



Western Australia

Criminal Investigation (Covert Powers) Act 2012

Compare between:

[14 Apr 2022, 01-b0-00] and [01 Jul 2022, 01-c0-00]

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Criminal Investigation (Covert Powers) Act 2012

An Act to facilitate criminal investigations and intelligence-gathering in relation to criminal activity by providing for —

- **the authorisation, conduct and monitoring of covert law enforcement operations; and**
- **the acquisition and use of assumed identities by participants in covert law enforcement operations; and**
- **the protection of the identity of participants in covert law enforcement operations,**

and to amend the *Corruption and Crime Commission Act 2003*¹, the *Misuse of Drugs Act 1981*¹, the *Prostitution Act 2000*¹ and the *Witness Protection (Western Australia) Act 1996*¹, and for related purposes.

Part 1 — Preliminary

1. Short title

This is the *Criminal Investigation (Covert Powers) Act 2012*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

Australian Crime Commission means the Australian Crime Commission established by the *Australian Crime Commission Act 2002* (Commonwealth);

authorising officer, for a law enforcement agency, means —

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

chief officer, of a law enforcement agency, means —

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

conduct includes any act or omission;

criminal activity means conduct that constitutes the commission of an offence by one or more persons;

disciplinary proceeding means a proceeding of a disciplinary nature under a law of any jurisdiction;

fisheries department means the department principally assisting in the administration of the *Fish Resources Management Act 1994*;

fisheries officer has the meaning given in the *Fish Resources Management Act 1994* section 4(1);

government agency means an authority or body (whether a body corporate or not) established or incorporated for a public purpose by a law of this jurisdiction, a participating jurisdiction or the Commonwealth, and includes a body corporate incorporated under a law of a jurisdiction or of the Commonwealth in which this jurisdiction, a participating jurisdiction or the Commonwealth has a controlling interest;

jurisdiction means a State, a Territory or the Commonwealth;

law enforcement agency means —

- (a) the Police Force; or
- (b) the Australian Crime Commission; or
- (c) the fisheries department;

law enforcement officer means —

- (a) a police officer; or
- (b) a person who is seconded to the Police Force, including (but not limited to) a police officer (however described), of another jurisdiction; or
- (c) a member of staff of the Australian Crime Commission; or
- (d) a fisheries officer holding a prescribed office in the fisheries department;

law enforcement operation means an operation that is conducted, or is intended to be conducted, by a law enforcement agency or other government agency for the purpose of —

- (a) obtaining evidence that may lead to the prosecution of a person for criminal activity; or
- (b) arresting any person suspected of being involved in criminal activity; or
- (c) frustrating criminal activity; or
- (d) carrying out an activity that is reasonably necessary to facilitate the achievement of any purpose referred to in paragraphs (a) to (c);

Minister —

- (a) in relation to the Police Force, means the Minister administering the *Police Act 1892*;
- (b) in relation to the Australian Crime Commission, means the Minister administering the *Australian Crime Commission (Western Australia) Act 2004*;
- (c) in relation to the fisheries department, means the Minister administering the *Fish Resources Management Act 1994*;

Police Force means the Police Force of Western Australia provided for by the *Police Act 1892*;

police officer means a person appointed under the *Police Act 1892* Part I to be a member of the Police Force;

prescribed means prescribed by regulations made under this Act;

this jurisdiction —

- (a) means Western Australia; and
- (b) for the purposes of any suspected criminal activity being investigated by the fisheries department, includes any waters not within the limits of Western Australia that are WA waters as defined in the *Fish Resources Management Act 1994* section 5(b) to (d).

4. Crown bound

- (1) This Act binds the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act makes the State, or the Crown in any of its other capacities, liable to be prosecuted for an offence.

Part 2 — Controlled operations

Division 1 — General

5. Terms used

In this Part, unless the contrary intention appears —

authorised operation means a controlled operation for which an authority is in force;

authority means an authority in force under Division 2, and includes any variation of such an authority and any retrospective authority granted under section 25;

civilian participant, in an authorised operation, means a participant in the operation who is not a law enforcement officer;

controlled conduct means conduct for which a person would, but for section 27 or 34, be criminally responsible;

controlled operation means a law enforcement operation that involves, or may involve, controlled conduct;

corresponding authorised operation means any operation in the nature of a controlled operation that is authorised by or under the provisions of a corresponding law;

corresponding authority means an authority authorising a controlled operation (within the meaning of that term in a corresponding law) that is in force under the corresponding law;

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

corresponding participant means a person who is authorised by a corresponding authority to participate in a corresponding authorised operation;

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

cross-border controlled operation has the meaning given in section 6;

formal application has the meaning given in section 10(2)(a);

formal authority has the meaning given in section 15(1)(a);

formal variation application has the meaning given in section 19(3)(a);

formal variation of authority has the meaning given in section 21(1)(a);

illicit goods means goods the possession of which is a contravention of the law of this jurisdiction in the circumstances of the particular case;

law enforcement participant, in an authorised operation, means a participant in the operation who is a law enforcement officer;

local controlled operation has the meaning given in section 7;

participant, in an authorised operation, means a person who is authorised under this Part to engage in controlled conduct for the purposes of the operation;

participating jurisdiction means a jurisdiction in which a corresponding law is in force;

principal law enforcement officer, for an authorised operation, means the law enforcement officer who is responsible for the conduct of the operation;

relevant offence means —

- (a) an offence against the law of this jurisdiction punishable by imprisonment for 3 years or more; or
- (b) an offence not covered by paragraph (a) that is prescribed for the purposes of this definition, being an offence under any of the following Acts —
 - (i) the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*;
 - (ii) *The Criminal Code*;
 - (iii) the *Firearms Act 1973*;

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

sexual offence means —

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

suspect means a person reasonably suspected of having committed or being likely to have committed, or of committing or being likely to commit, a relevant offence;

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

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

urgent variation application has the meaning given in section 19(3)(b);

urgent variation of authority has the meaning given in section 21(1)(b).

[Section 5 amended: No. 35 of 2014 s. 39.]

6. Cross-border controlled operations

- (1) When this Part refers to a **cross-border controlled operation** it means a controlled operation that is conducted, or is intended to be conducted —
 - (a) in this jurisdiction and in one or more participating jurisdictions; or
 - (b) in one or more participating jurisdictions.
- (2) For the purposes of subsection (1), a controlled operation is to be taken to be conducted, or intended to be conducted, in this jurisdiction if a law enforcement officer of this jurisdiction is, or is to be, authorised under this Part to engage in controlled conduct for the purposes of the operation.

7. Local controlled operation

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

8. Evidence obtained in controlled operations

- (1) Subject to subsection (2), this Part is not intended to limit a discretion that a court has —
 - (a) to admit or exclude evidence in any proceedings; or
 - (b) to stay criminal proceedings in the interests of justice.
- (2) In determining whether evidence should be admitted or excluded in any proceedings, the fact that the evidence was obtained as a result of a person engaging in criminal activity is to be disregarded if —
 - (a) the person was a participant or corresponding participant acting in the course of an authorised operation or corresponding authorised operation; and
 - (b) the criminal activity was controlled conduct within the meaning of that term in this Part or a corresponding law.

9. Non-application of certain Acts

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

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

Division 2 — Authorisation of controlled operations

10. Applications for authorities to conduct controlled operations

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

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

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

- (9) As soon as practicable after making an urgent application, the applicant must make a record in writing of the application and give a copy of it to the authorising officer.

11. Determination of applications

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

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

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

- (1) An authority to conduct a controlled operation must not be granted unless the authorising officer is satisfied on reasonable grounds —
- (a) that a relevant offence has been, is being or is likely to be committed; and
 - (b) that the authority is within the administrative responsibility of the law enforcement agency; and
 - (c) that any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and
 - (d) that the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons, other than law enforcement officers, at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation; and
 - (e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the

reporting requirements of Division 4 to be complied with; and

- (f) that the operation does not involve any participant in the operation inducing or encouraging another person to engage in criminal activity of a kind that the other person could not reasonably have been expected to engage in unless so induced or encouraged; and
 - (g) that any conduct involved in the operation will not —
 - (i) seriously endanger the health or safety of any person; or
 - (ii) cause the death of, or serious injury to, any person; or
 - (iii) involve the commission of a sexual offence against any person; or
 - (iv) result in unlawful loss of or serious damage to property (other than illicit goods).
- (2) A person must not be authorised to participate in a controlled operation unless the authorising officer is satisfied that the person has the appropriate skills or training to participate in the operation.
- (3) A civilian participant —
- (a) must not be authorised to participate in any aspect of a controlled operation unless the authorising officer is satisfied that it is wholly impracticable for a law enforcement participant to participate in that aspect of the operation; and
 - (b) must not be authorised to engage in controlled conduct unless the authorising officer is satisfied that it is wholly impracticable for the civilian participant to participate in the aspect of the controlled operation referred to in paragraph (a) without engaging in that conduct.

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

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

- (a) that the controlled operation will be, or is likely to be, conducted —
 - (i) in this jurisdiction and in one or more participating jurisdictions; or
 - (ii) in one or more participating jurisdictions;
- and
- (b) that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation —
 - (i) in this jurisdiction and in one or more participating jurisdictions; or
 - (ii) in one or more participating jurisdictions.

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

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

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

15. Form of authority

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

- (b) orally (an **urgent authority**), if the authorising officer is satisfied that the delay caused by granting a formal authority may affect the success of the operation.
- (2) A formal authority must be in a physical form, signed by the authorising officer.
- (3) However if it is impracticable in the circumstances for a physical document to be delivered to the applicant, a formal authority may take the form of —
 - (a) a fax; or
 - (b) an email or other electronic document, in which case the document need not be signed.
- (4) An urgent authority may be granted in person, by telephone or any other electronic means.
- (5) Nothing in this Division prevents an authority being granted in respect of a controlled operation that has been the subject of a previous authority.
- (6) An authority, whether formal or urgent, must do all of the following —
 - (a) state the name, and rank or position, of the person granting the authority;
 - (b) identify the principal law enforcement officer and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant;
 - (c) state whether the authority is for a cross-border controlled operation or a local controlled operation;
 - (d) for a cross-border controlled operation, state whether it is to be, or is likely to be, conducted —
 - (i) in this jurisdiction and in one or more participating jurisdictions specified in the authority; or
 - (ii) in one or more participating jurisdictions specified in the authority;

- (e) state whether the authority is a formal authority or an urgent authority;
 - (f) identify each person who may engage in controlled conduct for the purposes of the controlled operation;
 - (g) identify the nature of the criminal activity (including the suspected relevant offences) in respect of which the controlled conduct is to be engaged in;
 - (h) identify —
 - (i) with respect to the law enforcement participants, the nature of the controlled conduct that those participants may engage in; and
 - (ii) with respect to the civilian participants, the particular controlled conduct, if any, that each such participant may engage in;
 - (i) identify (to the extent known) any suspect;
 - (j) specify the period of validity of the authority, being a period not exceeding 6 months in the case of a formal authority or 7 days in the case of an urgent authority;
 - (k) specify any conditions to which the conduct of the operation is subject;
 - (l) state the date and time when the authority is granted;
 - (m) identify (to the extent known) —
 - (i) the nature and quantity of any illicit goods that will be involved in the operation; and
 - (ii) the route through which those goods will pass in the course of the operation.
- (7) A person is sufficiently identified for the purposes of subsection (6)(f) if the person is identified —
- (a) by an assumed name under which the person is operating; or

(b) by a code name or code number,

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

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

16. Duration of authorities

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

17. Variation of authority

- (1) The authorising officer may vary an authority —
- (a) at any time on the authorising officer's own initiative; or
 - (b) on application under section 19(1).
- (2) However, a variation cannot be made that has the effect of extending the period of validity of an urgent authority.
- (3) The authorising officer must, as soon as practicable after varying an authority, prepare and give to the principal law enforcement officer for the authorised operation a written document that complies with section 21.

18. Variations on authorising officer's own initiative

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

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

- (c) to authorise participants in the operation to engage in additional or alternative controlled conduct;
- (d) to identify additional suspects (to the extent known);
- (e) if the principal law enforcement officer has changed since the authority was granted, to identify the new principal law enforcement officer.

19. Applications for variation of authority

- (1) The principal law enforcement officer for an authorised operation, or any other law enforcement officer on behalf of the principal law enforcement officer, may apply to the authorising officer for a variation of authority for any one or more of the following purposes —
 - (a) to extend the period of validity of the authority (except as provided by section 17(2));
 - (b) to authorise additional or alternative persons to engage in controlled conduct for the purposes of the operation;
 - (c) to authorise participants in the operation to engage in additional or alternative controlled conduct;
 - (d) to identify additional suspects (to the extent known);
 - (e) if the principal law enforcement officer has changed since the authority was granted, to identify the new principal law enforcement officer.
- (2) More than one application for a variation may be made in respect of the same authority, but no single variation may extend the period of validity of an authority for more than 6 months at a time.
- (3) An application for a variation of an authority may be made —
 - (a) in writing (a *formal variation application*); or
 - (b) orally (an *urgent variation application*), if the applicant has reason to believe that the delay caused by making a formal variation application may affect the success of the operation.

- (4) A formal variation application must be in a physical form, signed by the applicant.
- (5) However if it is impracticable in the circumstances for a physical document to be delivered to the authorising officer, a formal variation application may take the form of —
 - (a) a fax; or
 - (b) an email or other electronic document, in which case the document need not be signed.
- (6) An urgent variation application may be made in person, by telephone or any other electronic means.
- (7) The authorising officer may require the applicant to furnish such additional information concerning the proposed variation as is necessary for the authorising officer's proper consideration of the application.
- (8) As soon as practicable after making an urgent variation application, the applicant must make a record in writing of the application and give a copy of it to the authorising officer.

20. Determining applications for variation of authority

- (1) After considering an application for a variation of authority, and any additional information furnished under section 19(7), the authorising officer —
 - (a) may vary the authority in accordance with the application, or part of the application, either unconditionally or subject to conditions; or
 - (b) may refuse the application.
- (2) Sections 12, 13 and 14 apply to an application for a variation of authority under this section in the same way as they apply to an application for authority under section 11.
- (3) Without limiting subsection (2), a variation of authority must not be granted unless the authorising officer is satisfied on reasonable grounds that the variation will not authorise a

significant alteration of the nature of the authorised operation concerned.

21. Form of variation of authority

- (1) A variation of authority may be made —
 - (a) in writing (a *formal variation of authority*) to the principal law enforcement officer for the authorised operation, or another law enforcement officer on behalf of the principal law enforcement officer, as the case requires; or
 - (b) orally (an *urgent variation of authority*) to the principal law enforcement officer for the authorised operation, or another law enforcement officer on behalf of the principal law enforcement officer, as the case requires, if the person making the variation is satisfied that the delay caused by making a formal variation of authority may affect the success of the operation.
- (2) A formal variation of authority must be in a physical form, signed by the authorising officer.
- (3) However if it is impracticable in the circumstances for a physical document to be delivered to the principal law enforcement officer for the authorised operation, or another law enforcement officer on behalf of the principal law enforcement officer, as the case requires, a formal variation of authority may take the form of —
 - (a) a fax; or
 - (b) an email or other electronic document, in which case the document need not be signed.
- (4) An urgent variation of authority may be made in person, by telephone or any other electronic means.
- (5) A variation of authority must —
 - (a) identify the authorised operation for which the authority is in force; and

- (b) state the name, and rank or position, of the person making the variation of authority; and
 - (c) state whether the variation of authority is a formal variation of authority or an urgent variation of authority; and
 - (d) if the variation is made under section 17(1)(a) —
 - (i) describe the variation having regard to the purposes referred to in section 18 in respect of which the variation is or was made; and
 - (ii) specify the reasons why the variation of authority is or was made;and
 - (e) if the variation is made under section 17(1)(b) —
 - (i) state the name of the applicant; and
 - (ii) describe the variation having regard to the purposes referred to in section 19(1) in respect of which the application for the variation was made;and
 - (f) state the date and time when the variation of authority is or was made.
- (6) The authorising officer must, as soon as practicable after making an urgent variation of authority, make a record in writing of the particulars referred to in subsection (5) relating to the variation of authority.

22. Cancellation of authorities

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

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

23. Effect of authorities

- (1) While it has effect, an authority for a controlled operation —
 - (a) authorises each law enforcement participant to engage in the controlled conduct specified in the authority in respect of the law enforcement participants; and
 - (b) authorises each civilian participant, if any, to engage in the particular controlled conduct, if any, specified in the authority in respect of that participant.
- (2) In the case of a local controlled operation, the authority authorises each participant to engage in the conduct referred to in subsection (1) in this jurisdiction but not in any other jurisdiction.
- (3) In the case of a cross-border controlled operation, the authority authorises each participant to engage in the conduct referred to in subsection (1) —
 - (a) in this jurisdiction and in one or more participating jurisdictions; or
 - (b) in one or more participating jurisdictions,subject to any corresponding law of that participating jurisdiction.
- (4) The authority to engage in controlled conduct given to a participant cannot be delegated to any other person.

24. Defect in authority

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

25. Retrospective authority

- (1) This section applies to local controlled operations but not to cross-border controlled operations.
- (2) If a participant in an authorised operation engages in unlawful conduct (other than controlled conduct) in the course of the operation, the principal law enforcement officer for the operation may, within 24 hours (or any longer period that the authorising officer may, in exceptional circumstances, allow) after the participant engages in that conduct, apply to the authorising officer for retrospective authority for the conduct.
- (3) An application under this section may be made in such manner as the authorising officer permits.
- (4) The authorising officer may require the principal law enforcement officer to furnish such additional information concerning the relevant conduct as is necessary for the authorising officer's proper consideration of the application.
- (5) After considering an application under subsection (2), and any additional information furnished under subsection (4), the authorising officer —
 - (a) may grant retrospective authority in accordance with the application; or
 - (b) may refuse the application.

- (6) Retrospective authority must not be granted unless the authorising officer is satisfied —
- (a) that the participant who engaged in the conduct believed on reasonable grounds —
 - (i) that there was a substantial risk to the success of the authorised operation; or
 - (ii) that there was a substantial risk to the health or safety of a participant in the operation, or any other person, as a direct result of the conduct of the authorised operation; or
 - (iii) that criminal activity other than the criminal activity in respect of which the authorised operation is being conducted had occurred, or was likely to occur, and that there was a substantial risk that evidence relating to that criminal activity would be lost,
and the participant could not avoid that risk otherwise than by engaging in the relevant conduct; and
 - (b) that, at all times prior to those circumstances arising, the participant had been acting in good faith; and
 - (c) that the participant had not foreseen, and could not reasonably be expected to have foreseen, that those circumstances would arise; and
 - (d) that, had it been possible to foresee that those circumstances would arise, authority for the relevant conduct would have been sought; and
 - (e) that it was not reasonably possible in those circumstances for the participant to seek a variation of the authority for the operation to authorise the relevant conduct.
- (7) Subsection (6) does not allow retrospective authority to be granted with respect to any conduct that —
- (a) seriously endangered the health or safety of any person; or

- (b) caused the death of, or serious injury to, any person; or
 - (c) involved the commission of a sexual offence against any person; or
 - (d) resulted in unlawful loss of or serious damage to property (other than illicit goods).
- (8) The authorising officer's power to grant a retrospective authority under this section cannot be delegated to any other person.

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

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

Division 3 — Conduct of controlled operations

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

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

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

the purposes of, the operation is not, if engaging in that conduct is an offence, criminally responsible for the offence if —

- (a) the conduct is authorised by, and is engaged in accordance with, the authority for the operation; and
 - (b) the conduct does not involve the participant inducing or encouraging another person to engage in criminal activity of a kind that the other person could not reasonably be expected to engage in unless so induced or encouraged; and
 - (c) the conduct does not involve the participant engaging in any conduct that is likely to —
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person;
- and
- (d) if the participant is a civilian participant, he or she acts in accordance with the instructions of a law enforcement officer.

28. Indemnification of participants against civil liability

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

reasonably be expected to engage in unless so induced or encouraged; and

- (c) the conduct does not involve the participant engaging in any conduct that is likely to —
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person;
- and
- (d) if the participant is a civilian participant, he or she acts in accordance with the instructions of a law enforcement officer; and
 - (e) the requirements, if any, specified in the regulations have been met.

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

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

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

30. Effect of being unaware of variation or cancellation of authority

- (1) If an authority for a controlled operation is varied in a way that limits its scope, this Division continues to apply to a participant in the operation as if the authority had not been varied in that way, for as long as —
 - (a) the participant is unaware of the variation; and
 - (b) the authorising officer for the relevant agency has taken reasonable measures to ensure the participant is aware of any variation.
- (2) If an authority for a controlled operation is cancelled, this Division continues to apply to a participant in the operation as if the authority had not been cancelled, for as long as —
 - (a) the participant is unaware of the cancellation; and
 - (b) the authorising officer has taken reasonable measures to ensure the participant is aware of any cancellation.

31. Protection from criminal responsibility for certain ancillary conduct

- (1) This section applies to conduct such as aiding and abetting the commission of an offence or of conspiring to commit an offence (*ancillary conduct*) for which a person may be criminally responsible because it involves conduct engaged in by another person that is conduct for which the other person would (but for section 27) be criminally responsible (the *related controlled conduct*).
- (2) Despite any other written law of this jurisdiction, a person who engages in ancillary conduct that is an offence (whether or not the person is a participant in a controlled operation) is not criminally responsible for the offence if, at the time the person engaged in the ancillary conduct —
 - (a) the person believed that the related controlled conduct was being engaged in, or would be engaged in, by a participant in an authorised operation; and

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

Subdivision 2 — Compensation and notification of third parties

32. Compensation for property loss or damage

- (1) If a person suffers loss of or damage to property as a direct result of an authorised operation, the State is liable to pay to the person compensation as agreed between the State and the person or, in default of agreement, as determined by action against the State in a court of competent jurisdiction.
- (2) Subsection (1) does not apply if —
 - (a) the person suffered the loss or damage in the course of, or as a direct result of, engaging in any criminal activity (other than criminal activity that is controlled conduct); or
 - (b) the person was a participant involved in the authorised operation at the time of suffering the loss or damage.

33. Notification requirements

- (1) If any loss of or damage to property occurs in the course of or as a direct result of an authorised operation (other than property of the State that is under the management or control of a participating law enforcement officer), the principal law enforcement officer for the operation must report the loss or damage to the chief officer as soon as practicable.
- (2) The chief officer must take all reasonable steps to notify the owner of the property of the loss or damage.
- (3) The chief officer is not required to notify the owner of property under this section until the chief officer is satisfied that notification would not —
 - (a) compromise or hinder the authorised operation; or
 - (b) compromise the identity of a participant in the authorised operation; or

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

Subdivision 3 — Mutual recognition

34. Mutual recognition of corresponding authorities

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

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

Division 4 — Compliance and monitoring

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

35. Disclosure of operational information

(1) In this section —

operational information means any information relating to a controlled operation for which an authority is or was in force or a corresponding authorised operation.

(2) A person who has access, or has had access, to operational information must not disclose the information except —

- (a) in connection with the administration or execution of this Part or a corresponding law; or
- (b) for the purposes of any legal proceeding arising out of or otherwise related to this Part or a corresponding law or of any report of any such proceedings; or
- (c) for the purpose of reporting to an appropriate authority any criminal activity that is outside the scope of the authority granted in respect of the authorised operation; or
- (d) for the purpose of seeking legal advice; or
- (e) to a government agency for the purposes of a law enforcement operation conducted by that agency or for intelligence-gathering purposes; or
- (f) in accordance with any requirement imposed by law.

Penalty: imprisonment for 10 years.

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

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

Subdivision 2 — Reporting and record-keeping

36. Principal law enforcement officers' reports

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

- (ii) any unlawful conduct (other than controlled conduct) was engaged in during the operation; and
- (iii) any person is, because of section 31, not criminally responsible for ancillary conduct (as defined in that section); and
- (iv) any variations were made to an authority for the operation; and
- (v) any of those variations were to extend the period of validity of the authority; and
- (vi) any retrospective authority was granted in respect of the operation; and
- (vii) any urgent authority was granted in respect of the operation; and
- (viii) any conditions of an authority for the operation were breached.

37. Chief officers' reports

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

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

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

38. Annual report by Corruption and Crime Commission

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

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

- (6) The report must not disclose any information that identifies any suspect or a participant in an authorised operation, or that is likely to lead to such a person or participant being identified.
- (7) Nothing in this section requires particulars of an authorised operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.

39. Keeping documents connected with authorised operations

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

- (a) each application made by a law enforcement officer of the agency;
- (b) each authority granted to a law enforcement officer of the agency;
- (c) each variation application made by a law enforcement officer of the agency;
- (d) each variation of authority granted or made by the authorising officer for the agency;
- (e) each order cancelling an authority granted to a law enforcement officer of the agency;
- (f) each retrospective authority granted under section 25 and details of the application and authority to which the retrospective authority relates;
- (g) each report of a principal law enforcement officer of the agency under section 33(1) or 36.

40. General register

- (1) The chief officer of a law enforcement agency must cause a general register to be kept.
- (2) The general register is to specify —
 - (a) for each application under this Part made by a law enforcement officer of the agency (including an application for variation of authority) —
 - (i) the date of the application; and
 - (ii) whether the application was formal or urgent; and
 - (iii) whether the application was made for a cross-border controlled operation or a local controlled operation; and
 - (iv) whether the application was for a retrospective authority under section 25; and
 - (v) whether the application was granted, refused or withdrawn; and
 - (vi) if the application was refused or withdrawn, the date and time of the refusal or withdrawal;and
 - (b) for each authority under this Part granted to a law enforcement officer of the agency —
 - (i) the date and time when the authority was granted; and
 - (ii) whether the authority was formal or urgent; and
 - (iii) whether the authority was granted for a cross-border controlled operation or a local controlled operation; and
 - (iv) whether the authority was a retrospective authority granted under section 25; and
 - (v) the name, and rank or position, of the person who granted the authority; and

- (vi) each relevant offence in respect of which controlled conduct under the authority was to be engaged in; and
 - (vii) the period of validity of the authority; and
 - (viii) if the authority was cancelled, the date and time of cancellation; and
 - (ix) the date and time when the authorised operation began and the date of completion of the operation; and
 - (x) the date on which the principal law enforcement officer for the operation made a report on the operation under section 36; and
 - (xi) if the authorised operation involved illicit goods, to the extent known —
 - (I) the nature and quantity of the illicit goods; and
 - (II) the route through which the illicit goods passed in the course of the operation;and
 - (xii) details of any loss of or damage to property, or any personal injuries, occurring in the course of or as a direct result of the operation;
- and
- (c) for each variation of authority under this Part —
 - (i) the date and time when the variation was made; and
 - (ii) whether the variation was formal or urgent; and
 - (iii) the name, and rank or position, of the person who made the variation.

Subdivision 3 — Inspections

41. Inspection of records by Corruption and Crime Commission

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

Crime Commission to perform or exercise functions under this section.

- (5) For the purposes of this section a record of, or a person employed or engaged in, the department of the Public Service that principally assists the Minister in the administration of the *Police Act 1892* is to be taken to be a record of, or a person employed or engaged in, the Police Force.

[Section 41 amended: No. 35 of 2014 s. 39.]

Division 5 — Miscellaneous

42. Evidence of authorities

- (1) A document purporting to be an authority granted under section 11 —
- (a) is admissible in any legal proceedings; and
 - (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person granting the authority was satisfied of the facts of which he or she was required to be satisfied before granting the authority.
- (2) A document purporting to be an authority within the meaning of that term in a corresponding law granted under a provision of the corresponding law that corresponds to section 11 —
- (a) is admissible in any legal proceedings in this jurisdiction; and
 - (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person who granted the authority was satisfied of the facts of which he or she was required to be satisfied under the corresponding law before granting the authority.

43. Delegation

(1) In this section —

senior officer means —

- (a) in relation to an authorising officer or chief officer who is the Commissioner of Police — a police officer of or above the rank of Commander; or
- (b) in relation to an authorising officer or chief officer who is the Chief Executive Officer of the Australian Crime Commission —
 - (i) an SES employee as defined in the *Australian Crime Commission Act 2002* (Commonwealth) section 4(1); or
 - (ii) a person holding a prescribed office in the Australian Crime Commission;

or

- (c) in relation to a chief officer who is the chief executive officer of the fisheries department — a fisheries officer holding a prescribed office in the department.

(2) Except as provided by this section, and despite any other written law to the contrary, the functions of an authorising officer or chief officer under this Part cannot be delegated to any other person.

(3) Except as provided in section 25(8), the authorising officer for, or chief officer of, a law enforcement agency may delegate to a senior officer any of his or her functions under this Part relating to the authorisation of controlled operations (including the variation and cancellation of authorities and the giving of notification under section 33(2)).

Part 3 — Assumed identities

Division 1 — General

44. Terms used

In this Part, unless the contrary intention appears —

acquire an assumed identity, means acquire evidence of the identity and includes taking steps towards acquiring evidence of the identity;

authorised civilian means a person (other than a law enforcement officer) who is authorised under an authority to acquire or use an assumed identity;

authorised officer means a law enforcement officer who is authorised under an authority to acquire or use an assumed identity;

authorised person means —

- (a) an authorised civilian; or
- (b) an authorised officer;

authority means an authority granted under section 48 to acquire or use an assumed identity, including the authority as varied under section 51;

chief officer, of an issuing agency, means the chief executive officer (however described) of the agency;

corresponding authority means —

- (a) an authority under a corresponding law to acquire or use an assumed identity in this jurisdiction; or
- (b) an authority under a corresponding law to request the production of evidence of an assumed identity in this jurisdiction;

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

doing a thing includes failing to do the thing;

evidence, of identity, means a document or other thing (such as a driver's licence, birth certificate, credit card or identity card) that evidences, indicates or supports, or can be used to evidence, indicate or support, a person's identity or any aspect of a person's identity;

formal authority has the meaning given in section 49(1)(a);

government issuing agency, in relation to an authority, means a government agency named in the authority that issues evidence of identity;

issuing agency means —

- (a) a government issuing agency; or
- (b) a non-government issuing agency;

non-government issuing agency, in relation to an authority, means a person, body or entity (other than a government issuing agency) named in the authority that issues evidence of identity;

officer, of an issuing agency, includes a person employed or engaged in the agency;

participating jurisdiction means a jurisdiction in which a corresponding law is in force;

Register has the meaning given in the *Births, Deaths and Marriages Registration Act 1998*;

Registrar means the Registrar of Births, Deaths and Marriages referred to in the *Births, Deaths and Marriages Registration Act 1998* section 5;

supervisor, of an authorised civilian, means the law enforcement officer who supervises or is to supervise the acquisition or use of an assumed identity by the authorised civilian;

use an assumed identity, includes representing (whether expressly or impliedly, or by saying or doing something) the identity to be real when it is not.

45. Non-application of certain Acts

The following Acts do not apply to activities or records under this Part —

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

46. Relationship to other laws relating to assumed identities

This Part does not affect the operation of any other written law of this jurisdiction that authorises the acquisition or use of an assumed identity.

Division 2 — Authority for assumed identity

47. Application for authority to acquire or use assumed identity

- (1) A law enforcement officer of a law enforcement agency may apply to the authorising officer for the agency for an authority for the law enforcement officer or any other person to do either or both of the following —
 - (a) acquire an assumed identity;
 - (b) use an assumed identity.
- (2) A separate application must be made in respect of each assumed identity to be acquired or used.
- (3) An application may be made —
 - (a) in writing (a *formal application*); or
 - (b) in relation to the use of an assumed identity but not the acquisition of an assumed identity — orally (an *urgent application*), if the applicant has reason to believe that the delay caused by making a formal application may affect the success of a law enforcement operation.
- (4) A formal application must be in a physical form, signed by the applicant.

- (5) However if it is impracticable in the circumstances for a physical document to be delivered to the authorising officer, a formal application may take the form of —
- (a) a fax; or
 - (b) an email or other electronic document, in which case the document need not be signed.
- (6) An urgent application may be made in person, by telephone or any other electronic means.
- (7) An application must provide all of the following information —
- (a) the name of the applicant;
 - (b) the name of the person (or if there is more than one, each person) to be authorised to acquire or use an assumed identity (if not the applicant);
 - (c) if the person referred to in paragraph (b) is not a law enforcement officer, the name, and rank or position, of the person proposed to be appointed as supervisor and an explanation of why it is necessary for a person who is not a law enforcement officer to acquire or use the assumed identity;
 - (d) details of the proposed assumed identity;
 - (e) reasons for the need to acquire or use an assumed identity;
 - (f) details of the investigation or intelligence-gathering exercise in which the assumed identity will be used (to the extent known);
 - (g) details of any issuing agencies and the types of evidence of identity to be issued by them;
 - (h) details of any application to be made for an order under section 54 in respect of the assumed identity.
- (8) The authorising officer may require the applicant to furnish such additional information concerning the application as is necessary for the authorising officer's proper consideration of the application.

- (9) As soon as practicable after making an urgent application, the applicant must make a record in writing of the application and give a copy of it to the authorising officer.

48. Determination of application

- (1) After considering an application for an authority to acquire or use an assumed identity, and any additional information furnished under section 47(8), the authorising officer —
- (a) may grant an authority to acquire or use the assumed identity, either unconditionally or subject to conditions; or
 - (b) may refuse the application.
- (2) An authority to acquire or use an assumed identity must not be granted unless the authorising officer is satisfied on reasonable grounds —
- (a) that the assumed identity is necessary for one or more of the following purposes —
 - (i) investigation of, or intelligence-gathering in relation to, criminal activity (whether a particular criminal activity or criminal activity generally);
 - (ii) the training of persons for the purposes mentioned in subparagraph (i);
 - (iii) any administrative function in support of a purpose mentioned in subparagraph (i) or (ii);and
 - (b) that the risk of abuse of the assumed identity by the authorised person is minimal; and
 - (c) if the application is for authorisation of an assumed identity for a person who is not a law enforcement officer, that it would be impossible or impracticable in the circumstances for a law enforcement officer to acquire or use the assumed identity for the purpose sought.

- (3) If an authority is granted for an authorised civilian, the chief officer must appoint a law enforcement officer of the law enforcement agency to supervise the acquisition or use of the assumed identity by the authorised civilian.
- (4) The law enforcement officer appointed as supervisor must be —
 - (a) in relation to the Police Force — a police officer of or above the rank of sergeant;
 - (b) in relation to the Australian Crime Commission — a person of or above the rank of senior investigator;
 - (c) in relation to the fisheries department — a person holding a prescribed office.
- (5) An authority may also authorise any one or more of the following —
 - (a) an application for an order for an entry in the Register under section 54 or in a register of births, deaths or marriages (however described) under a corresponding law;
 - (b) a request under section 58 or 69;
 - (c) the use of an assumed identity in a participating jurisdiction.
- (6) A separate authority is required for each assumed identity.

49. Form of authority

- (1) An authority must be —
 - (a) in writing (a *formal authority*); or
 - (b) orally (an *urgent authority*), if the authorising officer is satisfied that the delay caused by granting a formal authority may affect the success of a law enforcement operation.
- (2) A formal authority must be in a physical form, signed by the authorising officer.

- (3) However if it is impracticable in the circumstances for a physical document to be delivered to the applicant, a formal authority may take the form of —
- (a) a fax; or
 - (b) an email or other electronic document, in which case the document need not be signed.
- (4) An urgent authority may be granted in person, by telephone or any other electronic means.
- (5) An authority, whether formal or urgent, must state all of the following —
- (a) the name of the person granting the authority;
 - (b) the date of the authority;
 - (c) whether the authority is a formal authority or an urgent authority;
 - (d) if the authority is an urgent authority, the period of validity of the authority, being a period not exceeding 7 days;
 - (e) details of the assumed identity authorised;
 - (f) details of any evidence of the assumed identity that may be acquired under the authority;
 - (g) the conditions (if any) to which the authority is subject;
 - (h) why the authority is granted;
 - (i) if the authority relates to an authorised officer, the name of the officer (or if there is more than one, the name of each officer);
 - (j) if the authority relates to an authorised civilian —
 - (i) the name of the authorised civilian; and
 - (ii) the name of his or her supervisor under the authority; and
 - (iii) in the case of a formal authority, the period of validity of the authority, being a period not exceeding 3 months.

- (6) The authority must also state all of the following —
- (a) each issuing agency to which a request may be made under section 58 or 69;
 - (b) whether it authorises an application for an order for an entry in the Register under section 54 or in a register of births, deaths or marriages (however described) under a corresponding law;
 - (c) each participating jurisdiction in which an assumed identity may be used.
- (7) The authorising officer must, as soon as practicable after granting an urgent authority, make a record in writing of the particulars referred to in subsection (5) relating to the authority.

50. Duration of authority

- (1) A formal authority for an authorised officer remains in force until cancelled under section 52.
- (2) A formal authority for an authorised civilian remains in force until the end of the period of validity specified in it in accordance with section 49(5)(j)(iii), unless the authority is cancelled sooner under section 52.
- (3) A fresh formal authority may be issued to an authorised civilian before or after the end of the period of validity specified in the initial authority.
- (4) An urgent authority remains in force until the end of the period of validity specified in it in accordance with section 49(5)(d), unless the authority is cancelled sooner under section 52.

51. Variation of authority

- (1) The authorising officer who grants an authority may vary the authority at any time.

- (2) However, a variation cannot be made that has the effect of extending the period of validity of —
 - (a) a formal authority for an authorised civilian; or
 - (b) an urgent authority.
- (3) The authorising officer must give notice of the variation to —
 - (a) the authorised person to whom it relates; and
 - (b) if the authorised person is an authorised civilian, the authorised person’s supervisor.
- (4) The notice must be given —
 - (a) in writing (a *formal variation of authority*); or
 - (b) orally (an *urgent variation of authority*), if the authorising officer is satisfied that the delay caused by making a formal variation of authority may affect the success of a law enforcement operation or is otherwise urgently required.
- (5) A formal variation of authority must be in a physical form, signed by the authorising officer.
- (6) However if it is impracticable in the circumstances for a physical document to be given to the authorised person or the authorised person’s supervisor (as the case requires), a formal variation of authority may take the form of —
 - (a) a fax; or
 - (b) an email or other electronic document, in which case the document need not be signed.
- (7) An urgent variation of authority may be made in person, by telephone or any other electronic means.
- (8) A variation of authority takes effect —
 - (a) in the case of a formal variation of authority in which a date of effect is stated — on the day stated; or
 - (b) in any other case — when it is given to the authorised person.

- (9) A variation of authority must —
- (a) identify the authorised person to whom the authority relates and, if the authorised person is an authorised civilian, the authorised person’s supervisor; and
 - (b) state whether it is a formal variation of authority or an urgent variation of authority; and
 - (c) describe the variation; and
 - (d) specify the reasons why the variation of authority is or was made; and
 - (e) state the date and time when the variation of authority is or was made.
- (10) The authorising officer must, as soon as practicable after making an urgent variation of authority, make a record in writing of the particulars referred to in subsection (9) relating to the variation of authority.

52. Cancellation of authority

- (1) The authorising officer who grants an authority must cancel the authority if the authorising officer is satisfied, on a review under section 53 or otherwise, that use of the assumed identity is no longer necessary.
- (2) The authorising officer must give notice of the cancellation to —
- (a) the authorised person to whom it relates; and
 - (b) if the authorised person is an authorised civilian, the authorised person’s supervisor.
- (3) The notice must be given —
- (a) in writing (a *formal cancellation of authority*); or
 - (b) orally (an *urgent cancellation of authority*), if the authorising officer is satisfied that the delay caused by making a formal cancellation of authority may affect the success of a law enforcement operation or is otherwise urgently required.

- (4) A formal cancellation of authority must be in a physical form, signed by the authorising officer.
- (5) However if it is impracticable in the circumstances for a physical document to be given to the authorised person or the authorised person's supervisor (as the case requires), a formal cancellation of authority may take the form of —
 - (a) a fax; or
 - (b) an email or other electronic document, in which case the document need not be signed.
- (6) An urgent cancellation of authority may be made in person, by telephone or any other electronic means.
- (7) A cancellation of authority takes effect —
 - (a) in the case of a formal cancellation of authority in which a date of effect is stated — on the day stated; or
 - (b) in any other case — when it is given to the authorised person.
- (8) A cancellation of authority must —
 - (a) identify the authorised person to whom the authority relates and, if the authorised person is an authorised civilian, the authorised person's supervisor; and
 - (b) state whether it is a formal cancellation of authority or an urgent cancellation of authority; and
 - (c) state the date and time when the cancellation of authority is or was made.
- (9) The authorising officer must, as soon as practicable after making an urgent cancellation of authority, make a record in writing of the particulars referred to in subsection (8) relating to the cancellation of authority.

53. Yearly review of formal authority

- (1) The authorising officer must periodically review each formal authority granted by the authorising officer or a delegate of the authorising officer under this Part.
- (2) A review of a formal authority under this section is to be conducted at least once every 12 months.
- (3) The purpose of a review is to determine whether use of the assumed identity under the formal authority is still necessary.
- (4) If the authorising officer is satisfied on a review that use of the assumed identity under the formal authority is no longer necessary, he or she must cancel the authority under section 52.
- (5) If the authorising officer is satisfied on a review that use of the assumed identity under the formal authority is still necessary, he or she must record his or her opinion, and the reasons for it, in writing.

Division 3 — Evidence of assumed identity

54. Making records of births, deaths or marriages

- (1) The Supreme Court may order the Registrar to do one or more of the following —
 - (a) make an entry in the Register;
 - (b) issue a certificate of birth, death or marriage in relation to the acquisition of an assumed identity under an authority or corresponding authority.
- (2) The Registrar may create such other records as the Registrar thinks necessary to support the entry or certificate made or issued in accordance with the order in relation to the acquisition of an assumed identity under an authority or corresponding authority.

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

55. Cancellation of authority affecting records of births, deaths or marriages

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

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

56. Cancelling entries in Register

- (1) The Supreme Court may order the Registrar to cancel an entry in the Register, and any supporting records, made under an order under section 54.
- (2) The Court may make the order only on application by the chief officer who applied for the order under section 54.
- (3) The application must be heard in closed court.
- (4) The Registrar must give effect to the order within 28 days after the day on which the order is made.

57. Restriction about access to application for entry in Register

- (1) In this section —
relevant proceeding means —
 - (a) an application under section 54 or 56 for an order to make or cancel an entry in the Register; or
 - (b) an order given under the application.
- (2) A person is not entitled to search information in the custody of the Supreme Court in relation to a relevant proceeding unless the Supreme Court otherwise orders in the interests of justice.

58. Request for evidence of assumed identity

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

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

59. Government issuing agencies to comply with request

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

60. Non-government issuing agencies may comply with request

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

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

61. Cancellation of evidence of assumed identity

- (1) In this section —
cancel includes delete or alter an entry in a record of information.
- (2) This section applies if the chief officer of an issuing agency complies with a request under section 58.
- (3) The chief officer who made the request may in writing direct the chief officer of the issuing agency to cancel evidence produced in response to the request and cancel any other records or alterations made to support that evidence.
- (4) The direction must state a reasonable period for compliance with the direction.
- (5) The chief officer of an issuing agency who receives a direction under subsection (3) must comply with the direction within the reasonable period stated in the direction.

62. Protection from criminal liability — officers of issuing agencies

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

63. Indemnity for issuing agencies and officers

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

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

Division 4 — Effect of authority

64. Assumed identity may be acquired and used

- (1) An authorised officer may acquire or use (or both) an assumed identity if the acquisition or use (or both) are —
- (a) in accordance with an authority; and
 - (b) in the course of duty.
- (2) An authorised civilian may acquire or use (or both) an assumed identity if the acquisition or use (or both) are in accordance with —
- (a) an authority; and
 - (b) any direction by the person’s supervisor under the authority.
- (3) An authority also authorises —
- (a) the making (by the person to whom the authority applies or by any officer of the relevant law enforcement agency) of any false or misleading representation about the person, for the purposes of or in connection with the acquisition or use of the assumed identity by the person; and
 - (b) the use by the person of the assumed identity to obtain evidence of the identity.

65. Protection from criminal liability — authorised persons

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

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

66. Indemnity for authorised persons

- (1) This section applies if the authorising officer for a law enforcement agency grants an authority.
- (2) The chief officer of the law enforcement agency must indemnify the authorised person under the authority for any liability incurred by the person (including reasonable costs) because of something done by the person (whether in this jurisdiction or elsewhere) if —
 - (a) the thing is done in the course of acquiring or using an assumed identity in accordance with the authority; and
 - (b) the thing is done —
 - (i) in the case of an authorised officer, in the course of his or her duty; or

(ii) in the case of an authorised civilian, in accordance with any direction by his or her supervisor under the authority;

and

(c) any prescribed requirements have been met.

67. Particular qualifications

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

68. Effect of being unaware of variation or cancellation of authority

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

Division 5 — Mutual recognition under corresponding laws

69. Requests to participating jurisdiction for evidence of assumed identity

- (1) This section applies if the authorising officer for a law enforcement agency grants an authority under section 48 authorising a request under this section.
- (2) The chief officer of the law enforcement agency may request the chief officer (however described) of an issuing agency of a participating jurisdiction stated in the authority to —
 - (a) produce evidence of the assumed identity in accordance with the authority; and
 - (b) give evidence of the assumed identity to the authorised person named in the authority or another person specified by the chief officer making the request; and
 - (c) create or alter such other records as the chief officer of the issuing agency thinks necessary to support the evidence of the assumed identity produced in response to the request.
- (3) The request must state a reasonable period for compliance with the request.

70. Requests from participating jurisdiction for evidence of assumed identity

- (1) This section applies if —
 - (a) a corresponding authority authorises a request for —
 - (i) the production of evidence of an assumed identity in this jurisdiction; and
 - (ii) the giving of evidence of the assumed identity to the authorised person named in the authority;
 - and
 - (b) the request is made to the chief officer of an issuing agency of this jurisdiction; and

- (c) the request states a reasonable period for compliance with the request.
- (2) The chief officer of a government issuing agency who receives the request must comply with the request within the reasonable period stated in the request.
- (3) The chief officer of a non-government issuing agency who receives the request may comply with the request.
- (4) The chief officer of an issuing agency may create or alter such other records as the chief officer thinks necessary to support evidence of the assumed identity produced in response to the request.

71. Directions from participating jurisdiction to cancel evidence of assumed identity

- (1) In this section —
cancel includes delete or alter an entry in a record of information.
- (2) This section applies if the chief officer of an issuing agency (the *issuing chief officer*) who has produced evidence in response to a request under section 70 is directed in writing to cancel the evidence by the chief officer (however described) of the relevant law enforcement agency of the participating jurisdiction.
- (3) The issuing chief officer must, within any reasonable period stated in the request, cancel —
 - (a) the evidence; and
 - (b) any other records or alterations made to support that evidence.

72. Indemnity for issuing agencies and officers

- (1) This section applies if the chief officer of a law enforcement agency makes a request to the chief officer (however described) of an issuing agency of a participating jurisdiction under section 69.
- (2) The chief officer of the law enforcement agency must indemnify the issuing agency, and any officer of the issuing agency, for any liability incurred by the agency or officer (including reasonable costs) if —
 - (a) the liability is incurred because of something done (whether in this jurisdiction or elsewhere) by the agency or officer to comply with the request in the course of duty; and
 - (b) any prescribed requirements have been met.

73. Application of Division to authorities under corresponding laws

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

- (a) section 62 (Protection from criminal liability — officers of issuing agencies);
- (b) section 64 (Assumed identity may be acquired and used);
- (c) section 65 (Protection from criminal liability — authorised persons);
- (d) section 67 (Particular qualifications);
- (e) section 68 (Effect of being unaware of variation or cancellation of authority);
- (f) section 74 (Misuse of assumed identity);
- (g) section 75 (Disclosing information about assumed identity).

Division 6 — Compliance and monitoring

Subdivision 1 — Misuse of assumed identity and information

74. Misuse of assumed identity

- (1) An authorised officer must not acquire evidence of, or use, an assumed identity covered by the officer's authority except —
- (a) in accordance with his or her authority; and
 - (b) in the course of duty.

Penalty: imprisonment for 2 years.

- (2) An authorised civilian must not acquire evidence of, or use, an assumed identity covered by the civilian's authority except in accordance with —
- (a) the civilian's authority; and
 - (b) the directions of the civilian's supervisor under the authority.

Penalty: imprisonment for 2 years.

75. Disclosing information about assumed identity

- (1) A person must not disclose any information that reveals, or is likely to reveal, that an assumed identity that another person is authorised to acquire or use under an authority or corresponding authority is not the other person's real identity except —
- (a) in connection with the administration or execution of this Part or a corresponding law; or
 - (b) for the purposes of any legal proceeding arising out of or otherwise related to this Part or a corresponding law or of any report of any such proceedings; or
 - (c) to a government agency for the purposes of a law enforcement operation conducted by that agency; or

(d) in accordance with any requirement imposed by law.

Penalty: imprisonment for 10 years.

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

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

Subdivision 2 — Reporting and record-keeping

76. Reports about authorities for assumed identities

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

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

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

- (a) endanger a person's safety; or
- (b) prejudice an investigation or prosecution; or

- (c) compromise any law enforcement agency's operational activities or methodologies.
- (3) The Minister must —
 - (a) exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2); and
 - (b) insert a statement to the effect that information has been excluded from the report under paragraph (a).
- (4) The Minister is to cause a copy of the report to be laid before each House of Parliament within 15 sitting days from the day on which the report is received by the Minister.

77. Record-keeping

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

78. Audit of records

- (1) The chief officer of a law enforcement agency must arrange for the records kept under section 77 for each authority in respect of the agency to be audited —
 - (a) at least once every 6 months while the authority is in force; and
 - (b) at least once in the 6 months after the cancellation or expiry of the authority.
- (2) The audit is to be conducted by a person appointed by the chief officer.
- (3) The person appointed to conduct the audit —
 - (a) may, but need not, be an officer of the law enforcement agency; and
 - (b) must not be a person —
 - (i) who granted, varied or cancelled any of the authorities to which the records under section 77 relate; or
 - (ii) who is or was an authorised person, or the supervisor of an authorised civilian, under any of the authorities to which those records relate.
- (4) The results of an audit are to be reported to the chief officer.

Division 7 — Miscellaneous

79. Delegation

- (1) In this section —

intelligence agency has the meaning given in the *Crimes Act 1914* (Commonwealth) section 15K;
senior officer means —

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

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

Part 4 — Witness identity protection

Division 1 — General

80. Terms used

In this Part, unless the contrary intention appears —

appeal, against a decision, includes to seek a review of the decision;

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

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

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

court includes —

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

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

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

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

investigation means an investigation in relation to criminal activity, including an investigation extending beyond this jurisdiction;

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

operative means a person who is or was —

- (a) a participant in an authorised operation under Part 2; or
- (b) authorised to acquire and use an assumed identity under Part 3; or
- (c) a law enforcement officer otherwise using an assumed identity for the purposes of a law enforcement operation;

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

parliamentary proceeding means any proceeding before, or inquiry, reference or examination by, a parliamentary committee;

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 any other proceeding, each person who may appear or give evidence in the proceeding;

proceeding means a court proceeding or a parliamentary proceeding;

professional misconduct means —

- (a) an offence against the discipline of the Police Force under the *Police Act 1892*; or
- (b) misconduct or a breach of discipline (however described) under a law of another jurisdiction that corresponds to the *Police Act 1892*; or

- (c) misconduct or a breach of discipline (however described) under a law of the Commonwealth that governs the conduct of members of staff of the Australian Crime Commission;
- (d) a breach of discipline as defined in the *Public Sector Management Act 1994* section 3(1),

as the case requires, but does not include conduct that is the subject of an informal inquiry only;

witness identity protection certificate means a certificate given under section 82.

[\[Section 80 amended: No. 9 of 2022 s. 424.\]](#)

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

For the purposes of this Part —

- (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, or notifying, the party's lawyer.

Division 2 — Witness identity protection certificates for operatives

82. Witness identity protection certificate — giving

- (1) The chief officer of a law enforcement agency may give a certificate for an operative of the agency in relation to a proceeding if —
 - (a) the operative is, or may be required, to give evidence in the proceeding; and
 - (b) the chief officer is satisfied on reasonable grounds that the disclosure in the proceeding of the operative's true identity or where the operative lives is likely to —
 - (i) endanger the safety of the operative or someone else; or

- (ii) prejudice any investigation.
- (2) The chief officer must make all practicable inquiries to enable him or her to ascertain the information required to be included in the certificate by section 83.
- (3) A decision to give a witness identity protection certificate —
 - (a) is final; and
 - (b) cannot be impeached for informality or form; and
 - (c) cannot be appealed against, called into question, quashed or invalidated in any court.
- (4) Subsection (3) does not prevent a decision to give a witness identity protection certificate being called into question in the course of any disciplinary proceeding against the person who made the decision.
- (5) Subsection (3) does not limit judicial review for jurisdictional error.

83. Form of witness identity protection certificate

- (1) For the purposes of this section —
 - (a) a charge against a person for an offence is *outstanding* until the charge is finally dealt with in any of the following ways —
 - (i) the charge is withdrawn;
 - (ii) the charge is dismissed by a court;
 - (iii) the person is discharged by a court;
 - (iv) the person is acquitted or found guilty of the offence by a court;
- and

- (b) an allegation of professional misconduct against a person is **outstanding** if the allegation has not been finally dealt with under —
 - (i) in relation to a police officer — the *Police Act 1892*;
 - (ii) in relation to a member of staff of the Australian Crime Commission — the *Australian Crime Commission Act 2002* (Commonwealth);
 - (iii) in relation to a fisheries officer — the *Public Sector Management Act 1994*.
- (2) A witness identity protection certificate for an operative of a law enforcement agency in relation to a proceeding must state all of the following —
 - (a) if the operative —
 - (i) is known to a party to the proceeding by a name other than the operative's real name, that name (the **assumed name**); or
 - (ii) is not known to any party to the proceeding by the assumed name, the operative's court name for the proceeding;
 - (b) the name of the agency;
 - (c) the date of the certificate;
 - (d) the grounds for giving the certificate;
 - (e) whether the operative has been convicted or found guilty of an offence, in this jurisdiction or elsewhere, and, if so, particulars of each offence;
 - (f) whether any charges against the operative for an offence are outstanding, in this jurisdiction or elsewhere, and, if so, particulars of each charge;
 - (g) if the operative is or was a law enforcement officer —
 - (i) whether the operative has been found guilty of professional misconduct and, if so, particulars of each finding; and

- (ii) whether any allegations of professional misconduct against the operative are outstanding and, if so, particulars of each allegation;
 - (h) whether, to the knowledge of the person giving the certificate, a court has made any adverse comment about the operative's credibility and, if so, particulars of the comment;
 - (i) whether, to the knowledge of the person giving the certificate, the operative has made a false representation when the truth was required and, if so, particulars of the representation;
 - (j) if there is anything else known to the person giving the certificate that may be relevant to the operative's credibility, particulars of the thing.
- (3) A witness identity protection certificate for an operative must not contain information that may allow the operative's true identity, or where the operative lives, to be revealed.
- (4) The *Spent Convictions Act 1988* does not apply to the disclosure of information under subsection (2)(e) or (f).

Division 3 — Provisions applicable to court proceeding

84. Application of Division

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

85. Filing and notification

- (1) A witness identity protection certificate for an operative in relation to a court proceeding must be filed in the court before the operative gives evidence in the proceeding.
- (2) The person who files the certificate must give a copy of it to the operative and each party to the proceeding at least 14 days (or such shorter period as is agreed to by the party) before the day on which the operative is to give evidence.
- (3) The court may order the person filing the certificate to give a copy of it to someone else stated in the order.
- (4) This section applies subject to section 86.

86. Leave for non-compliance

- (1) The person who has filed, or proposes to file, a witness identity protection certificate may apply to the court for leave not to comply with the requirement under section 85(2) in relation to the time within which a copy of the certificate is to be given.
- (2) However, the court must not give such leave unless it is satisfied that it was not reasonably practicable to comply with the requirement referred to in subsection (1).

87. Effect of witness identity protection certificate

- (1) This section applies if —
 - (a) a witness identity protection certificate for an operative is filed in accordance with section 85(1); and
 - (b) either —
 - (i) a copy of the certificate is given to each party in accordance with section 85(2) and to each person in accordance with an order under section 85(3) (if any); or
 - (ii) the court gives leave for this section to apply despite non-compliance with section 85(2) or (3).

- (2) If this section applies —
- (a) the operative may give evidence in the proceeding under the assumed name, or court name, stated in the certificate; and
 - (b) subject to sections 89 and 90 —
 - (i) a question must not be asked of a witness, including the operative, that may lead to the disclosure of the operative's true identity or where the operative lives; and
 - (ii) a witness, including the operative, cannot be required to (and must not) answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives; and
 - (iii) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives.
- (3) For the purposes of this section, a person involved in a proceeding includes —
- (a) the court; and
 - (b) a party to the proceeding; and
 - (c) a person given leave to be heard or make submissions in the proceeding; and
 - (d) a lawyer representing a person referred to in paragraph (b) or (c) or a lawyer assisting the court in the proceeding; and
 - (e) any other officer of the court or person assisting the court in the proceeding; and
 - (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.

88. Orders to protect operative's true identity or location

- (1) The court in which a witness identity protection certificate is filed —
 - (a) must hear the proceeding (including any application relating to the proceeding, such as an application for an order under paragraph (b) or an application under section 86 or 90) in closed court; and
 - (b) may make any order it considers necessary or desirable to protect the true identity of the operative for whom the certificate is given or to prevent the disclosure of where the operative lives.
- (2) A person must not contravene an order under subsection (1)(b).
Penalty: imprisonment for 10 years.
Summary conviction penalty: a fine of \$24 000 or imprisonment for 2 years.
- (3) Subsection (2) does not limit the court's power to punish for contempt.

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

- (1) This section applies if a witness identity protection certificate for an operative in relation to a proceeding is filed in a court.
- (2) The presiding officer in the proceeding may require the operative to do one or both of the following —
 - (a) to disclose the operative's true identity to the presiding officer;
 - (b) to provide the presiding officer with photographic evidence of that identity.
- (3) The presiding officer must not —
 - (a) record information disclosed to the presiding officer under subsection (2); or
 - (b) retain or copy a document or other thing provided to the presiding officer under that subsection.

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

- (1) This section applies if a witness identity protection certificate for an operative in relation to a proceeding is filed in a court.
- (2) 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 operative, that may lead to the disclosure of the operative's true identity or where the operative lives; or
 - (ii) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives;
 - or
 - (b) for an order requiring a witness, including the operative, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives.
- (3) The court may —
 - (a) give leave for the party or lawyer to do anything mentioned in subsection (2)(a); and
 - (b) make an order requiring a witness to do anything mentioned in subsection (2)(b).
- (4) 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 operative's credibility;
 - (b) it would be impracticable to test properly the credibility of the operative without allowing the risk of disclosure

of, or disclosing, the operative's true identity or where the operative lives;

- (c) it is in the interests of justice for the operative's credibility to be able to be tested.
- (5) If there is a jury in the proceeding, the application must be heard in the absence of the jury.
 - (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 operative's true identity or to prevent the disclosure of where the operative lives.
 - (9) A person must not contravene an order under subsection (6), (7) or (8).

Penalty: imprisonment for 10 years.
Summary conviction penalty: a fine of \$24 000 or imprisonment for 2 years.
 - (10) Subsection (9) does not limit the court's power to punish for contempt.

91. Application for leave — joinder as respondent

- (1) This section applies if —
 - (a) a witness identity protection certificate for an operative in relation to a proceeding is filed in a court; and

- (b) a person applies —
 - (i) for leave under section 86 or 90; or
 - (ii) for an order under section 88 or 90.
- (2) The court in which the application is pending may allow a person to join the application as a respondent if —
 - (a) the person is —
 - (i) the operative in relation to whom the witness identity protection certificate is given; or
 - (ii) the chief officer of the agency that gave the witness identity protection certificate;
 - and
 - (b) the person applies to be joined to the application as a respondent; and
 - (c) the person has sufficient interest in the subject matter of the application.
- (3) If a court allows a person to join the application as a respondent under subsection (2), the court must allow the person, or the person's legal representative, to appear and be heard.

92. Directions to jury

- (1) This section applies if —
 - (a) a witness identity protection certificate for an operative in relation to a proceeding is filed in a court; and
 - (b) there is a jury in the proceeding; and
 - (c) the operative gives evidence.
- (2) The court must (unless it considers it inappropriate) direct the jury not to give the operative's evidence any more or less weight, or draw any adverse inferences against the defendant or another party to the proceeding, because —
 - (a) there is a witness identity protection certificate for the operative; or

- (b) the court has made an order under section 88 or 90(6), (7) or (8).

93. Adjournment for appeal decision

- (1) This section applies if, in proceedings before a court (the *original court*) —
 - (a) the original court gives, or refuses, leave under section 86 or 90 in relation to a witness identity protection certificate for an operative; or
 - (b) the original court makes, or refuses to make, an order under section 88 or 90 in relation to a witness identity protection certificate for an operative.
- (2) A party to the proceedings may apply to the original court for an adjournment —
 - (a) to appeal against the decision of the original court to give or refuse leave, or to make or refuse to make the order; or
 - (b) to decide whether to appeal or seek leave to appeal against the decision.
- (3) If an application is made under subsection (2), the original court must grant the adjournment.
- (4) A court that has jurisdiction to hear and determine appeals from a judgment, order or direction in the proceedings has jurisdiction to hear and determine an appeal against the decision to give or refuse leave, or to make or refuse to make the order.

**Division 4 — Provisions applicable to
parliamentary proceeding**

94. Application of Division

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

95. Witness identity protection certificate to be given to Parliament

- (1) A witness identity protection certificate for an operative in relation to a parliamentary proceeding must be given —
- (a) to the Clerk of the House of Parliament that established the parliamentary committee concerned; or
 - (b) if the parliamentary committee concerned was established by both Houses of Parliament, to the Clerk of each House of Parliament,

before the operative gives evidence in the proceeding.

- (2) The certificate must be given at least 14 days before the day on which the operative is to give evidence, unless in the circumstances it is not reasonably practicable to do so.
- (3) The person who gives the certificate must give a copy of it to the operative before the day on which the operative is to give evidence.

96. Effect of witness identity protection certificate

- (1) This section applies if a witness identity protection certificate for an operative is given in accordance with section 95 in relation to a parliamentary proceeding.
- (2) If this section applies —
- (a) the operative may give evidence in the proceeding under the assumed name, or court name, stated in the certificate; and
 - (b) subject to any resolution passed under section 97(4) —
 - (i) a question must not be asked of a witness, including the operative, that may lead to the disclosure of the operative's true identity or where the operative lives; and
 - (ii) a witness, including the operative, cannot be required to (and must not) answer a question,

give evidence or provide information that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives; and

- (iii) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives.
- (3) For the purposes of subsection (2)(b)(iii), a person involved in a proceeding includes —
- (a) a member of the parliamentary committee; and
 - (b) a party to the proceeding; and
 - (c) a person given leave to be heard or make submissions in the proceeding; and
 - (d) a lawyer representing a person referred to in paragraph (b) or (c) or a lawyer assisting the parliamentary committee in the proceeding; and
 - (e) any other person assisting the parliamentary committee in the proceeding; and
 - (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.
- (4) If this section applies, any evidence given by the operative in the proceeding must be given in private.

97. Disclosure of operative's true identity or location despite certificate

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

- (2) This section applies if a witness identity protection certificate for an operative is given in accordance with section 95 in relation to a parliamentary proceeding.
- (3) The parliamentary committee may seek the authorisation of the relevant House —
 - (a) to ask a question of a witness, including the operative, that may lead to the disclosure of the operative's true identity or where the operative lives; or
 - (b) to require a witness, including the operative, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives; or
 - (c) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the operative's true identity or where the operative lives.
- (4) The relevant House may pass a resolution authorising the doing of anything mentioned in subsection (3)(a), (b) or (c).
- (5) However, the relevant House must not pass a resolution unless satisfied about each of the following —
 - (a) there is evidence that, if accepted, would substantially call into question the operative's credibility;
 - (b) it would be impracticable to test properly the credibility of the operative without allowing the risk of disclosure of, or disclosing, the operative's true identity or where the operative lives.

98. Restrictions on content of reports to Parliament

If a witness identity protection certificate for an operative is given in accordance with section 95 in relation to a parliamentary proceeding, the parliamentary committee must not disclose in a report to a House of Parliament —

- (a) the operative's true identity or where the operative lives; or
- (b) information that may lead to the disclosure of the operative's identity or where the operative lives.

Division 5 — Other matters

99. Witness identity protection certificate — cancellation

- (1) This section applies if the chief officer of a law enforcement agency gives a witness identity protection certificate for an operative of the agency in relation to a proceeding.
- (2) The chief officer may cancel the witness identity protection certificate if the chief officer considers that it is no longer necessary or appropriate to prevent the disclosure of the operative's true identity or where the operative lives.
- (3) If the chief officer cancels the certificate —
 - (a) after it has been filed in a court and before the matter has been finalised by the court, the chief officer must immediately give written notice to the court and each party to the proceeding that the certificate has been cancelled; or
 - (b) after it has been given to the Clerk of a House of Parliament and before the matter has been finalised by the parliamentary committee concerned, the chief officer must immediately give written notice to the Clerk that the certificate has been cancelled.

100. Permission to give information disclosing operative's true identity or location

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

101. Disclosure offences

- (1) A person must not do something (the *disclosure action*) that discloses, or is likely to lead to the disclosure of, the true identity of an operative for whom a witness identity protection certificate has been given or where the operative lives unless —
 - (a) the certificate has been cancelled under section 99 before the person does the disclosure action; or
 - (b) the disclosure action is —
 - (i) required by section 89; or
 - (ii) authorised by leave or by an order under section 90; or
 - (iii) permitted under section 100.

Penalty: imprisonment for 10 years.

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

- (2) An offence against subsection (1) is an indictable offence.
- (3) Nothing in this section limits or otherwise affects the operation of the *Parliamentary Privileges Act 1891*.

102. Evidentiary certificates

- (1) A chief officer of a law enforcement agency may sign a certificate stating any of the following —
 - (a) that, for the purposes of section 101(1)(a), a witness identity protection certificate for an operative in relation to a proceeding has not been cancelled under section 99;
 - (b) whether, for the purposes of section 101(1)(b)(iii), the conduct that is the subject of the offence was permitted under section 100.
- (2) In any proceedings, a certificate given under this section is sufficient evidence, in the absence of evidence to the contrary, of the matters certified in it.

103. Reports about witness identity protection certificates

- (1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must submit to the Minister a report about witness identity protection certificates given by the chief officer during that year.
- (2) The report must include all of the following —
 - (a) the number of witness identity protection certificates given;
 - (b) on what basis the chief officer was satisfied about the matters mentioned in section 82(1)(b) for each certificate;
 - (c) if leave was given or an order made under section 90 in a proceeding in which a witness identity protection certificate for an operative of the agency was filed, details of the proceeding that relate to the leave or order;

- (d) if a witness identity protection certificate was cancelled under section 99, the reasons why the certificate was cancelled;
 - (e) if a permission was given under section 100, the reasons why the permission was given;
 - (f) any other information relating to witness identity protection certificates and the administration of this Part that the Minister considers appropriate.
- (3) A report must not include information that discloses, or may lead to the disclosure of, an operative's true identity, or where the operative lives, unless the witness identity protection certificate for the operative has been cancelled.
- (4) The Minister is to cause a copy of the report to be laid before each House of Parliament within 15 sitting days from the day on which the report is received by the Minister.

Division 6 — Mutual recognition under corresponding laws

104. Recognition of witness identity protection certificates under corresponding laws

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

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

- (f) section 90 (Disclosure of operative's true identity or location despite certificate);
- (g) section 91 (Application for leave — joinder as respondent);
- (h) section 92 (Directions to jury);
- (i) section 93 (Adjournment for appeal decision);
- (j) section 101 (Disclosure offences);
- (k) section 102 (Evidentiary certificates).

Division 7 — Miscellaneous

105. Delegation

- (1) In this section —

senior officer means —

- (a) in relation to the Police Force — a person holding office as a Deputy Commissioner of Police;
 - (b) in relation to the Australian Crime Commission —
 - (i) an SES employee as defined in the *Australian Crime Commission Act 2002* (Commonwealth) section 4(1); or
 - (ii) a person holding a prescribed office in the Australian Crime Commission;
 - (c) in relation to the fisheries department — a fisheries officer holding a prescribed office in the department.
- (2) Except as provided by this section, and despite any other written law to the contrary, the functions of a chief officer under this Part cannot be delegated to any other person.
- (3) A chief officer of a law enforcement agency may delegate any of the chief officer's functions under this Part (except this power of delegation) to a senior officer of the agency.

Part 5 — Miscellaneous

106. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

107. Review of Parts 2 and 3

- (1) The Minister must carry out a review of the operation and effectiveness of Parts 2 and 3 as soon as is practicable after the end of the period of 5 years beginning on the day on which this Act receives the Royal Assent.
- (2) The Minister must prepare a report based on the review and must cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared and, in any event, not later than 18 months after the end of the period referred to in subsection (1).

Part 6 — Savings provisions

108. Term used: commencement day

In this Part —

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

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

(1) In this section —

former authorisation means an authorisation under the *Misuse of Drugs Act 1981* section 31(1) as in force immediately before the day on which Part 9 comes into operation.

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

110. Savings provision relating to *Prostitution Act 2000*

(1) In this section —

former authorisation means an authorisation under the *Prostitution Act 2000* section 35(1) as in force immediately before the day on which Part 10 comes into operation.

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

[Parts 7-11 omitted under the Reprints Act 1984 s. 7(4)(e).]

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Notes

This is a compilation of the *Criminal Investigation (Covert Powers) Act 2012* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Investigation (Covert Powers) Act 2012</i>	55 of 2012	3 Dec 2012	s. 1 and 2: 3 Dec 2012 (see s. 2(a)); Act other than s. 1 and 2: 1 Mar 2013 (see s. 2(b) and <i>Gazette</i> 25 Jan 2013 p. 271)
<i>Corruption and Crime Commission Amendment (Misconduct) Act 2014</i> s. 39	35 of 2014	9 Dec 2014	1 Jul 2015 (see s. 2(b) and <i>Gazette</i> 26 Jun 2015 p. 2235)
Reprint 1: The <i>Criminal Investigation (Covert Powers) Act 2012</i> as at 15 Dec 2017 (includes amendments listed above)			
<i>Legal Profession Uniform Law Application Act 2022</i> s. 424	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Aquatic Resources Management Act 2016</i> Pt. 19 Div. 4	53 of 2016	29 Nov 2016	To be proclaimed (see s. 2(b))
<i>Legal Profession Uniform Law Application Act 2022</i> s. 424	9 of 2022	14 Apr 2022	To be proclaimed (see s. 2(c))

Other notes

¹ The provisions in this Act amending those Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).

