

1994

THE PARLIAMENT OF THE COMMONWEALTH OF  
AUSTRALIA

SENATE

WITNESS PROTECTION BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of  
the Government

(Circulated by Authority of the Minister for Justice the Hon Duncan Kerr MP)



## WITNESS PROTECTION BILL 1994

### Outline

The Government amendments to the Witness Protection Bill have 3 main purposes

- to authorise the Commissioner of the AFP to notify a party or possible party to legal proceedings involving a witness that the Commissioner will accept process issued by courts or tribunals on behalf of the witness and is to nominate a member for that purpose;
- to specifically authorise a member of the AFP to disclose to a court, tribunal, a Royal Commission, or an approved authority, upon request, details of the financial support arrangements provided to a witness under paragraph 9(2)(f) of the Bill but not so that it could identify the location or prejudice the safety of the witness;
- If a participant on the program or former participant, with a criminal conviction, is later required to give evidence in criminal proceedings in his/her new identity the person must advise the Commissioner. The Commissioner is then required to take appropriate action. If the person is to give evidence, the Commissioner shall provide a copy of the person's convictions to the court, prosecutor, the accused and his/her legal representative. This will have the consequence of the witness and his/her family being provided with a further new identity and relocation again. This amendment has required the delegation clause (cl 25) and clause 16 - disclosure of former identity to also be amended.

### Financial Impact

The amendments do not have a financial impact.

## NOTES ON CLAUSES

### Clause 1

This clause amends clause 15(2) of the Bill. The amendment requires the Commissioner of the Australian Federal Police to notify a party or possible party to legal proceedings against a witness that the AFP will accept process issued on behalf of a court or tribunal and will nominate a member for that purpose.

### Clause 2

Clause 2 amends clause 16 of the Bill which sets out the procedures which a participant must comply with when he/she does not disclose his/her former identity. The amendment extends this clause to former participants who retain their new identity.

### Clause 3

This clause amends clause 25(3) of the Bill which sets out the Commissioners powers which may only be delegated to a Deputy Commissioner. The amendment to this clause adds the proposed new clause 26A to clause 25(3).

### Clause 4

This clause amends clause 26 of the Bill. The financial support arrangements in the memorandum of understanding under clause 9(2)(f) of the Bill could be an issue, where the witness was giving evidence. So that this issue is directly dealt with in the Bill, it is proposed that clause 26 to be amended to provide that a member of the AFP may disclose to a court, tribunal, a Royal Commission, or an approved authority information relating to the financial support arrangement but not so that it could identify the location of the participant or prejudice the safety of the witness.

### Clause 5

This clause inserts a new clause in the Bill (Clause 26A). The new clause deals with the situation where a participant or former participant with a criminal record is to give evidence in a criminal proceeding in his/her new identity. Where the person is to give evidence, the person is required to notify the Commissioner. The Commissioner is then to take appropriate action. If the person is in fact to give evidence for the

prosecution, it is intended that the Commissioner shall provide the prosecution, the court, the accused or his/her legal representative with a copy of his/her criminal conviction. In such a case the person would need to be given a further new identity and relocated.