

First print



New South Wales

Witness Protection Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to authorise the Commissioner of Police to operate a witness protection program in New South Wales.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 contains definitions for the purposes of the proposed Act.

Clause 4 defines who is a *witness* for the purposes of the proposed Act. The definition includes family members of a witness if they require protection or assistance under the proposed Act.

Part 2 Witness protection program

Clause 5 authorises the Commissioner of Police, through a witness protection program, to provide for the safety and welfare of witnesses.

Clause 6 gives the Commissioner the sole responsibility of deciding whether to include a witness in the program. A witness must agree to be included and must enter into a memorandum of understanding.

Clause 7 specifies the things to which the Commissioner must have regard in deciding whether to include a witness in the program.

Clause 8 specifies the scope and requirements of a memorandum of understanding and makes provision for the manner of its execution.

Clause 9 enables a memorandum of understanding to be varied with the consent of the witness and the Commissioner.

Clause 10 enables the provision of temporary protection to a witness pending full assessment for inclusion in the program.

Clause 11 enables the protection and assistance provided to a witness under the program to be terminated at the request of the witness or by decision of the Commissioner.

Clause 12 enables a witness to obtain a review of the decision of the Commissioner to terminate the provision to the witness of protection and assistance under the program.

Clause 13 specifies the time at which a decision of the Commissioner to terminate the protection and assistance provided to a witness under the program takes effect.

Part 3 Protecting witnesses from identification

Clause 14 empowers the Commissioner to apply for documents that will enable a witness to change his or her identity or that will otherwise protect a witness.

Clause 15 enables the Commissioner to apply for a Supreme Court order (a *witness protection order*) to make entries in the register of births or the register of marriages or for the issue of identifying documents for a witness in the witness's new identity.

Clause 16 provides that the Supreme Court is to conduct its proceedings under this Part of the proposed Act in the absence of the public.

Clause 17 specifies the matters about which the Supreme Court must be satisfied before it can make a witness protection order.

Clause 18 specifies the action that may or must be taken in order to give effect to a witness protection order.

Clause 19 validates the making of entries in the register of births or the register of marriages in accordance with a witness protection order and regulates the circumstances in which those entries may be cancelled.

Clause 20 imposes restrictions on the marriage (or remarriage) of a witness who has been provided with a new identity.

Clause 21 sets out the procedure by which the former identity of a witness who has been provided with a new identity may be restored.

Clause 22 makes it an offence to use a document issued by the Registrar of Births, Deaths and Marriages relating to the former identity of a witness who has been provided with a new identity.

Clause 23 makes it an offence to reveal the change in a witness's identity.

Clause 24 enables a witness who has been provided with a new identity to refuse to disclose his or her former identity if the witness would otherwise be required by law to do so.

Clause 25 makes provision for the disclosure to a court in criminal proceedings brought against a witness who has been provided with a new identity of the witness's criminal record under his or her former identity.

Clause 26 establishes procedures to protect the identity of a witness who is called to give evidence before a court, tribunal or commission.

Clause 27 prevents new identifying documentation being provided to a witness if it represents that the witness has a qualification that he or she does not have or is entitled to a benefit that he or she is not entitled to.

Clause 28 enables the Commissioner to make commercial arrangements for a witness so as not to reveal his or her former identity.

Clause 29 enables the Commissioner to take action to ensure the rights of a witness are protected and that a witness meets his or her legal obligations.

Clause 30 enables the Commissioner to take action to ensure that a witness does not avoid obligations incurred by, or restrictions imposed on, the witness before the witness was provided with a new identity.

Clause 31 enables the Commissioner to prevent money paid to a witness under the witness protection program from being taken from the witness under the *Confiscation of Proceeds of Crime Act 1989*.

Part 4 Miscellaneous

Clause 32 makes it an offence to disclose information about the identity or location of a person who is, or has been, a witness under protection under the proposed Act or a complementary witness protection law of another Australian jurisdiction or to disclose information that compromises the security of such a person.

Clause 33 makes it an offence for a person who is, or has been, a witness under protection to disclose that he or she, or a member of his or her family, has entered into a memorandum of understanding under the proposed Act or to disclose information obtained as a result of certain things done under the proposed Act.

Clause 34 protects persons engaged in the administration of the proposed Act from being compelled to disclose information obtained in the course of their administration.

Clause 35 controls the issue of New South Wales identity documents to persons on witness protection programs conducted by the Commonwealth, another State or a Territory.

Clause 36 enables the Commissioner to make arrangements with other police and law enforcement agencies throughout Australia (*approved authorities*) about matters connected with the administration of witness protection laws of other Australian jurisdictions.

Clause 37 enables the Minister administering the proposed Act to authorise approved authorities to exercise functions conferred on the Commissioner for the purposes of any arrangement made under clause 36.

Clause 38 enables the Commissioner to give information to approved authorities concerning witnesses who have been provided with a new identity or relocated under the proposed Act.

Clause 39 enables the Commissioner to delegate functions under the proposed Act to certain members of the Police Service.

Clause 40 confers an immunity from legal proceedings on persons exercising functions in good faith under the proposed Act.

Clause 41 enables proceedings for offences (other than for an offence under clause 32) to be dealt with summarily before a Local Court. An offence under clause 32 may be dealt with summarily unless the prosecuting authority or the person charged with the offence elects to have the offence dealt with on indictment.

Clause 42 enables regulations to be made for the purposes of the proposed Act.

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Explanatory note

Clause 43 excludes the application of certain provisions of the *Births, Deaths and Marriages Registration Act 1995* to action taken under the proposed Act to change the identity of a witness.

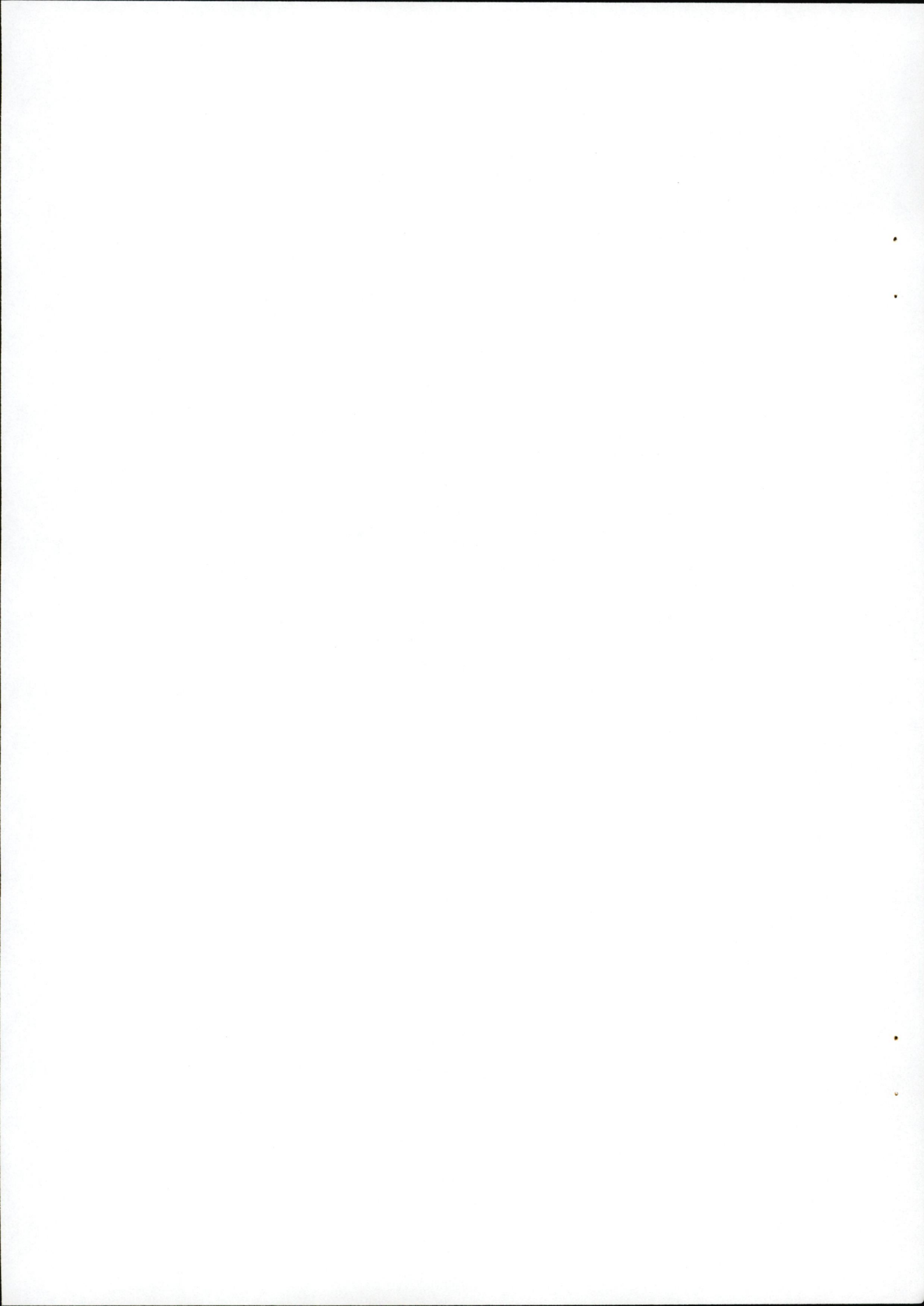
Clause 44 provides that the proposed Act does not affect any arrangements for the protection of witnesses under the *New South Wales Crime Commission Act 1985* or the *Independent Commission Against Corruption Act 1988*.

Clause 45 makes an amendment to the *Criminal Procedure Act 1986* to deal with the disposal of offences under clause 32.

Clause 46 gives effect to the schedule of savings, transitional and other provisions.

Clause 47 requires the proposed Act to be reviewed after 5 years to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives.

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.



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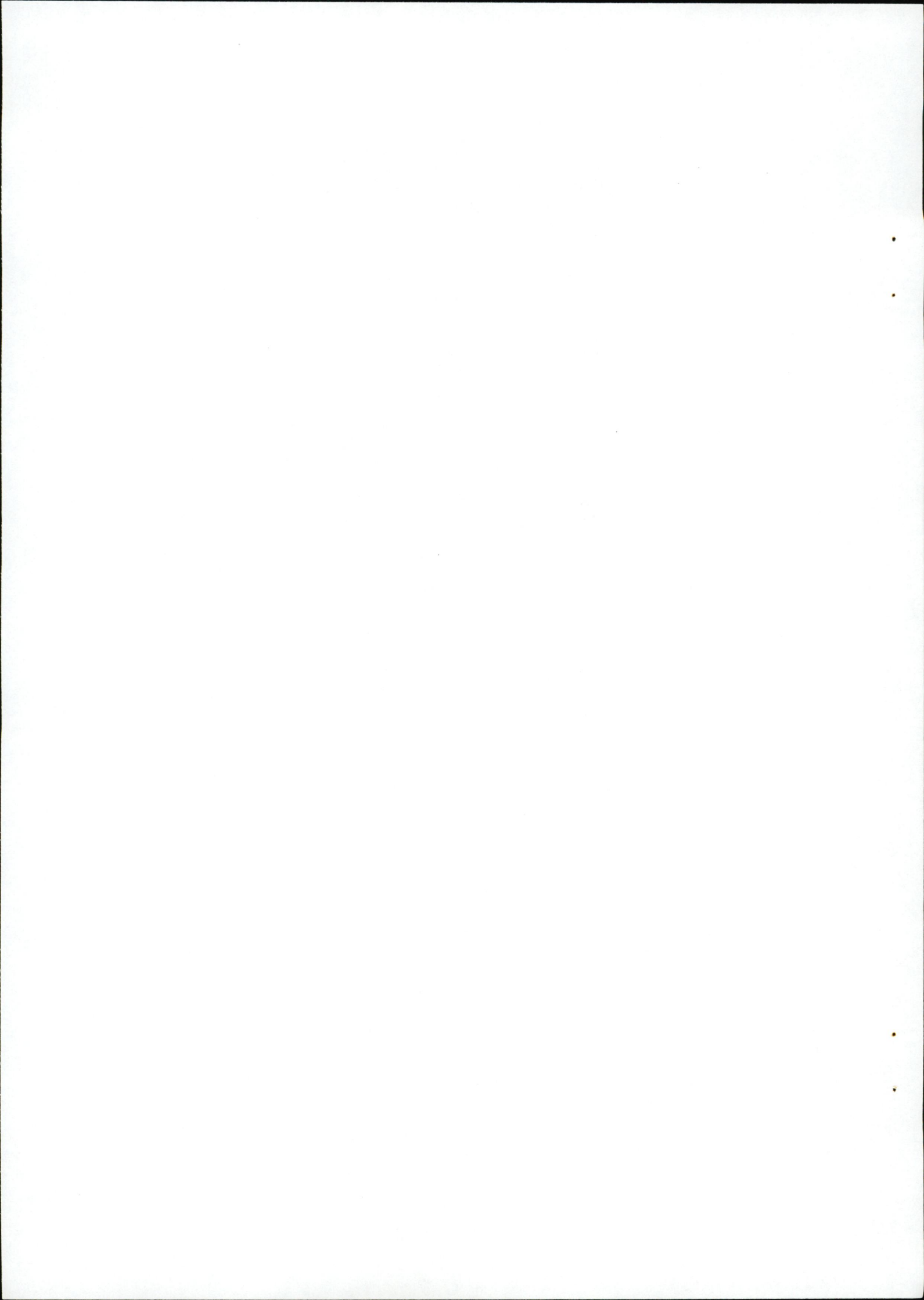
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New South Wales

Witness Protection Bill 1995

No. , 1995

A Bill for

An Act to make provision to protect the safety and welfare of witnesses; to amend the *Criminal Procedure Act 1986*; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Witness Protection Act 1995*.

2 Commencement

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

3 Definitions

In this Act:

approved authority means:

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- (a) the Commissioner of the Australian Federal Police, or
- (b) a Commissioner (however designated) of the police force of another State or a Territory, or
- (c) the Chairperson of the National Crime Authority, or
- (d) the Chairperson of the New South Wales Crime Commission, or
- (e) an authority or body of the Commonwealth, another State or a Territory that:
 - (i) is authorised to conduct inquiries or investigations in relation to conduct that constitutes, or is alleged to constitute, criminal conduct, misconduct or corruption, and
 - (ii) is declared by the Minister by order published in the Gazette to be an approved authority for the purposes of this Act.

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complementary witness protection law means a law of the Commonwealth, another State or a Territory that:

- (a) makes provision for the protection of witnesses, and
- (b) is declared by the Minister by order published in the Gazette to be a complementary witness protection law.

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designated position means a position of a member of the Police Service that has been declared in writing by the Commissioner of Police to be a designated position for the purposes of this Act.

exercise a function includes perform a duty.

function includes a power, authority or duty. 5

participant means a witness who is included in a witness protection program.

register of births means the register maintained under the *Births, Deaths and Marriages Registration Act 1995* in which births are registered. 10

register of marriages means the register maintained under the *Births, Deaths and Marriages Registration Act 1995* in which marriages are registered.

witness has the meaning given by section 4.

witness protection order means an order of the Supreme Court under Part 3. 15

witness protection program means a witness protection program established and maintained under section 5.

4 Who is a witness?

- (1) For the purposes of this Act, a **witness** is: 20
- (a) a person who has given, or agreed to give, evidence on behalf of the Crown in:
 - (i) proceedings for an offence, or
 - (ii) hearings or proceedings before an authority that is declared by the Minister by order published in the Gazette to be an authority to which this paragraph applies, or 25
 - (b) a person who has given, or agreed to give, evidence otherwise than as mentioned in paragraph (a) in relation to the commission or possible commission of an offence against a law of New South Wales, the Commonwealth, another State or a Territory, or 30

Clause 4 Witness Protection Bill 1995

Part 1 Preliminary

- (c) a person who has made a statement to the Commissioner of Police, another member of the Police Service or an approved authority in relation to an offence against a law of New South Wales, the Commonwealth, another State or a Territory, or 5
 - (d) a person who, for any other reason, may require protection or other assistance under this Act.
- (2) A person is taken to be a *witness* for the purposes of this Act if the person, because of his or her relationship to, or association with, a person to whom subsection (1) applies may require protection or other assistance under this Act. 10

Part 2 Witness protection program

5 Witness protection program

- (1) The Commissioner of Police, through the establishment and maintenance of a witness protection program, is to take such action as the Commissioner thinks necessary and reasonable to protect the safety and welfare of a witness. 5
- (2) That action may include the following:
- (a) making arrangements necessary:
 - (i) to allow the witness to establish a new identity, or
 - (ii) otherwise to protect the witness, 10
 - (b) relocating the witness,
 - (c) providing accommodation for the witness,
 - (d) providing transport for the property of the witness,
 - (e) providing reasonable financial assistance to the witness,
 - (f) permitting persons involved in the administration of the witness protection program to use assumed names in carrying out their duties and to have documentation supporting those assumed names, 15
 - (g) doing any other things that the Commissioner of Police considers necessary to ensure the safety of the witness. 20
- (3) That action may also include doing things as a result of functions conferred on the Commissioner of Police under a complementary witness protection law.

6 Inclusion in the witness protection program

- (1) The Commissioner of Police has the sole responsibility of deciding whether to include a witness in the witness protection program, including cases where an approved authority has requested that a witness be included in the program. 25
- (2) A witness may be included in the witness protection program only if: 30
- (a) the Commissioner of Police has decided that the witness be included, and

- (b) the witness agrees to be included, and
- (c) the witness signs a memorandum of understanding in accordance with section 8 or:
 - (i) if the witness is under the age of 18—a parent or guardian of the witness signs the memorandum, or 5
 - (ii) if the witness otherwise lacks legal capacity to sign the memorandum—a guardian or other person who is usually responsible for the care and control of the witness signs the memorandum.
- (3) If: 10
 - (a) a parent or guardian of a witness signs a memorandum of understanding because the witness was under the age of 18, and
 - (b) the memorandum is still operating after the witness turns 18, 15the Commissioner of Police may require the witness to sign the memorandum.

7 Assessing witness for inclusion in witness protection program

- (1) The Commissioner of Police, in deciding whether to include a witness in the witness protection program, must have regard to: 20
 - (a) the seriousness of the offence to which any relevant evidence or statement relates, and
 - (b) the nature and importance of any relevant evidence or statement, and
 - (c) the nature of the perceived danger to the witness, and 25
 - (d) the nature of the witness's relationship to other witnesses being assessed for inclusion in the program, and
 - (e) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness's suitability for inclusion in the program—that examination or evaluation, and 30
 - (f) whether there are viable alternative methods of protecting the witness, and

- (g) whether the witness has a criminal record, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the program,

and may have regard to such other matters as the Commissioner of Police considers relevant. 5

- (2) The Commissioner of Police must not include a witness in the witness protection program if the Commissioner does not, in his or her opinion, have enough information to assess the matters referred to in this section in relation to the witness. 10

8 Memorandum of understanding

- (1) A memorandum of understanding is to:
- (a) set out the basis on which a participant is included in the witness protection program and details of the protection and assistance that are to be provided, and 15
 - (b) contain a provision to the effect that protection and assistance under the program may be terminated if the participant breaches a term of the memorandum of understanding.
- (2) A memorandum of understanding in relation to a participant may also contain provisions relating to any one or more of the following: 20
- (a) any outstanding legal obligations of the participant and how they are to be dealt with,
 - (b) any legal obligations that the participant may or may not enter into, 25
 - (c) the surrender and issue of passports,
 - (d) the issue of any documents relating to the new identity of the participant,
 - (e) the prohibition of the participant from engaging in specified activities, 30
 - (f) marriage, family maintenance, taxation, welfare or other social or domestic obligations or relationships,
 - (g) any other obligations of the participant,

- (h) consequences of the participant failing to comply with the provisions of the memorandum of understanding,
 - (i) any other matter for which it may be necessary or convenient to make provision in the circumstances of the case. 5
 - (3) A memorandum of understanding must contain a statement advising the participant of his or her right to complain to the Ombudsman about the conduct of the Commissioner of Police or another member of the Police Service in relation to the matters dealt with in the memorandum. 10
 - (4) A memorandum of understanding must be signed by or on behalf of the witness in the presence of a member of the Police Service who holds or occupies a designated position.
 - (5) A witness becomes included in the witness protection program when the Commissioner of Police signs the memorandum of understanding. 15
 - (6) The Commissioner of Police must, as soon as practicable after signing a memorandum of understanding, notify the relevant participant that it has been signed.
- 9 Variation of memorandum of understanding 20**
- A memorandum of understanding may be varied with the consent of the participant and the Commissioner of Police.
- 10 Temporary protection pending full assessment**
- (1) The Commissioner of Police may include in the witness protection program on a temporary basis a witness who, in the Commissioner's opinion, is in urgent need of protection. 25
 - (2) The Commissioner of Police may require an interim memorandum of understanding to be signed by or on behalf of the witness.
 - (3) Sections 6 and 7 do not prevent the exercise of any function under this section but, in so far as those sections have not been complied with before the witness is included in the witness protection program, they must be complied with as soon as practicable after the witness's inclusion. 30

11 Cessation of protection and assistance

- (1) Protection and assistance provided under the witness protection program to a participant must be terminated by the Commissioner of Police if the participant requests in writing that it be terminated. 5
- (2) Protection and assistance provided under the witness protection program may be terminated by the Commissioner of Police if:
- (a) the participant deliberately breaches a term of the memorandum of understanding or a requirement or undertaking relating to the witness protection program, or 10
 - (b) the participant's conduct or threatened conduct is, in the opinion of the Commissioner, likely to threaten the security or compromise the integrity of the witness protection program, or
 - (c) the circumstances that gave rise to the need for protection and assistance for the participant cease to exist, 15

and the Commissioner is of the opinion that, in the circumstances of the case, the protection and assistance should be terminated.

12 Notice of involuntary termination and application for review

- (1) If the Commissioner of Police makes a decision under section 11 (2) that protection and assistance provided under the witness protection program to a participant be terminated, the Commissioner must: 20
- (a) take reasonable steps to notify the participant of the decision, and 25
 - (b) notify the relevant approved authority (if any) of the decision.
- (2) A participant who receives such a notification may, within 28 days after receiving the notice, apply in writing to the Commissioner for a review of the decision. 30

- (3) If an application is made, the Commissioner:
- (a) must review the decision, and confirm, reverse or vary it, and
 - (b) before making that decision, must give the participant a reasonable opportunity to state his or her case, and 5
 - (c) after making that decision, must inform the participant in writing of the decision.

13 Date on which involuntary termination takes effect

A decision of the Commissioner of Police under section 11 (2) that protection and assistance provided under the witness protection program to a participant be terminated: 10

- (a) if the participant's location is not known and the Commissioner has taken reasonable steps to notify the participant of the decision but has been unable to do so—takes effect at the end of the period of 28 days after those steps were commenced, or 15
- (b) if the participant does not apply for a review of the decision in accordance with section 12 (2)—takes effect at the end of the period of 28 days after the participant receives the notification, or 20
- (c) if the participant applies for a review of the decision in accordance with section 12 (2) and the Commissioner notifies the participant that the decision has been reversed—has no effect, or
- (d) if the participant applies for a review of the decision in accordance with section 12 (2) and the Commissioner notifies the participant that the decision has been confirmed—takes effect when the Commissioner notifies the participant of the decision on the review, or 25
- (e) if the participant applies for a review of the decision in accordance with section 12 (2) and the Commissioner notifies the participant that the decision has been varied—takes effect on the day specified by the Commissioner. 30

Part 3 Protecting witnesses from identification

14 Identifying documents

Without limiting section 5, the Commissioner of Police may apply for any documents necessary:

- (a) to allow a witness to establish a new identity, or 5
- (b) otherwise to protect the witness, or
- (c) to restore a former participant's former identity.

15 Application for court order

- (1) The Commissioner of Police may apply to the Supreme Court for a court order authorising a specified person or a person of a specified class or description of persons: 10
 - (a) to make a new entry in the register of births or the register of marriages in respect of a witness, or
 - (b) to issue in the witness's new identity a document of a kind previously issued to the witness. 15
- (2) The Commissioner of Police must provide such evidence as the Supreme Court may require to satisfy itself as to the matters specified in section 17.

16 Court proceedings under this Part to be closed to public

All business of the Supreme Court under this Part is to be conducted in the absence of the public. 20

17 Power of Supreme Court to make order

The Supreme Court may make a witness protection order if it is satisfied that:

- (a) the person named in the application as a witness: 25
 - (i) was a witness to or has knowledge of an indictable offence and is or has been a witness in criminal proceedings relating to the indictable offence, or
 - (ii) is a person who, because of his or her relationship to, or association with, a person to whom subparagraph (i) applies may require protection or other assistance under this Act, and 30

- (b) the life or safety of the person may be endangered as a result of the person being a witness, and
- (c) a memorandum of understanding in accordance with section 8 has been entered into between the witness and the Commissioner of Police, and 5
- (d) the person is likely to comply with the memorandum of understanding.

18 Effect of witness protection order

On the making of a witness protection order of the kind referred to in section 15 (1) (a): 10

- (a) a person authorised to do so by the order may make any entries in the register of births or the register of marriages that are necessary to give effect to the order, and
- (b) the Registrar of Births, Deaths and Marriages is required to give the person access to the relevant register and to give such assistance as the person may require, and 15
- (c) the Commissioner of Police must maintain records showing details of the original birth entry or the original marriage entry of each person in respect of whom an entry is made under paragraph (a). 20

19 Effect of entries made under this Act

- (1) An entry made under this Act in the register of births or the register of marriages has effect as if it were a valid entry made under the *Births, Deaths and Marriages Registration Act 1995*.
- (2) An entry made under this Act in the register of births or the register of marriages can only be cancelled by the Registrar of Births, Deaths and Marriages if the Supreme Court, after being satisfied that the witness is no longer included in the witness protection program, has made a court order on the application of the Commissioner of Police directing that the entry be cancelled. 25 30

20 Special provision in case of marriage of participant

A participant who has been provided with a new identity under the witness protection program must not marry unless:

-
- (a) the participant has given to the Commissioner of Police or an approved authority evidence that satisfies the Commissioner or the approved authority of the identity of the participant and that the participant is of marriageable age, and 5
 - (b) if the participant has been married previously—the participant has given to the Commissioner or an approved authority evidence that satisfies the Commissioner or the approved authority that the person's previous spouse has died or that the participant is divorced, and 10
 - (c) the participant has given to the Commissioner or an approved authority a statutory declaration to the effect that there is no legal impediment to the marriage and the Commissioner or the approved authority is not aware of any legal impediment to the marriage. 15

Maximum penalty: 5 penalty units or imprisonment for 6 months.

21 Restoration of former identity

- (1) If:
 - (a) a participant has been provided with a new identity under the witness protection program, and 20
 - (b) protection and assistance under the witness protection program to the participant are terminated,

the Commissioner of Police may, if he or she considers it appropriate to do so, take such action as is necessary to restore the former participant's former identity. 25
- (2) The Commissioner of Police must take reasonable steps to notify the former participant of a decision under subsection (1).
- (3) If the Commissioner of Police proposes to take action to restore the former participant's former identity, the former participant may apply in writing to the Commissioner for a review of the decision. 30
- (4) If an application is made, the Commissioner of Police:
 - (a) must review the decision and confirm, reverse or vary it, and

- (b) before making that decision, must give the participant a reasonable opportunity to state his or her case, and
 - (c) after making that decision, must inform the participant in writing of the decision.
- (5) If the Commissioner of Police: 5
- (a) takes action under this section to restore the former identity of a person who was a participant, and
 - (b) the Commissioner notifies the former participant in writing that he or she is required to return to the Commissioner all documents provided to the former participant that relate to the new identity provided under the witness protection program, 10
- the former participant must not, without reasonable excuse, refuse or fail to return those documents to the Commissioner within 14 days after receiving the notice. 15
- Maximum penalty (subsection (5)): 10 penalty units.

22 Offences in relation to documents

While an entry made under this Act in the register of births or the register of marriages continues in force, a person in respect of whom the entry is made must not use or obtain any document issued by the Registrar of Births, Deaths and Marriages that is based on the previous entry. 20

Maximum penalty: 10 penalty units.

23 Information not to be disclosed

- (1) A person must not, either directly or indirectly, make a record of, disclose, or communicate to another person any information relating to the making of an entry under this Act in the register of births or the register of marriages, unless it is necessary to do so: 25
- (a) for the purposes of this Act, or
 - (b) for the purposes of an investigation by the Ombudsman, or 30
 - (c) to comply with an order of the Supreme Court.

Maximum penalty: imprisonment for 10 years.

- (2) Despite subsection (1), the Commissioner of Police may disclose the former identity of a participant or former participant for the purpose of obtaining documents relating to the new identity of the participant or former participant.

24 Non-disclosure of former identity of participant

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- (1) If:

(a) a participant who has been provided with a new identity under the witness protection program would, apart from this section, be required by or under a law of New South Wales to disclose his or her former identity for a particular purpose, and

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(b) the Commissioner of Police has given the participant permission, in the form prescribed by the regulations, not to disclose his or her former identity for that purpose,

the participant is not required to disclose his or her former identity to any person for that purpose.

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- (2) If a participant has been given permission under subsection (1) not to disclose his or her former identity for a particular purpose, it is lawful for the participant, in any proceedings or for any purpose, under or in relation to the relevant law of New South Wales to claim that his or her new identity is his or her only identity.

20

- (3) It is the duty of each person who is or has been associated with the administration of the witness protection program and who has obtained access to information or a document relevant to the witness protection program not to disclose that information or publish that document except as authorised by the Commissioner of Police.

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- (4) If, under a complementary witness protection law of the Commonwealth, another State or a Territory, it is lawful for a participant not to disclose his or her former identity for a purpose approved by the Commissioner of Police, the participant is not required to disclose his or her former identity to another person for that purpose.

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- (5) In addition to prescribing a form for the purposes of a permission under subsection (1), the regulations may prescribe a form for the purposes of a similar permission of the Commissioner of Police under a complementary witness protection law of the Commonwealth, another State or a Territory. 5
- (6) In this section:
participant includes a person who:
- (a) was provided with a new identity under the witness protection program, and
 - (b) is no longer a participant but retains that identity. 10

25 Requirement where participant becomes a witness in criminal proceedings

- (1) If:
- (a) a participant is provided with a new identity under the witness protection program, and 15
 - (b) the person, whether or not he or she remains a participant, retains that identity, and
 - (c) the person is to be a witness in a criminal proceeding under that identity, and
 - (d) the person has a criminal record under his or her former identity, 20
- the person must notify the Commissioner of Police that the person is to be a witness in the proceeding.
- (2) After being notified under subsection (1), the Commissioner of Police may take any action he or she considers appropriate in the circumstances, including disclosing to the court, the prosecutor and the accused person or the accused person's legal representative the criminal record of the participant or former participant. 25

26 Identity of participant not to be disclosed in legal proceedings 30

- (1) If, in any proceedings in a court, a tribunal or a Royal Commission or other commission of inquiry, the identity of a participant is in issue or may be disclosed, the court, tribunal or commission must, unless it considers that the interests of justice require otherwise: 35

-
- (a) hold that part of the proceedings that relates to the identity of the participant in private, and
 - (b) make such order relating to the suppression of publication of evidence given before the court, tribunal or commission as, in its opinion, will ensure that the identity of the participant is not disclosed. 5
- (2) If in any proceedings in a court, a tribunal or a Royal Commission or other commission of inquiry, a participant who has been provided with a new identity under the witness protection program is giving evidence, the court, tribunal or commission may hold that part of the proceedings in the absence of the public. 10

27 Documentation restrictions

The Commissioner of Police must not obtain documentation for a participant that represents that the participant: 15

- (a) has a qualification that he or she does not have, or
- (b) is entitled to a benefit that he or she is not entitled to.

28 Special commercial arrangements by Commissioner of Police

The Commissioner of Police may make commercial arrangements with a person under which a participant is able to obtain a benefit under a contract or arrangement without revealing his or her former identity. 20

29 Dealing with rights and obligations of participant

- (1) If a participant has any outstanding rights or obligations or is subject to any restrictions, the Commissioner of Police is to take such steps as are reasonably practicable to ensure that: 25
 - (a) those rights or obligations are dealt with according to law, or
 - (b) the person complies with those restrictions.
- (2) That action may include: 30
 - (a) providing protection for the participant while the participant is attending court, or

- (b) notifying a party or possible party to legal proceedings that the Commissioner of Police will, on behalf of the participant, accept process issued by a court, a tribunal or a Royal Commission or other commission of inquiry and nominating a member of the Police Service for the purpose. 5

30 Avoidance of obligations by participant

- (1) If the Commissioner of Police is satisfied that a participant who has been provided with a new identity under the witness protection program is using the new identity: 10
 - (a) to avoid obligations that were incurred before the new identity was established, or
 - (b) to avoid complying with restrictions that were imposed on the person before the new identity was established,the Commissioner is to give notice in writing to the participant stating that he or she is so satisfied. 15
- (2) The notice is also to state that, unless the participant satisfies the Commissioner of Police that the obligations will be dealt with according to law or the restrictions will be complied with, the Commissioner will take such action as he or she considers reasonably necessary to ensure that they are dealt with according to law or complied with. 20
- (3) That action may include informing a person who is seeking to enforce rights against the participant of the details of any property (whether real or personal) owned by the participant under his or her former identity. 25

31 Payments under witness protection program

- (1) The Commissioner of Police has a discretion to certify in writing that the whole or part of an amount held by a participant represents payments made to the participant under the witness protection program. 30
- (2) An amount so certified cannot be confiscated or restrained, and cannot be applied in payment of pecuniary penalties, under the *Confiscation of Proceeds of Crime Act 1989*.

Part 4 Miscellaneous

32 Offence—disclosures concerning participants

A person must not, except in accordance with this Act or a complementary witness protection law, disclose information:

- (a) about the identity or location of a person who is or has been: 5
 - (i) a participant, or
 - (ii) a person on a witness protection program conducted by the Commonwealth, another State or a Territory under a complementary witness protection law, or 10
- (b) that compromises the security of such a person.

Maximum penalty on indictment: imprisonment for 10 years.

33 Offence—disclosures by participants

- (1) Subject to subclause (2), a participant or a former participant must not, either directly or indirectly, disclose or communicate to another person: 15
 - (a) the fact that he or she or a member of his or her family has entered a memorandum of understanding under section 8, or
 - (b) details of the memorandum of understanding, or 20
 - (c) information relating to anything done by the Commissioner of Police or another member of the Police Service under this Act, or
 - (d) information about any member of the Police Service gained by the person as a result of anything done under this Act. 25

Maximum penalty: imprisonment for 5 years.

- (2) This section does not apply to a disclosure or communication:
 - (a) that has been authorised by the Commissioner of Police, or
 - (b) that is necessary for the purposes of an investigation by the Ombudsman, or 30

- (c) that is necessary to comply with an order of the Supreme Court.

34 Certain persons not to be required to disclose information

- (1) This section applies to a person who is or has been:
 - (a) the Commissioner of Police, or 5
 - (b) a member of the Police Service, or
 - (c) the Registrar of Births, Deaths and Marriages, or
 - (d) a person employed in the administration of the *Registration of Births, Deaths and Marriages Act 1973* or the *Births, Deaths and Marriages Registration Act 1995*, or 10
 - (e) the Ombudsman, or
 - (f) a member of the staff of the Ombudsman, or
 - (g) an approved authority, or
 - (h) a member of the staff of an approved authority. 15
- (2) Unless the Supreme Court makes an order that provides to the contrary, or the proceedings relate to an offence under this Act, a person to whom this section applies cannot be required in any proceedings in a court, tribunal or a Royal Commission or other commission of inquiry to produce any document or to divulge or communicate any matter or thing relating to the performance of his or her duties in accordance with this Act. 20

35 Restriction on issue of New South Wales identity documents

- (1) New South Wales identity documents must not be issued for a person who is on a witness protection program being conducted by the Commonwealth, another State or a Territory unless: 25
 - (a) an arrangement is in force between the Minister and the relevant Commonwealth, State or Territory Minister relating to the issue of New South Wales identity documents for the purposes of that program, and 30
 - (b) a complementary witness protection law is in force in the Commonwealth, State or Territory.

-
- (2) Without limiting the matters to which such an arrangement may relate, an arrangement may relate to:
- (a) the procedures to be adopted for requesting the issue of New South Wales identity documents for the purposes of such a program, and 5
 - (b) guidelines for the issue of those documents and other documents.

36 Arrangements with approved authorities

- (1) The Commissioner of Police may make arrangements with an approved authority about any matter in connection with the administration of a complementary witness protection law. 10
- (2) Without limiting the coverage of those arrangements, they:
- (a) may provide for the Commissioner of Police or a member of the Police Service to exercise functions conferred by a complementary witness protection law, and 15
 - (b) must include procedures under which the authority shares with the State the costs incurred under those arrangements, and
 - (c) may provide for the authority to make available to the Commissioner of Police such statements, transcripts of evidence and other documents as will assist the Commissioner in deciding: 20
 - (i) whether to provide protection or assistance to a person under this Act, and
 - (ii) what protection and assistance are appropriate for a person, and 25
 - (d) may confer functions under complementary witness protection laws on the Commissioner of Police.

37 Authorisation of approved authorities

The Minister, by notice published in the Gazette, may authorise an approved authority to exercise functions conferred on the Commissioner of Police under this Act for the purposes of any 30

arrangement entered into by the Commissioner under section 36 or the corresponding provision of a complementary witness protection law.

38 Provision of information to approved authorities

- (1) If: 5
 - (a) a witness has been provided with a new identity or relocated under this Act, and
 - (b) an approved authority notifies the Commissioner of Police that the witness is under investigation for, or has been arrested for or is charged with, an offence against a law of New South Wales, the Commonwealth, another State or a Territory, the maximum penalty for which is or includes imprisonment for a period of more than one year, 10

the Commissioner of Police may do any one or more of the things in subsection (2). 15
- (2) If subsection (1) applies, the Commissioner of Police may:
 - (a) release to the approved authority the new identity or location of the witness, 20
 - (b) provide the approved authority with the criminal record and the fingerprints of the witness, 20
 - (c) release to the approved authority such other information relating to the witness as the Commissioner of Police considers appropriate in the circumstances, 25
 - (d) if the Commissioner of Police considers it appropriate in the circumstances, allow officers of the approved authority to interview members of the Police Service in relation to the witness. 25

39 Delegation

- (1) The Commissioner of Police may delegate all or any of his or her functions under this Act, other than this power of delegation, to a member of the Police Service who holds or occupies a designated position. 30
- (2) A member of the Police Service who holds or occupies a designated position may exercise functions delegated to the member by the Commissioner of Police under a complementary witness protection law. 35

40 Immunity from legal proceedings for exercise of functions under Act

A person is not liable to any action, suit or proceedings (including criminal proceedings) in respect of an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a function conferred by this Act. 5

41 Proceedings for offence

- (1) Proceedings for an offence against this Act, except section 32, are to be dealt with summarily before 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 32.

42 Regulations 15

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.

43 Exclusion of provisions of Births, Deaths and Marriages Registration Act 1995 20

Divisions 4 and 5 of Part 3, Part 5 and section 59 (2) of the *Births, Deaths and Marriages Registration Act 1995* do not apply to or in respect of anything done under the authority of this Act.

44 Relationship with other witness protection arrangements 25

Nothing in this Act affects:

- (a) section 21 of the *New South Wales Crime Commission Act 1985*, or
- (b) section 50 of the *Independent Commission Against Corruption Act 1988*. 30

Clause 45 Witness Protection Bill 1995

Part 4 Miscellaneous

45 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended by inserting the following item after item 24 in Part 4 of Table 1 to Part 9A:

24A Witness Protection Act 1995

An offence under section 32 of the *Witness Protection Act 1995*. 5

46 Savings, transitional and other provisions

Schedule 1 has effect.

47 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. 10
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 15

Schedule 1 Savings, transitional and other provisions

(Section 46)

Part 1 Preliminary

1 Regulations

5

(1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or from a later date.

10

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

15

(b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

20

2 NSW Police Witness Protection Plan

The New South Wales Police Witness Protection Plan in force immediately before the commencement of section 5 is taken to be a witness protection program for the purposes of this Act.

25

3 Memorandum of understanding

A memorandum of understanding entered into under the New South Wales Police Witness Protection Plan and in force immediately before the commencement of section 8 is taken to be a memorandum of understanding under that section.

30

Witness Protection Bill 1995

Schedule 1 Savings, transitional and other provisions

4 Protected witnesses

A person who, for his or her safety and welfare has entered into a memorandum of understanding to which clause 3 applies is taken to be a witness for the purposes of this Act.

5 Validation

5

Anything done before the commencement of a provision of this Act that would, had the provision been in force at the time it was done, have been valid is validated by this clause and is taken to be valid from the time it was done.

NOT TO BE TABLED
POLICE SERVICE AMENDMENT BILL 1995

MINISTER'S SECOND READING SPEECH

LEGISLATIVE COUNCIL

MR PRESIDENT, THE OBJECT OF THIS BILL IS TO PROVIDE A FAST, EFFECTIVE MEANS OF DISMISSING CORRUPT OFFICERS FROM THE POLICE SERVICE WHO FAIL TO CO-OPERATE WITH THE ROYAL COMMISSION.

HONOURABLE MEMBERS WILL BE AWARE THAT UNTIL THE 9TH OF FEBRUARY NEXT YEAR CORRUPT OFFICERS HAVE THE OPPORTUNITY - UNDER THE RECENTLY ANNOUNCED AMNESTY - TO COME FORWARD, ADMIT THEIR DISHONESTY AND IMMEDIATELY RESIGN FROM THE POLICE SERVICE.

THOSE WHO FAIL TO TAKE THIS OPPORTUNITY DO SO AT THEIR OWN RISK.

THE ROYAL COMMISSION HAS ALREADY DEMONSTRATED ITS EFFECTIVENESS IN DETECTING AND EXPOSING CORRUPTION, AND THERE IS EVERY REASON TO BELIEVE IT WILL CONTINUE TO GET RESULTS.

MR PRESIDENT, OFFICERS WHO COOPERATE WITH THE ROYAL COMMISSION ARE BEING ALLOWED TO RESIGN FROM THE POLICE SERVICE.

THAT PRIVILEGE WILL NOT BE EXTENDED TO OFFICERS WHO DO NOT CO-OPERATE.

THIS BILL WILL PROVIDE THE MECHANISM FOR RAPID EXPULSION OF UNCOOPERATIVE CORRUPT POLICE EXPOSED BY THE ROYAL COMMISSION.

THE PROVISIONS OF THE BILL ARE STRAIGHTFORWARD, AND I SHALL EXPLAIN THEM IN DETAIL A LITTLE LATER.

BEFORE DOING SO, IT IS IMPORTANT THAT HONOURABLE MEMBERS UNDERSTAND WHY EXISTING PROCESSES ARE NOT SUFFICIENT TO ALLOW CORRUPT OFFICERS TO BE QUICKLY DISMISSED, AND WHY A SPECIAL BILL IS NECESSARY.

MR PRESIDENT, AT PRESENT UNDER THE POLICE SERVICE ACT AN OFFICER CAN LEAVE THE POLICE SERVICE BY RETIRING, RESIGNING, OR BEING DISMISSED.

RETIREMENT IS AVAILABLE TO OFFICERS WHO HAVE REACHED THE AGE OF 55, OR WHO ARE FOUND TO BE MEDICALLY UNFIT TO CONTINUE IN THEIR DUTIES.

RESIGNATION IS AVAILABLE AS OF RIGHT, TO ANY OFFICER WHO GIVES FOUR WEEKS NOTICE. HOWEVER, IF ON THE NOMINATED LEAVING DATE AN OFFICER IS UNDER SUSPENSION, THE RESIGNATION DOES NOT TAKE EFFECT.

IN THOSE CIRCUMSTANCES, THE RESIGNATION WILL ONLY BE



EFFECTIVE IF THE COMMISSIONER OF POLICE (OR IN THE CASE OF A COMMISSIONED OFFICER, THE POLICE BOARD) MAKES THE DECISION TO ACCEPT THE RESIGNATION.

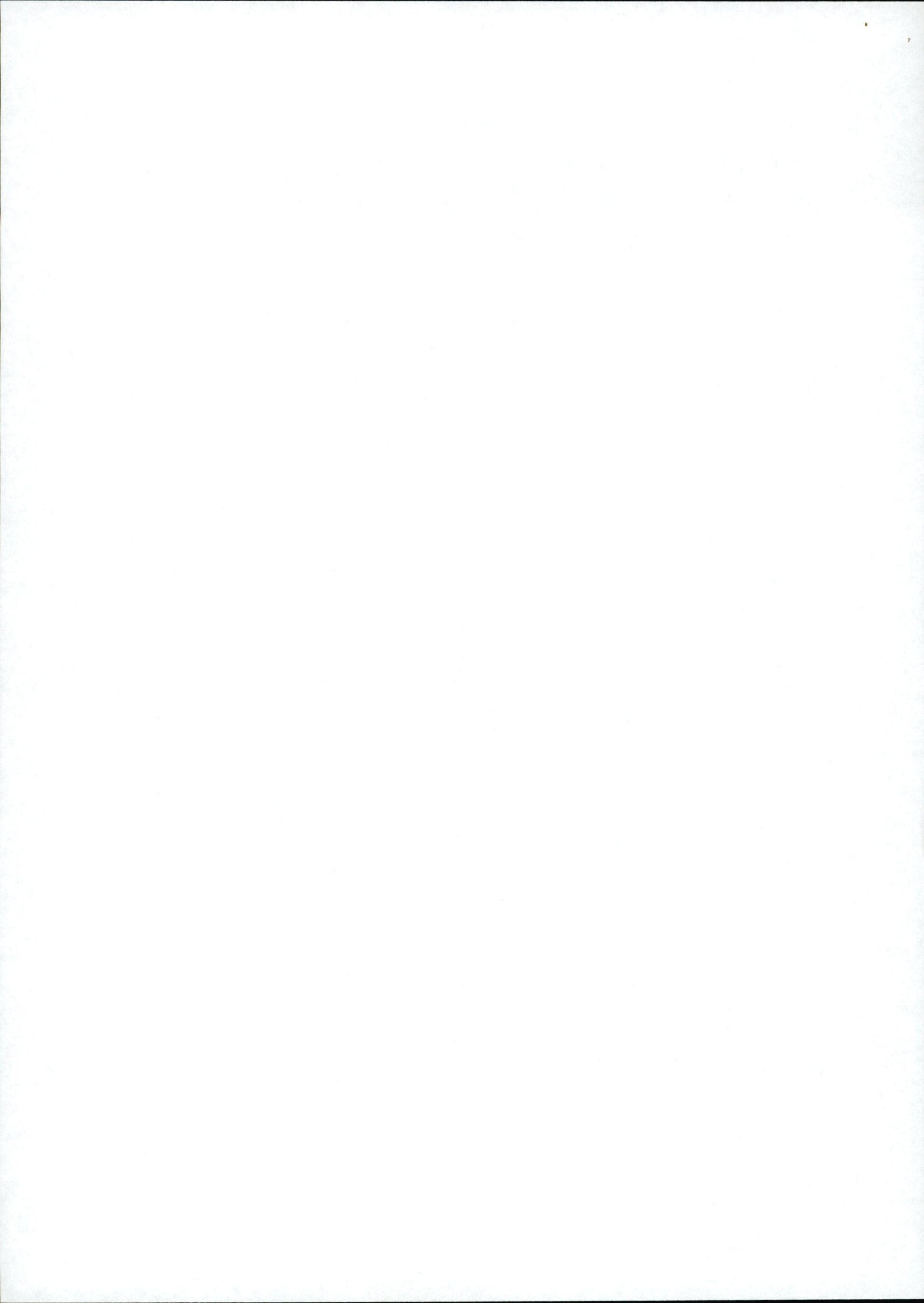
MR PRESIDENT, THESE ARRANGEMENTS ARE NECESSARY TO ENSURE THAT RESIGNATION DOES NOT PROVIDE AN ESCAPE PATH FOR OFFICERS WHO ARE UNDER INTERNAL INVESTIGATION OR FACING DISCIPLINARY CHARGES.

ONLY WHERE THE COMMISSIONER OR THE POLICE BOARD IS SATISFIED THAT THE BEST RESULT IS ACHIEVED BY ALLOWING AN OFFICER TO RESIGN, CAN THE INTERNAL DISCIPLINARY JURISDICTION OF THE POLICE SERVICE BE AVOIDED.

THE THIRD OPTION, DISMISSAL, CAN ONLY FOLLOW AFTER AN OFFICER HAS BEEN FOUND GUILTY ON CRIMINAL OR DISCIPLINARY CHARGES.

MR PRESIDENT, IT IS INDISPUTABLE THAT OFFICERS WHO ADMIT WRONGDOING OR ARE SHOWN TO BE CORRUPT SHOULD HAVE NO FUTURE IN THE POLICE SERVICE.

IT IS ALSO REASONABLE TO EXPECT THAT ONCE EVIDENCE OF CORRUPTION IS UNCOVERED, AN OFFICER WILL IMMEDIATELY BE SUSPENDED FROM DUTY.



THIS CREATES A DILEMMA AS AN OFFICER SUSPENDED CAN ONLY VOLUNTARILY EXIT THE POLICE SERVICE IF THE COMMISSIONER OR THE POLICE BOARD ACCEPTS HIS OR HER RESIGNATION.

IT IS NOT ENOUGH FOR THEM SIMPLY TO GIVE NOTICE.

THIS RAISES THE QUESTION OF WHETHER RESIGNATION IS AN ACCEPTABLE MEANS OF SEVERANCE FOR OFFICERS WHO HAVE BEEN PUBLICLY REVEALED AS CORRUPT.

IN A SOCIAL CONTEXT, AND FROM THE PERSPECTIVE OF FUTURE EMPLOYMENT, THERE IS A SIGNIFICANT GULF BETWEEN DISMISSAL AND RESIGNATION.

RESIGNATION IS A VOLUNTARY ACT WHICH GIVES NO INDICATION A PERSON WAS NO LONGER ACCEPTABLE TO HIS OR HER EMPLOYER, OR WAS NO LONGER FIT TO HOLD OFFICE. IT GIVES NO INDICATION THE EMPLOYEE WAS FOUND IN ANY WAY WANTING, AND SOUNDS NO WARNING BELLS FOR PROSPECTIVE EMPLOYERS.

DISMISSAL ON THE OTHER HAND CARRIES ALL OF THESE IMPLICATIONS. IT SENDS A CLEAR MESSAGE THAT AN EMPLOYER HAD REASON TO LOSE FAITH IN AN EMPLOYEE, AND THEY WERE NO LONGER PREPARED TO EMPLOY THAT PERSON IN ANY CAPACITY.

MR PRESIDENT, RESIGNING ALLOWS CORRUPT POLICE OFFICERS TO SLIP QUIETLY AWAY FROM THE POLICE SERVICE WITHOUT ACCEPTING ANY OF THE STIGMA OF DISMISSAL.

FROM THE POINT OF VIEW OF THE POLICE SERVICE IT ALSO SENDS A DISTORTED MESSAGE TO THE COMMUNITY. IT SIGNALS A LACK OF RIGOUR IN PURSUING CORRUPTION WITHIN THE POLICE SERVICE, AND RAISES QUESTIONS ABOUT THE LEVEL OF COMMITMENT TO BRINGING CORRUPT OFFICERS TO ACCOUNT.

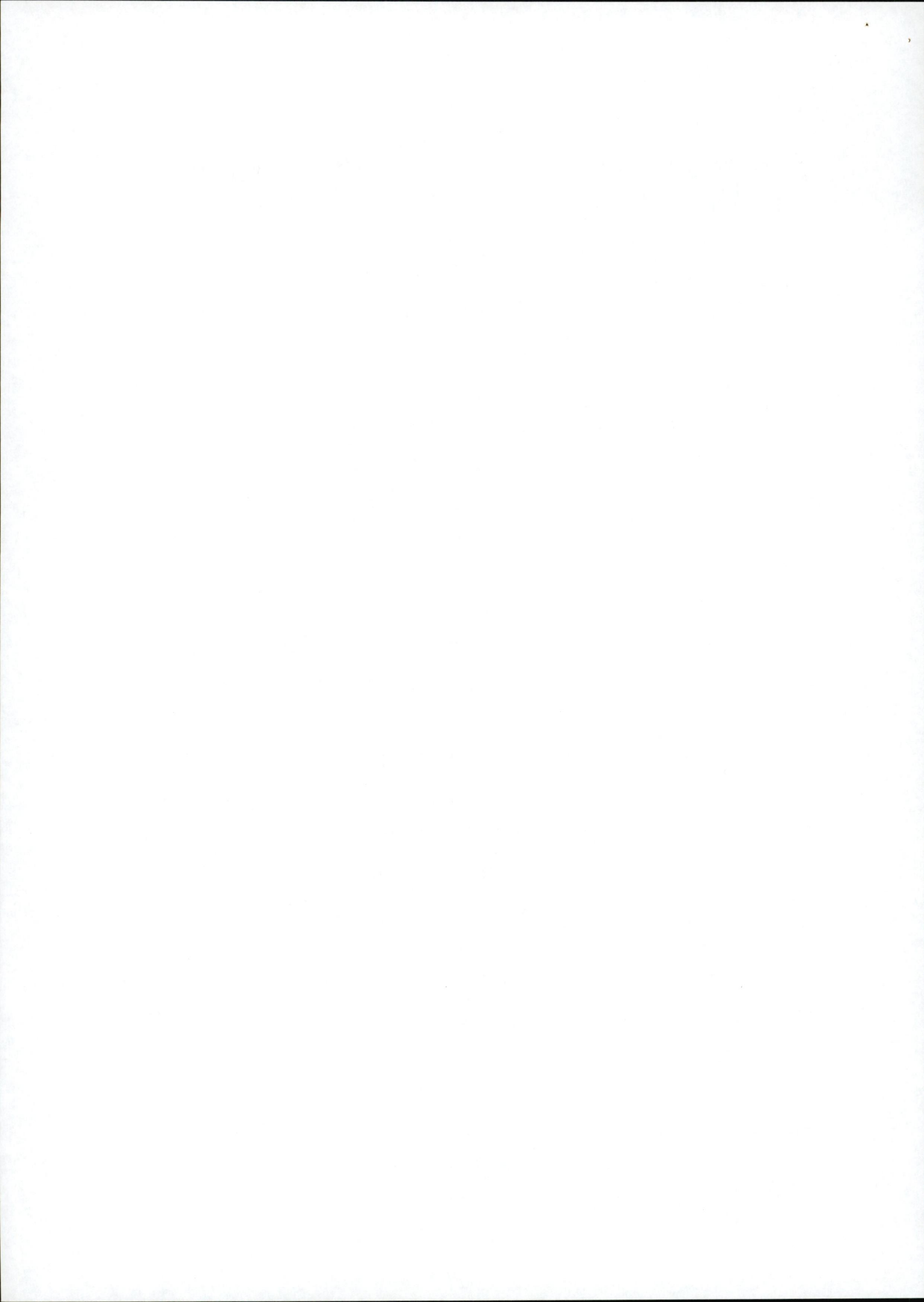
MR PRESIDENT, THE GOVERNMENT BELIEVES THAT IT IS UNACCEPTABLE TO FACILITATE THE RESIGNATION OF CORRUPT POLICE WHO HAVE FAILED TO CO-OPERATE WITH THE ROYAL COMMISSION. IT IS MORE APPROPRIATE THAT THEY BE DISMISSED.

THE GOVERNMENT BELIEVES THE COMMISSIONER SHOULD REFUSE TO ACCEPT THE RESIGNATIONS OF OFFICERS SUSPENDED FROM DUTY AS A RESULT OF REVELATIONS IN THE ROYAL COMMISSION.

MR PRESIDENT, HAVING ESTABLISHED THAT DISMISSAL IS THE ONLY ACCEPTABLE MEANS OF RIDDING THE SERVICE OF CORRUPT OFFICERS WHO FAIL TO COOPERATE WITH THE ROYAL COMMISSION, I TURN TO THE FINAL FACTOR THAT HAS NECESSITATED THE INTRODUCTION OF THE NEW PROCESSES IN THIS BILL.

I REFER TO THE NEED FOR CRIMINAL OR DEPARTMENTAL CHARGES TO BE PROVEN AGAINST AN OFFICER AS A NECESSARY PRECURSOR TO DISMISSAL.

OBVIOUSLY WHERE AN OFFICER HAS BEEN REVEALED AS CORRUPT BEFORE THE ROYAL COMMISSION, THE COMMISSION HOLDS EVIDENCE THAT COULD BE USED TO SUPPORT CRIMINAL OR



DEPARTMENTAL CHARGES.

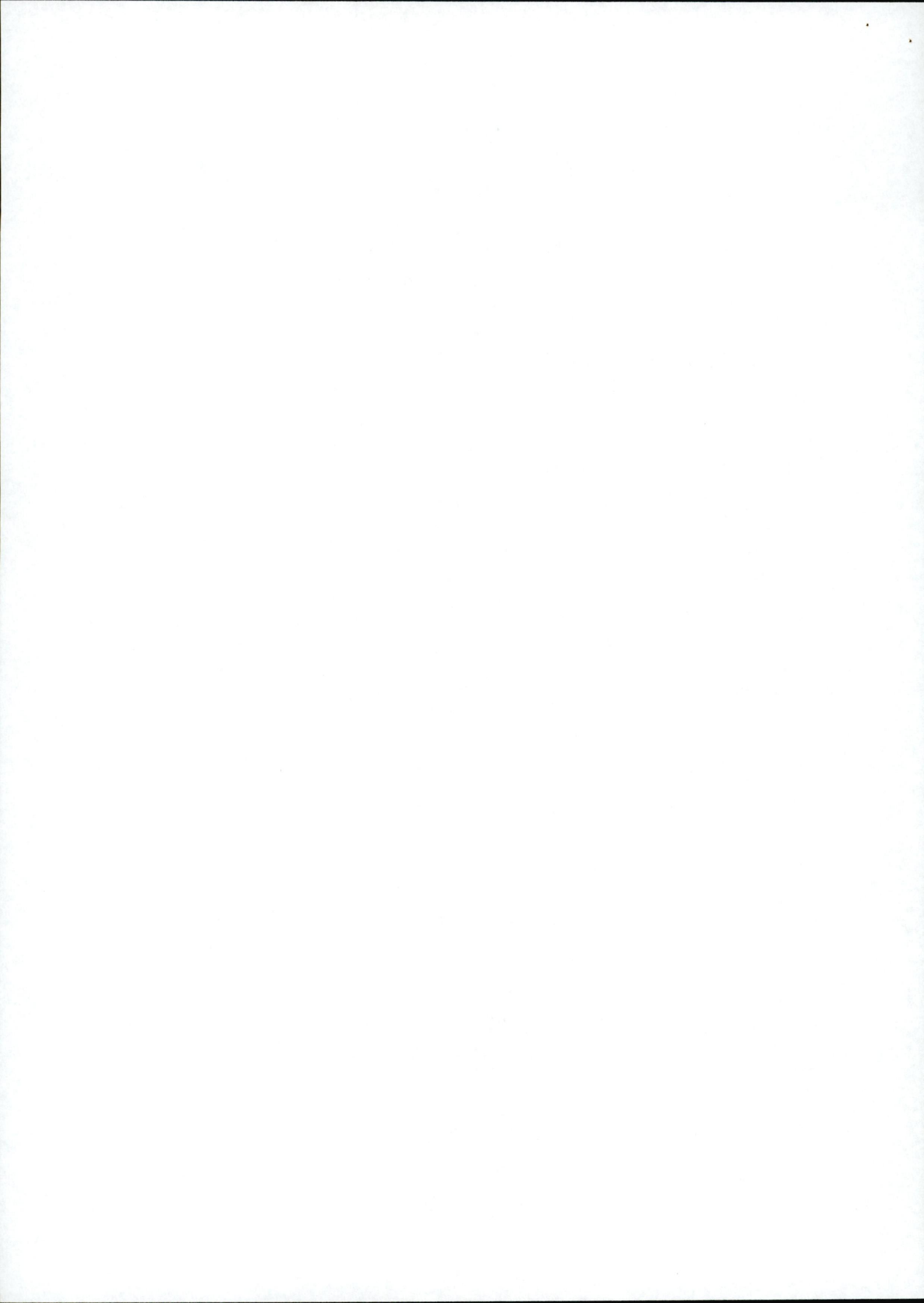
TO PROTECT THE INTEGRITY OF ITS OWN CONTINUING INQUIRIES IT MAY NOT BE IN THE COMMISSION'S INTEREST FOR THAT EVIDENCE TO BE REVEALED TO ITS FULL EXTENT, OR TO BE RELEASED TO THE POLICE SERVICE, OR INDEED FOR AN OFFICER TO BE CHARGED.

UNLESS AN OFFICER IS PREPARED TO ADMIT TO A CHARGE, THIS MAY LEAD TO A PROLONGED PERIOD OF SUSPENSION BEFORE THE POLICE SERVICE WILL BE IN A POSITION TO LAY CHARGES THAT COULD BE SUPPORTED BY EVIDENCE IN A HEARING BEFORE THE POLICE TRIBUNAL. THAT IS CLEARLY UNACCEPTABLE.

MR PRESIDENT, WHAT IS PROPOSED IS AN ALTERNATIVE DISMISSAL PROCESS, RESERVED EXCLUSIVELY FOR USE AGAINST OFFICERS AGAINST WHOM THERE IS OVERWHELMING EVIDENCE OF CORRUPTION ARISING OUT OF THE ROYAL COMMISSION INTO THE POLICE SERVICE.

THE BILL PROVIDES THAT WHERE EVIDENCE AGAINST AN OFFICER IS SUFFICIENTLY STRONG FOR THE COMMISSIONER OF POLICE TO HAVE LOST CONFIDENCE IN THE OFFICER'S INTEGRITY, AND THEREFORE IN THEIR FITNESS TO REMAIN IN THE POLICE SERVICE, HE MAY MOVE TO DISMISS THEM.

IT IS IMPORTANT TO REMEMBER THAT AN OFFICER WILL NOT NECESSARILY HAVE HAD THE OPPORTUNITY TO TEST THE EVIDENCE AGAINST THEM AT THE ROYAL COMMISSION. NATURAL JUSTICE

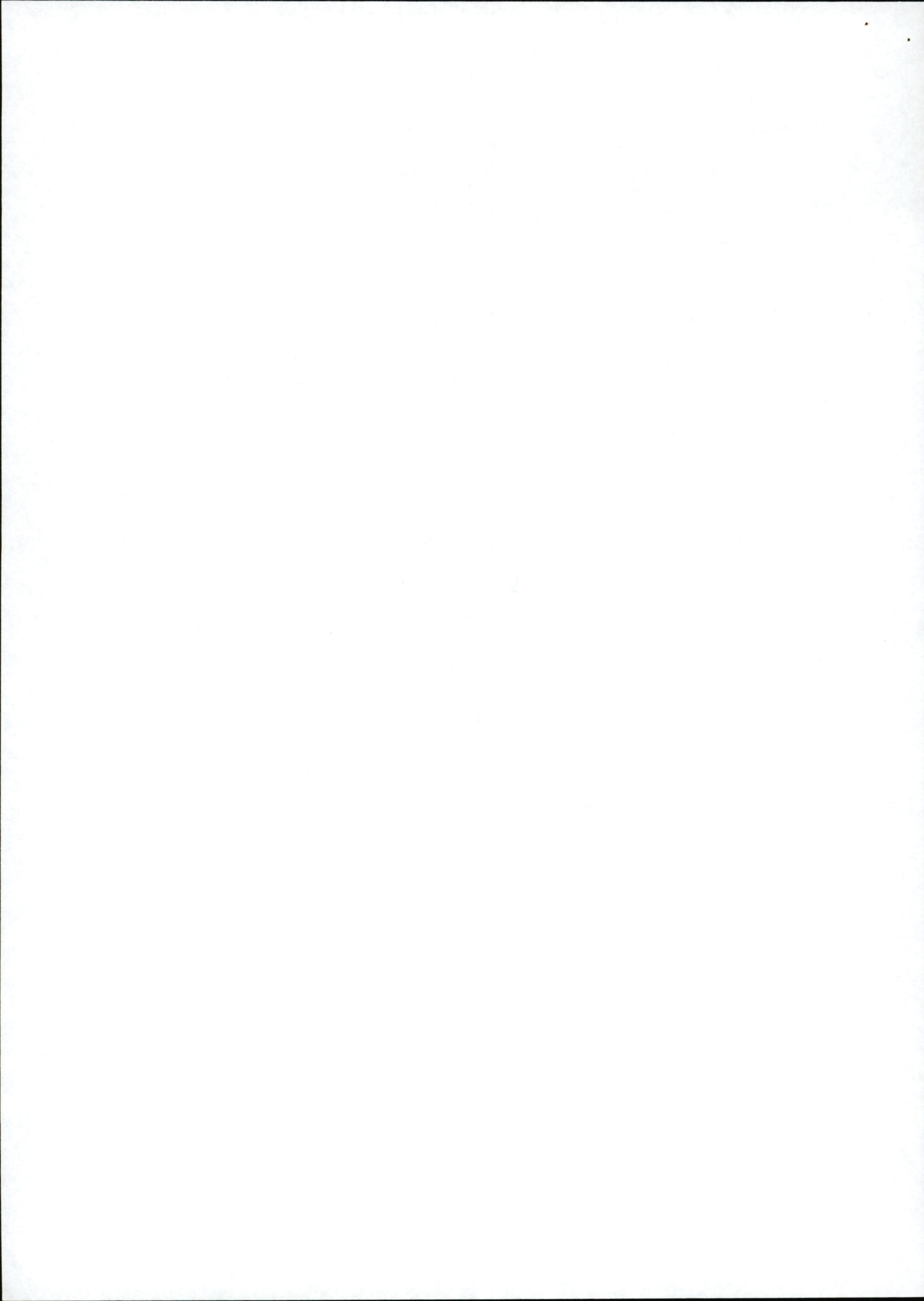


THEREFORE DEMANDS THAT THEY HAVE AN OPPORTUNITY TO BE HEARD BEFORE ANY ACTION IS TAKEN ON THE BASIS OF THAT EVIDENCE.

TO THIS END THE BILL REQUIRES THAT AN OFFICER HAVE A PERIOD OF 21 DAYS WITHIN WHICH TO MAKE A SUBMISSION. THE COMMISSIONER WILL BE UNDER AN OBLIGATION TO CONSIDER ANY SUCH SUBMISSION BEFORE MAKING A DETERMINATION.

MR PRESIDENT, THE COMMISSIONER'S DECISION WILL BE SUBJECT TO THE PROVISIONS OF PART 8 OF THE INDUSTRIAL RELATIONS ACT WHICH ALLOWS AN ACTION FOR UNFAIR DISMISSAL TO BE TAKEN IN THE INDUSTRIAL RELATIONS COMMISSION.

MR PRESIDENT, IT WILL ONLY BE IN THE MOST CLEAR CUT CASES THAT AN OFFICER WILL BE DISMISSED UNDER THE NEW PROVISIONS.



WHERE THE AVAILABLE INFORMATION LEAVES ANY ROOM FOR DOUBT AS TO WHETHER AN OFFICER IS CORRUPT THE EXISTING DISCIPLINARY PROCESSES WILL NEED TO BE FOLLOWED.

MR PRESIDENT, THIS LEGISLATION WILL HELP TO EMPHASIS THE DISTINCTION BETWEEN OFFICERS WHO VOLUNTEER TO CO-OPERATE WITH THE ROYAL COMMISSION AND THOSE WHO DO NOT, IN MORE WAYS THAN ONE.

UNDER PROPOSED SECTION 181F THE DISCRETION OF THE COMMISSIONER AND THE POLICE BOARD TO ACCEPT OR REJECT THE RESIGNATION OF A SUSPENDED OFFICER IS SUBJECT TO ONE IMPORTANT QUALIFICATION.

IN CIRCUMSTANCES IN WHICH THE ROYAL COMMISSIONER THINKS THAT IT IS APPROPRIATE TO DO SO, THE ROYAL COMMISSIONER MAY MAKE A RECOMMENDATION THAT AN OFFICER BE ALLOWED TO RESIGN.

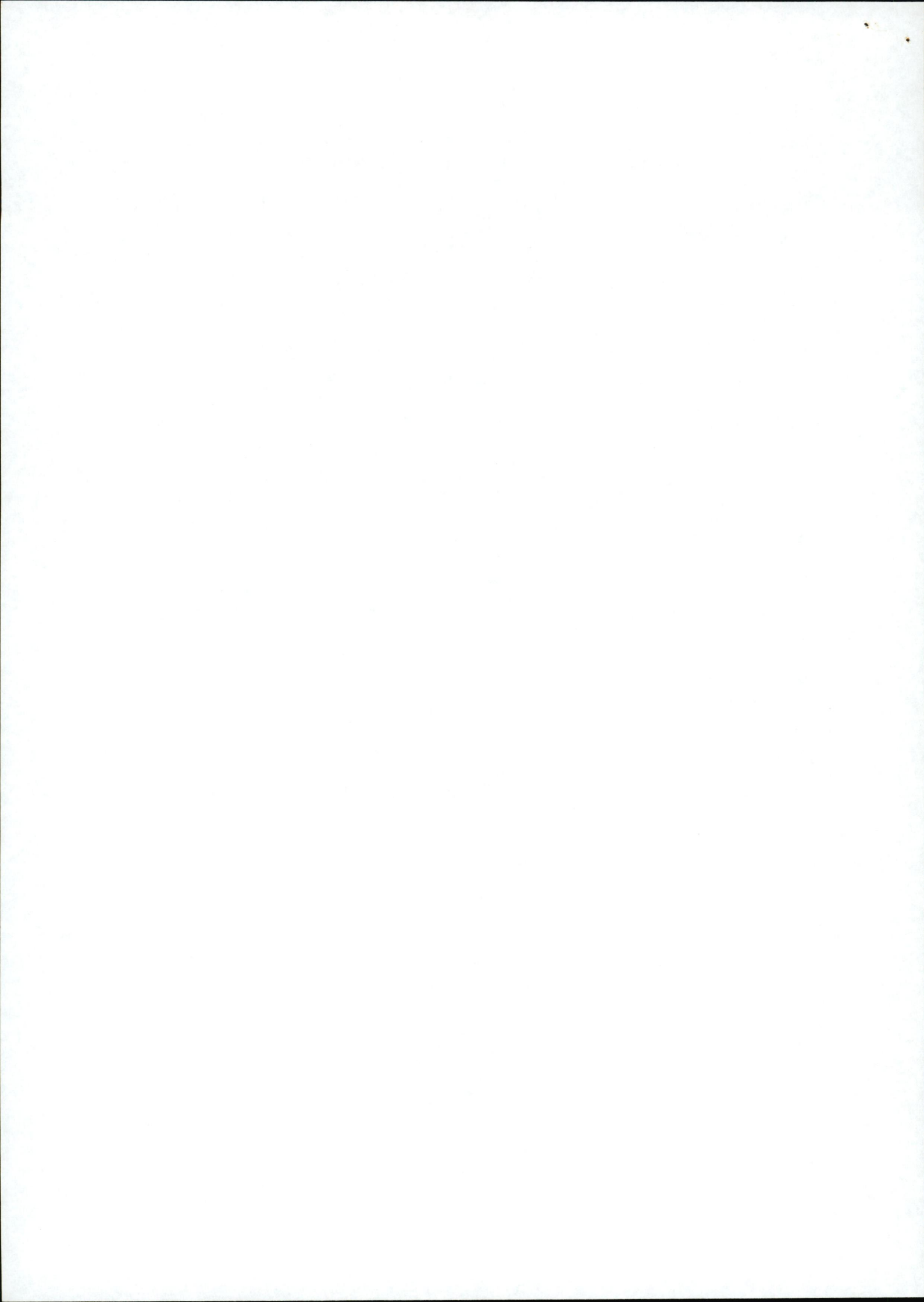
UNDER THE TERMS OF SECTION 181F SUCH A RECOMMENDATION WILL REQUIRE THE COMMISSIONER OR THE POLICE BOARD TO ACCEPT THE OFFICER'S RESIGNATION.

MR PRESIDENT, THIS PROVISION IS PIVOTAL IN SUPPORTING THE WORK OF THE ROYAL COMMISSION.

IT ENSURES THAT EVEN AFTER THE AMNESTY PERIOD ELAPSES, THE THREAT OF IMMEDIATE DISMISSAL DOES NOT DETER OFFICERS FROM COMING FORWARD TO ASSIST THE COMMISSION IF SUCH ASSISTANCE NECESSITATES CONFESSION OF CORRUPT CONDUCT.

THE PROVISION PROVIDES A CONTINUING INCENTIVE FOR OFFICERS TO VOLUNTARILY COME FORWARD RATHER THAN TO BE FLUSHED OUT. IMPORTANTLY, IT ALSO PLACES THE DECISION TO REWARD CO-OPERATION WHERE THE EXTENT OF THE ASSISTANCE PROVIDED CAN BE MOST READILY ASSESSED: THE ROYAL COMMISSION.

MR PRESIDENT, THIS BILL IS A FAIR AND PRACTICAL MEANS OF BALANCING THE EXPECTATIONS OF THE COMMUNITY, THE NEEDS OF THE POLICE SERVICE, AND THE RIGHTS OF INDIVIDUAL POLICE OFFICERS, WHEN CONFRONTED WITH EXTRAORDINARY AND OVERWHELMING EVIDENCE OF CORRUPTION COMING FROM THE ROYAL COMMISSION AND I COMMEND IT TO THE HOUSE.



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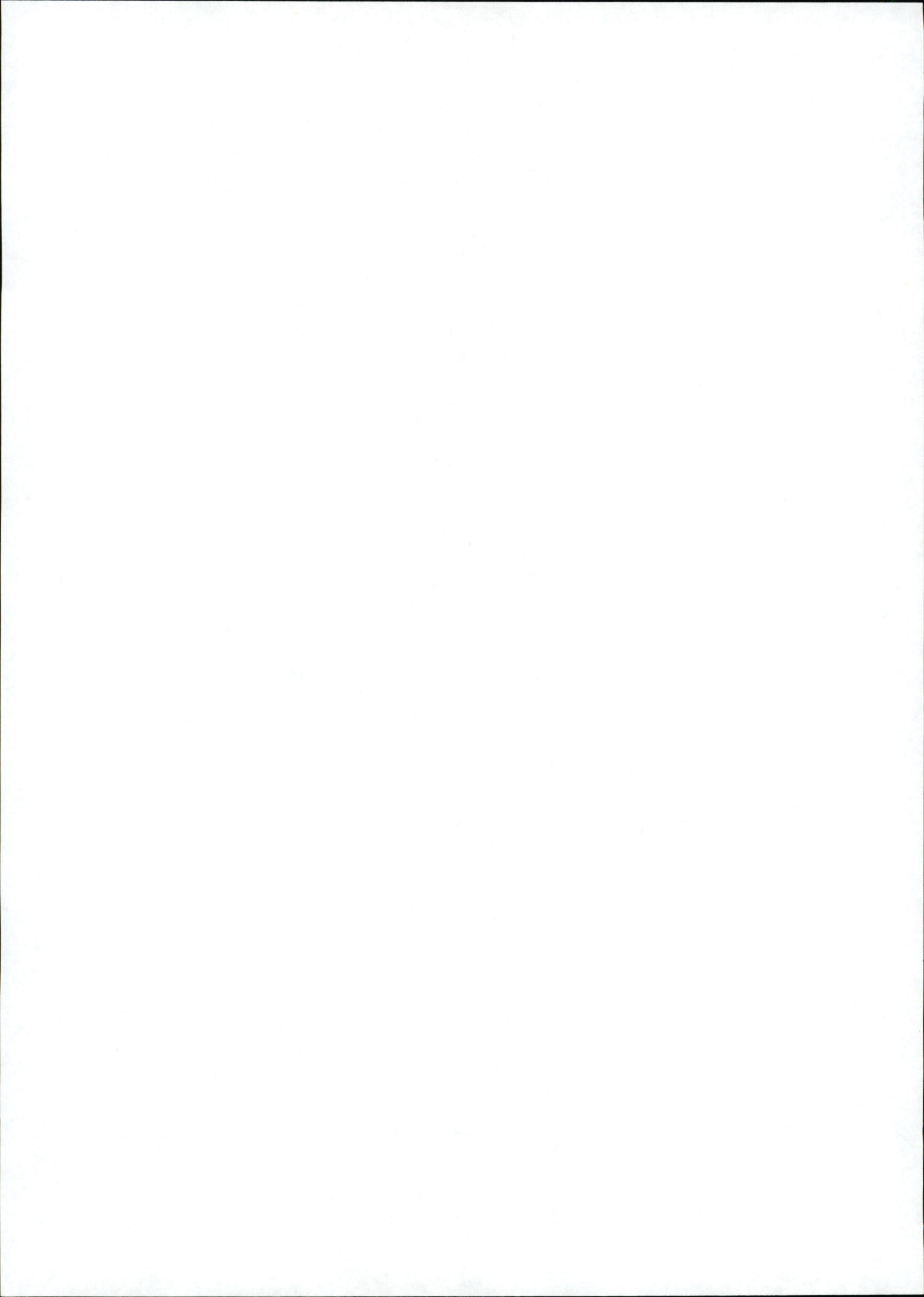
LEGISLATIVE COUNCIL

Witness Protection Bill 1995

First Print

Amendment to be moved in Committee

Page 26, Schedule 1, clause 5, lines 5-9. Omit all words on those lines.



LEGISLATIVE COUNCIL

Witness Protection Bill 1995

First Print

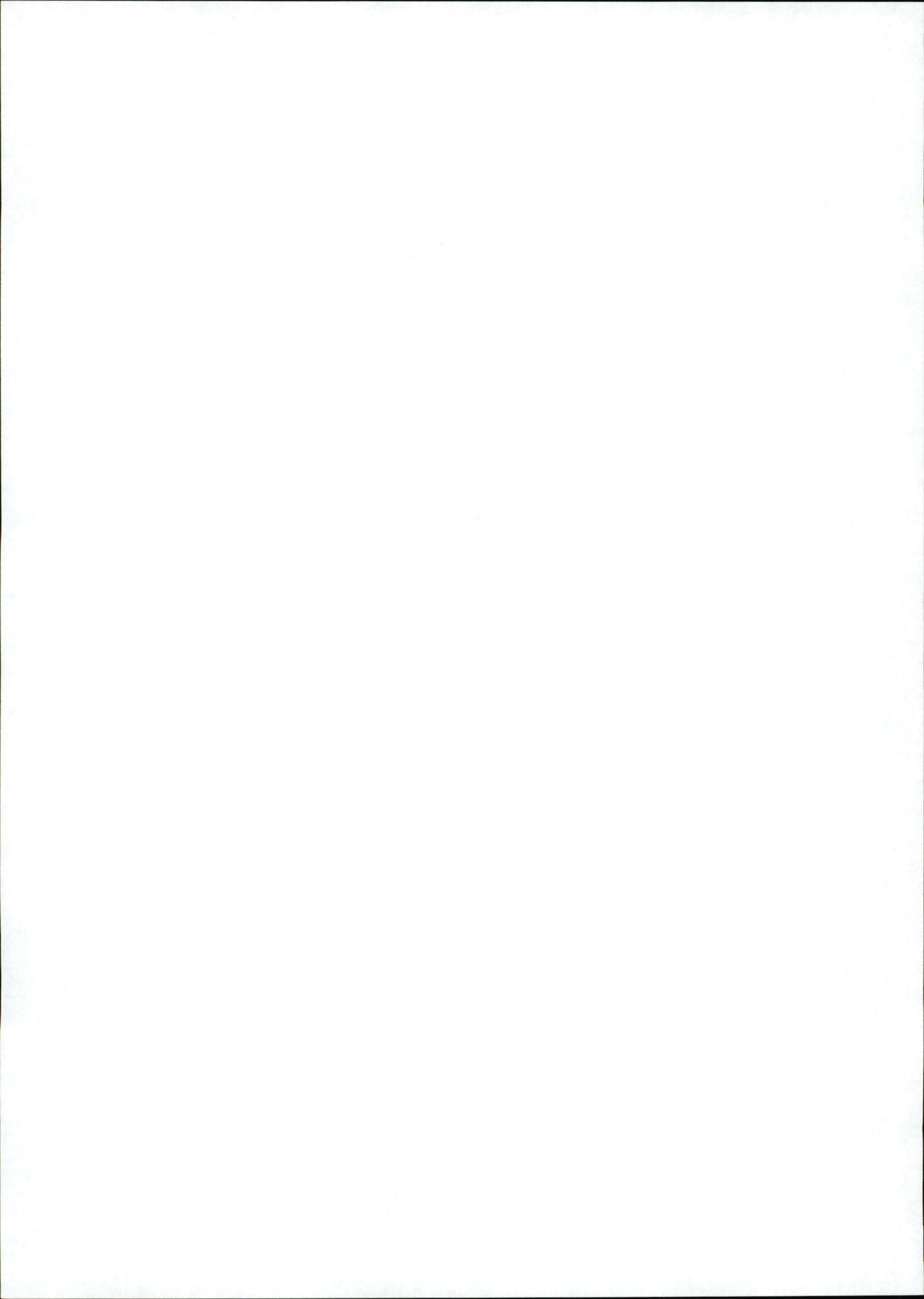
Amendments to be moved in Committee

No 1 Page 6, clause 6. After line 9, insert:

- (3) If the Commissioner decides not to include a witness in the witness protection program, the Commissioner must inform the witness of the witness's rights under subsection (4)
- (4) A witness may appeal to the Ombudsman within 3 days after being informed of a decision not to include the witness in the witness protection program. The Ombudsman must determine the appeal within 72 hours after the appeal is received. The Ombudsman, in determining the appeal, may make any decision that could have been made by the Commissioner and the Ombudsman's determination has effect according to its tenor.
- (5) Subsections (3) and (4) have effect despite subsections (1) and (2).

No 2 Page 10, clause 12. After line 7, insert:

- (4) If the Commissioner confirms a decision to terminate protection and assistance provided under the witness protection program to a participant, the Commissioner must inform the participant of the participant's rights under subsection (5).
 - (5) A participant may appeal to the Ombudsman within 3 days after being informed of the confirmation of a decision to terminate protection and assistance. The Ombudsman must determine the appeal within 72 hours after the appeal is received. The Ombudsman, in determining the appeal, may make any decision that could have been made by the Commissioner and the Ombudsman's determination has effect according to its tenor.
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New South Wales

Witness Protection Act 1995 No 87

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New South Wales

Witness Protection Act 1995 No 87

Act No 87, 1995

An Act to make provision to protect the safety and welfare of witnesses; to amend the *Criminal Procedure Act 1986*; and for other purposes. [Assented to 19 December 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Witness Protection Act 1995*.

2 Commencement

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

3 Definitions

In this Act:

approved authority means:

- (a) the Commissioner of the Australian Federal Police, or
- (b) a Commissioner (however designated) of the police force of another State or a Territory, or
- (c) the Chairperson of the National Crime Authority, or
- (d) the Chairperson of the New South Wales Crime Commission, or
- (e) an authority or body of the Commonwealth, another State or a Territory that:
 - (i) is authorised to conduct inquiries or investigations in relation to conduct that constitutes, or is alleged to constitute, criminal conduct, misconduct or corruption, and
 - (ii) is declared by the Minister by order published in the Gazette to be an approved authority for the purposes of this Act.

complementary witness protection law means a law of the Commonwealth, another State or a Territory that:

- (a) makes provision for the protection of witnesses, and
- (b) is declared by the Minister by order published in the Gazette to be a complementary witness protection law.

designated position means a position of a member of the Police Service that has been declared in writing by the Commissioner of Police to be a designated position for the purposes of this Act.

exercise a function includes perform a duty.

function includes a power, authority or duty.

participant means a witness who is included in a witness protection program.

register of births means the register maintained under the *Births, Deaths and Marriages Registration Act 1995* in which births are registered.

register of marriages means the register maintained under the *Births, Deaths and Marriages Registration Act 1995* in which marriages are registered.

witness has the meaning given by section 4.

witness protection order means an order of the Supreme Court under Part 3.

witness protection program means a witness protection program established and maintained under section 5.

4 Who is a witness?

- (1) For the purposes of this Act, a **witness** is:
- (a) a person who has given, or agreed to give, evidence on behalf of the Crown in:
 - (i) proceedings for an offence, or
 - (ii) hearings or proceedings before an authority that is declared by the Minister by order published in the Gazette to be an authority to which this paragraph applies, or
 - (b) a person who has given, or agreed to give, evidence otherwise than as mentioned in paragraph (a) in relation to the commission or possible commission of an offence against a law of New South Wales, the Commonwealth, another State or a Territory, or

- (c) a person who has made a statement to the Commissioner of Police, another member of the Police Service or an approved authority in relation to an offence against a law of New South Wales, the Commonwealth, another State or a Territory, or
 - (d) a person who, for any other reason, may require protection or other assistance under this Act.
- (2) A person is taken to be a *witness* for the purposes of this Act if the person, because of his or her relationship to, or association with, a person to whom subsection (1) applies may require protection or other assistance under this Act.

Part 2 Witness protection program

5 Witness protection program

- (1) The Commissioner of Police, through the establishment and maintenance of a witness protection program, is to take such action as the Commissioner thinks necessary and reasonable to protect the safety and welfare of a witness.
- (2) That action may include the following:
 - (a) making arrangements necessary:
 - (i) to allow the witness to establish a new identity, or
 - (ii) otherwise to protect the witness,
 - (b) relocating the witness,
 - (c) providing accommodation for the witness,
 - (d) providing transport for the property of the witness,
 - (e) providing reasonable financial assistance to the witness,
 - (f) permitting persons involved in the administration of the witness protection program to use assumed names in carrying out their duties and to have documentation supporting those assumed names,
 - (g) doing any other things that the Commissioner of Police considers necessary to ensure the safety of the witness.
- (3) That action may also include doing things as a result of functions conferred on the Commissioner of Police under a complementary witness protection law.

6 Inclusion in the witness protection program

- (1) The Commissioner of Police has the sole responsibility of deciding whether to include a witness in the witness protection program, including cases where an approved authority has requested that a witness be included in the program.
- (2) A witness may be included in the witness protection program only if:
 - (a) the Commissioner of Police has decided that the witness be included, and

- (b) the witness agrees to be included, and
- (c) the witness signs a memorandum of understanding in accordance with section 8 or:
 - (i) if the witness is under the age of 18—a parent or guardian of the witness signs the memorandum, or
 - (ii) if the witness otherwise lacks legal capacity to sign the memorandum—a guardian or other person who is usually responsible for the care and control of the witness signs the memorandum.
- (3) If the Commissioner decides not to include a witness in the witness protection program, the Commissioner must inform the witness of the witness's rights under subsection (4).
- (4) A witness may appeal to the Ombudsman within 3 days after being informed of a decision not to include the witness in the witness protection program. The Ombudsman must determine the appeal within 72 hours after the appeal is received. The Ombudsman, in determining the appeal, may make any decision that could have been made by the Commissioner and the Ombudsman's determination has effect according to its tenor.
- (5) Subsections (3) and (4) have effect despite subsections (1) and (2).
- (6) If:
 - (a) a parent or guardian of a witness signs a memorandum of understanding because the witness was under the age of 18, and
 - (b) the memorandum is still operating after the witness turns 18,

the Commissioner of Police may require the witness to sign the memorandum.

7 Assessing witness for inclusion in witness protection program

- (1) The Commissioner of Police, in deciding whether to include a witness in the witness protection program, must have regard to:
 - (a) the seriousness of the offence to which any relevant evidence or statement relates, and

- (b) the nature and importance of any relevant evidence or statement, and
- (c) the nature of the perceived danger to the witness, and
- (d) the nature of the witness's relationship to other witnesses being assessed for inclusion in the program, and
- (e) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness's suitability for inclusion in the program—that examination or evaluation, and
- (f) whether there are viable alternative methods of protecting the witness, and
- (g) whether the witness has a criminal record, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the program,

and may have regard to such other matters as the Commissioner of Police considers relevant.

- (2) The Commissioner of Police must not include a witness in the witness protection program if the Commissioner does not, in his or her opinion, have enough information to assess the matters referred to in this section in relation to the witness.

8 Memorandum of understanding

- (1) A memorandum of understanding is to:
 - (a) set out the basis on which a participant is included in the witness protection program and details of the protection and assistance that are to be provided, and
 - (b) contain a provision to the effect that protection and assistance under the program may be terminated if the participant breaches a term of the memorandum of understanding.
- (2) A memorandum of understanding in relation to a participant may also contain provisions relating to any one or more of the following:
 - (a) any outstanding legal obligations of the participant and how they are to be dealt with,

- (b) any legal obligations that the participant may or may not enter into,
 - (c) the surrender and issue of passports,
 - (d) the issue of any documents relating to the new identity of the participant,
 - (e) the prohibition of the participant from engaging in specified activities,
 - (f) marriage, family maintenance, taxation, welfare or other social or domestic obligations or relationships,
 - (g) any other obligations of the participant,
 - (h) consequences of the participant failing to comply with the provisions of the memorandum of understanding,
 - (i) any other matter for which it may be necessary or convenient to make provision in the circumstances of the case.
- (3) A memorandum of understanding must contain a statement advising the participant of his or her right to complain to the Ombudsman about the conduct of the Commissioner of Police or another member of the Police Service in relation to the matters dealt with in the memorandum.
- (4) A memorandum of understanding must be signed by or on behalf of the witness in the presence of a member of the Police Service who holds or occupies a designated position.
- (5) A witness becomes included in the witness protection program when the Commissioner of Police signs the memorandum of understanding.
- (6) The Commissioner of Police must, as soon as practicable after signing a memorandum of understanding, notify the relevant participant that it has been signed.

9 Variation of memorandum of understanding

A memorandum of understanding may be varied with the consent of the participant and the Commissioner of Police.

10 Temporary protection pending full assessment

- (1) The Commissioner of Police may include in the witness protection program on a temporary basis a witness who, in the Commissioner's opinion, is in urgent need of protection.
- (2) The Commissioner of Police may require an interim memorandum of understanding to be signed by or on behalf of the witness.
- (3) Sections 6 and 7 do not prevent the exercise of any function under this section but, in so far as those sections have not been complied with before the witness is included in the witness protection program, they must be complied with as soon as practicable after the witness's inclusion.

11 Cessation of protection and assistance

- (1) Protection and assistance provided under the witness protection program to a participant must be terminated by the Commissioner of Police if the participant requests in writing that it be terminated.
- (2) Protection and assistance provided under the witness protection program may be terminated by the Commissioner of Police if:
 - (a) the participant deliberately breaches a term of the memorandum of understanding or a requirement or undertaking relating to the witness protection program, or
 - (b) the participant's conduct or threatened conduct is, in the opinion of the Commissioner, likely to threaten the security or compromise the integrity of the witness protection program, or
 - (c) the circumstances that gave rise to the need for protection and assistance for the participant cease to exist,

and the Commissioner is of the opinion that, in the circumstances of the case, the protection and assistance should be terminated.

12 Notice of involuntary termination and application for review

- (1) If the Commissioner of Police makes a decision under section 11 (2) that protection and assistance provided under the witness protection program to a participant be terminated, the Commissioner must:
 - (a) take reasonable steps to notify the participant of the decision, and
 - (b) notify the relevant approved authority (if any) of the decision.
- (2) A participant who receives such a notification may, within 28 days after receiving the notice, apply in writing to the Commissioner for a review of the decision.
- (3) If an application is made, the Commissioner:
 - (a) must review the decision, and confirm, reverse or vary it, and
 - (b) before making that decision, must give the participant a reasonable opportunity to state his or her case, and
 - (c) after making that decision, must inform the participant in writing of the decision.
- (4) If the Commissioner confirms a decision to terminate protection and assistance provided under the witness protection program to a participant, the Commissioner must inform the participant of the participant's rights under subsection (5).
- (5) A participant may appeal to the Ombudsman within 3 days after being informed of the confirmation of a decision to terminate protection and assistance. The Ombudsman must determine the appeal within 72 hours after the appeal is received. The Ombudsman, in determining the appeal, may make any decision that could have been made by the Commissioner and the Ombudsman's determination has effect according to its tenor.

13 Date on which involuntary termination takes effect

- (1) A decision of the Commissioner of Police under section 11 (2) that protection and assistance provided under the witness protection program to a participant be terminated:
 - (a) if the participant's location is not known and the Commissioner has taken reasonable steps to notify the participant of the decision but has been unable to do so—takes effect at the end of the period of 28 days after those steps were commenced, or
 - (b) if the participant does not apply for a review of the decision in accordance with section 12 (2)—takes effect at the end of the period of 28 days after the participant receives the notification, or
 - (c) if the participant applies for a review of the decision in accordance with section 12 (2) and the Commissioner notifies the participant that the decision has been reversed—has no effect, or
 - (d) if the participant applies for a review of the decision in accordance with section 12 (2) and the Commissioner notifies the participant that the decision has been varied—takes effect on the day specified by the Commissioner, or
 - (e) if the participant applies for a review of the decision in accordance with section 12 (2), the Commissioner notifies the participant that the decision has been confirmed and the participant does not appeal to the Ombudsman under section 12 (5)—takes effect on the expiration of 3 days after the Commissioner notifies the participant of the decision on the review, or
 - (f) if the participant appeals to the Ombudsman under section 12 (5)—has no effect.
- (2) A decision of the Ombudsman under section 12 (5) that protection and assistance provided under the witness protection program to a participant be terminated takes effect when the Ombudsman notifies the participant of the decision.

Part 3 Protecting witnesses from identification

14 Identifying documents

Without limiting section 5, the Commissioner of Police may apply for any documents necessary:

- (a) to allow a witness to establish a new identity, or
- (b) otherwise to protect the witness, or
- (c) to restore a former participant's former identity.

15 Application for court order

- (1) The Commissioner of Police may apply to the Supreme Court for a court order authorising a specified person or a person of a specified class or description of persons:
 - (a) to make a new entry in the register of births or the register of marriages in respect of a witness, or
 - (b) to issue in the witness's new identity a document of a kind previously issued to the witness.
- (2) The Commissioner of Police must provide such evidence as the Supreme Court may require to satisfy itself as to the matters specified in section 17.

16 Court proceedings under this Part to be closed to public

All business of the Supreme Court under this Part is to be conducted in the absence of the public.

17 Power of Supreme Court to make order

The Supreme Court may make a witness protection order if it is satisfied that:

- (a) the person named in the application as a witness:
 - (i) was a witness to or has knowledge of an indictable offence and is or has been a witness in criminal proceedings relating to the indictable offence, or
 - (ii) is a person who, because of his or her relationship to, or association with, a person to whom subparagraph (i) applies may require protection or other assistance under this Act, and

- (b) the life or safety of the person may be endangered as a result of the person being a witness, and
- (c) a memorandum of understanding in accordance with section 8 has been entered into between the witness and the Commissioner of Police, and
- (d) the person is likely to comply with the memorandum of understanding.

18 Effect of witness protection order

On the making of a witness protection order of the kind referred to in section 15 (1) (a):

- (a) a person authorised to do so by the order may make any entries in the register of births or the register of marriages that are necessary to give effect to the order, and
- (b) the Registrar of Births, Deaths and Marriages is required to give the person access to the relevant register and to give such assistance as the person may require, and
- (c) the Commissioner of Police must maintain records showing details of the original birth entry or the original marriage entry of each person in respect of whom an entry is made under paragraph (a).

19 Effect of entries made under this Act

- (1) An entry made under this Act in the register of births or the register of marriages has effect as if it were a valid entry made under the *Births, Deaths and Marriages Registration Act 1995*.
- (2) An entry made under this Act in the register of births or the register of marriages can only be cancelled by the Registrar of Births, Deaths and Marriages if the Supreme Court, after being satisfied that the witness is no longer included in the witness protection program, has made a court order on the application of the Commissioner of Police directing that the entry be cancelled.

20 Special provision in case of marriage of participant

A participant who has been provided with a new identity under the witness protection program must not marry unless:

- (a) the participant has given to the Commissioner of Police or an approved authority evidence that satisfies the Commissioner or the approved authority of the identity of the participant and that the participant is of marriageable age, and
- (b) if the participant has been married previously—the participant has given to the Commissioner or an approved authority evidence that satisfies the Commissioner or the approved authority that the person's previous spouse has died or that the participant is divorced, and
- (c) the participant has given to the Commissioner or an approved authority a statutory declaration to the effect that there is no legal impediment to the marriage and the Commissioner or the approved authority is not aware of any legal impediment to the marriage.

Maximum penalty: 5 penalty units or imprisonment for 6 months.

21 Restoration of former identity

- (1) If:
 - (a) a participant has been provided with a new identity under the witness protection program, and
 - (b) protection and assistance under the witness protection program to the participant are terminated,the Commissioner of Police may, if he or she considers it appropriate to do so, take such action as is necessary to restore the former participant's former identity.
- (2) The Commissioner of Police must take reasonable steps to notify the former participant of a decision under subsection (1).
- (3) If the Commissioner of Police proposes to take action to restore the former participant's former identity, the former participant may apply in writing to the Commissioner for a review of the decision.
- (4) If an application is made, the Commissioner of Police:
 - (a) must review the decision and confirm, reverse or vary it, and

- (b) before making that decision, must give the participant a reasonable opportunity to state his or her case, and
 - (c) after making that decision, must inform the participant in writing of the decision.
- (5) If the Commissioner of Police:
- (a) takes action under this section to restore the former identity of a person who was a participant, and
 - (b) the Commissioner notifies the former participant in writing that he or she is required to return to the Commissioner all documents provided to the former participant that relate to the new identity provided under the witness protection program,

the former participant must not, without reasonable excuse, refuse or fail to return those documents to the Commissioner within 14 days after receiving the notice.

Maximum penalty (subsection (5)): 10 penalty units.

22 Offences in relation to documents

While an entry made under this Act in the register of births or the register of marriages continues in force, a person in respect of whom the entry is made must not use or obtain any document issued by the Registrar of Births, Deaths and Marriages that is based on the previous entry.

Maximum penalty: 10 penalty units.

23 Information not to be disclosed

- (1) A person must not, either directly or indirectly, make a record of, disclose, or communicate to another person any information relating to the making of an entry under this Act in the register of births or the register of marriages, unless it is necessary to do so:
- (a) for the purposes of this Act, or
 - (b) for the purposes of an investigation by the Ombudsman, or
 - (c) to comply with an order of the Supreme Court.

Maximum penalty: imprisonment for 10 years.

- (2) Despite subsection (1), the Commissioner of Police may disclose the former identity of a participant or former participant for the purpose of obtaining documents relating to the new identity of the participant or former participant.

24 Non-disclosure of former identity of participant

- (1) If:
- (a) a participant who has been provided with a new identity under the witness protection program would, apart from this section, be required by or under a law of New South Wales to disclose his or her former identity for a particular purpose, and
 - (b) the Commissioner of Police has given the participant permission, in the form prescribed by the regulations, not to disclose his or her former identity for that purpose,
- the participant is not required to disclose his or her former identity to any person for that purpose.
- (2) If a participant has been given permission under subsection (1) not to disclose his or her former identity for a particular purpose, it is lawful for the participant, in any proceedings or for any purpose, under or in relation to the relevant law of New South Wales to claim that his or her new identity is his or her only identity.
- (3) It is the duty of each person who is or has been associated with the administration of the witness protection program and who has obtained access to information or a document relevant to the witness protection program not to disclose that information or publish that document except as authorised by the Commissioner of Police.
- (4) If, under a complementary witness protection law of the Commonwealth, another State or a Territory, it is lawful for a participant not to disclose his or her former identity for a purpose approved by the Commissioner of Police, the participant is not required to disclose his or her former identity to another person for that purpose.

- (5) In addition to prescribing a form for the purposes of a permission under subsection (1), the regulations may prescribe a form for the purposes of a similar permission of the Commissioner of Police under a complementary witness protection law of the Commonwealth, another State or a Territory.
- (6) In this section:
participant includes a person who:
- (a) was provided with a new identity under the witness protection program, and
 - (b) is no longer a participant but retains that identity.

25 Requirement where participant becomes a witness in criminal proceedings

- (1) If:
- (a) a participant is provided with a new identity under the witness protection program, and
 - (b) the person, whether or not he or she remains a participant, retains that identity, and
 - (c) the person is to be a witness in a criminal proceeding under that identity, and
 - (d) the person has a criminal record under his or her former identity,

the person must notify the Commissioner of Police that the person is to be a witness in the proceeding.

- (2) After being notified under subsection (1), the Commissioner of Police may take any action he or she considers appropriate in the circumstances, including disclosing to the court, the prosecutor and the accused person or the accused person's legal representative the criminal record of the participant or former participant.

26 Identity of participant not to be disclosed in legal proceedings

- (1) If, in any proceedings in a court, a tribunal or a Royal Commission or other commission of inquiry, the identity of a participant is in issue or may be disclosed, the court, tribunal or commission must, unless it considers that the interests of justice require otherwise:

- (a) hold that part of the proceedings that relates to the identity of the participant in private, and
 - (b) make such order relating to the suppression of publication of evidence given before the court, tribunal or commission as, in its opinion, will ensure that the identity of the participant is not disclosed.
- (2) If in any proceedings in a court, a tribunal or a Royal Commission or other commission of inquiry, a participant who has been provided with a new identity under the witness protection program is giving evidence, the court, tribunal or commission may hold that part of the proceedings in the absence of the public.

27 Documentation restrictions

The Commissioner of Police must not obtain documentation for a participant that represents that the participant:

- (a) has a qualification that he or she does not have, or
- (b) is entitled to a benefit that he or she is not entitled to.

28 Special commercial arrangements by Commissioner of Police

The Commissioner of Police may make commercial arrangements with a person under which a participant is able to obtain a benefit under a contract or arrangement without revealing his or her former identity.

29 Dealing with rights and obligations of participant

- (1) If a participant has any outstanding rights or obligations or is subject to any restrictions, the Commissioner of Police is to take such steps as are reasonably practicable to ensure that:
 - (a) those rights or obligations are dealt with according to law, or
 - (b) the person complies with those restrictions.
- (2) That action may include:
 - (a) providing protection for the participant while the participant is attending court, or

- (b) notifying a party or possible party to legal proceedings that the Commissioner of Police will, on behalf of the participant, accept process issued by a court, a tribunal or a Royal Commission or other commission of inquiry and nominating a member of the Police Service for the purpose.

30 Avoidance of obligations by participant

- (1) If the Commissioner of Police is satisfied that a participant who has been provided with a new identity under the witness protection program is using the new identity:
 - (a) to avoid obligations that were incurred before the new identity was established, or
 - (b) to avoid complying with restrictions that were imposed on the person before the new identity was established,

the Commissioner is to give notice in writing to the participant stating that he or she is so satisfied.

- (2) The notice is also to state that, unless the participant satisfies the Commissioner of Police that the obligations will be dealt with according to law or the restrictions will be complied with, the Commissioner will take such action as he or she considers reasonably necessary to ensure that they are dealt with according to law or complied with.
- (3) That action may include informing a person who is seeking to enforce rights against the participant of the details of any property (whether real or personal) owned by the participant under his or her former identity.

31 Payments under witness protection program

- (1) The Commissioner of Police has a discretion to certify in writing that the whole or part of an amount held by a participant represents payments made to the participant under the witness protection program.
- (2) An amount so certified cannot be confiscated or restrained, and cannot be applied in payment of pecuniary penalties, under the *Confiscation of Proceeds of Crime Act 1989*.

Part 4 Miscellaneous

32 Offence—disclosures concerning participants

A person must not, except in accordance with this Act or a complementary witness protection law, disclose information:

- (a) about the identity or location of a person who is or has been:
 - (i) a participant, or
 - (ii) a person on a witness protection program conducted by the Commonwealth, another State or a Territory under a complementary witness protection law, or
- (b) that compromises the security of such a person.

Maximum penalty on indictment: imprisonment for 10 years.

33 Offence—disclosures by participants

- (1) Subject to subclause (2), a participant or a former participant must not, either directly or indirectly, disclose or communicate to another person:
 - (a) the fact that he or she or a member of his or her family has entered a memorandum of understanding under section 8, or
 - (b) details of the memorandum of understanding, or
 - (c) information relating to anything done by the Commissioner of Police or another member of the Police Service under this Act, or
 - (d) information about any member of the Police Service gained by the person as a result of anything done under this Act.

Maximum penalty: imprisonment for 5 years.

- (2) This section does not apply to a disclosure or communication:
 - (a) that has been authorised by the Commissioner of Police, or
 - (b) that is necessary for the purposes of an investigation by the Ombudsman, or

- (c) that is necessary to comply with an order of the Supreme Court.

34 Certain persons not to be required to disclose information

- (1) This section applies to a person who is or has been:
 - (a) the Commissioner of Police, or
 - (b) a member of the Police Service, or
 - (c) the Registrar of Births, Deaths and Marriages, or
 - (d) a person employed in the administration of the *Registration of Births, Deaths and Marriages Act 1973* or the *Births, Deaths and Marriages Registration Act 1995*, or
 - (e) the Ombudsman, or
 - (f) a member of the staff of the Ombudsman, or
 - (g) an approved authority, or
 - (h) a member of the staff of an approved authority.
- (2) Unless the Supreme Court makes an order that provides to the contrary, or the proceedings relate to an offence under this Act, a person to whom this section applies cannot be required in any proceedings in a court, tribunal or a Royal Commission or other commission of inquiry to produce any document or to divulge or communicate any matter or thing relating to the performance of his or her duties in accordance with this Act.

35 Restriction on issue of New South Wales identity documents

- (1) New South Wales identity documents must not be issued for a person who is on a witness protection program being conducted by the Commonwealth, another State or a Territory unless:
 - (a) an arrangement is in force between the Minister and the relevant Commonwealth, State or Territory Minister relating to the issue of New South Wales identity documents for the purposes of that program, and
 - (b) a complementary witness protection law is in force in the Commonwealth, State or Territory.

- (2) Without limiting the matters to which such an arrangement may relate, an arrangement may relate to:
 - (a) the procedures to be adopted for requesting the issue of New South Wales identity documents for the purposes of such a program, and
 - (b) guidelines for the issue of those documents and other documents.

36 Arrangements with approved authorities

- (1) The Commissioner of Police may make arrangements with an approved authority about any matter in connection with the administration of a complementary witness protection law.
- (2) Without limiting the coverage of those arrangements, they:
 - (a) may provide for the Commissioner of Police or a member of the Police Service to exercise functions conferred by a complementary witness protection law, and
 - (b) must include procedures under which the authority shares with the State the costs incurred under those arrangements, and
 - (c) may provide for the authority to make available to the Commissioner of Police such statements, transcripts of evidence and other documents as will assist the Commissioner in deciding:
 - (i) whether to provide protection or assistance to a person under this Act, and
 - (ii) what protection and assistance are appropriate for a person, and
 - (d) may confer functions under complementary witness protection laws on the Commissioner of Police.

37 Authorisation of approved authorities

The Minister, by notice published in the Gazette, may authorise an approved authority to exercise functions conferred on the Commissioner of Police under this Act for the purposes of any

arrangement entered into by the Commissioner under section 36 or the corresponding provision of a complementary witness protection law.

38 Provision of information to approved authorities

- (1) If:
 - (a) a witness has been provided with a new identity or relocated under this Act, and
 - (b) an approved authority notifies the Commissioner of Police that the witness is under investigation for, or has been arrested for or is charged with, an offence against a law of New South Wales, the Commonwealth, another State or a Territory, the maximum penalty for which is or includes imprisonment for a period of more than one year,the Commissioner of Police may do any one or more of the things in subsection (2).
- (2) If subsection (1) applies, the Commissioner of Police may:
 - (a) release to the approved authority the new identity or location of the witness,
 - (b) provide the approved authority with the criminal record and the fingerprints of the witness,
 - (c) release to the approved authority such other information relating to the witness as the Commissioner of Police considers appropriate in the circumstances,
 - (d) if the Commissioner of Police considers it appropriate in the circumstances, allow officers of the approved authority to interview members of the Police Service in relation to the witness.

39 Delegation

- (1) The Commissioner of Police may delegate all or any of his or her functions under this Act, other than this power of delegation, to a member of the Police Service who holds or occupies a designated position.
- (2) A member of the Police Service who holds or occupies a designated position may exercise functions delegated to the member by the Commissioner of Police under a complementary witness protection law.

40 Immunity from legal proceedings for exercise of functions under Act

A person is not liable to any action, suit or proceedings (including criminal proceedings) in respect of an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a function conferred by this Act.

41 Proceedings for offence

- (1) Proceedings for an offence against this Act, except section 32, are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (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 32.

42 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.

43 Exclusion of provisions of Births, Deaths and Marriages Registration Act 1995

Divisions 4 and 5 of Part 3, Part 5 and section 59 (2) of the *Births, Deaths and Marriages Registration Act 1995* do not apply to or in respect of anything done under the authority of this Act.

44 Relationship with other witness protection arrangements

Nothing in this Act affects:

- (a) section 21 of the *New South Wales Crime Commission Act 1985*, or
- (b) section 50 of the *Independent Commission Against Corruption Act 1988*.

45 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended by inserting the following item after item 24 in Part 4 of Table 1 to Part 9A:

24A Witness Protection Act 1995

An offence under section 32 of the *Witness Protection Act 1995*.

46 Savings, transitional and other provisions

Schedule 1 has effect.

47 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 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

(Section 46)

Part 1 Preliminary

1 Regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 NSW Police Witness Protection Plan

The New South Wales Police Witness Protection Plan in force immediately before the commencement of section 5 is taken to be a witness protection program for the purposes of this Act.

3 Memorandum of understanding

A memorandum of understanding entered into under the New South Wales Police Witness Protection Plan and in force immediately before the commencement of section 8 is taken to be a memorandum of understanding under that section.

4 Protected witnesses

A person who, for his or her safety and welfare has entered into a memorandum of understanding to which clause 3 applies is taken to be a witness for the purposes of this Act.

[Minister's second reading speech made in—
Legislative Assembly on 23 November 1995
Legislative Council on 7 December 1995]

BY AUTHORITY

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