

**NORTHERN TERRITORY OF AUSTRALIA**

**WITNESS PROTECTION (NORTHERN TERRITORY) ACT 2002**

As in force at 30 November 2018

**Table of provisions**

<b>Part 1</b>	<b>Preliminary</b>	
1	Short title .....	1
2	Commencement .....	1
3	Interpretation .....	1
4	Declaration of approved authorities and complementary witness protection laws etc. ....	4
<b>Part 2</b>	<b>Territory witness protection program</b>	
<b>Division 1</b>	<b>Establishment</b>	
5	Commissioner to establish Territory witness protection program .....	5
6	Commercial arrangements for benefit of participant .....	6
<b>Division 2</b>	<b>Inclusion of witnesses etc. in TWPP</b>	
7	Conditions on which witness or family member included in TWPP .....	7
8	Decision of Commissioner whether to include witness or family member .....	7
9	Commissioner to receive information before making decision to include witness or family member .....	8
10	Memorandum of understanding: content .....	9
11	Memorandum of understanding: signing .....	10
12	Memorandum of understanding: amending .....	11
13	Commissioner must take action to protect etc. ....	11
<b>Division 3</b>	<b>New identities for participants</b>	
14	Application to Supreme Court for order .....	11
15	Power of Supreme Court to make order .....	12
16	Effect of order authorising new identity .....	12
17	Commissioner to maintain records of original entries in Register .....	13
18	Marriage of participant who has been given new identity .....	13

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<b>Division 4</b>	<b>Termination of inclusion in TWPP</b>	
<b>Subdivision 1</b>	<b>Cessation of protection and assistance</b>	
19	Termination of protection etc. by Commissioner or Deputy Commissioner.....	14
20	Procedure for involuntary termination of protection etc. ....	15
21	When involuntary termination takes effect.....	15
22	Effect of termination of protection and assistance .....	16
<b>Subdivision 2</b>	<b>Restoration of former identity of former participant</b>	
23	Restoration of former identity.....	16
24	When Commissioner or Deputy Commissioner may take action to restore former identity .....	17
25	Commissioner or Deputy Commissioner must apply to Supreme Court to restore former identity .....	18
26	Approved authority may apply to Court to restore former identity .....	18
27	Power of Supreme Court to make order .....	18
28	Registrar to cancel new identity.....	19
29	Effect of cancellation of new identity.....	19
<b>Part 2A</b>	<b>Assumed identities for ICAC witnesses</b>	
<b>Division 1</b>	<b>Preliminary matters</b>	
29A	Application of Part .....	20
<b>Division 2</b>	<b>Orders for protection</b>	
29B	Application by ICAC for order .....	20
29C	Power of Supreme Court to make order .....	20
<b>Division 3</b>	<b>Arrangements for protection</b>	
29D	Memorandum of understanding – content .....	21
29E	Memorandum of understanding – signing .....	23
29F	Memorandum of understanding – amending .....	23
<b>Division 4</b>	<b>Restoration of former identity of former ICAC witness</b>	
29G	Restoration of former identity.....	24
29H	When ICAC may take action to restore former identity.....	24
29J	ICAC must apply to Supreme Court to restore former identity.....	25
29K	Approved authority may apply to Court to restore former identity .....	25

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29L	Power of Supreme Court to make order .....	26
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**Part 3 Arrangements between Commissioner and approved authorities**

30	Arrangements with approved authorities .....	26
31	Exercise of powers etc. by Commissioner etc. under complementary witness protection law .....	27
32	Exercise of powers etc. under this Act by approved authority .....	27

**Part 4 Offences**

33	Offences relating to disclosure of information about participants .....	28
34	Offences relating to disclosure of information by participants.....	29
35	Person who has new identity not to use documents relating to former identity.....	30

**Part 5 Miscellaneous**

36	Provision of information about participant or former participant to approved authorities .....	30
37	Commissioner may delegate powers and functions under this Act .....	31
38	Proceedings in Supreme Court to be closed to public.....	31
39	Immunity from proceedings .....	32
40	Double jeopardy .....	32
41	Regulations.....	33
42	Transitional.....	33

**ENDNOTES**



# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 30 November 2018

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## WITNESS PROTECTION (NORTHERN TERRITORY) ACT 2002

**An Act to establish a program to arrange and provide protection and assistance to persons who are or have been witnesses in criminal proceedings, and to other persons, and for related purposes**

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Witness Protection (Northern Territory) Act 2002*.

#### 2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

#### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

***approved authority*** means:

- (aa) the ICAC; or
- (a) the Commissioner of the Australian Federal Police; or
- (b) the highest ranking officer (however designated) of the police force of a State or another Territory of the Commonwealth; or
- (c) the Chief Executive Officer of the Australian Crime Commission established by the *Australian Crime Commission Act 2002* of the Commonwealth; or
- (d) an authority or body of the Commonwealth or a State or Territory of the Commonwealth that the Minister declares under section 4(1) to be an approved authority.

***authorised member of the Police Force*** means a member of the Police Force who is authorised under an instruction given by the Commissioner or a general order made under section 14A of the

*Police Administration Act 1978* to carry out duties for the purposes of giving protection and assistance under the TWPP to a witness or family member.

**Commissioner** means the Commissioner of Police.

**complementary witness protection law** means:

- (a) the *Witness Protection Act 1994* of the Commonwealth; or
- (b) a law of a State or another Territory of the Commonwealth that:
  - (i) makes provision for the protection of witnesses or family members; and
  - (ii) is declared by the Minister under section 4(3) to be a complementary witness protection law.

**complementary witness protection program** means a witness protection program established under a complementary witness protection law.

**Deputy Commissioner** has the same meaning as in the *Police Administration Act 1978*.

**family member**, of a witness, means:

- (a) a spouse or de facto partner of the witness; or
- (b) a person who is related to or associated with the witness.

**former identity**, in relation to a person who was a participant who was given a new identity, means the identity of the person before the person was given the new identity.

**ICAC Act** means the *Independent Commissioner Against Corruption Act 2017*.

**ICAC examination** means an examination as defined in section 4 of the ICAC Act.

**ICAC investigation** means an investigation as defined in section 4 of the ICAC Act.

**ICAC witness** means a person mentioned in the definition **witness**, paragraph (d).

**Inspector**, see section 4 of the ICAC Act.

**memorandum of understanding** means a memorandum of understanding entered into in respect of a witness or family member under Part 2, Division 2.

**new identity**, in relation to a participant, means the identity given to the participant under Part 2, Division 3 as a means of providing protection and assistance to the participant under the TWPP.

**officer of an approved authority** means:

- (a) an employee, member or officer (however described) of the authority or body administered by an approved authority referred to in paragraph (a), (b) or (c) of the definition of **approved authority**; or
- (b) a person who is an employee, member or officer (however described) of an approved authority referred to in paragraph (d) of the definition of **approved authority**.

**participant** means a witness or family member who receives protection or assistance under the TWPP.

**public inquiry**, see section 4 of the ICAC Act.

**recognised participant** means a witness or family member who receives protection or assistance under a complementary witness protection program.

**Register** has the same meaning as in the *Births, Deaths and Marriages Registration Act 1996*.

**Registrar** has the same meaning as in the *Births, Deaths and Marriages Registration Act 1996*.

**TWPP** means the Territory witness protection program established and maintained under section 5 of this Act.

**witness** means a person who:

- (a) has given or agreed to give evidence on behalf of the Crown in:
  - (i) proceedings for an offence against a law of the Territory, the Commonwealth or a State or another Territory of the Commonwealth; or
  - (ii) hearings or proceedings before an authority that the Minister declares under section 4(4) to be an authority to which this paragraph applies; or

- (b) has given or agreed to give evidence, other than evidence referred to in paragraph (a), in relation to the commission or alleged commission of an offence against a law of the Territory, the Commonwealth or a State or another Territory of the Commonwealth; or
- (c) has made a statement to a member of the Police Force, an approved authority or an officer of an approved authority in relation to the commission or alleged commission of an offence against a law of the Territory, the Commonwealth or a State or another Territory of the Commonwealth; or
- (d) is a person for whom the ICAC may take action under section 111 of the ICAC Act.

*Note for subsection (1)*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

- (2) A reference in this Act to a parent or other person in relation to agreeing to inclusion in the TWPP, or consenting to or signing a memorandum of understanding or an amendment to a memorandum of understanding, for and on behalf of a witness, family member or participant who is less than 18 years of age or who lacks legal capacity is a reference to a parent, guardian or other person who is usually responsible for the care and control of the witness, family member or participant or to the legal personal representative of the witness, family member or participant.

#### **4 Declaration of approved authorities and complementary witness protection laws etc.**

- (1) Subject to subsection (2), the Minister may, by notice in the *Gazette*, declare an authority or body of the Commonwealth or of a State or Territory of the Commonwealth to be an approved authority.
- (2) The Minister must not declare an authority or body to be an approved authority under subsection (1) unless the authority or body is authorised under a law in force in the Commonwealth or the State or other Territory to conduct inquiries or investigations in relation to conduct that constitutes or is alleged to constitute criminal conduct, misconduct or corruption.
- (3) The Minister may, by notice in the *Gazette*, declare a law of a State or another Territory of the Commonwealth that makes provision for the protection of witnesses or family members to be a complementary witness protection law.



- (4) The Minister may, by notice in the *Gazette*, declare an authority to be an authority to which paragraph (a)(ii) of the definition of **witness** in section 3(1) refers.

## **Part 2 Territory witness protection program**

### **Division 1 Establishment**

#### **5 Commissioner to establish Territory witness protection program**

- (1) The Commissioner must establish and maintain the Territory witness protection program to arrange and provide protection and other assistance for witnesses and their family members.
- (2) The TWPP is to enable the Commissioner to take, or to authorise another member of the Police Force to take, the action the Commissioner considers necessary and reasonable to provide the protection and assistance to a witness or family member that will ensure the safety and welfare of the witness or family member.
- (3) Without limiting subsection (2), the TWPP may enable the Commissioner or an authorised member of the Police Force to do any one or more of the following:
- (a) provide protection for a witness while attending a court or an ICAC examination or public inquiry;
  - (b) provide a witness or family member with a new identity;
  - (c) apply for and obtain a document that is necessary to allow a witness or family member to establish a new identity or otherwise protect the witness or family member;
  - (d) provide accommodation for a witness or family member;
  - (e) relocate a witness or family member;
  - (f) provide transport for a witness or family member and his or her property;
  - (g) provide payment to a witness or family member for the purpose of meeting costs associated with relocation;
  - (h) provide payment to a witness or family member for the purpose of meeting the reasonable living expenses of the witness or family member and, whether directly or indirectly, other reasonable financial assistance;

- (i) provide assistance to a witness or family member to deal with any outstanding rights or obligations of the witness or family member;
  - (j) provide assistance to ensure that a witness or family member is able to comply with any restrictions that apply to the witness or family member;
  - (k) provide assistance to a witness or family member in obtaining employment or access to education;
  - (l) provide other assistance to a witness or family member with a view to ensuring that the witness or family member becomes self-sustaining;
  - (m) provide for the safety of the members of the Police Force who carry out duties in relation to the TWPP, including permitting the members to use assumed names and to carry documentation supporting those assumed names;
  - (n) exercise a power or perform a function under a complementary witness protection law;
  - (o) do any other thing that the Commissioner considers to be necessary to ensure the safety of a witness or family member.
- (4) In applying for and obtaining documentation referred to in subsection (3)(c), the Commissioner must not apply for and obtain a document that represents a witness or family member as having a qualification that he or she does not have or as being entitled to a benefit that he or she is not entitled to.
- (5) A member of the Police Force who uses an assumed name or carries documentation supporting an assumed name in accordance with the Commissioner's permission referred to in subsection (3)(m) does not, by doing so, commit an offence against any law in force in a State or Territory of the Commonwealth

## **6 Commercial arrangements for benefit of participant**

The Commissioner may make commercial arrangements with a person under which a participant who has been given a new identity is able to obtain benefits under a contract or arrangement without revealing his or her former identity.

## **Division 2 Inclusion of witnesses etc. in TWPP**

### **7 Conditions on which witness or family member included in TWPP**

- (1) A witness or family member is not to be given protection or assistance under the TWPP unless:
  - (a) the Commissioner has decided that there is a risk to the safety and welfare of the witness or family member and because of that risk the witness or family member needs protection and assistance of the kind able to be provided under the TWPP;
  - (b) subject to paragraph (c) – the witness or family member agrees to be included in the TWPP;
  - (c) if a witness or family member is less than 18 years of age or otherwise lacks legal capacity – a parent or other person agrees for and on behalf of the witness or family member that the witness or family member be included in the TWPP; and
  - (d) a memorandum of understanding is in force in respect of the witness or family member.
- (2) A witness or a family member of a witness is not to be given protection or assistance under the TWPP for the sole purpose of rewarding the witness for giving evidence or making a statement or persuading or encouraging the witness to give evidence or make a statement.

### **8 Decision of Commissioner whether to include witness or family member**

- (1) The Commissioner has the sole responsibility of deciding whether to include a witness or family member in the TWPP, including a witness or family member who an approved authority has requested to be included in the TWPP.
- (2) In deciding whether to include a witness or family member in the TWPP, the Commissioner:
  - (a) must have regard to the following:
    - (i) whether the witness or family member has a criminal record, particularly in respect of indictable offences or violence, and whether that record indicates a risk to the public if the witness or family member is included in the TWPP;

- (ii) any psychological or psychiatric examination or evaluation that has been conducted to determine the witness' or family member's suitability for inclusion in the TWPP;
  - (iii) the seriousness of the offence or, in the case of an ICAC witness, the conduct to which any relevant evidence or statement of the witness relates;
  - (iv) the nature and importance of the relevant evidence or statement referred to in subparagraph (iii);
  - (v) the nature of the perceived danger to the witness or family member;
  - (vi) whether there are viable alternative methods of protecting the witness or family member;
  - (vii) the nature of the witness's relationship to other witnesses being assessed for inclusion in the TWPP; and
- (b) may have regard to any other matters the Commissioner considers relevant.

**9 Commissioner to receive information before making decision to include witness or family member**

- (1) The Commissioner must not decide whether to include a witness or family member in the TWPP unless he or she is satisfied that he or she has received all the information necessary to assess whether or not to include the witness or family member in the TWPP.
- (2) For the purposes of receiving information referred to in subsection (1), the Commissioner may:
  - (a) require the witness or family member to:
    - (i) undergo medical, psychological or psychiatric tests or examinations; and
    - (ii) make the results of the tests or examinations available to the Commissioner; and
  - (b) make any other inquiries and investigations in relation to the witness or family member that the Commissioner considers appropriate.

- (3) The Regulations may prescribe information that a witness or family member may or must provide to the Commissioner for the purpose of deciding whether to include the witness or family member in the TWPP.

## **10 Memorandum of understanding: content**

- (1) A memorandum of understanding must:
- (a) set out the basis on which the witness and the witness' family members (if any) to whom it relates are included in the TWPP;
  - (b) set out details of the protection and assistance that are to be provided to the witness and family members;
  - (c) set out the effect of Division 4, Subdivision 1 of this Part; and
  - (d) contain a statement advising the witness and family members of their right under the *Ombudsman Act 2009* to complain to the Ombudsman about the conduct of the Commissioner or another member of the Police Force in relation to the matters dealt with in the memorandum.
- (2) A memorandum of understanding may contain:
- (a) the terms and conditions on which protection and assistance are to be provided to the witness and each family member;
  - (b) requirements that the witness and each family member must not engage in activities of a kind specified in the memorandum of understanding;
  - (c) an undertaking by or on behalf of the witness and each family member not to compromise, directly or indirectly, the security or any other aspect of the protection and assistance being provided;
  - (d) an undertaking by or on behalf of the witness and each family member to comply with all reasonable directions of the Commissioner in relation to the protection and assistance provided to the witness;
  - (e) a list of:
    - (i) the outstanding legal obligations (including family maintenance obligations and taxation obligations) of the witness and each family member; and
    - (ii) any other obligations and relationships of the witness and each family member,

and specify how they are to be dealt with;

- (f) a list of obligations that the witness and each family member may or may not enter into;
- (g) details of any financial assistance to be given to the witness and each family member;
- (h) an undertaking by or on behalf of the witness and each family member to disclose to the Commissioner details of any criminal charges made against the witness or family member, and any civil or bankruptcy proceedings made in relation to the witness or family member, after he or she is included in the TWPP;
- (i) details concerning the surrender and issue of passports and the issue of any other documents relating to the identity of the witness and each family member; or
- (j) any other matter that the Commissioner considers appropriate.

#### **11 Memorandum of understanding: signing**

- (1) A memorandum of understanding does not take effect until it is signed in accordance with subsection (2).
- (2) A memorandum of understanding must be signed:
  - (a) by the witness and each family member to whom it relates; or
  - (b) if the witness or family member is less than 18 years of age or lacks legal capacity – by a parent or other person for and on behalf of the witness or family member.
- (3) If:
  - (a) a parent or other person signed a memorandum of understanding for and on behalf of a witness or family member who was less than 18 years of age or lacked legal capacity; and
  - (b) the memorandum of understanding is still effective after the witness or family member becomes 18 years of age or attains legal capacity,

the Commissioner may require the witness or family member to sign the memorandum of understanding.

**12 Memorandum of understanding: amending**

- (1) Subject to subsection (2), the Commissioner may amend a memorandum of understanding.
- (2) An amendment to a memorandum of understanding:
  - (a) has no effect unless the participant or, if more than one, each participant to whom it relates or, if a participant is less than 18 years of age or lacks legal capacity, a parent or other person for and on behalf of the participant consents to the amendment; and
  - (b) is not to have the effect of removing from the memorandum of understanding the provisions referred to in section 10(1).

**13 Commissioner must take action to protect etc.**

If:

- (a) a witness or family member is being assessed for inclusion in the TWPP; or
- (b) a witness or family member is included in the TWPP,

the Commissioner must take, or authorise another member of the Police Force to take, the action permitted under the TWPP that the Commissioner considers necessary and reasonable to provide the protection and assistance to the witness or family member that will ensure the witness' or family member's safety and welfare while also protecting the safety of members of the Police Force.

**Division 3 New identities for participants**

**14 Application to Supreme Court for order**

- (1) If the Commissioner decides to provide a participant with a new identity, the Commissioner may apply to the Supreme Court for an order authorising the Registrar to make a new entry in the Register in respect of a participant.
- (2) If an approved authority decides to provide a recognised participant with a new identity, the approved authority may apply to the Supreme Court for an order authorising the Registrar to make a new entry in the Register in respect of a recognised participant.

- (3) An application under subsection (1) or (2) is to:
- (a) specify the nature of the new entry the Commissioner or approved authority seeks to be made in the Register and the particulars to be noted in respect of the entry in the Register; and
  - (b) be supported by evidence of the matters specified in section 15(a), (b) and (c).

## **15 Power of Supreme Court to make order**

On hearing an application made under section 14, if the Supreme Court is satisfied that:

- (a) the person named in the application as the participant or recognised participant is a participant or a recognised participant;
- (b) the life or safety of the person may be endangered as a result of the person or a family member of the person being or having been a witness; and
- (c) the person is likely to comply with the memorandum of understanding that he or she entered into under this Act or under the relevant complementary witness protection law,

the Supreme Court may make the order applied for in respect of the person.

## **16 Effect of order authorising new identity**

- (1) On receiving a copy of an order made under section 15 or 29C, the Registrar, or a person authorised by the Registrar, must note in the Register in relation to the person the subject of the order the particulars that give effect to the order.
- (2) An entry made in the Register under subsection (1) has effect as if it were a valid entry made under and in accordance with the *Births, Deaths and Marriages Registration Act 1996*.
- (3) The Registrar or person authorised by the Registrar may not alter or cancel an entry made in the Register under subsection (1) unless authorised to do so by an order of the Supreme Court.
- (4) Subject to an order of the Supreme Court to the contrary, a birth certificate, marriage certificate or death certificate issued in relation to a person in relation to whom particulars are noted in the Register under subsection (1) (but after the particulars have been noted) is to specify particulars of the person's new identity.



**17 Commissioner to maintain records of original entries in Register**

The Commissioner must keep and maintain a record of the original birth entry or the original marriage entry in the Register of each person in respect of whom an entry is made in the Register under section 16(1).

**18 Marriage of participant who has been given new identity**

If:

- (a) a participant or recognised participant who has been provided with a new identity wishes to marry;
- (b) the participant gives to the Commissioner or the recognised participant gives to the relevant approved authority evidence:
  - (i) of the identity of the participant or recognised participant; and
  - (ii) that the participant or recognised participant is of marriageable age,

and the Commissioner or approved authority is satisfied as to the identity of the participant or recognised participant and that he or she is of marriageable age;

- (c) in the case where the participant or recognised participant has been married previously – the participant gives to the Commissioner or the recognised participant gives to the approved authority evidence that satisfies the Commissioner or approved authority that his or her former spouse has died or that the marriage has been dissolved or annulled; and
- (d) the participant gives to the Commissioner or the recognised participant gives to the approved authority a statutory declaration to the effect that there is no legal impediment to the marriage and the Commissioner or approved authority is not aware of any legal impediment to the marriage,

the Commissioner or approved authority, as the case may require, may give a certificate to the Registrar stating that the Commissioner or approved authority has received the evidence referred to in paragraphs (a), (b) and (c) and the statutory declaration referred to in paragraph (d).

## **Division 4 Termination of inclusion in TWPP**

### **Subdivision 1 Cessation of protection and assistance**

#### **19 Termination of protection etc. by Commissioner or Deputy Commissioner**

(1) If:

- (a) a participant deliberately breaches a term of the memorandum of understanding in respect of the participant or a requirement or undertaking under the TWPP;
- (b) a participant's conduct or threatened conduct is, in the opinion of the Commissioner or Deputy Commissioner, likely to threaten the security or compromise the integrity of the TWPP;
- (c) the circumstances that gave rise for the need to protect and assist a participant cease to exist;
- (d) a participant commits an offence against a law in force in the Territory, the Commonwealth or a State or another Territory of the Commonwealth;
- (e) the Commissioner or Deputy Commissioner becomes aware that a participant has knowingly given information in relation to a matter relevant to the TWPP to the Commissioner or another member of the Police Force that is false or misleading in a material particular;
- (f) a participant breaches an undertaking, including an undertaking to give evidence, given in relation to a matter relevant to the TWPP;
- (g) a participant refuses or fails to sign a memorandum of understanding as required by the Commissioner under section 11(3); or
- (h) a participant refuses or fails to consent in accordance with section 12(2)(a) to an amendment to the memorandum of understanding relating to the participant,

the Commissioner or Deputy Commissioner may terminate the protection and assistance provided to the participant.

- (2) If a participant requests, in writing, the Commissioner or Deputy Commissioner to terminate the protection and assistance provided to him or her, the Commissioner or Deputy Commissioner must do so.

## **20 Procedure for involuntary termination of protection etc.**

- (1) If the Commissioner or Deputy Commissioner decides under section 19(1) that it is appropriate to terminate the protection and assistance being given to a participant, the Commissioner or Deputy Commissioner must:
  - (a) take reasonable steps to notify the participant of his or her decision; and
  - (b) notify the relevant approved authority (if any) of the decision.
- (2) The Commissioner or Deputy Commissioner is not required to notify a participant under subsection (1)(a) if the participant cannot be found after making reasonable inquiry.
- (3) The participant may, within 28 days after receiving notice of the decision, apply to the Commissioner for a review of the decision.
- (4) On receiving an application for review under subsection (3), the Commissioner must review the decision and, in doing so, must give the participant a reasonable opportunity to state his or her case.
- (5) After conducting the review, the Commissioner must:
  - (a) confirm or reverse the decision reviewed;
  - (b) give notice in writing of the outcome of the review to the participant;
  - (c) if the Commissioner confirms the decision to terminate the protection and assistance – specify in the notice under paragraph (b) his or her reasons for confirming the decision; and
  - (d) if the Commissioner reverses the decision – state in the notice that the decision has no effect and that protection and assistance under the TWPP will continue to be provided to the participant.

## **21 When involuntary termination takes effect**

- (1) A decision of the Commissioner or Deputy Commissioner under section 19(1) to terminate the protection and assistance given to a participant under the TWPP takes effect:
  - (a) if the participant's location is not known and the Commissioner or Deputy Commissioner has taken reasonable steps to notify the participant of the decision but has been unable to do so – on the expiry of 28 days after the Commissioner or Deputy

Commissioner commenced taking the steps to notify the participant;

- (b) if the participant receives notice of the Commissioner's or Deputy Commissioner's decision but does not apply for review of the decision under section 20(3) – on the expiry of 28 days after the participant receives notice of the decision; or
  - (c) if the participant receives notice of the Commissioner's or Deputy Commissioner's decision and applies for review of the decision under section 20(3) and, on review, the Commissioner confirms the decision – on the expiry of 3 days after the Commissioner notifies the participant that he or she has confirmed the decision.
- (2) The decision of the Commissioner or Deputy Commissioner to terminate the protection and assistance given to a participant has no effect where a participant applies to the Commissioner to review the decision and the Commissioner reverses the decision.

## **22 Effect of termination of protection and assistance**

On the termination of the provision of protection and assistance to a person as a participant under the TWPP:

- (a) the person is no longer included in the TWPP; and
- (b) the memorandum of understanding entered into in respect of the person ceases to operate in respect of the person.

## **Subdivision 2 Restoration of former identity of former participant**

### **23 Restoration of former identity**

- (1) If protection and assistance under the TWPP to a person is terminated, the Commissioner or Deputy Commissioner may decide that it is appropriate to restore the person's former identity.
- (2) The Commissioner or Deputy Commissioner must take reasonable steps to notify the person of his or her decision.
- (3) The Commissioner or Deputy Commissioner is not required to notify a person under subsection (2) if the person cannot be found after making reasonable inquiry.
- (4) The person may, within 7 days after receiving notice of the decision, apply to the Commissioner to review the decision.

- (5) On receiving an application for review under subsection (4), the Commissioner must review the decision and, in doing so, must give the person a reasonable opportunity to state his or her case.
- (6) After conducting the review, the Commissioner must:
  - (a) confirm or reverse the decision reviewed;
  - (b) give notice in writing of the outcome of the review to the person;
  - (c) if the Commissioner confirms the decision to restore the person's former identity – specify in the notice under paragraph (b) his or her reasons for doing so; and
  - (d) if the Commissioner reverses the decision – state in the notice that the decision has no effect and that the person's former identity will not be restored.

**24 When Commissioner or Deputy Commissioner may take action to restore former identity**

- (1) If the Commissioner or Deputy Commissioner decides under section 23 to restore a person's former identity, the Commissioner or Deputy Commissioner may commence action to restore the person's former identity:
  - (a) if the person's location is not known and the Commissioner or Deputy Commissioner has taken reasonable steps to notify the person of the decision but has been unable to do so – on the expiry of 28 days after the Commissioner or Deputy Commissioner commenced taking the steps to notify the person;
  - (b) if the person receives notice of the Commissioner's or Deputy Commissioner's decision but does not apply for review of the decision under section 23(4) – on the expiry of 28 days after the person receives notice of the decision; or
  - (c) if the person receives notice of the Commissioner's or Deputy Commissioner's decision and applies for review of the decision under section 23(4) and, on review, the Commissioner confirms the decision – on the expiry of 3 days after the Commissioner notifies the person that he or she has confirmed the decision.
- (2) The Commissioner or Deputy Commissioner may not restore a person's former identity if the person applies to the Commissioner to review the decision to restore the person's former identity and the Commissioner reverses the decision.

**25 Commissioner or Deputy Commissioner must apply to Supreme Court to restore former identity**

- (1) If the Commissioner or Deputy Commissioner decides under section 23 to restore a person's former identity, the Commissioner or Deputy Commissioner must apply to the Supreme Court for an order to restore the person's former identity.
- (2) The application is to:
  - (a) specify the particulars that will need to be cancelled to restore the person's former identity; and
  - (b) be supported by evidence of the matters specified in section 27(1)(a) and (b).

**26 Approved authority may apply to Court to restore former identity**

- (1) An approved authority may apply to the Supreme Court for an order to restore the former identity of a person who was a recognised participant.
- (2) Sections 25(2), 27 and 28 apply in relation to an application under subsection (1) as if:
  - (a) a reference to an application under section 25 includes a reference to an application under subsection (1);
  - (b) reference to the Commissioner or Deputy Commissioner includes a reference to the approved authority;
  - (c) a reference to a person who was a participant includes a reference to a person who was a recognised participant; and
  - (d) a reference to the TWPP is a reference to a complementary witness protection program.

**27 Power of Supreme Court to make order**

- (1) On hearing an application made under section 25, if the Supreme Court is satisfied that:
  - (a) the person named in the application as a person who was a participant was a participant; and
  - (b) the protection and assistance given to the person as a participant under the TWPP has been terminated,

the Supreme Court may make the orders it considers necessary to:

- (c) cancel the new identity given to the person;
  - (d) restore the person's former identity; and
  - (e) secure the return to the Commissioner of any document issued in respect of the person's new identity within the 14 day period specified in section 28(4).
- (2) The orders that the Supreme Court may make under subsection (1) include an order authorising the Registrar to cancel the entry in the Register in respect of the new identity given to the person and specified members of the person's family (if any).

## **28 Registrar to cancel new identity**

- (1) On the Registrar receiving a copy of an order made under section 27 or 29L, the Registrar or a person authorised by the Registrar, must give effect to the order by cancelling the relevant particulars noted in the Register under section 16(1) in relation to the person.
- (2) After particulars noted in the Register are cancelled under subsection (1), the Registrar or a person authorised by the Registrar must, subject to subsection (3), give notice in writing of the cancellation to the person to whom the particulars related.
- (3) The Registrar or person authorised by the Registrar is not required to give notice to a person under subsection (2) if the person cannot be found after making reasonable inquiry.
- (4) A person to whom notice is given under subsection (2) must, within 14 days after receiving the notice return to the Commissioner or ICAC all documents issued to the person in respect of the new identity that was given to the person under the TWPP or under Part 2A.

Maximum penalty: 10 penalty units.

## **29 Effect of cancellation of new identity**

- (1) The cancellation under section 28(1) of particulars noted in the Register has effect as if it were a valid entry made under and in accordance with the *Births, Deaths and Marriages Registration Act 1996*.

- (2) A birth certificate, marriage certificate or death certificate issued in relation to a person in relation to whom particulars are cancelled under subsection (1) (but after the particulars have been cancelled) is to specify particulars of the person's former identity.

## **Part 2A            Assumed identities for ICAC witnesses**

### **Division 1        Preliminary matters**

#### **29A            Application of Part**

This Part applies if:

- (a) an ICAC witness or a family member of an ICAC witness is not, or is no longer, included in the TWPP; or
- (b) an ICAC witness or a family member of an ICAC witness is included in the TWPP but the Commissioner decides not to apply to the Supreme Court under section 14 for an order in respect of the witness or family member.

### **Division 2        Orders for protection**

#### **29B            Application by ICAC for order**

- (1) The ICAC may apply to the Supreme Court for an order authorising the Registrar to make a new entry in the Register in respect of a participant.
- (2) An application under subsection (1) is to:
- (a) specify the nature of the new entry the ICAC seeks to be made in the Register and the particulars to be noted in respect of the entry in the Register; and
- (b) be supported by evidence of the matters specified in section 29C(1)(a), (b) and (c).

#### **29C            Power of Supreme Court to make order**

- (1) On hearing an application made under section 29B, the Supreme Court may make the order applied for in respect of the person if the Supreme Court is satisfied that:
- (a) there is a risk to the safety and welfare of the person because the person is an ICAC witness or a family member of an ICAC witness; and
- (b) an assumed identity would assist in reducing that risk; and



- (c) the witness has undertaken to comply with a memorandum of understanding between the ICAC and the ICAC witness in accordance with section 29D.
- (2) If the Supreme Court makes an order under subsection (1), Part 2, Division 3 (other than sections 14 and 15) applies as if:
- (a) the order were an order made under section 15; and
  - (b) a reference in that Division to the participant were a reference to the person; and
  - (c) a reference in that Division to the Commissioner were a reference to the ICAC.

### **Division 3 Arrangements for protection**

#### **29D Memorandum of understanding – content**

- (1) A memorandum of understanding in relation to an ICAC witness must:
- (a) set out the basis on which the witness and the witness' family members (if any) to whom it relates are being provided with protection by the ICAC; and
  - (b) set out details of the protection and assistance that are to be provided to the witness and family members, including that the protection and assistance provided may be reviewed and modified by the ICAC at any time; and
  - (c) state that the ICAC may terminate the protection at any time if, in the opinion of the ICAC, protection is:
    - (i) no longer required; or
    - (ii) cannot be provided; and
  - (d) set out the process and timeframes for termination of protection, including how the witness and family members would be notified of the termination; and
  - (e) state that if the protected person cannot be located after reasonable inquiry, termination of protection may still proceed; and
  - (f) state that if protection is terminated, the ICAC may take action to restore a person's identity; and

- (g) contain a statement advising the witness and family members of their right under the ICAC Act to complain to the Inspector about the conduct of the ICAC or a member of ICAC staff in relation to the matters dealt with in the memorandum.
- (2) A memorandum of understanding in relation to an ICAC witness may contain the following:
- (a) the terms and conditions on which protection and assistance are to be provided to the witness and each family member;
  - (b) requirements that the witness and each family member must not engage in activities of a kind specified in the memorandum of understanding;
  - (c) an undertaking by, or on behalf of, the witness and each family member not to compromise, directly or indirectly, the security or any other aspect of the protection and assistance being provided;
  - (d) an undertaking by, or on behalf of, the witness and each family member to comply with all reasonable directions of the ICAC in relation to the protection and assistance provided to the witness;
  - (e) a list of the following and specification as to how they will be dealt with:
    - (i) the outstanding legal obligations (including family maintenance obligations and taxation obligations) of the witness and each family member;
    - (ii) any other obligations and relationships of the witness and each family member;
  - (f) a list of obligations that the witness and each family member may or may not enter into;
  - (g) details of any financial assistance to be given to the witness and each family member;
  - (h) an undertaking by or on behalf of the witness and each family member to disclose to the ICAC details of any criminal charges brought against the witness or family member, and any civil or bankruptcy proceedings made in relation to the witness or family member, while the witness or family member is being provided with protection by the ICAC;

- (i) details concerning the surrender and issue of passports and the issue of any other documents relating to the identity of the witness and each family member;
- (j) any other matter that the ICAC considers appropriate.

**29E Memorandum of understanding – signing**

- (1) A memorandum of understanding does not take effect until it is signed in accordance with subsection (2).
- (2) A memorandum of understanding must be signed:
  - (a) by the ICAC witness and each family member to whom it relates; or
  - (b) if the ICAC witness or family member is less than 18 years of age or lacks legal capacity – by a parent or other person for and on behalf of the witness or family member.
- (3) The ICAC may require the ICAC witness or family member to sign the memorandum of understanding if:
  - (a) a parent or other person signed a memorandum of understanding for and on behalf of an ICAC witness or family member who was less than 18 years of age or lacked legal capacity; and
  - (b) the memorandum of understanding is still effective after the ICAC witness or family member becomes 18 years of age or attains legal capacity.

**29F Memorandum of understanding – amending**

- (1) Subject to subsection (2), the ICAC may amend a memorandum of understanding.
- (2) An amendment to a memorandum of understanding:
  - (a) has no effect unless the participant or, if more than one, each participant to whom it relates or, if a participant is less than 18 years of age or lacks legal capacity, a parent or other person for and on behalf of the participant consents to the amendment; and
  - (b) is not to have the effect of removing from the memorandum of understanding the provisions referred to in section 29D(1).

## **Division 4            Restoration of former identity of former ICAC witness**

### **29G            Restoration of former identity**

- (1) If protection under this Part of a person is terminated, the ICAC may decide that it is appropriate to restore the person's former identity.
- (2) The ICAC must take reasonable steps to notify the person of the ICAC's decision.
- (3) The ICAC is not required to notify a person under subsection (2) if the person cannot be found after making reasonable inquiry.
- (4) The person may, within 7 days after receiving notice of the decision, apply to the ICAC to review the decision.
- (5) On receiving an application for review under subsection (4), the ICAC must review the decision and, in doing so, must give the person a reasonable opportunity to state the person's case.
- (6) After conducting the review, the ICAC must:
  - (a) confirm or reverse the decision reviewed; and
  - (b) give notice in writing of the outcome of the review to the person; and
  - (c) if the ICAC confirms the decision to restore the person's former identity – specify in the notice under paragraph (b) the ICAC's reasons for doing so; and
  - (d) if the ICAC reverses the decision – state in the notice that the decision has no effect and that the person's former identity will not be restored.

### **29H            When ICAC may take action to restore former identity**

- (1) If the ICAC decides under section 29G to restore a person's former identity, the ICAC may commence action to restore the person's former identity:
  - (a) if the person's location is not known and the ICAC has taken reasonable steps to notify the person of the decision but has been unable to do so – on the expiry of 28 days after the ICAC commenced taking the steps to notify the person; or

- (b) if the person receives notice of the ICAC's decision but does not apply for review of the decision under section 29G(4) – on the expiry of 28 days after the person receives notice of the decision; or
  - (c) if the person receives notice of the ICAC's decision and applies for review of the decision under section 29G(4) and, on review, the ICAC confirms the decision – on the expiry of 3 days after the ICAC notifies the person that the ICAC has confirmed the decision.
- (2) The ICAC must not restore a person's former identity if:
- (a) the person applies to the ICAC to review the decision to restore the person's former identity; and
  - (b) the ICAC reverses the decision.

**29J ICAC must apply to Supreme Court to restore former identity**

- (1) If the ICAC decides under section 29G to restore a person's former identity, the ICAC must apply to the Supreme Court for an order to restore the person's former identity.
- (2) The application must:
  - (a) specify the particulars that will need to be cancelled to restore the person's former identity; and
  - (b) be supported by evidence of the matters specified in section 29L(1)(a) and (b).

**29K Approved authority may apply to Court to restore former identity**

- (1) An approved authority may apply to the Supreme Court for an order to restore the former identity of a person who was protected under this Part.
- (2) Sections 28, 29J(2) and 29L apply in relation to an application under subsection (1) as if:
  - (a) a reference to an application under section 29J includes a reference to an application under subsection (1); and
  - (b) reference to the ICAC includes a reference to the approved authority; and
  - (c) a reference to a person who was a participant includes a reference to a person who was a recognised participant.

**29L Power of Supreme Court to make order**

- (1) On hearing an application made under section 29J, if the Supreme Court is satisfied that:
  - (a) the person named in the application as a person who was protected by the ICAC was protected; and
  - (b) the protection given to the person has been terminated;the Supreme Court may make the orders it considers necessary to:
  - (c) cancel the new identity given to the person;
  - (d) restore the person's former identity; and
  - (e) secure the return to the ICAC of any document issued in respect of the person's new identity within the 14 day period specified in section 28(4).
- (2) The orders that the Supreme Court may make under subsection (1) include an order authorising the Registrar to cancel the entry in the Register in respect of the new identity given to the person and specified members of the person's family (if any).

**Part 3 Arrangements between Commissioner and approved authorities****30 Arrangements with approved authorities**

- (1) The Commissioner may make arrangements with an approved authority about any matter in connection with the administration of this Act or a complementary witness protection law.
- (2) Without limiting subsection (1), the arrangements between the Commissioner and an approved authority:
  - (a) may provide for the exercise of powers or the performance of functions under the complementary witness protection law by the Commissioner or another member of the Police Force;
  - (b) may provide for the exercise of powers or the performance of functions under this Act by the approved authority or an officer of the approved authority;
  - (c) are to provide for the sharing between the Territory and the approved authority of the costs incurred under the arrangements;

- (d) may provide for the approved authority to make available to the Commissioner, or the Commissioner to make available to the approved authority, the statements, transcripts of evidence and other documents that will assist the Commissioner or approved authority to decide:
  - (i) whether to provide protection or assistance to a witness and any family members of the witness under this Act or the relevant complementary witness protection law; and
  - (ii) what protection or assistance is appropriate for the witness and family members;
- (e) may provide for the exercise of powers and performance of functions under the complementary witness protection law by the Commissioner or another member of the Police Force; or
- (f) are to require the approved authority to maintain records showing:
  - (i) details of each application relating to the new identity of a recognised participant made by the authority to the Supreme Court under section 14 and the orders made by the Supreme Court under section 15 in respect of that application;
  - (ii) the original entry in the Register of the birth of a recognised participant referred to in subparagraph (i) in respect of whom an entry concerning his or her birth is made under section 16(1); and
  - (iii) the original entry in the Register of the marriage of a recognised participant referred to in subparagraph (i) in respect of whom an entry concerning his or her marriage is made under section 16(1).

**31 Exercise of powers etc. by Commissioner etc. under complementary witness protection law**

The Commissioner or another member of the Police Force must not exercise a power or perform a function under a complementary witness protection law unless arrangements under section 30 providing for the exercise of the power or performance of the function by the Commissioner or member of the Police Force are in force.

**32 Exercise of powers etc. under this Act by approved authority**

- (1) The Minister may, by notice in the *Gazette*, authorise an approved authority to exercise powers and perform functions conferred on the

Commissioner under this Act for the purpose of an arrangement entered into under section 30 or the corresponding provision of a complementary witness protection law.

- (2) An approved authority or an officer of the approved authority must not exercise a power or perform a function under this Act unless:
  - (a) arrangements under section 30 or the corresponding provision of a complementary witness protection law providing for the exercise of the power or the performance of the function by the approved authority are in force; and
  - (b) the Minister has authorised the approved authority to do so under subsection (1).
- (3) For the purposes of an approved authority or an officer of the approved authority exercising a power or performing a function under this Act in accordance with an arrangement entered into under section 30, a reference in or under this Act to the Commissioner or another member of the Police Force is to be taken to include a reference to the approved authority or officer of the approved authority.

## **Part 4                      Offences**

### **33                      Offences relating to disclosure of information about participants**

- (1) A person must not, either directly or indirectly:
  - (a) make a record of any information relating to the noting of particulars in the Register in respect of a person who is or was a participant; or
  - (b) disclose or communicate to another person any information relating to the noting of particulars in the Register in respect of a person who is or was a participant;unless it is necessary to do so:
  - (c) for the purposes of this Act; or
  - (d) for the purposes of an investigation of a complaint about the conduct of a member of the Police Force by the Ombudsman under the *Ombudsman Act 2009*; or



(da) for the purposes of an ICAC investigation (not including a public inquiry as defined in section 4 of the ICAC Act or a report or brief of evidence under Part 3, Division 7 of the ICAC Act); or

(e) to comply with an order of the Supreme Court.

Maximum penalty: Imprisonment for 10 years.

(2) Despite subsection (1), the Commissioner, the Deputy Commissioner, an approved authority or an officer of an approved authority may disclose the former identity of a participant who is being or has been given a new identity for the purpose of obtaining documents relating to the new identity of the participant.

(3) A person must not, without lawful authority, disclose information in the Territory or elsewhere that:

(a) is about the identity or location of a person who is or was a participant or recognised participant; or

(b) compromises the security of that person.

Maximum penalty: Imprisonment for 10 years.

### **34 Offences relating to disclosure of information by participants**

(1) Subject to subsection (2), a person who is or was a participant must not, either directly or indirectly, disclose or communicate to another person, in the Territory or elsewhere:

(a) the fact that the person or a family member of the person is or was included in the TWPP; or

(b) the fact that a memorandum of understanding is or was in force in respect of the person or his or her family member; or

(c) details of the memorandum of understanding; or

(d) information relating to anything done under this Act by the Commissioner or another member of the Police Force; or

(e) information about a member of the Police Force, an approved authority or an officer of an approved authority acquired by the person as a result of anything done under this Act.

Maximum penalty: Imprisonment for 10 years.

- (2) Subsection (1) does not apply to a disclosure or communication that:
- (a) has been authorised by the Commissioner or an approved authority; or
  - (b) is necessary for the purposes of an investigation of a complaint about the conduct of a member of the Police Force by the Ombudsman under the *Ombudsman Act 2009*; or
  - (ba) is a protected communication (as defined in section 93 of the ICAC Act) to the ICAC; or
  - (bb) is necessary to comply with the direction of an authorised officer as defined in the ICAC Act; or
  - (c) is necessary to comply with an order of the Supreme Court.

**35 Person who has new identity not to use documents relating to former identity**

While particulars noted in the Register that relate to a new identity given to a person under this Act continue to have effect, the person to whom the particulars relate must not use or obtain any document issued by the Registrar which specifies or is based on particulars that:

- (a) were noted in the Register before the particulars relating to the person's new identity were; and
- (b) relate only to the person's former identity.

Maximum penalty: 10 penalty units.

**Part 5 Miscellaneous**

**36 Provision of information about participant or former participant to approved authorities**

If:

- (a) a person has been provided with a new identity or relocated under this Act; and
- (b) an approved authority notifies the Commissioner that the person is under investigation for, or has been arrested or charged with, an offence against a law of the Commonwealth or a State or another Territory the maximum penalty for which is or includes imprisonment for 1 year or more,

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the Commissioner may (if he or she considers it is appropriate) do any one or more of the following:

- (c) release the person's new identity or location to the approved authority;
- (d) provide the approved authority with the person's criminal record and fingerprints;
- (e) release other information relating to the person to the approved authority;
- (f) allow an officer of the approved authority to interview a member of the Police Force in relation to the person.

**37 Commissioner may delegate powers and functions under this Act**

- (1) Subject to subsection (2), the Commissioner may, in writing, delegate to a member of the Police Force all or any of his or her powers and functions under this Act.
- (2) The Commissioner must not delegate:
  - (a) his or her powers and functions under sections 8(1), 20(4) and (5) and 23(5) and (6); and
  - (b) his or her power of delegation under subsection (1).
- (3) A power or function delegated under this section is, when exercised or performed by the delegate, to be taken to have been exercised or performed by the Commissioner.
- (4) A delegation under this section does not prevent the Commissioner exercising a power or performing a function that has been delegated.

**38 Proceedings in Supreme Court to be closed to public**

- (1) A proceeding in the Supreme Court under this Act is not to be heard in open court.
- (2) No person may inspect the records of the Supreme Court relating to proceedings under this Act unless authorised to do so by a Supreme Court Judge.

**39 Immunity from proceedings**

(1) In this section:

**person** means any person who is or was:

- (a) the Commissioner;
  - (b) the Deputy Commissioner;
  - (c) an authorised member of the Police Force;
  - (d) an officer of an approved authority;
  - (e) the Registrar;
  - (f) an employee within the meaning of the *Public Sector Employment and Management Act 1993* who is or was subject to direction by the Registrar; or
  - (g) the Ombudsman.
- (2) A person cannot be required in any proceedings in any court or tribunal or before any person acting judicially to produce a document or to divulge or communicate any matter or thing relating to the exercise of powers or the performance of functions by the person or another person under this Act.
- (3) No legal proceedings may be commenced against a person in respect of an act, matter or thing done by the person in the course of exercising his or her powers or performing his or her functions for the purposes of this Act.
- (4) Nothing in this section prevents the Ombudsman from investigating a complaint in relation to the conduct of the Commissioner or another member of the Police Force in relation to this Act.

**40 Double jeopardy**

If an act or omission is both an offence under this Act and an offence under a law of the Commonwealth or a State or another Territory of the Commonwealth, a person who is found guilty of the offence under the law of the Commonwealth, State or other Territory (whether or not a conviction is recorded by the court) is not liable to be proceeded against for the offence under this Act.

**41 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**42 Transitional**

- (1) A person who, immediately before the commencement of this Act, receives on the request of the Commissioner protection and assistance under a witness protection program established under a law of the Commonwealth or a State or another Territory of the Commonwealth becomes, on that commencement, a participant in the TWPP.
- (2) A memorandum of understanding in force immediately before the commencement of this Act in respect of a person referred to in subsection (1) continues, with the necessary changes, to have effect, and may be dealt with, after that commencement as if it were a memorandum of understanding entered into under this Act.

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

**2 LIST OF LEGISLATION*****Witness Protection (Northern Territory) Act 2002 (Act No. 21, 2002)***

Assent date	7 June 2002
Commenced	21 August 2002 ( <i>Gaz</i> G33, 21 August 2002, p 5)

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)***

Assent date	7 January 2004
Commenced	17 March 2004 ( <i>Gaz</i> G11, 17 March 2004, p 8)

***Australian Crime Commission (Consequential Amendments) Act 2005 (Act No. 7, 2005)***

Assent date	17 March 2005
Commenced	18 May 2005 (s 2, s 2 <i>Australian Crime Commission Act 2005</i> (Act No. 6, 2005) and <i>Gaz</i> G20, 18 May 2005, p 2)

***Ombudsman Act 2009 (Act No. 5, 2009)***

Assent date	12 March 2009
Commenced	1 July 2009 ( <i>Gaz</i> G21, 27 May 2009, p 5)

***Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)***

Assent date	20 May 2010
Commenced	1 July 2010 ( <i>Gaz</i> G24, 16 June 2010, p 2)

***Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)***

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 <i>Local Court (Repeals and Related Amendments) Act 2016</i> (Act No. 9, 2016) and <i>Gaz</i> S34, 29 April 2016)

***Independent Commissioner Against Corruption (Consequential and Related Amendment) Act 2018 (Act No. 3, 2018)***

Assent date	21 February 2018
Commenced	30 November 2018 (s 2, s 2 <i>Independent Commissioner Against Corruption Act 2017</i> (Act No. 23, 2017) and <i>Gaz</i> S94, 30 November 2018)

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**3 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 3, 10, 16, 29, 33, 34 and 39.

**4 LIST OF AMENDMENTS**

s 3	amd No. 1, 2004, s 62; No. 7, 2005, s 3; No. 3, 2018, s 99
s 5	amd No. 3, 2018, s 100
s 8	amd No. 8, 2016, s 45; No. 3, 2018, s 101
s 10	amd No. 5, 2009, s 179
s 16	amd No. 3, 2018, s 102
s 28	amd No. 12, 2010, s 3; No. 3, 2018, s 103
pt 2A hdg	ins No. 3, 2018, s 104
pt 2A	
div 1 hdg	ins No. 3, 2018, s 104
s 29A	ins No. 3, 2018, s 104
pt 2A	
div 2 hdg	ins No. 3, 2018, s 104
ss 29B – 29C	ins No. 3, 2018, s 104
pt 2A	
div 3 hdg	ins No. 3, 2018, s 104
ss 29D – 29F	ins No. 3, 2018, s 104
pt 2A	
div 4 hdg	ins No. 3, 2018, s 104
ss 29G – 29L	ins No. 3, 2018, s 104
s 33	amd No. 5, 2009, s 179; No. 12, 2010, s 3; No. 3, 2018, s 105
s 34	amd No. 5, 2009, s 179; No. 12, 2010, s 3; No. 3, 2018, s 106
s 35	amd No. 12, 2010, s 3
s 38	amd No. 8, 2016, s 45