

Queensland



**EVIDENCE (WITNESS
ANONYMITY) AMENDMENT
BILL 2000**

Queensland



**EVIDENCE (WITNESS ANONYMITY)
AMENDMENT BILL 2000**

TABLE OF PROVISIONS

| Section | | Page |
|---|---|------|
| PART 1—PRELIMINARY | | |
| 1 | Short title | 4 |
| 2 | Commencement | 4 |
| PART 2—AMENDMENT OF EVIDENCE ACT 1977 | | |
| 3 | Act amended in pt 2 | 4 |
| 4 | Insertion of new pt 2, div 5 | 4 |
| <i>Division 5—Witness anonymity</i> | | |
| 21B | Definitions for div 5 | 4 |
| 21C | Application of division | 5 |
| 21D | Witness anonymity certificate | 6 |
| 21E | What witness anonymity certificate must state | 7 |
| 21F | Effect of witness anonymity certificate | 7 |
| 21G | Persons to be given copy of witness anonymity certificate | 8 |
| 21H | Orders relevant entity may make on filing of witness anonymity certificate | 9 |
| 21I | Relevant entity may grant leave to disclose identity | 9 |
| 21J | Review of giving of witness anonymity certificates other than by criminal justice commission | 10 |
| 21K | Review of operation of division | 12 |
| PART 3—AMENDMENT OF JUDICIAL REVIEW ACT 1991 | | |
| 5 | Act amended in pt 3 | 12 |
| 6 | Amendment of sch 1 (Operation of other laws) | 12 |

2000

A BILL

FOR

An Act to amend the *Evidence Act 1977*, and for other purposes

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

Clause **1.** This Act may be cited as the *Evidence (Witness Anonymity) Amendment Act 2000*.

4

5

Commencement

6

Clause **2.** This Act commences on a day to be fixed by proclamation.

7

PART 2—AMENDMENT OF EVIDENCE ACT 1977

8

Act amended in pt 2

9

Clause **3.** This part amends the *Evidence Act 1977*.

10

Insertion of new pt 2, div 5

11

Clause **4.** Part 2, after section 21A—

12

insert—

13

‘Division 5—Witness anonymity

14

‘Definitions for div 5

15

‘21B. In this division—

16

Evidence (Witness Anonymity) Amendment

| | |
|--|----------------------|
| “controlled operation” means a controlled operation approved under the <i>Police Powers and Responsibilities Act 2000</i> , chapter 5, part 2, division 3 ¹ for the purposes of an investigation being conducted by a law enforcement agency. | 1 2 3 4 |
| “covert operative” , for a controlled operation conducted by a law enforcement agency, means a police officer or another person named as a covert operative in an approval under the <i>Police Powers and Responsibilities Act 2000</i> , section 178. ² | 5 6 7 8 |
| “law enforcement agency” means— | 9 |
| (a) the crime commission; or | 10 |
| (b) the criminal justice commission; or | 11 |
| (c) the police service. | 12 |
| “protected witness” has the meaning given by section 21F. ³ | 13 |
| “relevant entity” , for a relevant proceeding, means the entity before whom the relevant proceeding is being heard or conducted. | 14 15 |
| “relevant proceeding” means a proceeding before a court, including a criminal proceeding. | 16 17 |
| ‘Application of division | 18 |
| 21C. This division applies to a relevant proceeding in which a witness who is or was a covert operative is or may be required to give evidence that was obtained when the operative was engaged in activities for a controlled operation. | 19 20 21 22 |

¹ *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities), part 2 (Controlled operations), division 3 (Approval of controlled operations)

² *Police Powers and Responsibilities Act 2000*, section 178 (What approval must state)

³ Section 21F (Effect of witness anonymity certificate)

Evidence (Witness Anonymity) Amendment

‘Witness anonymity certificate

‘21D.(1) The chief executive officer of a law enforcement agency may, for the agency, give a witness anonymity certificate in the approved form for the purposes of a relevant proceeding if the officer considers it is reasonably necessary to protect a person—

(a) who is, or was, a covert operative for the agency; and

(b) who is, or may be, required to give evidence in the proceeding.

‘(2) Also, a senior police officer may, for the police service, give the witness anonymity certificate for the purposes of a relevant proceeding if the senior police officer considers it is reasonably necessary to protect a person—

(a) who is, or was, a covert operative for the police service; and

(b) who is, or may be, required to give evidence in the proceeding.

‘(3) The law enforcement agency must—

(a) file the witness anonymity certificate with the relevant entity before the person for whom the certificate was given is called to give evidence; and

(b) if the agency is not the criminal justice commission, give to the chairperson of the criminal justice commission a copy of the certificate and notice of the date it was filed.

‘(4) Power to give a witness anonymity certificate under subsection (1) or (2) may not be delegated.

‘(5) Subsection (4) applies despite any other Act.

‘(6) A decision to give a witness anonymity certificate under this section—

(a) is final and conclusive; and

(b) can not be impeached for informality or want of form; and

(c) can not be appealed against, reviewed, quashed or invalidated in any court.

Evidence (Witness Anonymity) Amendment

| | |
|---|----------------------|
| ‘(7) In this section— | 1 |
| “ senior police officer ” means a person performing functions in the police service as— | 2 3 |
| (a) a deputy commissioner; or | 4 |
| (b) the assistant commissioner responsible for crime operations. | 5 |
| ‘What witness anonymity certificate must state | 6 |
| ‘ 21E.(1) A witness anonymity certificate must state the following in relation to a person for whom the certificate is given (the “ witness ”)— | 7 8 |
| (a) the name the witness used in the relevant controlled operation; | 9 |
| (b) for a stated period the witness was a covert operative for a stated law enforcement agency; | 10 11 |
| (c) the witness has not been convicted of any offence, other than a stated offence; | 12 13 |
| (d) if the witness is a police officer, whether the witness has at any time been found guilty of misconduct or a breach of discipline within the meaning of either of the following and if so, details of the misconduct or breach of discipline— | 14 15 16 17 |
| (i) the <i>Police Service Administration Act 1990</i> ; | 18 |
| (ii) a law of the Commonwealth or another State that corresponds to the <i>Police Service Administration Act 1990</i> ; | 19 20 |
| (e) if, to the knowledge of the person giving the certificate, a court or judge has made any adverse comment on the credibility of the witness, what was said about the witness. | 21 22 23 |
| ‘(2) A witness anonymity certificate must not include any information that may enable the actual identity of the witness, or where the witness lives, to be revealed. | 24 25 26 |
| ‘Effect of witness anonymity certificate | 27 |
| ‘ 21F. On the filing of a witness anonymity certificate— | 28 |

Evidence (Witness Anonymity) Amendment

- (a) the witness (“**protected witness**”) may give evidence in the relevant proceeding under the name the witness used in the relevant controlled operation; and
- (b) subject to section 21I—
- (i) a question may not be asked that may lead to the disclosure of the actual identity of the protected witness or where the protected witness lives; and
- (ii) a witness, including the protected witness, can not be required to answer a question, give any evidence, or provide any information, that may lead to the disclosure of the actual identity of the protected witness or where the protected witness lives; and
- (iii) a person involved in a relevant proceeding must not make a statement that discloses or could disclose the actual identity of the protected witness or where the witness lives.
- ‘Persons to be given copy of witness anonymity certificate**
- ‘21G.(1)** On the filing of a witness anonymity certificate, the relevant law enforcement agency must give a copy of the certificate to the following—
- (a) for a criminal proceeding—each accused person to whom the relevant proceeding relates or the person’s lawyer;
- (b) for a civil proceeding—each party to the relevant proceeding or the party’s lawyer;
- (c) for another proceeding—each person who has been given leave to appear in the relevant proceeding or the person’s lawyer.
- ‘(2)** The relevant entity may also require the relevant law enforcement agency to give a copy of the witness anonymity certificate to a person the relevant entity considers should be given a copy.

‘Orders relevant entity may make on filing of witness anonymity certificate

‘21H.(1) The relevant entity may make any order it considers necessary to protect the identity of the protected witness.

Example of types of orders—

1. An order prohibiting sketching of the witness.
2. An order that the witness give evidence in the absence of the public.

‘(2) A person must not contravene an order made under subsection (1).

Maximum penalty—85 penalty units or 1 year’s imprisonment.

‘(3) Subsection (2) does not limit the relevant entity’s power to punish for contempt.

‘Relevant entity may grant leave to disclose identity

‘21I.(1) The relevant entity may, on application to it, give leave to any of the following (“**relevant party**”) to ask questions of a witness, including the protected witness, or make a statement that, if answered or made, may disclose the protected witness’s actual identity or where the protected witness lives—

- (a) for a criminal proceeding—each accused person to whom the relevant proceeding relates or the person’s lawyer;
- (b) for a civil proceeding—each party to the relevant proceeding or the party’s lawyer;
- (c) for another proceeding—each person who has been given leave to appear in the relevant proceeding or the person’s lawyer;
- (d) a lawyer assisting the relevant entity.

‘(2) The relevant entity may direct that the application be heard in the absence of any jury empanelled for the proceeding and the public.

‘(3) The relevant entity must not give leave under subsection (1) unless satisfied—

- (a) there is some evidence that, if believed, would call into question the credibility of the protected witness; and

Evidence (Witness Anonymity) Amendment

- (b) it is in the interests of justice for the relevant party to be able to test the credibility of the protected witness; and 1
2
- (c) it would be impractical to test properly the credibility of the protected witness without knowing the actual identity of the witness. 3
4
5
- ‘(4) If the relevant entity gives leave, a person may, in accordance with the leave— 6
7
- (a) ask a question that may lead to the disclosure of the actual identity of the protected witness or where the protected witness lives; or 8
9
- (b) answer a question, give evidence, or provide information that may lead to the disclosure of the actual identity of the protected witness or where the protected witness lives; or 10
11
12
- (c) make a statement that discloses or could disclose the actual identity of the protected witness or where the witness lives. 13
14
- ‘(5) The relevant entity may also make any orders the entity considers appropriate in the circumstances, including, for example, orders about hearing the relevant part of the proceeding in the absence of the public, and suppressing the publication of anything said in the relevant part of the proceeding. 15
16
17
18
19
- ‘(6) A person must not contravene an order made under subsection (5). 20
- Maximum penalty—85 penalty units or 1 year’s imprisonment. 21
- ‘(7) Subsection (5) does limit the relevant entity’s power to punish for contempt. 22
23
- ‘Review of giving of witness anonymity certificates other than by criminal justice commission 24
25**
- ‘21J.(1) This section applies to witness anonymity certificates filed with a relevant entity by a law enforcement agency other than the criminal justice commission. 26
27
28
- ‘(2) As soon as practicable after the end of a proceeding in which a witness anonymity certificate is filed by the crime commission or the police service, the chief executive officer of the relevant law enforcement agency 29
30
31

Evidence (Witness Anonymity) Amendment

- must give the chairperson of the criminal justice commission notice of the date the proceeding to which the certificate relates ended. 1
2
- ‘(3) The chairperson must— 3
- (a) review the giving of each witness anonymity certificate as soon as practicable after the end of the proceeding to which the certificate relates and, in any event, within 3 months after the end of the year in which the certificate is filed; and 4
5
6
7
 - (b) consider whether, in the circumstances, it was appropriate to give the certificate; and 8
9
 - (c) if the chairperson considers it was inappropriate to give the certificate, notify whichever of the following is relevant of that fact as soon as practicable— 10
11
12
 - (i) for a criminal proceeding—each accused person to whom the relevant proceeding relates or the person’s lawyer; 13
14
 - (ii) for a civil proceeding—each party to the relevant proceeding or the party’s lawyer; 15
16
 - (iii) for another proceeding—each person who has been given leave to appear in the relevant proceeding or the person’s lawyer; 17
18
19
 - (iv) a lawyer assisting the relevant entity. 20
- ‘(4) The chief executive officer of the relevant law enforcement agency, if asked by the chairperson, must give the chairperson— 21
22
- (a) all the information the law enforcement agency used for deciding to give a witness anonymity certificate; and 23
24
 - (b) particulars relating to each person to whom a copy of the certificate was given under section 21G. 25
26
- ‘(5) The chairperson— 27
- (a) must give a copy of any report on the review to the law enforcement agency affected by the review as soon as practicable after the report is completed; and 28
29
30
 - (b) may include a report about the reviews in the annual report of the operations of the criminal justice commission. 31
32

Evidence (Witness Anonymity) Amendment

‘Review of operation of division

‘**21K.(1)** The Attorney-General must ensure the operation of this division is reviewed within 5 years after it commences.

‘**(2)** Also, the Attorney-General must table a report on the review in the Parliament within 3 months after the review is complete.’.

**PART 3—AMENDMENT OF JUDICIAL REVIEW ACT
1991**

Act amended in pt 3

Clause **5.** This part amends the *Judicial Review Act 1991*.

Amendment of sch 1 (Operation of other laws)

Clause **6.** Schedule 1, part 1—

insert—

‘**2A.** *Evidence Act 1977*, section 21D’.