

Australia's Witness Protection Law: Analytical Analysis

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Abstract:

It is a part of the criminal justice system's responsibilities to safeguard people who assist. Security of witnesses is one of the key points of criminal justice in each nation of democracy. The victim is usually a star witness in court trials. The court often corroborates the facts with the victim's statement before judging. It is observed that in numerous violent incidents and high-profile events, victims also experience physical, emotional and financial threat. In consideration of this, several world countries have adopted witness safety legislation. Any industrialised and emerging nations, but do ignore witness rights regulations. India is one example. Any nation in the world needs witness safety. In this article, the writer attempted to address Australia's witness protection law's important provisions.

Key Words: Witness protection, Law, NWPP, Action, Offence, Commissioner, Identity of witnesses.

1. Introduction:

"A criminal case is built on the edifies of evidence, evidence that is admissible in law. For that witnesses are required, whether it is direct evidence or circumstantial evidence."¹

"The witness should be treated with great respect and should be considered as a guest of honour."² Witnesses are nothing but a court participant. Without their assistance court, no verdict or order may be concluded. When there is a credible witness, the darker aspect of a criminal trial may be pictured. To seek justice in a criminal trial, the position of witnesses is vital. Some of the other countries also adopted witness safety legislation as mentioned above. Countries like USA, UK, Australia, Germany, Canada, Italy, Jamaica, Kenya, etc. have their witness-protection regulations. We're living the 20th century. Before 2000, each of these countries passed legislation. Until now there is no central codified legislation for the protection of witnesses in India. There is no question that in Mahindra Chawla Vs. Union of India 2018, the honourable Supreme Court of India approved the 2018 Witness Protection Scheme and became law in compliance with Article 141 of the Indian Constitution. It's a precedent, after all. A witness

security act is required for a nation like India, which has a vast population and one of the largest democratic countries in the world. It was also proposed in India that, as mentioned above, "The witnesses should be treated with great respect and should be considered as guests of honour." As concern present paper, Australia adopted the Witness Protection Act in 1994. The aim is to set up a scheme for the safety and assistance of such witnesses and other individuals.' The Royal Commission, in 1983, articulated the need for protection of witnesses. In that age, the witnesses used to protect the officers. The Joint Legislative Committee carried out an enquiry on the safety of witnesses in 1988. The Witness Security Act 1994 (hereinafter 'the Act') was adopted at Commonwealth level in the aforementioned committee. National Witness Protection Program (NWPP) was created by the Act.³

2. Interpretation Clause:

Section 3 of the act defines various terms in respect of witness protection. The term 'witness' has been defined by the Act as under.

Witness: witness means,

- a) a person who has given, or who has agreed to give, evidence on behalf of the crown in right of the Commonwealth or a state or territory in:
 - i) proceedings for an offence; or
 - ii) hearing or proceedings before an authority that is declared by the Minister

- by notice in the Gazette to be an authority to which this paragraph applies; or*
- b) a person who has given, or who has agreed to give, evidence otherwise than as mentioned in paragraph a) in relation to the commission or possible commission of an offence against law of the Commonwealth or of a state or a territory; or*
- c) a person who has made a statement to the Australian Federal Police or an approved authority in relation to an offence against the law of the commonwealth or of a state or territory, or*
- d) a person who, for any other reason may require protection or other assistance under the NWPP, or*
- e) a person who, because of his or her relationship to, or association with, a person referred to in paragraph a), b), c) or d) may require protection or other assistance under the NWPP.*

On perusal the above definition the trouble is that it is an exhaustive one. It has covered all persons who have agreed to give evidence and persons who made a statement before Australian Federal police or any other authority. If any person is required protection under NWPP is also included in the term witness. Furthermore, section 3 of the act also defines NWPP. NWPP means the national witness protection program established by the Act. NWPP is one of the key features of the Act.

3. National Witness Protection Program: NWPP

As the Act has been passed at the level of the Commonwealth, the NWPP is one of the vital or relevant organs of the Act. The Act specifies that the Commissioner is to maintain a service named the NWPP. The Commissioner and all individuals in the programme are liable for offering security and support to witnesses. Witness security and support can require some aspects that may be the product of the powers and duties of the Commissioner given to him under the Act. Therefore, the Commissioner may look at the evidence provided by the witnesses in order to protect the witnesses. This does not mean that whether an individual refers to or approaches the NWPP and the Commissioner can have security. The

Act often puts such obligations on the individual or witness who needs protection.

The Act specifies that the Commissioner must be pleased with the evidence given by the witnesses before granting them immunity. Witnesses must have reported on unpaid civil responsibilities, loans and taxation. Whether there is some criminal background or civil litigation or bankruptcy proceedings, the witness must notify the NWPP Commissioner. In addition, whether a witness occupies some role in a business, if either public or private, details of immigration status, details of financial obligations and actual or personal properties, details of any cash in the accounts or otherwise, details of any planning order against him or her. It's more about his assets liabilities assets, etc. It is appropriate to remember that if a person is not psychologically prepared, the laws in this respect are different for providing evidence before the court. As in India, section 118 of the Indian Evidence Act says regarding the lunatic. Likewise, for security reasons, the act also specifies that witnesses shall be aware of their general medical status. Witnesses must notify the court of every decision involving custody of infants. The witness shall report information of every company associated with him or her, the penalty placed on him or her in court action, of any probation or licence and shall include the appropriate copies of the records.⁴

The witness must supply the Commissioner with the facts addressed. Upon receipt of all the evidence and related records, the NWPP Commissioner can provide the witnesses with security. The Commissioner is primarily liable for involving a witness in the NWPP. A witness may be included in the NWPP if the Commissioner has decided and the witness wishes to be included. It is not sufficient for a witness to sign a Memorandum of Understanding with section 9 of the Act even whether he or she is a juvenile or lack of lawful ability with the sign of his or her parent or guardian. In addition, the Commissioner may take into account the prior record of the witness, in particular the offences of abuse, the medical or clinical examination or appraisal of the witnesses, the extent of the felony to which any related proof or statement relates, and the existence and significance of any relevant evidence or statement. The Commissioner is

still searching for an alternative way to secure the witness and the existence of the potential threat to the witness.⁵

The Act also includes clauses covering the incorporation of foreign nationals or immigrants of the NWPP. The thorough process has been given for in the Act. The required authority of a foreign party wanting to have a citizen (nominated person) from their country in the NWPP is to appeal to the Minister. Upon receipt of the order, if the Minister is pleased with all the materials given by the appropriate authority of a foreign nation, may ask the Commissioner to include that individual or witness in the NWPP. The Commissioner, and the nominated person in the NWPP, would recognise the same protocol as that applied to all individuals in Australia. If the Commissioner is not pleased, he can collect or request more details from a foreign country regarding the nominated individual.⁶

4. Actions to Protect Witnesses:

The Act also includes clauses regarding the steps to be performed by the Commissioner to shield witnesses, participants and past participants, etc. It is for the Commissioner to take the appropriate and fair steps to secure and preserve the safety of witnesses who are included in the NWPP. The Commissioner shall take steps to ensure the welfare of the Commissioner, the Deputy Commissioner, the AFP personnel and special representatives of the Australian Federal Police. Such acts may require creating a new identification of the witnesses or otherwise shielding the witnesses. It also requires relocation, lodging, transport of property, payments to the witnesses for the meeting, fair living expenses of the witnesses, his family and other participants, reimbursement of costs, assistance to the witnesses to secure work or schooling, other assistance to ensure that the witnesses become self-sustaining and other items committed. The Commissioner may take some action to protect the former participant or any other individual who has a relationship with the former participant where such action is appropriate and fair for the safety of the former participant or the other person.⁷

5. Termination Of Inclusion Protection And Assistance:

Where an individual, witness or participant is included in the NWPP, they may be omitted or their

security may be terminated in certain circumstances. The clause in this respect was also included in the Act. The Commissioner can terminate inclusion, security and assistance if the Participant demands termination in writing. In addition, the Deputy Commissioner could dismiss the participant if he or she has purposely violated the provisions of the Memorandum of Understanding or if the participant has deliberately presented deceptive or deceptive details in the criminal sense or if the participants are likely to undermine the credibility of the NWPP. Where there are other conditions if the participant intentionally declines or fails to sign a new Memorandum of Understanding according to subsection 8(5) or if it is the judgement of the Deputy Commissioner, there is no fair excuse for the participant to stay in the NWPP whether there are other situations or whether the participant deliberately refuses or fails to sign a new Memorandum of Understanding according to subsection 8(5). The decision to terminate the prosecution can be checked by the Commissioner if an appeal is submitted in this respect. However, when evaluating the decision approaching unification, it is important to state the case and after a decision, the Commissioner must advise the individual in writing of the decision.⁸

5. Identity Of Participants:

The Act also specifies that the name of the participant shall not be revealed in legal hearings. If any proceeding is pending before a court, tribunal or royal commission of the Commonwealth, a State or territory or any other commission of investigation and original identification or a former NWPP identity of a Commonwealth participant or a State participant or a territory participant shall not be revealed. It is mentioned every that aspect of the proceeding is personally owned by the court, tribunal or committee. However, where the court or tribunal or council finds that those limitations do not exist in the interests of fairness, they shall not apply.⁹

6. Protection Of Officer:

Officers and workers employed for the safety and welfare of the participants or witnesses shall therefore be shielded from suit in regard to the decision of the Act. Means that if the Commissioner or Deputy Commissioner takes some decision as to security or inclusion in the NWPP, no one can bring

an action against the Commissioner or Deputy Commissioner in support of the decision taken by the Commissioner or Deputy Commissioner. The Act states that the commissioner, the delegates of the commissioner and all individuals conducting duties in support of the NWPP or not entitled to any prosecution, suit or proceeding could be criminal in respect of an act committed by them in good conscience in the exercise and presumed exercise of the powers imposed on them by the Act.¹⁰

7. Offences:

The act also includes criminal requirements in regard to the security of witnesses. The Act specifies that whenever details on popular resources or territory are revealed by any person, that person is claimed to have committed a crime and to have been liable for imprisonment for 2 years. If a person discloses details on a citizen undertaking an examination as a resident of the Commonwealth or territories with regard to NWPPE, imprisonment shall be punishable for two years. In addition, the Act specifies that if an individual discloses details regarding an integer and a participant and as a consequence of that information, could endanger the protection of popular wealth or the territory of a participant, that person shall be liable for imprisonment for 10 years. The Act also punishes the disclosing of details that may threaten the welfare of persons undergoing evaluations as citizens of the Commonwealth or jurisdiction, the disclosure of information about the State Participant, the disclosure of information about the person undergoing assessments as a State Participant, the disclosure of information that may compromise the protection of the State Participant, the disclosure of information about the individual undergoing assessments as a State Participant.¹¹

8. Conclusion:

It is also inferred that in the context of the requirements of the Act and the debate alluded to above, it is clear that the Australian Witness Protection Act has a strong framework and provisions for the security of witnesses. Australia, Canada, Colombia, Germany, Guatemala, Indonesia, Italy, Jamaica, Kenya, Latvia, Peru, Slovakia, South Africa and the United States of America have their witness protection laws in effect. Compared to the other nations, the Australian Act was introduced and

the statutory body found all forms of safety and security not just for witnesses but also for their families, members, etc. The Act further allows for the protection of foreigners who, in every event, are observers in Australia. NWPP is the key function of the law. The NWPP Act as a whole plays a vital role in the protection of witnesses. The Act has a total of 32 sections. These clauses and portions run throughout the NWPP. Apart from this the States and Territories of Australia still have their initial witness protection system complemented by the NWPP: Australian Capital Territory Witness Protection Act 1996, New South Wales Witness Protection Act 1995, Northern Territory Witness Protection Act 2002, Queensland Witness Protection Act 2000, South Australia Witness Protection Act

In addition, the Act granted the Australian Federal Police power to put witnesses under and expel them from the NWPP. The Act, therefore, requires the creation of a registry of participants now or previously under the NWPP. There are also requirements for the security of the legitimacy of the Commonwealth identification papers. The Act offers a framework to guarantee that the participant may not exploit his or her new name to escape civil or criminal responsibility. As mentioned above, offences are often generated when some individual misuses knowledge relevant to the NWPP.

1. Swaransingh v. State of Punjab AIR 2000 S.C.2017
2. Committee on Reforms in Criminal Justice System, headed by Justice Mallimath, Vol. I, P. 151
3. United Nations Office on Drugs and Crime, Good practices for the protection of witnesses in criminal proceedings involving organized crime.
4. Section 7, the Witness Protection Act, 1994, Australia.
5. Section 8, the Witness Protection Act, 1994, Australia.
6. Section 9, the Witness Protection Act, 1994, Australia.
7. Section 13, the Witness Protection Act, 1994, Australia.
8. Section 18, the Witness Protection Act, 1994, Australia.
9. Section 28, the Witness Protection Act, 1994, Australia.
10. Section 21, the Witness Protection Act, 1994, Australia.
11. Section 21, 22, 22A, 22B, 28A, the Witness Protection Act, 1994, Australia.