and 33(2)(b)

Insert “or the Inspector” after “Commission” wherever occurring.

[37] Section 24(6), definition of “participant”

Omit the definition. Insert instead—

participant includes a former participant.

[38] Section 31A Definitions

Omit “in the context of relevant proceedings in which the protected person is or may be required to give evidence” wherever occurring in the definition of *protected identity*.

Insert instead “if the protected person is involved in a relevant proceeding”.

[39] Section 31A, definition of “relevant proceeding”, paragraph (d)

Omit “*Police Integrity Commission Act 1996*”.

Insert instead “*Law Enforcement Conduct Commission Act 2016*”.

[40] Section 31B, heading

Omit “a witness”. Insert instead “involved”.

[41] Section 31B(1) and (1A)

Omit section 31B(1). Insert instead—

(1) This section applies if a protected person becomes involved in a relevant proceeding before a court, whether under the person’s new identity or previous identity, where the person’s identity is in issue.

(1A) The protected person must notify the Commissioner of Police of the person’s involvement in the proceeding as soon as practicable after becoming involved.
Maximum penalty—50 penalty units.

[42] Section 31B(2)

Insert “in accordance with any requirements prescribed by the regulations” after “the protected person”.

[43] Section 31B(2A)

Insert after section 31B(2)—

(2A) Subject to the regulations, a non-disclosure certificate may be given to the court—

(a) before the relevant proceeding commences, and

(b) in the absence of a party to the proceeding.

[44] Section 31B(3)(a)

Omit “a person who may be required to give evidence in the proceeding”.

Insert instead “a person involved in the proceeding”.

[45] Section 31C What non-disclosure certificate must state

Omit “certificate.” from section 31C(1)(c). Insert instead—
certificate, and

- (d) that the person is entitled to give evidence by audio visual link under section 31G(1), subject to—
 - (i) a court order under section 31G(2), and
 - (ii) section 31G(5), and
- (e) other information about the person the Commissioner of Police considers necessary or appropriate to include.

[46] Section 31C(2)

Insert “, unless the Commissioner of Police is satisfied the inclusion of the information is necessary or appropriate” after “to be revealed”.

[47] Section 31E Court may grant leave to disclose relevant information

Omit “on application made to it” from section 31E(1).

Insert instead “on the application of a party or of its own motion”.

[48] Section 33 Offence—disclosure by participants and others

Omit section 33(1). Insert instead—

- (1) A person must not, either directly or indirectly, disclose or record—
 - (a) the fact that the person, or a person with whom the person is associated, has entered into a memorandum of understanding, or
 - (b) details of a memorandum of understanding, or
 - (c) the fact that the person is or was a participant in the witness protection program, or
 - (d) confidential information relating to the witness protection program.Maximum penalty—imprisonment for 5 years.
- (1A) Subsection (1)(c) does not apply to a person if—
 - (a) the person has a reasonable excuse for recording or disclosing the fact, and
 - (b) the reasonable excuse relates to a health or safety risk.
- (1B) For subsection (1A)(a) and (b), the onus of proof lies with the person seeking to rely on the exemption.

[49] Section 33(2)

Omit “communication”. Insert instead “recording”.

[50] Section 33(3)

Omit the subsection. Insert instead—

- (3) In this section—
 - confidential information*, in relation to the witness protection program, means the following—
 - (a) information relating to a thing done by the Commissioner of Police or another member of the NSW Police Force under this Act,
 - (b) information about how the witness protection program operates,
 - (c) information relating to the identity of a member of the NSW Police Force who is or has been involved in the witness protection program.
 - person* means the following—

- (a) a participant,
- (b) a former participant,
- (c) a witness who is being, or has been, assessed for inclusion in the witness protection program.

[51] Section 34 Certain persons not to be required to disclose information

Insert after section 34(1)(e)—

- (f) the Inspector, or

[52] Section 38 Provision of information to approved authorities

Insert after section 38(2)—

- (3) In this section—
participant includes a former participant.

[53] Section 38A

Insert after section 38—

38A Confidential documents to be kept and handled securely

- (1) This section applies if an agency is in possession of confidential documents.
- (2) The agency must take reasonable steps to ensure the confidential documents are kept and handled securely in accordance with—
 - (a) the principles referred to in the *Privacy and Personal Information Protection Act 1998*, section 12, and
 - (b) any requirements prescribed by the regulations.
- (3) In this section—
confidential document means a document containing information relating to the witness protection program.

[54] Section 45 Special provisions for former participants in NSW Police Witness Protection Plan

Omit “his or her relationship with, or association with,” from section 45(a).

Insert instead “the person’s association with”.

Schedule 2 Amendment of Surveillance Devices Act 2007 No 64

[1] Section 7 Prohibition on installation, use and maintenance of listening devices

Omit “officer.” from section 7(2)(g). Insert instead—

officer,

- (h) the installation, use or maintenance of a listening device in accordance with the *Witness Protection Act 1995* or an instrument made under that Act.

[2] Section 10 Prohibition on installation, use and maintenance of data surveillance devices

Omit “Commonwealth.” from section 10(2)(b). Insert instead—

Commonwealth,

- (c) the installation, use or maintenance of a data surveillance device in accordance with the *Witness Protection Act 1995* or an instrument made under that Act.