

NORTHERN TERRITORY OF AUSTRALIA

POLICE (SPECIAL INVESTIGATIVE AND OTHER POWERS) ACT 2015

Act No. 4 of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 4 of 2015

An Act to provide for additional operational powers for law enforcement agencies for investigations and intelligence-gathering in relation to criminal activity, and for related purposes

[Assented to 25 March 2015]
[Second reading 23 October 2014]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Police (Special Investigative and Other Powers) Act 2015*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

acquire, in relation to an assumed identity, see section 39.

Australian Crime Commission means the Australian Crime Commission established by the *Australian Crime Commission Act 2002* (Cth).

authorised civilian, for Part 3, see section 39.

authorised officer, for Part 3, see section 39.

authorised operation means a controlled operation for which an authority under Part 2 is in force.

authorised person, for Part 3, see section 39.

authority:

- (a) for Part 2 – section 8; and
- (b) for Part 3 – see section 39.

chief officer:

- (a) of a law enforcement agency – means the person holding office or acting as:
 - (i) in relation to the Police Force – the Commissioner of Police; or
 - (ii) in relation to the Australian Crime Commission – the Chief Executive Officer of the Australian Crime Commission; or
- (b) of an issuing agency – means the chief executive officer (however described) of the agency; or
- (c) of an intelligence agency, for Part 3 – see section 15K of the *Crimes Act 1914* (Cth).

civilian participant, for Part 2, see section 8.

conduct includes any act or omission.

controlled conduct, for Part 2, see section 8.

controlled operation, for Part 2, see section 8.

corresponding authorised operation, for Part 2, see section 8.

corresponding authority:

- (a) for Part 2 – see section 8; and
- (b) for Part 3 – see section 39.

corresponding law means a law of another jurisdiction that corresponds to this Act or a Part of this Act, and includes a law of another jurisdiction that is declared by a regulation to correspond to this Act.

corresponding non-disclosure certificate, for Part 4, see section 73.

corresponding participant, for Part 2, see section 8.

corresponding witness identity protection certificate, for Part 4, see section 73.

court, for Part 4, see section 73.

court name, for Part 4, see section 73.

criminal activity means conduct that involves the commission of an offence by one or more persons.

doing a thing includes failing to do the thing.

evidence of identity, for Part 3, see section 39.

formal application, for Part 2, see section 10(2)(a).

formal authority, for Part 2, see section 12(1)(a).

formal variation application, for Part 2, see section 14(5)(a).

formal variation of authority, for Part 2, see section 14(10)(a).

function includes a power, authority or duty.

government issuing agency, for Part 3, see section 39.

illicit goods, for Part 2, see section 8.

intelligence agency, for Part 3, see section 15K of the *Crimes Act 1914* (Cth).

investigation means an investigation in relation to criminal activity, including an investigation extending beyond the Territory.

issuing agency means:

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

law enforcement agency means either of the following:

- (a) the Police Force;
- (b) the Australian Crime Commission.

law enforcement officer means:

- (a) in relation to the Police Force:
 - (i) a police officer; and
 - (ii) a person who is seconded to the Police Force, including (but not limited to) a member of the police service (however described) of another jurisdiction; and
- (b) in relation to the Australian Crime Commission – a member of the staff of the ACC.

member of the staff of the ACC, see section 4(1) of the *Australian Crime Commission Act 2002* (Cth).

non-disclosure certificate, for Part 4, see section 88(2).

non-government issuing agency, for Part 3, see section 39.

officer, for Part 3, see section 39.

Ombudsman, see section 4 of the *Ombudsman Act*.

operative, for Part 4, see section 73.

participant, for Part 2, see section 8.

participating jurisdiction means the Commonwealth, a State or another Territory in which a corresponding law is in force.

party, for Part 4, see section 73.

person involved in a proceeding, for Part 4, see section 73.

Police Force means the Police Force of the Northern Territory established by section 5(1) of the *Police Administration Act*.

principal law enforcement officer, for Part 2, see section 8.

proceeding, for Part 4, see section 73.

protected identity, for Part 4, Division 3, see section 87.

protected person, for Part 4, Division 3, see section 87.

Registrar, for Part 3, see section 39.

relevant offence, for Part 2, see section 8.

supervisor, for Part 3, see section 39.

suspect, for Part 2, see section 8.

TWPP, for Part 4, Division 3, see section 87.

urgent application, for Part 2, see section 10(2)(b).

urgent authority, for Part 2, see section 12(1)(b).

urgent variation application, for Part 2, see section 14(5)(b).

urgent variation of authority, for Part 2, see section 14(10)(b).

use, by a person in relation to an assumed identity, see section 39.

witness identity protection certificate, for Part 4, see section 73.

4 Act binds Crown

- (1) This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) Subsection (1) does not make the Crown liable to be prosecuted for an offence.

5 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 5

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Controlled operations

Division 1 Preliminary matters

6 Objects of Part

The objects of this Part are:

- (a) to provide for the authorisation, conduct and monitoring of controlled operations; and

- (b) to facilitate mutual recognition of things done in relation to controlled operations conducted within, or partially within, the Territory and authorised under corresponding laws of other jurisdictions; and
- (c) to provide, for the conduct of the authorised operations:
 - (i) indemnity for participants against civil liability arising out of the operations; and
 - (ii) protection for participants from criminal responsibility for conduct engaged in as part of the operations which would otherwise be an offence.

7 **Evidentiary matters**

- (1) Subject to subsection (2), this Act 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, a court must disregard the fact that the evidence was obtained as a result of a person engaging in criminal activity 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 this Act or controlled conduct within the meaning of a corresponding law.

8 **Definitions**

In this Part:

authority means an authority under Division 2 and includes any variation of the authority.

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, apart from section 20 or 27, be criminally responsible.

controlled operation means an operation that:

- (a) is conducted, or intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and
- (b) involves, or may involve, controlled conduct.

corresponding authorised operation means any operation in the nature of a controlled operation that is authorised under a corresponding law.

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

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

illicit goods means goods the possession of which is a contravention of a law of the Territory.

participant, in an authorised operation, means a person who is authorised under this Act to engage in controlled conduct for the operation.

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 a law of the Territory punishable by a maximum term of imprisonment of 3 years or more; or
- (b) an offence against a law of the Territory that is prescribed by regulation to be a relevant offence.

suspect means a person reasonably suspected of:

- (a) having, or being likely to have, committed a relevant offence;
or
- (b) committing, or being likely to commit, a relevant offence.

9 **When operation is taken to be conducted in Territory**

For this Act, a controlled operation relating to a relevant offence is taken to be conducted in the Territory (whether or not it is also conducted in another jurisdiction) if a participant in the operation is:

- (a) a Territory law enforcement officer; or
- (b) a civilian participant acting in accordance with the instructions of a Territory law enforcement officer.

Example for section 9

A Territory police officer is investigating a conspiracy to import drugs into the Territory from Victoria, and the operation is to be conducted wholly within Victoria.

Division 2 Authorisation of controlled operations

10 Application for authority to conduct controlled operation

- (1) A law enforcement officer of a law enforcement agency may apply to the chief officer of the agency for an authority to conduct a controlled operation on behalf of the agency.
- (2) An application for an authority may be made:
 - (a) in writing signed by the applicant (a **formal application**); or
 - (b) if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the operation – in person or by telephone, fax, email or any other means of communication (an **urgent application**).
- (3) If an application is made for an authority for a controlled operation that was the subject of a previous application, the subsequent application must be a formal application.
- (4) In an application, the applicant must:
 - (a) provide sufficient information to enable the chief officer to decide whether or not to grant the authority applied for; and
 - (b) state whether the proposed operation, or any other controlled operation relating to the same criminal activity, has been the subject of an earlier application for an authority or a variation of an authority and, if so, whether the authority was granted or varied.

- (5) The chief officer may require the applicant to provide any additional information concerning the proposed controlled operation that is necessary for the chief officer's proper consideration of the application.
- (6) 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 chief officer.

11 Determination of application

- (1) After considering an application for an authority to conduct a controlled operation, and any additional information provided under section 10(5), the chief officer of the agency:
 - (a) may authorise the operation by granting the authority, either unconditionally or subject to conditions; or
 - (b) may refuse the application.
- (2) An authority to conduct a controlled operation must not be granted unless the chief 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 nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation in the Territory (whether or not it is also conducted in another participating jurisdiction); 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 will not be conducted in such a way that a person is likely to be induced to commit an offence against a law of any jurisdiction that the person would not otherwise have intended to commit; 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 harm 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); and
- (h) that any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

12 **Form of authority**

- (1) An authority to conduct a controlled operation may be granted:
 - (a) in writing signed by the chief officer of a law enforcement agency (a **formal authority**); or
 - (b) if the chief officer is satisfied that the delay caused by granting a formal authority may affect the success of the operation – in person or by telephone, fax, email or any other means of communication (an **urgent authority**).
- (2) If an authority is granted for a controlled operation that was the subject of a previous authority, the subsequent authority must be a formal authority.
- (3) An authority must:
 - (a) state the name and position of the person granting the authority; and
 - (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; and
 - (c) state whether the application is a formal application or an urgent application; and
 - (d) identify each person who may engage in controlled conduct for the purposes of the operation; and
 - (e) state the jurisdictions in which the controlled conduct is, or is likely, to be engaged in; and

- (f) identify the nature of the criminal activity (including the suspected relevant offences) in relation to which the controlled conduct is to be engaged in; and
 - (g) identify:
 - (i) for participants in the operation who are law enforcement officers – the nature of the controlled conduct that those participants may engage in; and
 - (ii) for each civilian participant – the particular controlled conduct (if any) that the participant may engage in; and
 - (h) identify (to the extent known) any suspect; and
 - (i) specify the period of validity of the authority, being a period not exceeding 6 months for a formal authority or 7 days for an urgent authority; and
 - (j) specify any conditions to which the conduct of the operation is subject; and
 - (k) state the date and time when the authority is granted; and
 - (l) 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.
- (4) A person is sufficiently identified for subsection (3)(d) if:
- (a) the person is identified:
 - (i) by an assumed name under which the person is operating; or
 - (ii) by a code name or code number; and
 - (b) the assumed name, code name or code number can be matched to the person's identity.
- (5) The chief officer must ensure that written notes are kept of the particulars mentioned in subsection (3) for each urgent authority.

13 Duration of authority

Unless it is sooner cancelled, an authority is in force for the period of validity specified in accordance with section 12(3)(i).

14 **Variation of authority**

- (1) The chief officer of a law enforcement agency may vary an authority:
 - (a) at any time on the chief officer's own initiative; or
 - (b) on application under subsection (3).
- (2) However, a variation cannot be made that has the effect of extending the period of validity of an urgent authority.
- (3) 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 chief officer for a variation of an authority for any one or more of the following purposes:
 - (a) subject to subsection (2) – to extend the period of validity of the authority;
 - (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).
- (4) More than one application for a variation may be made for the same authority, but no single variation may extend the period of validity of an authority for more than 3 months at a time.
- (5) An application for a variation of an authority may be made:
 - (a) in writing signed by the applicant (a **formal variation application**); or
 - (b) if the applicant has reason to believe that the delay caused by making a formal variation application may affect the success of the operation – in person or by telephone, fax, email or any other means of communication (an **urgent variation application**).
- (6) The chief officer may require the applicant to provide any additional information concerning the proposed variation that is necessary for the chief officer's proper consideration of the application.

- (7) After considering an application for a variation of authority, and any additional information given under subsection (6), the chief officer:
- (a) may vary the authority in accordance with the application, either unconditionally or subject to conditions; or
 - (b) may refuse the application.
- (8) Section 11(2) applies to an application for a variation of authority under this section in the same way as it applies to an application for an authority under section 11(1).
- (9) Without limiting subsection (8), a variation of authority must not be granted unless the chief officer is satisfied on reasonable grounds that the variation will not authorise a significant alteration of the nature of the authorised operation concerned.
- (10) An authority may be varied:
- (a) in writing signed by the chief officer (a **formal variation of authority**); or
 - (b) if the person granting the variation is satisfied that the delay caused by granting a formal variation of authority may affect the success of the operation – in person or by telephone, fax, email or any other means of communication (an **urgent variation of authority**).
- (11) The chief officer:
- (a) must ensure that written notes are kept of the following matters:
 - (i) the date and time when the authority was varied;
 - (ii) the identity of the law enforcement officer to whom the variation of authority was granted; and
 - (b) must, as soon as practicable, prepare and give to the applicant a document that complies with section 15.

15 Form of variation of authority

A variation of an authority must be in writing, and:

- (a) identify the authorised operation for which the authority is in force; and
- (b) state the name and position of the person varying the authority; and

- (c) if the application for the variation was made under section 14(3) – state the name of the applicant; and
- (d) state whether the application was a formal variation application or an urgent variation application; and
- (e) state the date and time when the authority is to be or was varied; and
- (f) describe the variation having regard to the purposes mentioned in section 14(3) for which the application was made.

16 Cancellation of authority

- (1) The chief officer of a law enforcement agency may, by written notice 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 chief 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 the written cancellation is given to the principal law enforcement officer or, if a later time is specified, that later time.

17 Effect of authority

- (1) While it is in force, an authority for a controlled operation:
 - (a) authorises each law enforcement officer who is a participant in the operation to engage in the controlled conduct specified in the authority for those participants; and
 - (b) authorises each civilian participant to engage in the particular controlled conduct specified in the authority for that participant; and
 - (c) authorises each participant to engage in that conduct in the Territory or any participating jurisdiction (subject to any corresponding law of that participating jurisdiction).
- (2) The authority to engage in controlled conduct given to a participant cannot be delegated to any other person.

18 Defect in authority

An application for an authority or a variation of an authority, and any authority granted or varied 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.

19 Retrospective authority

- (1) This section applies if a participant in an authorised operation engages in unlawful conduct (other than unlawful conduct that is controlled conduct) in the course of the operation.
- (2) The principal law enforcement officer for the operation may, within 24 hours after the participant engages in that conduct, apply to the chief officer of the law enforcement agency for retrospective authority for the conduct.
- (3) The chief officer may require the principal law enforcement officer to provide any additional information concerning the relevant conduct that is necessary for the chief officer to properly consider the application.
- (4) After considering an application under subsection (2), and any additional information provided under subsection (3), the chief officer:
 - (a) may grant retrospective authority in accordance with the application; or
 - (b) may refuse the application.
- (5) The chief officer must not grant retrospective authority for conduct unless the chief officer is satisfied:
 - (a) that, when the relevant conduct occurred, the participant who engaged in the conduct believed on reasonable grounds that one or more of the following circumstances existed:
 - (i) there was a substantial risk to the success of the authorised operation;
 - (ii) 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;

- (iii) criminal activity other than the criminal activity in respect of which the authorised operation was being conducted had occurred, or was likely to occur, and there was a substantial risk that evidence relating to that criminal activity would be lost; and
 - (b) the participant believed on reasonable grounds that the participant could not avoid that risk otherwise than by engaging in the relevant conduct; and
 - (c) that, at all times prior to the circumstance arising, the participant had been acting in good faith and in accordance with any relevant code of conduct; and
 - (d) that the participant had not foreseen, and could not reasonably be expected to have foreseen, that the circumstance would arise; and
 - (e) that, had it been possible to foresee that the circumstance would arise, authority for the relevant conduct would have been sought; and
 - (f) it was not reasonably possible in the circumstances for the participant to seek a variation of the authority for the operation to authorise the relevant conduct.
- (6) Subsection (4)(a) does not allow retrospective authority to be granted with respect to conduct giving rise to any of the following:
- (a) the offence of murder;
 - (b) any other offence for which the common law defence of duress would not be available.

Division 3 Conduct of controlled operation

Subdivision 1 Controlled conduct engaged in for authorised operation

20 Protection from criminal responsibility for controlled conduct during authorised operation

Despite any other Act or law of the Territory, a participant who engages in conduct (whether in the Territory 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 in accordance with, the authority for the operation; and
- (b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction that the person would not otherwise have intended to commit; and
- (c) the conduct does not involve the participant engaging in any conduct that is likely to:
 - (i) cause the death of, or serious harm to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
- (d) if the participant is a civilian participant – the participant acts in accordance with the instructions of a law enforcement officer.

21 Indemnity for participant against civil liability

- (1) This section applies to a law enforcement agency if a controlled operation has been authorised by the chief officer of the agency under section 11.
- (2) The law enforcement agency must indemnify a participant in the authorised operation against any civil liability (including reasonable costs) the participant incurs because of conduct 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 intentionally inducing a person to commit an offence under a law of any jurisdiction that the person would not otherwise have intended to commit; and
- (c) the conduct does not involve the participant engaging in any conduct that is likely to:
 - (i) cause the death of, or serious harm to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
- (d) if the participant is a civilian participant – the participant acts in accordance with the instructions of a law enforcement officer; and
- (e) any requirements prescribed by regulation for this section have been met.

22 Effect of sections 20 and 21 on other laws relating to criminal investigation

Sections 20 and 21 do not apply to a person's conduct that is, or could have been authorised, under a law of the Territory relating to any of the following:

- (a) arrest or detention of individuals;
- (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.

23 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 so varied to the extent to which the participant:
 - (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the 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 to the extent to which the participant:
 - (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.
- (3) For this section, a person is reckless about the existence of the variation or cancellation of an authority if:
 - (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

24 Protection from criminal responsibility for ancillary conduct

- (1) This section applies to conduct, such as aiding and abetting the commission of an offence or conspiring to commit an offence (the **ancillary conduct**), for which a person may be criminally responsible because it involves conduct engaged in by another person that is controlled conduct for which the other person would (apart from section 20) be criminally responsible (the **related controlled conduct**).
- (2) Despite any other law of the Territory, 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, the person believed the related controlled conduct was being engaged in, or would be engaged in, by a participant in an authorised operation.

Subdivision 2 Compensation and notification of third parties

25 Compensation for property loss or serious damage

- (1) If a person suffers loss of, or serious damage to, property as a direct result of an authorised operation, the Territory is liable to pay to the person compensation as agreed between the Territory and the person or, in default of agreement, as determined by action against the Territory 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 law enforcement officer at the time of suffering the loss or damage.

26 Notification requirements

- (1) If any loss of, or serious damage to, property occurs in the course of, or as a direct result of, an authorised operation (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation), the principal law enforcement officer for the operation must report the loss or damage to the chief officer of the agency 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 proceeding; or
 - (e) otherwise be contrary to the public interest.

- (4) If any personal injury occurs in the course of, or as a direct result of, an authorised operation, the principal law enforcement officer for the operation must report the injury to the chief officer as soon as practicable.

Subdivision 3 Mutual recognition

27 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 granted under section 11:

- (a) section 17 (Effect of authority);
- (b) section 18 (Defect in authority);
- (c) section 20 (Protection from criminal responsibility for controlled conduct during authorised operation);
- (d) section 21 (Indemnity for participant against civil liability);
- (e) section 22 (Effect of sections 20 and 21 on other laws relating to criminal investigation);
- (f) section 23 (Effect of being unaware of variation or cancellation of authority);
- (g) section 24 (Protection from criminal responsibility for ancillary conduct).

Division 4 Compliance and monitoring

Subdivision 1 Restrictions on use, communication and publication of information

28 Unauthorised disclosure of information

- (1) A person commits an offence if:
- (a) the person discloses information to another person; and
 - (b) the information relates to an authorised operation or a corresponding authorised operation; and
 - (c) the disclosure is not authorised as mentioned in section 94(2).

Maximum penalty: Imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(a) and (c).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.
- (4) A person commits an offence if:
 - (a) the person discloses information to another person; and
 - (b) the information relates to an authorised operation or a corresponding authorised operation; and
 - (c) the disclosure is not authorised as mentioned in section 94(2).

Maximum penalty: Imprisonment for 2 years.

- (5) Strict liability applies to subsection (4)(c).
- (6) A person commits an offence against this subsection if:
 - (a) the person engages in conduct; and
 - (b) the conduct would constitute an offence against subsection (1) or (4); and
 - (c) the conduct:
 - (i) endangers the health or safety of any person; or
 - (ii) prejudices the effective conduct of an investigation or intelligence-gathering in relation to criminal activity.

Maximum penalty: Imprisonment for 10 years.

- (7) For this section, information relates to an authorised operation or a corresponding authorised operation if it relates to an application for an authority for a proposed operation, despite that the proposed operation has not yet been authorised or even is never authorised.

Subdivision 2 Reporting and record-keeping

29 Principal law enforcement officer's report

- (1) Within 2 months after the completion of an authorised operation, the principal law enforcement officer for the operation must give a report to the chief officer of the law enforcement agency who granted the authority to conduct the operation.

- (2) The report must include the following details:
- (a) the date and time when the authorised operation began and its duration;
 - (b) the nature of the controlled conduct engaged in for the purposes of the operation;
 - (c) details of the outcome of the operation;
 - (d) 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;
 - (e) details of any loss of or serious damage to property, or any personal injuries, that occurred in the course of or as a direct result of the operation.

30 Chief officer's report

- (1) As soon as practicable after 31 March and 30 September in each year, the chief officer of each law enforcement agency must provide a report to the Ombudsman in relation to authorised operations conducted on behalf of the agency during the previous 6 months.
- (2) The report must include the following details:
- (a) the number of formal authorities that were granted or varied by the chief officer, and the number of formal applications for the granting or variation of authorities that were refused by the chief officer, during the period to which the report relates;
 - (b) the number of urgent authorities or urgent variations of authorities that were granted by the chief officer, and the number of urgent applications for authorities or urgent variations of authorities that were refused by the chief officer, 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, that occurred in the course of, or as a direct result of, the authorised operations;
 - (g) the number of authorities cancelled by the chief officer or that expired during the period to which the report relates.
- (3) The Ombudsman may require the chief officer to provide additional information about an authorised operation to which a report relates.
- (4) If an authorised operation has not been completed at the end of a reporting period, the details mentioned in subsection (2)(c) to (f) need not be included in the report for that period in relation to that operation, but must be included in the report for the period in which the operation concludes.

31 Annual report by Ombudsman

- (1) The Ombudsman must, as soon as practicable after 30 June in each year:
- (a) prepare a report for each law enforcement agency of the work and activities of the agency under this Part for the preceding 12 months; and
 - (b) give a copy of each report to the Minister and to the chief officer of the law enforcement agency to which the report relates.
- (2) The report must include comments on the comprehensiveness and adequacy of the reports which were provided to the Ombudsman by the chief officer of the law enforcement agency under section 30.
- (3) The report must not disclose any information that identifies, or is likely to lead to the identification of, any suspect or a participant in an authorised operation.
- (4) If an authorised operation has not been completed at the end of a reporting period, particulars of the operation need not be included in the report for that period, but must be included in the report for the period in which the operation concludes.

- (5) The chief officer of a law enforcement agency must advise the Minister of any information in the report relating to the agency that, in the chief officer's opinion, should be excluded from the report before the report is tabled in the Legislative Assembly 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.
- (6) The Minister must:
- (a) exclude information from the report if satisfied on the advice of the chief officer of any of the grounds mentioned in subsection (5); and
 - (b) table the report in the Legislative Assembly within 15 sitting days after the Minister receives it.

32 Keeping documents connected with authorised operations

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

- (a) each formal application made by a law enforcement officer of the agency;
- (b) each formal authority granted to a law enforcement officer of the agency;
- (c) each formal variation application made by a law enforcement officer of the agency;
- (d) each formal variation of authority granted to a law enforcement officer of the agency;
- (e) each cancellation of an authority that was granted to a law enforcement officer of the agency;
- (f) each report of a principal law enforcement officer of the agency under section 26(1) or 29.

33 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 granted, refused or withdrawn; and
 - (iv) if the application was refused or withdrawn – the date and time of the refusal or withdrawal; and
 - (b) for each authority granted to a law enforcement officer of the agency:
 - (i) the date and time the authority was granted; and
 - (ii) whether the authority was formal or urgent; and
 - (iii) the name and position of the person who granted the authority; and
 - (iv) each relevant offence in relation to which controlled conduct under the authority was to be engaged in; and
 - (v) the period of validity of the authority; and
 - (vi) if the authority was cancelled, the date and time of cancellation; and
 - (vii) the date and time the authorised operation began and the date of completion of the operation; and
 - (viii) the date on which the principal law enforcement officer for the operation gave a report on the operation to the chief officer of the agency under section 29; and
 - (ix) if the authorised operation involved illicit goods, a statement (to the extent known) of:
 - (A) the nature and quantity of the illicit goods; and
 - (B) the route through which the illicit goods passed in the course of the operation; and

- (x) details of any loss of, or serious damage to, property, or any personal injuries, that occurred in the course of, or as a direct result of, the operation; and
- (c) for each variation of an authority under this Part:
 - (i) the date and time the variation was made; and
 - (ii) whether the variation was formal or urgent; and
 - (iii) the name and position of the person who made the variation.

Subdivision 3 Inspections

34 Inspection of records by Ombudsman

- (1) The Ombudsman must, from time to time and at least once every 12 months, inspect the records of each law enforcement agency to determine the extent of compliance with this Part by the agency and law enforcement officers of the agency.
- (2) For each inspection, the Ombudsman:
 - (a) after notifying the chief officer of the 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 agency that are relevant to the inspection; and
 - (c) may require a member of staff of the agency to provide to the Ombudsman any information:
 - (i) that the Ombudsman considers necessary; and
 - (ii) that is in the member's possession, or to which the member has access; and
 - (iii) that is relevant to the inspection.
- (3) The chief officer of the agency must ensure that members of staff of the agency give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this section.

Division 5 Miscellaneous matters

35 DPP to be notified if evidence obtained in authorised operation

The chief officer of a law enforcement agency on whose behalf an authorised operation is conducted must ensure that any evidence obtained in the course of the operation that is sent to the Director of Public Prosecutions for any legal proceedings is accompanied by:

- (a) a written notice to the effect that the evidence has been obtained in the course of an authorised operation conducted on behalf of the agency; and
- (b) a copy of the authority for the operation.

36 Evidentiary certificate

In any proceedings, a certificate signed by the chief officer of a law enforcement agency stating that, when granting or varying an authority, the chief officer was satisfied as to any matter mentioned in section 11(2) and specified in the certificate is admissible and is conclusive evidence that the chief officer was satisfied as to those matters.

37 Evidence of authority

- (1) A document purporting to be an authority granted under section 11:
 - (a) is admissible in any legal proceedings; and
 - (b) is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the chief officer granting the authority was satisfied of the facts the chief officer was required to be satisfied of to grant the authority.
- (2) A document purporting to be an authority within the meaning of a corresponding law granted under a provision of the corresponding law that corresponds to section 11:
 - (a) is admissible in any legal proceedings in the Territory; and
 - (b) is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the chief officer who granted the authority was satisfied of the facts the chief officer was required to be satisfied of under the corresponding law to grant the authority.

Part 3 Assumed identities

Division 1 Preliminary matters

38 Object of Part

The object of this Part is to facilitate, for law enforcement purposes, investigations and intelligence-gathering in relation to criminal activity, including investigations extending beyond the Territory, by:

- (a) providing for the lawful acquisition and use of assumed identities; and
- (b) facilitating mutual recognition of things done in relation to assumed identities under corresponding laws.

39 Definitions

In this Part:

acquire, in relation to 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 under section 41 to acquire and use an assumed identity and includes any variation of the authority.

corresponding authority means:

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

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

government issuing agency, in relation to an authority, means an Agency or other government organisation that issues evidence of identity and which is named in the authority.

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

officer, of a law enforcement agency or an issuing agency, includes a person employed or engaged in the agency.

Registrar means the Registrar of Births, Deaths and Marriages appointed under section 5(1) of the *Births, Deaths and Marriages Registration Act*.

supervisor, of an authorised civilian, means the law enforcement officer appointed under section 41(3) to supervise the acquisition or use of an assumed identity by the authorised civilian.

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

Division 2 Authority for assumed identity

40 Application for authority to acquire or use assumed identity

- (1) A law enforcement officer of a law enforcement agency may apply in writing to the chief officer of 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 for each assumed identity to be acquired or used.
- (3) The application must contain the following information:
 - (a) the name of the applicant;

- (b) the name of the person to be authorised to acquire or use an assumed identity (if not the applicant);
 - (c) if the person mentioned in paragraph (b) is not a law enforcement officer – the name and rank or position of the law enforcement officer 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 operation in which the assumed identity will be used (to the extent known);
 - (g) details of any issuing agencies and the types of evidence proposed to be issued by them;
 - (h) details of any application to be made for an order under section 46 (Making entries in register of births, deaths or marriages) in relation to the assumed identity.
- (4) The chief officer may require the applicant to provide any additional information concerning the application that is necessary for the chief officer's proper consideration of the application.

41 Determination of application

- (1) After considering an application for an authority to acquire or use an assumed identity, and any additional information provided under section 40(4), the chief officer of a law enforcement agency:
- (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 chief officer is satisfied on reasonable grounds:
- (a) that the assumed identity is necessary for an investigation or intelligence-gathering in relation to criminal activity; 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 of or above the rank of sergeant.
- (5) An authority may also authorise any one or more of the following:
 - (a) an application for an order for an entry in a register of births, deaths or marriages under section 46 or a corresponding law;
 - (b) a request under section 50 or 62;
 - (c) the use of an assumed identity in a participating jurisdiction.
- (6) A separate authority is required for each assumed identity.

42 Form of authority

- (1) An authority must be in writing and signed by the chief officer granting it.
- (2) An authority must state the following:
 - (a) the name of the chief officer granting the authority;
 - (b) the date of the authority;
 - (c) details of the assumed identity authorised;
 - (d) details of any evidence of the assumed identity that may be acquired under the authority;
 - (e) the conditions to which the authority is subject;
 - (f) why the authority is granted;
 - (g) if the authority relates to an authorised officer – the name of the officer;
 - (h) if the authority relates to an authorised civilian:
 - (i) the name of the civilian; and

- (ii) the name of the civilian's supervisor under the authority; and
 - (iii) the period for which the authority will remain in force, being a period not exceeding 3 months.
- (3) The authority must also state the following:
 - (a) each issuing agency to which a request may be made under section 50 or 62;
 - (b) whether it authorises an application for an order for an entry in a register of births, deaths or marriages under section 46 or a corresponding law;
 - (c) each participating jurisdiction in which an assumed identity arising under this Part may be used.

43 Period of authority

- (1) An authority for an authorised officer remains in force until cancelled under section 44.
- (2) An authority for an authorised civilian remains in force until the end of the period specified in the authority unless cancelled sooner under section 44.

44 Variation or cancellation of authority

- (1) The chief officer of a law enforcement agency who grants an authority:
 - (a) may vary or cancel the authority at any time; and
 - (b) must cancel the authority if the chief officer is satisfied (on a review under section 45 or otherwise) that use of the assumed identity is no longer necessary.
- (2) The chief officer must give written notice of the variation or cancellation to:
 - (a) the authorised person to whom it relates; and
 - (b) if the authorised person is an authorised civilian – the authorised civilian's supervisor.
- (3) The notice must state why the authority is varied or cancelled.
- (4) The variation or cancellation takes effect at the time the written notice is given to the authorised person or, if a later time is specified, that later time.

45 Review of authority

- (1) The chief officer of a law enforcement agency must periodically review each authority granted under this Part.
- (2) The review 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 authority is still necessary.
- (4) If the chief officer is satisfied on a review that use of the assumed identity under the authority is no longer necessary, the chief officer must cancel the authority.
- (5) If the chief officer is satisfied on a review that use of the assumed identity under the authority is still necessary, the chief officer must record his or her opinion, and the reasons for it, in writing.

Division 3 Evidence of assumed identity

46 Making entry in register of births, deaths or marriages

- (1) An application to the Supreme Court for an order under this section may be made by:
 - (a) the chief officer of a law enforcement agency; or
 - (b) the chief officer of a law enforcement agency under a corresponding law; or
 - (c) the chief officer of an intelligence agency.
- (2) If the Court is satisfied the order is justified, having regard to the nature of the activities undertaken or to be undertaken under an authority or corresponding authority, the Court may order the Registrar to make an entry in a register of births, deaths or marriages under the *Births, Deaths and Marriages Registration Act* in relation to an assumed identity acquired under the authority or corresponding authority.
- (3) The application must be heard in closed court and a transcript must not be made of the proceedings.
- (4) If the Court makes an order under subsection (2), the Registrar must give effect to the 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 the order is made.

47 Cancelling entry in register of births, deaths or marriages

- (1) This section applies if:
 - (a) the chief officer of an agency mentioned in section 46(1) applied for an order under that section; and
 - (b) as a result of the order being made there is an entry in relation to an assumed identity in a register of births, deaths or marriages under the *Births, Deaths and Marriages Registration Act*; and
 - (c) the chief officer cancels the authority for that assumed identity.
- (2) The chief officer of that agency must apply to the Supreme Court for an order under this section within 28 days after the day the authority is cancelled.
- (3) The Supreme Court may order the Registrar to cancel the entry that has been made in a register of births, deaths or marriages as a result of the order under section 46.
- (4) The application must be heard in closed court and a transcript must not be made of the proceedings.
- (5) If the Court makes an order under subsection (3), the Registrar must give effect to the 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 the order is made.

48 Cancelling entry in register of births, deaths or marriages of another jurisdiction

- (1) This section applies if:
 - (a) the chief officer of a law enforcement agency applied for an order under a corresponding law; and
 - (b) as a result of the order being made there is an entry in relation to an assumed identity in a register of births, deaths or marriages in another jurisdiction; and
 - (c) the chief officer cancels the authority for that assumed identity.
- (2) The chief officer of that agency must apply under the corresponding law for an order to cancel the entry within 28 days after the day the authority is cancelled.

49 Restriction about access to application about entry in register

- (1) This section applies to:
 - (a) a proceeding on an application under section 46 or 47 for an order to make or cancel an entry in a register of births, deaths and marriages; and
 - (b) an order in a proceeding mentioned in paragraph (a).
- (2) A person is not entitled to search information in the custody of a court in relation to the proceeding unless a Judge otherwise orders in the interests of justice.
- (3) In addition, a person must not publish a report of the proceeding.

50 Request for evidence of assumed identity

- (1) This section applies if an authority authorises a request under this section.
- (2) The chief officer who grants the authority 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.
- (3) The request must state a reasonable period for compliance with the request.
- (4) A request cannot be made under this section for an entry in a register of births, deaths or marriages.
- (5) In this section:

evidence means evidence similar to that ordinarily produced or given by the issuing agency.

51 Government issuing agency to comply with request

The chief officer of a government issuing agency who receives a request under section 50 must comply with the request within the reasonable period stated in the request.

52 Non-government issuing agency may comply with request

The chief officer of a non-government issuing agency who receives a request under section 50 may comply with the request.

53 Cancellation of evidence of assumed identity

(1) The chief officer of an issuing agency who produces evidence of an assumed identity under this Division must cancel the evidence if directed in writing to do so by the chief officer who requested the evidence.

(2) In this section:

cancel includes delete or alter an entry in a record of information.

54 Protection from criminal liability – officer of issuing agency

The chief officer, or an officer, of an issuing agency 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 50 or a direction under section 53.

55 Indemnity for issuing agency and officers

(1) This section applies if the chief officer of a law enforcement agency makes a request under section 50, or gives a direction under section 53, to the chief officer of an issuing agency.

(2) 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 requirements prescribed by regulation for this section have been met.

56 Lawfulness of activities in relation to assumed name

(1) This section applies in relation to documentation or information that is the subject of a certificate, signed by the chief officer of the issuing agency responsible for issuing the documentation or information, to the effect that the documentation or information is to be used for this Act.

- (2) Despite any other Act or law, the following activities are not unlawful, and do not constitute offences:
- (a) the preparation of any false documentation (such as the preparation of a driver licence, credit card or identity card under an assumed name) in accordance with a request by the chief officer of a law enforcement agency or the chief officer of an intelligence agency;
 - (b) the inclusion of any false information in any record or register (such as that relevant to the issue of a driver licence, credit card or identity card under an assumed name) in accordance with a request by the chief officer of a law enforcement agency or the chief officer of an intelligence agency;
 - (c) the use of such documentation or information by any person in the course of, and for the purposes of, an authorised operation conducted on behalf of a law enforcement agency;
 - (d) an activity in connection with an activity mentioned in paragraph (a), (b) or (c) that (apart from this section) would be unlawful (such as an activity that would otherwise give rise to the offence of aiding and abetting the commission of an offence or of conspiring to commit an offence).
- (3) Subsection (1) does not render lawful the preparation of false documentation, the inclusion of false information in any record or register or the use of such documentation or information in relation to matters of the kind recorded or registered under the *Births, Deaths and Marriages Registration Act*.

Division 4 Effect of authority

57 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) a direction by the authorised civilian's supervisor under the authority.

58 Protection from criminal liability – authorised persons

If an authorised person does something (whether in the Territory 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) for an authorised officer – in the course of the officer's duty; or
 - (ii) for an authorised civilian – in accordance with a direction by the civilian's supervisor under the authority; and
- (c) doing the thing would not be an offence if the assumed identity were the person's real identity.

59 Indemnity for authorised person

- (1) This section applies if the chief officer of a law enforcement agency grants an authority.
- (2) 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 the Territory 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) for an authorised officer – in the course of the officer's duty; or
 - (ii) for an authorised civilian – in accordance with a direction by the civilian's supervisor under the authority; and
 - (c) any requirements prescribed by regulation for this section have been met.

60 Particular qualifications

- (1) Sections 58 and 59 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 the person has that qualification.

61 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 Part continues to apply to the authorised person to whom it relates as if it had not been varied in that way, to the extent that the person:

(a) is unaware of the variation; and

(b) is not reckless about the existence of the variation.

- (2) If an authority has been cancelled, this Part continues to apply to the authorised person to whom it related as if it had not been cancelled, to the extent that the person:

(a) is unaware of the cancellation; and

(b) is not reckless about the existence of the cancellation.

- (3) For this section, a person is reckless about the existence of the variation or cancellation of an authority if:

(a) the person is aware of a substantial risk that the authority has been varied or cancelled; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

Division 5 Mutual recognition under corresponding law

62 Request to participating jurisdiction for evidence of assumed identity

- (1) This section applies if an authority authorises a request under this section.

- (2) The chief officer who grants the authority may request the chief officer 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.

63 Request 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; 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; 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.

64 Direction from participating jurisdiction to cancel evidence of assumed identity

- (1) The chief officer of an issuing agency who produces evidence of an assumed identity because of a request mentioned in section 63 must cancel the evidence if directed in writing to do so by the chief officer who made the request.

- (2) In this section:

cancel includes delete or alter an entry in a record of information.

65 Indemnity for issuing agency and officers

- (1) This section applies if the chief officer of a law enforcement agency makes a request to the chief officer of an issuing agency of a participating jurisdiction under section 62.

- (2) The law enforcement agency must indemnify the issuing agency and any 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 (whether in the Territory or elsewhere) by the issuing agency or officer to comply with the request in the course of duty; and
 - (b) any requirements prescribed by regulation for this section have been met.

66 Application of Part to corresponding authority

The following provisions apply to anything done in the Territory in relation to a corresponding authority as if it were an authority granted under section 41:

- (a) section 54 (Protection from criminal liability – officer of issuing agency);
- (b) section 57 (Assumed identity may be acquired and used);
- (c) section 58 (Protection from criminal liability – authorised persons);
- (d) section 60 (Particular qualifications);
- (e) section 61 (Effect of being unaware of variation or cancellation of authority);
- (f) section 67 (Misuse of assumed identity);
- (g) section 68 (Disclosing information about assumed identity).

Division 6 Compliance and monitoring

Subdivision 1 Misuse of assumed identity and information

67 Misuse of assumed identity

- (1) An authorised officer commits an offence if:
- (a) the officer acquires evidence of an assumed identity; and
 - (b) the acquisition:
 - (i) is not in accordance with the officer's authority; or

(ii) is not in the course of duty.

Maximum penalty: Imprisonment for 2 years.

(2) An authorised officer commits an offence if:

(a) the officer uses an assumed identity; and

(b) the use:

(i) is not in accordance with the officer's authority; or

(ii) is not in the course of duty.

Maximum penalty: Imprisonment for 2 years.

(3) An authorised civilian commits an offence if:

(a) the civilian acquires evidence of an assumed identity; and

(b) the acquisition:

(i) is not in accordance with the civilian's authority; or

(ii) is not in accordance with a direction of the civilian's supervisor under the authority.

Maximum penalty: Imprisonment for 2 years.

(4) An authorised civilian commits an offence if:

(a) the civilian uses an assumed identity; and

(b) the use:

(i) is not in accordance with the civilian's authority; or

(ii) is not in accordance with a direction of the civilian's supervisor under the authority.

Maximum penalty: Imprisonment for 2 years.

(5) Strict liability applies to subsections (1)(b), (2)(b), (3)(b) and (4)(b).

68 Disclosing information about assumed identity

(1) A person commits an offence if:

(a) the person discloses information to another person; and

(b) the information reveals or may reveal that an assumed identity acquired or used by a third person is not that person's real identity; and

(c) the disclosure is not authorised as mentioned in section 94(2).

Maximum penalty: Imprisonment for 12 months.

(2) Strict liability applies to subsection (1)(a) and (c).

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

(4) A person commits an offence if:

(a) the person discloses information to another person; and

(b) the information reveals or may reveal that an assumed identity acquired or used by a third person is not that person's real identity; and

(c) the disclosure is not authorised as mentioned in section 94(2).

Maximum penalty: Imprisonment for 2 years.

(5) Strict liability applies to subsection (4)(c).

(6) A person commits an offence against this subsection if:

(a) the person engages in conduct; and

(b) the conduct would constitute an offence against subsection (1) or (4); and

(c) the conduct:

(i) endangers the health or safety of any person; or

(ii) prejudices the effective conduct of an investigation or intelligence-gathering in relation to criminal activity.

Maximum penalty: Imprisonment for 10 years.

Subdivision 2 Reporting and record-keeping

69 Reports about authorities for assumed identities etc.

- (1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must provide a report to the Minister that includes the following information for the year in relation to the agency:
 - (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 as to whether any fraud or other unlawful activity was identified by an audit under section 71 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 tabled in the Legislative Assembly 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) table the report in the Legislative Assembly within 15 sitting days after the Minister receives it.

70 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 relation to the agency.
- (2) The records must include the following, for authorities granted, varied or cancelled under this Part in relation to the law enforcement agency:
 - (a) the date on which, and the name of the person who, granted, varied or cancelled an authority;
 - (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 50 in relation to 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 45.

71 Audit of records

- (1) The chief officer of a law enforcement agency must arrange for the records kept under section 70 for each authority in relation to 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 70 relate; or
 - (ii) who is or was an authorised person under any of the authorities to which those records relate.
- (4) The results of an audit are to be reported to the chief officer.

Part 4 Witness identity protection

Division 1 Preliminary matters

72 Object of Part

The object of this Part is to facilitate, for law enforcement purposes, investigations in relation to criminal activity, including investigations extending beyond the Territory, by:

- (a) providing for the protection of the identity of operatives; and
- (b) facilitating mutual recognition of corresponding witness identity protection certificates.

73 Definitions

In this Part:

corresponding non-disclosure certificate means a certificate given under a provision of a corresponding law that corresponds to section 88(2).

corresponding witness identity protection certificate means a certificate given under a provision of a corresponding law that corresponds to section 76.

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

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.

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 person who is authorised under section 32 of the *Misuse of Drugs Act* to acquire, supply or possess a dangerous drug or precursor.

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.

person involved in a proceeding includes the following:

- (a) the court;
- (b) a party to the proceeding;
- (c) a person given leave to be heard or make submissions in the proceeding;
- (d) a lawyer representing a person mentioned in paragraph (b) or (c) or a lawyer assisting the court in the proceeding;
- (e) any other officer of the court or person assisting the court in the proceeding;
- (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.

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

witness identity protection certificate means a certificate given under section 76.

74 Party may act through lawyer

- (1) A thing that may be done by a party to a proceeding may, for this Part, be done by the party's lawyer.
- (2) A requirement to give something to a party to a proceeding is satisfied, for this Part, by giving the thing to the party's lawyer.

Division 2 Witness identity protection certificate for operative

75 Application of Division

- (1) This Division applies to a 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 proceeding.

76 Witness identity protection certificate

- (1) The chief officer of a law enforcement agency may give a certificate (a **witness identity protection 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 identity or where the operative lives is likely to:
 - (i) endanger the safety of the operative or someone else; or
 - (ii) prejudice an investigation.
- (2) The chief officer must make all reasonable enquiries to enable the chief officer to ascertain the information required to be included in the certificate by section 77.
- (3) A decision to give a witness identity protection certificate:
 - (a) is final; and
 - (b) cannot be appealed against, reviewed, 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 proceedings of a disciplinary nature against the person who made the decision.

77 Form of witness identity protection certificate

- (1) A witness identity protection certificate for an operative of a law enforcement agency in relation to a proceeding must state the following:
- (a) if the operative is known to a party to the proceeding or a party's lawyer by a name other than the operative's real name – the name by which the party or party's lawyer knows the operative;
 - (b) if the operative is not known to any party to the proceeding or any party's lawyer by a name – the operative's court name for the proceeding;
 - (c) the period the operative was involved in the investigation to which the proceeding relates;
 - (d) the name of the agency;
 - (e) the date of the certificate;
 - (f) the grounds for giving the certificate;
 - (g) whether the operative has been convicted or found guilty of an offence and, if so, particulars of each offence;
 - (h) whether there are charges against the operative for an offence pending or outstanding and, if so, particulars of each charge;
 - (i) 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;
 - (j) 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;
 - (k) 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;

- (1) 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.
- (2) A witness identity protection certificate for an operative must not contain information that may allow the operative's identity, or where the operative lives, to be revealed.
- (3) For 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 magistrate following a committal hearing;
 - (iv) the person is acquitted or found guilty of the offence by a court; and
 - (b) a charge against a person for an offence is **pending** if the person has not yet been charged with the offence, but:
 - (i) the person has been arrested for the offence, unless the person has been later released without being charged with an offence; or
 - (ii) a summons to appear before a court to answer a charge for the offence has been served on the person; and
 - (c) an allegation of professional misconduct against a person is **outstanding** if the allegation has not been finally dealt with in accordance with Part IV of the *Police Administration Act*.

- (4) In this section:

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

professional misconduct means misconduct or a breach of discipline under:

- (a) Part IV of the *Police Administration Act*; or
- (b) a law of another jurisdiction that corresponds to the *Police Administration Act*; or

- (c) a law of a foreign country that corresponds to the *Police Administration Act*.

78 Filing and notification

- (1) A witness identity protection certificate for an operative, in relation to a 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 each party to the proceeding at least 14 days (or the shorter period agreed to by the party) before the day 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.

79 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 78(1); and
 - (b) either:
 - (i) a copy of the certificate is given to each party in accordance with section 78(2) and to each person in accordance with an order under section 78(3) (if any); or
 - (ii) the court gives leave for this section to apply despite non-compliance with section 78(2) or (3).
- (2) The operative may give evidence in the proceeding under the name by which the operative is known as mentioned in section 77(1)(a) or court name as mentioned in section 77(1)(b), stated in the certificate and, subject to section 81:
 - (a) a question must not be asked of a witness, including the operative, that may lead to the disclosure of the operative's identity or where the operative lives; and
 - (b) 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 identity or where the operative lives; and
 - (c) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the operative's identity or where the operative lives.

80 Orders to protect operative's identity etc.

- (1) The court in which a witness identity protection certificate is filed may make any order it considers necessary or desirable to protect the identity of the operative for whom the certificate is given or to prevent the disclosure of where the operative lives.
- (2) A person commits an offence if the person:
 - (a) engages in conduct; and
 - (b) the conduct results in a contravention of an order made under subsection (1).

Maximum penalty: Imprisonment for 2 years.

- (3) Subsection (2) does not limit the court's power to punish for contempt.

81 Disclosure of operative's identity etc. despite certificate

- (1) This section applies if a witness 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 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 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 identity or where the operative lives.
- (3) The court may:
 - (a) if an application is made under subsection (2)(a) – give leave for the party or lawyer to do anything mentioned in that subsection; or

- (b) if an application is made under subsection (2)(b) – make an order requiring a witness to do anything mentioned in that subsection.
- (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 impractical to test properly the credibility of the operative without allowing the risk of disclosure of, or disclosing, the operative's 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) Unless the court considers that the interests of justice require otherwise, the court must be closed when:
 - (a) the application is made; and
 - (b) if leave is given or an order is made – the question is asked (and answered), the evidence is given, the information is provided or the statement is made.
 - (7) 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.
 - (8) Subsection (7) does not prevent 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.
 - (9) The court may make any other order it considers appropriate to protect the operative's identity or to prevent the disclosure of where the operative lives.
 - (10) A person commits an offence if the person:
 - (a) engages in conduct; and

- (b) the conduct results in a contravention of an order made under subsection (7), (8) or (9).

Maximum penalty: Imprisonment for 2 years.

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

82 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) Unless the court considers to do so would be inappropriate, the court must 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 80 or 81(7), (8) or (9).

83 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 must 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 identity or where the operative lives.
- (3) If the chief officer cancels the certificate after it has been filed in a court, the chief officer must immediately give notice to the court and each party to the proceeding, in writing, that the certificate has been cancelled.

84 Permission to provide information disclosing operative's identity etc.

- (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 provide information (otherwise than in the proceeding) that discloses, or may lead to the disclosure of, the operative's 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 provide the information; and
 - (b) must name the person to whom the information may be provided; and
 - (c) must state the information that may be provided; and
 - (d) may state how the information may be provided.

85 Disclosure offences

- (1) This section applies if:
 - (a) a witness identity protection certificate has been given for an operative in relation to a proceeding; and
 - (b) the certificate has not been cancelled under section 83.
- (2) A person commits an offence if:
 - (a) the person discloses information to another person; and
 - (b) the information reveals or may reveal the operative's identity or where the operative lives; and
 - (c) the disclosure:
 - (i) is not authorised by leave or an order under section 81; and
 - (ii) is not permitted under section 84.

Maximum penalty: Imprisonment for 12 months.

- (3) Strict liability applies to subsection (2)(a) and (c).

- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.
- (5) A person commits an offence if:
- (a) the person discloses information to another person; and
 - (b) the information reveals or may reveal the operative's identity or where the operative lives; and
 - (c) the disclosure:
 - (i) is not authorised by leave or an order under section 81; and
 - (ii) is not permitted under section 84.

Maximum penalty: Imprisonment for 2 years.

- (6) Strict liability applies to subsection (5)(c).
- (7) A person commits an offence against this subsection if:
- (a) the person engages in conduct; and
 - (b) the conduct would constitute an offence against subsection (2) or (5); and
 - (c) the conduct:
 - (i) endangers the health or safety of any person; or
 - (ii) prejudices the effective conduct of an investigation.

Maximum penalty: Imprisonment for 10 years.

86 Report about witness identity protection certificate

- (1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must provide a report to the Minister about witness identity protection certificates given by the chief officer during that year.
- (2) The report must include 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 76(1)(b) for each certificate;

- (c) if leave was given or an order made under section 81 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 83 – the reasons why the certificate was cancelled;
 - (e) if a permission was given under section 84 – 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 identity, or where the operative lives, unless the witness identity protection certificate for the operative has been cancelled.
- (4) The Minister must table the report in the Legislative Assembly within 15 sitting days after the Minister receives it.

Division 3 Evidence by people in witness protection program

87 Definitions

In this Division:

protected identity, of a protected person, means:

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

protected person means a person who, having been given a new identity under the TWPP, keeps that identity whether or not the person remains a participant in the program.

TWPP means the Territory witness protection program established and maintained under section 5 of the *Witness Protection (Northern Territory) Act*.

88 Non-disclosure certificates

- (1) If a protected person is or may be required to give evidence in a proceeding in a court, whether under the person's new identity or previous identity, the person must notify the chief officer of the law enforcement agency responsible for the TWPP that the person is, or may be, required to give evidence in the proceeding.
- (2) The chief officer must give a certificate (a ***non-disclosure certificate***) for the protected person in relation to the proceeding, and file a copy with the court.
- (3) A protected person commits an offence if:
 - (a) the person knows that the person may be required to give evidence in a proceeding in a court; and
 - (b) the person fails to notify the chief officer under subsection (1).

Maximum penalty: 50 penalty units.

- (4) In this section:

court means a court (as defined in section 73):

- (a) of the Territory; or
- (b) of another jurisdiction.

89 What non-disclosure certificate must state

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

90 Effect of non-disclosure certificate

- (1) This section applies if a non-disclosure certificate for a protected person in relation to a proceeding is filed in a court in the Territory.

- (2) In the proceeding:
- (a) a question must not be asked of a witness, including the protected person, that may lead to the disclosure of the protected person's protected identity or where the protected person lives; and
 - (b) a witness, including the protected person, 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 protected person's protected identity or where the protected person lives; and
 - (c) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the protected person's protected identity or where the protected person lives.
- (3) The court may disclose to each party to the proceeding:
- (a) that the court has been given a non-disclosure certificate for a person who may be required to give evidence in the proceeding; and
 - (b) what the certificate states.
- (4) The court may only disclose what the non-disclosure certificate states in the absence of the jury and the public.
- (5) If the court makes a disclosure about the non-disclosure certificate under subsection (3), the court must also inform the parties of the effect of the certificate.
- (6) This section applies despite any other Act, but subject to section 91.

91 Disclosure of protected person's identity despite certificate

- (1) This section applies if a non-disclosure certificate for a protected person in relation to a proceeding is filed in a court in the Territory.
- (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 protected person, that may lead to the disclosure of the protected person's protected identity or where the protected person lives; or

- (ii) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the protected person's protected identity or where the protected person lives; or
 - (b) for an order requiring a witness, including the protected person, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the protected person's protected identity or where the protected person lives.
- (3) The court may:
 - (a) if an application is made under subsection (2)(a) – give leave for the party or lawyer to do anything mentioned in that subsection; or
 - (b) if an application is made under subsection (2)(b) – make an order requiring a witness to do anything mentioned in that subsection.
- (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 protected person's credibility;
 - (b) it would be impractical to test properly the credibility of the protected person without allowing the risk of disclosure of, or disclosing, the protected person's protected identity or where the protected person lives;
 - (c) it is in the interests of justice for the protected person'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) Unless the court considers that the interests of justice require otherwise, the court must be closed when:
 - (a) the application is made; and
 - (b) if leave is given or an order is made – the question is asked (and answered), the evidence is given, the information is provided or the statement is made.

- (7) 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.
- (8) Subsection (7) does not prevent 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.
- (9) The court may make any other order it considers appropriate to protect the protected person's protected identity or to prevent the disclosure of where the protected person lives.
- (10) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in a contravention of an order made under subsection (7), (8) or (9).
- Maximum penalty: Imprisonment for 2 years.
- (11) Subsection (10) does not limit the court's power to punish for contempt.

Division 4 Mutual recognition under corresponding laws

92 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 76:

- (a) section 78 (Filing and notification);
- (b) section 79 (Effect of witness identity protection certificate);
- (c) section 80 (Orders to protect operative's identity etc.);
- (d) section 81 (Disclosure of operative's identity etc. despite certificate);
- (e) section 82 (Directions to jury);
- (f) section 85 (Disclosure offences).

93 Recognition of non-disclosure certificates under corresponding laws

The following provisions apply, with any necessary changes, to a corresponding non-disclosure certificate that is filed with a court in the Territory as if it were a non-disclosure certificate given under section 88(2):

- (a) section 90 (Effect of non-disclosure certificate);
- (b) section 91 (Disclosure of protected person's identity despite certificate).

Part 5 Administrative matters**94 Confidentiality**

- (1) A person commits an offence if:
 - (a) the person obtains information in the course of carrying out functions connected with the administration of this Act; and
 - (b) the person engages in conduct that results in the disclosure of the information.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Subsection (1) does not apply if:
 - (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) for legal proceedings arising out of the operation of this Act; or
 - (b) the person is authorised by law to disclose the information.
- (3) Without limiting subsection (2)(b), a person is authorised to disclose information in either of the following circumstances:
 - (a) for the purpose of reporting to an appropriate authority any criminal activity that is outside the scope of an authority granted in respect of an authorised operation;
 - (b) the disclosure is to a government agency for the purposes of a law enforcement operation conducted by that agency, or for intelligence-gathering in relation to criminal activity.

95 Delegation

- (1) Except as provided by this section (and despite any other Act or law to the contrary) the functions of a chief officer under this Act may not be delegated to any other person.
- (2) The power of delegation under this section cannot be delegated.
- (3) A chief officer of a law enforcement agency may delegate any of the chief officer's functions under Part 2 relating to the authorisation of controlled operations (including the variation and cancellation of controlled operations and notifications under section 26(2)) to the following senior law enforcement officers of the law enforcement agency (**senior officers**):
 - (a) in relation to the Police Force – the person holding office or acting as:
 - (i) Deputy Commissioner of Police; or
 - (ii) Assistant Commissioner, Crime and Specialist Service;
 - (b) in relation to the Australian Crime Commission:
 - (i) a member of the core staff of the ACC who is an SES employee, or a person occupying an equivalent or higher position in the Commission; or
 - (ii) a person holding office, or acting in an office, of the Commission that is prescribed by regulation.
- (4) A chief officer of a law enforcement agency may delegate any of the chief officer's functions under Part 3 relating to the granting, variation and cancellation of authorities (including conducting reviews under section 45, making applications under section 46 or 48, or making requests under section 50 or 62) to the following senior officers:
 - (a) in relation to the Police Force – the person holding office or acting as:
 - (i) Deputy Commissioner of Police; or
 - (ii) Assistant Commissioner, Crime and Specialist Service;
 - (b) in relation to the Australian Crime Commission:
 - (i) a member of the core staff of the ACC who is an SES employee, or a person occupying an equivalent or higher position in the Commission; or

- (ii) a person holding office, or acting in an office, of the Commission that is prescribed by regulation.
- (5) No more than 4 delegations may be in force under subsection (4) at any one time for any one law enforcement agency.
- (6) A chief officer of a law enforcement agency may delegate any of the chief officer's functions under Part 4 to the following senior officers:
 - (a) in relation to the Police Force – the person holding office or acting as Deputy Commissioner of Police;
 - (b) in relation to the Australian Crime Commission:
 - (i) a member of the core staff of the ACC who is an SES employee, or a person occupying an equivalent or higher position in the Commission; or
 - (ii) a person holding office, or acting in an office, of the Commission that is prescribed by regulation.
- (7) In this section:

member of the core staff of the ACC means a member of the staff of the ACC mentioned in section 47(1) of the *Australian Crime Commission Act 2002* (Cth).

SES employee, see section 34 of the *Public Service Act 1999* (Cth).

96 Regulations

The Administrator may make regulations under this Act.

Part 6 Consequential amendment of Information Act

97 Act amended

This Part amends the *Information Act*.

98 Section 46 amended

(1) Section 46(2)(e)

omit

person.

insert

person; or

(2) After section 46(2)(e)

insert

- (f) is information, originating from a Police Force Intelligence Division, relating to an authorised operation or a corresponding authorised operation as defined in section 3 of the *Police (Special Investigative and Other Powers) Act*; or
- (g) reveals that an assumed identity, acquired or used by a person in accordance with Part 3 of the *Police (Special Investigative and Other Powers) Act*, is not the person's real identity; or
- (h) reveals the identity of an operative (as defined in section 73 of the *Police (Special Investigative and Other Powers) Act*), or where the operative lives, where the disclosure is not:
 - (i) authorised by leave or an order under section 81 of that Act; or
 - (ii) permitted under section 84 of that Act.

99 Expiry of Part

This Part expires on the day after it commences.