

First print



New South Wales

Law Enforcement and National Security (Assumed Identities) Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to provide for the acquisition and use of assumed identities in the course of the performance of official duties by officers of certain State and Federal agencies that have law enforcement and national security functions.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. An important definition is that of *authorised agency* which means each of the following agencies:

- (a) the Police Service,
- (b) the Independent Commission Against Corruption,
- (c) the New South Wales Crime Commission,
- (d) the Police Integrity Commission,
- (e) such of the following agencies as may be prescribed by the regulations as authorised agencies for the purposes of the proposed Act:
 - (i) the Australian Federal Police,
 - (ii) the National Crime Authority,
 - (iii) the Australian Security Intelligence Organization,
 - (iv) the Australian Secret Intelligence Service,
 - (v) the Australian Customs Service.

Part 2 Approval to acquire and use assumed identity

Clause 4 authorises the CEO of an authorised agency to give approval (an *assumed identity approval*) for the acquisition and use of an assumed identity by an officer of the agency.

Clause 5 provides that an assumed identity approval authorises the officer concerned to acquire the assumed identity and use that identity when carrying out the officer's official duties.

Clause 6 provides for government and private bodies, at the request of the CEO of an authorised agency who has granted an assumed identity approval, to prepare and provide evidence of the assumed identity and make entries under the assumed identity in registers and other records of information. Government bodies are authorised and required to comply with such a request. Private bodies are authorised but not required to comply.

Clause 7 makes special provision for the making of entries under assumed identities in a register of births or marriages by the Registrar of Births, Deaths and Marriages. Such an entry cannot be made unless an eligible Judge (under clause 8) orders the entry to be made on being satisfied that it is justified having regard to the nature of the duties being undertaken or to be undertaken by an officer under the assumed identity.

Clause 8 provides for the nomination of Supreme Court Judges as eligible Judges for the purposes of clause 7.

Clause 9 provides that things done in good faith under the authority of the proposed Act are not unlawful and do not constitute an offence or corrupt conduct.

Part 3 Accountability

Clause 10 provides for the keeping of records by CEOs of authorised agencies about assumed identity approvals.

Clause 11 requires a record kept under clause 10 to be audited at least every 12 months.

Clause 12 requires authorised agencies to include in their annual reports a statement of certain matters concerning assumed identity approvals.

Part 4 Miscellaneous

Clause 13 provides that the proposed Act binds the Crown.

Clause 14 imposes restrictions on the disclosure in legal proceedings of the identity of an officer in respect of whom an assumed identity approval is or was in force.

Clause 15 makes it an offence to make a record of, disclose or communicate information relating to the provision of evidence of identity or the making of an entry in a register or record under the authority of the proposed Act.

Clause 16 is a power of delegation allowing the CEOs of authorised agencies to delegate functions under the proposed Act. The clause imposes limits on the number of delegations and the officers to whom functions can be delegated.

Clause 17 makes it clear that the proposed Act does not limit or otherwise affect the *Law Enforcement (Controlled Operations) Act 1997* or the *Witness Protection Act 1995*.

Clause 18 provides for the taking of proceedings for offences under the proposed Act.

Clause 19 is a general regulation-making power.

Clause 20 makes a consequential amendment to the *Criminal Procedure Act 1986*.

Clause 21 provides for the Minister to review the operation of the proposed Act in 12 months after the commencement of clause 4.



New South Wales

Law Enforcement and National Security (Assumed Identities) Bill 1998

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New South Wales

Law Enforcement and National Security (Assumed Identities) Bill 1998

No. , 1998

A Bill for

An Act to provide for the acquisition and use of assumed identities by officers of certain law enforcement and national security agencies for the purposes of their official duties.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Law Enforcement and National Security (Assumed Identities) Act 1998*.

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2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

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assumed identity approval means an approval under this Act to acquire and use an assumed identity.

authorised agency means each of the following:

- (a) the Police Service,
- (b) the Independent Commission Against Corruption,
- (c) the New South Wales Crime Commission,
- (d) the Police Integrity Commission,
- (e) such of the following agencies as may be prescribed by the regulations as authorised agencies for the purposes of this Act:

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- (i) the Australian Federal Police,
- (ii) the National Crime Authority,
- (iii) the Australian Security Intelligence Organization,
- (iv) the Australian Secret Intelligence Service,
- (v) the Australian Customs Service.

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chief executive officer means the person for the time being holding office or acting as:

- (a) in relation to the Police Service, the Commissioner of Police, or
- (b) in relation to the Independent Commission Against Corruption, the Commissioner for that Commission, or 5
- (c) in relation to the New South Wales Crime Commission, the Commissioner for that Commission, or
- (d) in relation to the Police Integrity Commission, the Commissioner for that Commission, or 10
- (e) in relation to an agency prescribed by the regulations as an authorised agency for the purposes of this Act, the officer prescribed by the regulations as the chief executive officer of the agency.

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. 15

exercise a function includes perform a duty.

function includes a power, authority or duty. 20

government body means each of the following:

- (a) a department, office, commission, board, person, corporation, agency, service or instrumentality, exercising any function of any branch of the Government of the State.
- (b) any body, office, person or institution that exercises any public functions and that is declared by the regulations to be a government body for the purposes of this Act. 25

identity means name, address or date of birth, or such other aspects of a person's identity as may be prescribed by the regulations for the purposes of this definition. 30

officer includes agent and employee, and any person exercising the functions of officer, agent or employee.

private body means any body, office, person or institution that is not a government body.

Part 2 Approval to acquire and use assumed identity

4 Chief executive officer may grant approval for assumed identity

- (1) The chief executive officer of an authorised agency may grant approval (an *assumed identity approval*) for the acquisition and use of an assumed identity by an officer of the agency. The approval remains in force until it is revoked. 5
- (2) The chief executive officer may vary or revoke an assumed identity approval at any time. Notice of the variation or revocation must be given to the officer to whom the approval applies. 10
- (3) An assumed identity approval can relate to more than one assumed identity.

5 What an approval authorises

- (1) An assumed identity approval authorises the officer to whom it applies to acquire an assumed identity specified in the approval and to use that identity when carrying out the officer's official duties. The officer can use an assumed identity under the authority of an assumed identity approval without having actually acquired the identity. 15
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- (2) For the purposes of this Act:
 - (a) an officer *acquires* an assumed identity by obtaining evidence of identity under the assumed identity, including by obtaining the making of an entry in any register or other record of information, and 25
 - (b) an officer *uses* an assumed identity by representing it to be the officer's true identity.
- (3) An assumed identity approval also authorises:
 - (a) the making (by the officer to whom the approval applies or by the person who gave the approval) of any false or misleading representation about the officer, for the purposes of or in connection with the acquisition or use of the assumed identity by the officer, and 30
 - (b) the use by the officer of the assumed identity to obtain evidence of identity. 35

- (4) Evidence of identity of a kind that ordinarily authorises a person to exercise a function (such as a driver's licence) does not, when acquired under the authority of an assumed identity approval, authorise the officer concerned to exercise any function that the officer could not otherwise lawfully exercise. 5
- (5) However, the fact that an officer is not competent or qualified or otherwise authorised to exercise a particular function (such as the driving of a vehicle) does not prevent the acquisition by the officer under the authority of an assumed identity approval of evidence of identity of a kind that ordinarily authorises a person to exercise that function. 10

6 Role of government and private bodies

- (1) When an assumed identity approval has been granted, the chief executive officer of the authorised agency concerned may request a government body or private body to do any of the following: 15
- (a) prepare and provide in respect of the officer to whom the approval applies specified evidence of identity under the assumed identity (being evidence of identity of a kind that is ordinarily provided by the government body or private body), 20
- (b) make an entry in respect of the officer to whom the approval applies under the assumed identity in any register or other record of information kept by the government body or private body (such as that relevant to the issue of a driver's licence, credit card or identity card or to the recording of driving or credit history). 25
- (2) A government body is authorised and required to comply with a request made to it under this section. A private body is authorised (but not required) to comply with a request made to it under this section. 30
- (3) For the purpose of complying with a request under this section, the officer in charge of a government body or private body, and any other officer or employee of the government body or private body acting in accordance with the directions of the officer in charge, is authorised to provide evidence of identity and make an entry in a register or other record of information in accordance with the request. 35

- (4) A certificate given or apparently given by the chief executive officer of an authorised agency certifying that a request made to a government body or private body is authorised by this section may be relied on by the officer in charge and any other officer or employee of the government body or private body as evidence of the matters certified. 5
- (5) On being directed by the chief executive officer of an authorised agency to cancel an assumed identity, the officer in charge of a government body or private body, and any other officer or employee of the government body or private body acting in accordance with the directions of the officer in charge, is authorised and required to cancel any evidence of identity or entry in a register or other record of information provided or made in respect of the assumed identity. 10
- (6) This section does not authorise the making or cancellation of an entry in a register of births or marriages except in accordance with an order under section 7. 15

7 Special provisions for entries in register of births and marriages

- (1) The chief executive officer of an authorised agency may apply to an eligible Judge (as defined in section 8) for an order authorising the Registrar of Births, Deaths and Marriages to make in any register of births or marriages kept by the Registrar an entry in respect of an officer to whom an assumed identity approval has been granted under an assumed identity to which the approval applies. 20 25
- (2) An eligible Judge may make an order under this section if satisfied that the making of the entry to which the application relates is justified having regard to the nature of the duties being undertaken or to be undertaken by the officer in connection with the assumed identity approval. 30
- (3) A chief executive officer must provide such evidence as an eligible Judge may require to satisfy himself or herself as to the matters provided by this section.
- (4) On the making of an order under this section, the Registrar of Births, Deaths and Marriages and any officer of the Registry acting under the direction of the Registrar is authorised and required to make any entries in a register of births or marriages that are necessary to give effect to the order. 35

- (5) The chief executive officer of the authorised agency must maintain records showing appropriate identifying particulars of the original birth entry or the original marriage entry of an officer in respect of whom an order is made under this section.
- (6) An entry in a register of births or marriages made under this section is to be cancelled by the Registrar of Births, Deaths and Marriages or by any officer of the Registry acting under the direction of the Registrar if an eligible Judge, on being satisfied that the assumed identity approval is no longer in force, makes an order on the application of the chief executive officer directing that the entry be cancelled. 5 10

8 Eligible Judges

- (1) In this section and section 7:
eligible Judge means a Judge in relation to whom a consent under subsection (2) and a nomination under subsection (3) are in force. 15
Judge means a person who is a Judge of the Supreme Court.
- (2) A Judge may, by instrument in writing, consent to being nominated by the Attorney General under subsection (3).
- (3) The Attorney General may, by instrument in writing, nominate Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of section 7. 20
- (4) An eligible Judge has, in relation to the exercise of a function conferred on an eligible Judge by section 7, the same protection and immunity as a Judge of the Supreme Court has in relation to proceedings in the Supreme Court. 25
- (5) A Judge who has given consent under this section may, by instrument in writing, revoke the consent.
- (6) The Attorney General may, by instrument in writing, amend or revoke a nomination under this section. 30

9 Protection from liability

- (1) Anything done by an officer of an authorised agency or the officer in charge or other officer or employee of a government body or private body, in good faith in accordance with the

authority conferred by this Act, is not unlawful and does not constitute an offence under any Act or other law, or corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*.

- (2) Conduct of a person as chief executive officer of an authorised agency, an officer of such an agency, an officer in charge of any government body or private body, or an officer or employee of a government body or private body acting under the direction of the officer in charge, does not, if the conduct was in good faith and for the purpose of executing this Act, subject him or her personally to any action, claim, liability or demand. 5 10
- (3) This section does not limit or otherwise affect the liability of an authorised agency for any liability incurred by an officer of the agency in the course of acquiring or using an assumed identity.

Part 3 Accountability

10 Record to be kept

- (1) The chief executive officer of an authorised agency is required to ensure that a record is kept in respect of assumed identity approvals granted, varied or revoked under this Act. 5
- (2) The record is to specify the following:
 - (a) the date on which an approval is granted, varied or revoked and the name of the officer who granted, varied or revoked it.
 - (b) the name of the officer in respect of whom an approval applies together with details of the assumed identity or assumed identities to which the approval applies. 10
 - (c) details of any request made under section 6 (Role of government and private bodies) in respect of the approval.
 - (d) the general nature of the duties proposed to be undertaken by the officer to whom the approval applies under an assumed identity to which the approval applies, and the general nature of the duties undertaken by the officer under that assumed identity. 15
 - (e) general details of relevant financial transactions entered into using an assumed identity to which the approval applies. 20

11 Audit of record

- (1) The record kept under section 10 is to be audited at least once every 12 months by a person appointed by the chief executive officer of the authorised agency concerned. The person appointed to audit the record may but need not be an officer of the authorised agency concerned. 25
- (2) The results of an audit are to be reported to the chief executive officer of the authorised agency. 30

12 Annual report

- (1) The annual report of an authorised agency must include a statement of:
- (a) the number of assumed identity approvals granted or revoked in respect of officers of the agency in the period to which the report applies, and 5
 - (b) the general nature of the duties undertaken by those officers under the assumed identities concerned, and
 - (c) the results of the most recent audit under section 11, as reported to the chief executive officer of the agency, so far as they disclose any fraudulent or other criminal behaviour. 10
- (2) The statement must not include any information that, if made public, could reasonably be expected:
- (a) to endanger the health or safety of any person, or 15
 - (b) to disclose the methodology used in any investigation or operation that is being, has been or is proposed to be conducted by any authorised agency, or
 - (c) to prejudice any investigation or operation that is being or is proposed to be conducted by an authorised agency, or 20
 - (d) to prejudice any legal proceedings arising from any such investigation or operation.

Part 4 Miscellaneous

13 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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14 Identity of certain officers not to be disclosed in legal proceedings

(1) If, in proceedings before a court, a tribunal or a Royal Commission or other commission of inquiry, the identity of an officer in respect of whom an assumed identity approval is or was in force is in issue or may be disclosed, the court, tribunal, Royal Commission or other commission must, unless it considers that the interests of justice otherwise require:

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(a) ensure that such parts of the proceedings as relate to the identity of the officer are held in private, and

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(b) make such orders as to the suppression of evidence given before it as, in its opinion, will ensure that the identity of the officer is not disclosed.

(2) In particular, the court, tribunal, Royal Commission or other commission of inquiry:

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(a) may allow an officer in respect of whom an assumed identity approval is or was in force to appear before it under the assumed name or under a code name or code number, and

(b) may make orders prohibiting the publication of any information (including information derived from evidence given before it) that identifies, or might facilitate the identification of, any person who has been or is proposed to be called to give evidence.

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- (3) A person must not contravene an order in force under this section.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

15 Information not to be disclosed 5

A person must not, either directly or indirectly, make a record of, disclose, or communicate to another person any information relating to the provision of evidence of identity or the making of an entry in any register or other record of information under the authority of this Act, unless it is necessary to do so for the purposes of this Act. 10

Maximum penalty: imprisonment for 5 years.

16 Delegations

- (1) Except as provided by this section (despite any other Act or law to the contrary), the functions of a chief executive officer under this Act may not be delegated to any other person. 15
- (2) The chief executive officer of an authorised agency may delegate any of the chief executive officer's functions under this Act (except this power of delegation) to a person for the time being holding or acting in an office prescribed by the regulations as an office to which functions under this Act may be delegated. 20
- (3) An office cannot be prescribed as an office to which functions under this Act may be delegated unless it is the office of an officer, employee, or member of the governing body, of the authorised agency concerned. 25
- (4) In the case of the Police Service, no more than 4 delegations may be in force under this section at any one time and no more than 4 offices may be prescribed at any one time as offices to which functions under this Act may be delegated. The offices prescribed can only be offices that are of or above the rank of Superintendent. 30

- (5) In the case of any other authorised agency, no more than one delegation may be in force under this section at any one time and no more than one office may be prescribed at any one time as an office to which functions under this Act may be delegated.

17 Other Acts not affected

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This Act does not limit or otherwise affect the operation of the *Law Enforcement (Controlled Operations) Act 1997* or the *Witness Protection Act 1995*.

18 Proceedings for offences

- (1) Proceedings for an offence against this Act, except section 15, are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone. 10
- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 15. 15

19 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 20

20 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended by inserting the following item after item 21 in Part 4 of Table 1 to Part 9A:

21A Law Enforcement and National Security (Assumed Identities) Act 1998 25

An offence under section 15 of the *Law Enforcement and National Security (Assumed Identities) Act 1998*.

21 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the commencement of section 4. 5
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 3 months after the end of the period of 12 months.