



Legislative Council

Witness Protection Amendment Bill

Hansard - Extract

06/06/2002

Second Reading

The Hon. MICHAEL COSTA (Minister for Police) [8.52 p.m.]: I move:

That this bill be now read a second time.

The Witness Protection Act 1995 enables special steps to be taken to protect witnesses at extremely high risk when other methods are insufficient. It addresses matters such as close personal protection during court proceedings and providing witnesses and their families with new identities and other assistance to allow them to live safely in the community. Witness protection may be particularly necessary when dealing with organised crime gangs. This Government has already done a great deal to ensure that the police have sufficient powers to investigate and prosecute criminal gangs. This bill will enhance the protection available to people who agree to testify against the gangs.

New South Wales led the way by introducing a legislative witness protection program in 1995. All other Australian jurisdictions now have such systems or are implementing them. In 2001 the Witness Protection Act was reviewed. A report of that review was tabled in both Houses of Parliament earlier this year and this bill implements the legislative recommendations of the report. The review involved consultation with a range of bodies: NSW Police, the Crime Commission, the Police Integrity Commission, the Attorney General's Department, the Ombudsman, the Director of Public Prosecutions [DPP], the Commonwealth and the States and Territories.

The PRESIDENT: Order! Members wishing to engage in private conversation should do so outside the Chamber.

The Hon. MICHAEL COSTA: I thank those bodies for their advice. The report concluded that the policy objectives of the Act remain valid and that the terms of the Act are essentially appropriate. Nevertheless, the report identified a number of areas for amendment which will improve the operation of the Act. I will now outline the amendments. All witness protection cases are governed by a memorandum of understanding between the participant and the Commissioner of Police. The memorandum sets out what protection and assistance may be provided and places certain requirements on the witness. The bill enables the memorandum of understanding to provide for psychological counselling of participants and their families and also vocational training to help them re-enter the community and to be self-supporting. The bill will also permit participants to be photographed by police and for photographs to be retained and kept up to date. This will assist officers of the witness security unit or the Ombudsman to identify participants when they meet them under covert circumstances.

The bill will also make it clear to a protected witness that protection can be withdrawn if the memorandum of understanding is breached intentionally. The provision or withdrawal of protection services is not taken lightly. The Act has built-in safeguards so that when the commissioner refuses to provide protection or to withdraw it, the participant can ask the commissioner to review that decision and can then appeal the decision to the Ombudsman. The bill makes a number of improvements to this process. Currently the Ombudsman has 72 hours to determine appeals against decisions to refuse to include people in the program or to terminate participants from the program. This period is sometimes too short, as it may be difficult to contact the participant. The bill will extend this time frame to seven days. When a person is served notice of termination of their position on the program, the time frame for them to lodge an appeal to the commissioner is 28 days. The 28-day window will be reduced to 14 days. The 28-day period is too long, as there are resource and security issues raised by keeping a participant under protection.

A participant's rights are maintained by the avenue of appeal to the Ombudsman and, as I stated, the period of time for the Ombudsman's review is being increased from three to seven days. Currently if the Ombudsman reviews the commissioner's decision to terminate and confirms it, the termination is not complete until the Ombudsman has informed the appellant. However, people in such a position may be very difficult to locate. Termination will now take place if the Ombudsman takes all reasonable steps to locate and inform the person. The bill introduces a power to temporarily suspend protection if the capacity of the witness security unit to provide support and assistance is significantly reduced through some conduct of the participant. Examples are if the participant chooses to travel overseas, or if the participant is sent to prison. There will be the opportunity for a participant to appeal the decision to suspend protection and for the Ombudsman to review the decision. A two-day opportunity to appeal followed by a three-day period for the Ombudsman's review will be sufficient, as the decision being made is only for temporary suspension and the circumstances of such a case make a quick decision necessary.

A key aspect of witness protection is providing witnesses with new identities. Very commonly, birth certificates and marriage certificates will be issued in a new name. Currently death certificates cannot be issued. If the spouse of a participant is widowed and desires to remarry, it may be necessary to issue a death certificate to demonstrate that the former spouse is deceased. The capacity to issue appropriate death certificates will also

support the new identity of a protected witness who has no apparent relatives. Witness security unit personnel are themselves issued with identity documents in false names to ensure maximum security when meeting participants. Up until now, this has been done through provisions in the Act, but the bill will bring this activity under the general provisions of the Law Enforcement and National Security (Assumed Identities) Act 1998, which was introduced specifically for the purpose of providing law enforcement officers with assumed identities.

There needs to be greater clarity as to procedures when protected witnesses are asked questions in court. There also needs to be greater clarity regarding the obtaining of orders from the court protecting the identity of a protected witness. The bill establishes a system whereby a non-disclosure certificate is issued to the court by the Commissioner of Police. The non-disclosure certificate states that the person is a protected witness, that they have a new identity and must state any criminal record. The court can only disclose the contents of the certificate in the absence of the jury and the public. The certificate also requires that questions to the protected witness may not lead to the disclosure of the identity of the witness. Exceptions are provided to permit, for example, an accused's counsel to ask questions relating to the credibility of the witness. Where such questions are asked, the public must be excluded for that part of the proceedings and suppression orders must be made.

In order to protect participants, witness security unit personnel and others who assist the program, the Act contains various offence provisions relating to breaches of security of the program. Under section 34 of the Act it is an offence to disclose or compromise the identity of a participant. However, another law may require such a disclosure to be made, for example under a subpoena. This can place people who assist the program in good faith in an invidious position. Consequently, the Act provides that certain classes of people are not required to divulge information relating to the program unless directed to do so by the Supreme Court. The Act lists a range of people who may claim the benefit of this exemption, but it only includes people employed by specified agencies. The bill will amend the Act to protect any person who provides assistance to or for a participant at the request of the Commissioner of Police. The Act currently makes it an offence for participants or former participants to disclose information about the program or the police officers who administer it.

The bill expands this to cover people who are assessed for inclusion but who are ultimately not included. Use is often made of identity or other documents from other jurisdictions. Similarly, participants may be relocated interstate. All Australian jurisdictions recognise the importance of this and the need for the various witness protection Acts to recognise each other and facilitate this co-operation. Currently, co-operating witness protection programs of other jurisdictions that wish to obtain New South Wales birth certificates and other documents via a New South Wales Supreme Court order must first approach NSW Police. This increases the number of people aware of the identity of the participant. New South Wales does not benefit from requiring NSW Police to act as intermediary in this way. The bill will amend the Act to allow recognised witness protection programs of other Australian jurisdictions to approach the New South Wales Supreme Court directly. I commend this bill to the House.