



New South Wales

Witness Protection Amendment Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to—

- (a) amend the *Witness Protection Act 1995* (**the Act**) to—
 - (i) provide additional protection for and assistance to participants and former participants in the witness protection program, and
 - (ii) provide for the disclosure and secure management of certain information relating to the program, and
 - (iii) make other minor administrative and consequential amendments, and
- (b) make consequential amendments to the *Surveillance Devices Act 2007*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Witness Protection Act 1995 No 87

Schedule 1[1] and [2] insert definitions related to and consequent on other amendments in Schedule 1.

Schedule 1[3] clarifies that the definition of *participant* includes a witness included in the witness protection program on a temporary basis. **Schedule 1[25]** makes a consequential amendment.

Schedule 1[4] clarifies that a witness protection order is an order referred to in section 15.

Schedule 1[6] extends the definition of *witness* to include a person who has given, or agreed to give, evidence for the Crown in proceedings relating to an application for a serious crime prevention order under the *Crimes (Serious Crime Prevention Orders) Act 2016*. **Schedule 1[5]** makes a minor change to the heading to section 4.

Schedule 1[7] clarifies that the definition of *witness* includes a person who, because of the person's association with a person to whom section 4(1) applies, may require protection under the Act. **Schedule 1[11], [24] and [54]** make consequential amendments.

Schedule 1[8] inserts proposed sections 4A and 4B. Proposed section 4A defines *agency* and *local government authority*. Proposed section 4B provides that a function conferred or imposed on an agency or interstate entity is taken to be conferred or imposed on the head of the agency or entity, and defines *head* of an agency or interstate entity for the proposed section.

Schedule 1[9], [10], [17] and [23] replace certain references to witnesses with references to participants. **Schedule 1[52]** makes a consequential amendment.

Schedule 1[12] and [13] enable the Commissioner of Police to record or monitor participants' communications with persons other than the persons referred to in proposed section 9A(2)(a)–(d).

Schedule 1[14] clarifies that temporary protection under the Act means temporary protection pending a full assessment or termination.

Schedule 1[15] provides for an additional circumstance in which the Commissioner of Police may terminate protection and assistance under the witness protection program. **Schedule 1[16]** makes a consequential amendment.

Schedule 1[18] defines *former participant* for Part 3. **Schedule 1[19], [34] and [37]** make consequential amendments.

Schedule 1[20] replaces references to “former identity” with references to “previous identity”.

Schedule 1[21] provides that the Commissioner of Police, or the designated authority for a complementary witness protection law, may apply for a witness protection order authorising the removal or creation of identity records. Currently, an order only authorises the making of an entry in certain registers maintained under the *Births, Deaths and Marriages Registration Act 1995*, section 43. **Schedule 1[26]** ensures that an order to remove an identity record of a participant may only be made if the Supreme Court is satisfied that there is a risk of the identity record linking the participant's previous identity and new identity. **Schedule 1[22], [27] and [29]** make consequential amendments.

Schedule 1[28] enables a witness protection order to be used, with the consent of the participant to whom the order relates, to change the participant's identity not more than twice.

Schedule 1[30] clarifies that the Commissioner of Police, or the designated authority for a complementary witness protection law, may apply for an order directing the Registrar of Births, Deaths and Marriages to cancel an entry made under the Act. **Schedule 1[31] and [32]** make consequential amendments.

Schedule 1[33] inserts proposed sections 19A and 19B. Proposed section 19A provides that the Commissioner of Police may ask an interstate entity to remove or create an identity record if there is a risk of an identity record held by the entity linking a participant's previous identity and new identity. Proposed section 19B applies if a person authorised by a witness protection order or an interstate entity has removed an identity record and enables the person or entity to ask the Commissioner of Police to keep the removed identity record for the purposes of restoring a previous identity. The proposed section also provides that the Commissioner must comply with the request.

Schedule 1[36] enables the recording or disclosure of information for the purposes of an investigation by the Inspector of the Law Enforcement Conduct Commission. **Schedule 1[51]** makes a consequential amendment.

Schedule 1[39] replaces a reference to the *Police Integrity Commission Act 1996* with a reference to the *Law Enforcement Conduct Commission Act 2016*.

Schedule 1[41] provides that a person given a new identity must notify the Commissioner of Police if the person becomes involved in a proceeding in which the person's identity is in issue. Currently, the person only needs to give notice if the person is or may be required to give evidence in a proceeding. **Schedule 1[38], [40] and [44]** make consequential amendments.

Schedule 1[42] and [43] provide for the giving of a non-disclosure certificate by the Commissioner of Police.

Schedule 1[45] sets out additional information to be included in non-disclosure certificates. **Schedule 1[46]** makes a consequential amendment.

Schedule 1[47] enables a court, of its own motion, to grant leave to a party to ask questions or make statements that may disclose certain information.

Schedule 1[48] substitutes section 33(1) to provide that a person must not, either directly or indirectly, disclose or record certain information. It also inserts proposed section 33(1A) and (1B) to provide an exemption to the offence under proposed section 33(1) and to set out the onus of proof for the exemption. **Schedule 1[35], [49] and [50]** make consequential amendments.

Schedule 1[53] inserts proposed section 38A, which requires agencies in possession of documents containing information relating to the witness protection program to take reasonable steps to ensure the documents are kept and handled securely.

Schedule 2 Amendment of Surveillance Devices Act 2007 No 64

Schedule 2[1] and [2] make consequential amendments.