



## AFP National Guideline on assumed identities

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### 1. Disclosure and compliance

This document is classified **UNCLASSIFIED** and is intended for internal AFP use.

This instrument is not suitable to proactively disclose under the Commonwealth [Information Publishing Scheme](#). Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on disclosure of information](#).

## Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

## 2. Acronyms

<b>AFP</b>	Australian Federal Police
<b>AI</b>	assumed identity
<b>DR</b>	Deputy registrar
<b>NAIR</b>	National Assumed Identities Register
<b>NR</b>	National Registrar

## 3. Definitions

**Assumed identity (AI)** - means a fictitious identity used legitimately in support of AFP operations.

**Authorising person** - means the Commissioner or a person delegated by the Commissioner under paragraph 15LH(2) of the [Crimes Act 1914](#) (Cth) (the Act) to authorise, vary or revoke the use of an AI under Part 1AC of the Act.

**Deputy registrar** - is a person appointed to take responsibility for the authorisation, creation, administration and reporting obligations for all AIs held in a particular location.

**Evidential instrument** - is an item or document that authenticates an AI.

**Issuing agency** - means a government or non-government body assisting the AFP with assumed identity requests.

**National Assumed Identities Register (NAIR)** - is the central register of all AI records held by the AFP.

**National Registrar** - is the person appointed to take responsibility for the overall AI control framework, including administration of the NAIR.

**Operative** - is defined in s. 15M of the Act.

**Program Axiom** - is the AFP National Undercover Program.

**Undercover operation** - means a planned investigation where authorised undercover operatives are covertly deployed to communicate with a person(s) of interest to obtain evidence and/or intelligence.

**Witness protection** - for the purpose of this guideline, means the National Witness Protection Program, established under the terms of the [Witness Protection Act 1994](#) (Cth).

## 4. Guideline authority

This guideline was issued by National Manager Intelligence using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

## 5. Introduction

This guideline outlines the practices and procedures to be followed when obtaining, using and managing assumed identities authorised under the [Crimes Act 1914](#) (Cth) or corresponding state and territory legislation.

## 6. Legislative framework

Part 1AC of the [Crimes Act 1914](#) (Cth) (the Act) affords certain agencies, including the AFP, powers and protections to enable the creation, substantiation and use of assumed identities (AIs) in support of official activities. The Act imposes responsibilities relating to how authorised AIs will be administered, used, varied and revoked.

The Act protects authorised officers from civil and criminal liability where they use AIs in circumstances that may otherwise be considered unlawful.

Similarly, the Act offers protection to Commonwealth, state, territory and non-government agencies which provide evidence of AIs in accordance with the Act.

The legislation imposes reporting, administration and audit regimes on the participating agencies holding AIs sanctioned by the Act.

Section 15KA of the Act provides that the head of a participating agency (such as the Commissioner) or a prescribed person authorised in writing by the head of the agency, may grant approval for the acquisition and use of an AI.

Part 1AC, Division 5 of the Act provides for mutual recognition of corresponding legislation under state law. In effect, this part provides a jurisdictional nexus between Part 1AC and corresponding state laws, affording authority, indemnity and protection under Commonwealth statute to authorised AIs held in participating jurisdictions.

Nothing in the Act makes it unlawful for a person to use an AI in circumstances that do not contravene an Australian law or regulation. The Act is designed to assist authorised officers to overcome barriers that might otherwise prevent the lawful acquisition or use of an AI.

The Act, and this guideline do not apply to operational activity where an AI can be used without the need to exercise a power to circumvent regulatory process, and in the absence of protection from civil or criminal liability.

## 7. Registrar responsibilities

## National Registrar

The Commissioner has appointed the National Coordinator Program Axiom as the National Registrar (NR) of assumed identities (AIs). s37(1)(b), s37(2)(b), s47E(d)

With the assistance of appointed deputy registrars (DRs), the NRs responsibilities include:

- monitoring the use of AIs throughout the AFP
- administering the central National Assumed Identities Registrar (NAIR) and ensuring that all NAIR documentation is secured to an appropriate standard
- working with issuing agencies to ensure that AI material is stored appropriately
- staying abreast of the internal environment as it relates to AIs, and ensuring consistency between regions and portfolios
- s37(1)(b), s37(2)(b), s47E(d)
- coordinating risk assessments of AI processes and practices, where required
- coordinating the annual review of AI authorities
- ensuring that reporting and auditing obligations imposed by the Act are met.

## Deputy registrars

Manager Operations Intelligence should appoint regionally based coordinators to the role of deputy registrar (DR). This role supports the NR by implementing and managing the AI control framework in each region. s37(1)(b), s37(2)(b), s47E(d)

s37(1)(b), s37(2)(b), s47E(d)

The DR is responsible for the following functions in their respective regions/area of responsibility:

- managing all requests for:
  - new AIs
  - AI variations or revocations
- managing the acquisition of evidential instruments on behalf of requesting AFP members
- managing the administration of locally held NAIR databases and records in accordance with the NAIR training manual
- supporting the secure and consistent operation of locally held NAIR systems
- ensuring that locally held NAIR databases are uploaded to the central NAIR on a monthly basis
- ensuring that all AI related information is secured to an appropriate standard
- facilitating training for all local AI holders

- establishing local protocols for AI material accounting/auditing and storage
- coordinating local reviews and audits prescribed by the Act
- ensuring local compliance with statutory obligations and best practice protocols relating to the handling, use and administration of AIs.

## 8. Acquiring and using assumed identities

Assumed identities (AIs) should only be used in support of sanctioned covert activities where disclosure of a person's true identity, or their association with law enforcement, could jeopardise the security, safety or objectives of the AFP, its personnel or another person.

Using an AI, in itself, does not necessarily require the powers and protections conferred by the [Crimes Act 1914](#) (Cth) (*the Act*).

If a member conducts themselves under an AI in circumstances not requiring authority under the Act, it should be reported to the member's immediate supervisor as soon as is practicable after the activity.

s37(2)(b), s47E(d)

An AI must be authorised under the Act if any one or more of the following circumstances apply:

- the use of an AI or the acquisition or presentation of evidential instruments either:
  - contravenes any Australian law or regulation
  - is likely to bring about civil litigation
- the AI holder is likely to be required to give sworn evidence under the assumed name
- an issuing agency may require protection from civil litigation or criminal prosecution arising out of the issuance of evidential instruments for the AI
- it is necessary to compel a Commonwealth issuing agency to produce evidence of the AI.

s37(2)(b), s47E(d)

## 9. Offences

Part 1AC, Division 6, subdivision A of the [Crimes Act 1914](#) (Cth) creates offences relating to AFP members (and other persons) who:

- acquire or use an authorised assumed identity (AI) except in the course of duty
- engage in conduct that breaches an authorised condition
- unlawfully disclose information about an AI.

AFP appointees who suspect an AI has been obtained or used without authority or outside its conditions of use must report it immediately to Professional Standards.

## 10. Authorising assumed identities

To invoke the powers and protection offered by the *Crimes Act 1914* (Cth) (the Act), an assumed identity (AI) must be authorised in writing by the Commissioner or his/her delegate. In accordance with the Act and its relevant regulations, the Commissioner has authorised specific AFP Senior Executives (not their positions) to approve the acquisition and use of AIs.

s37(1)(b), s37(2)(b), s47E(d)

Section 15KC of the Act specifies the form in which an application must take.

s37(1)(b), s37(2)(b), s47E(d)

s37(1)(b), s37(2)(b), s47E(d)

The application must also list the evidential instruments included under the authority, and the issuing agencies that may be subject to the provisions and indemnities offered by the Act. Specifically, an instrument and the relevant issuing agency should be specified on the application if any one or more of the following circumstances apply:

- the issue of an instrument under false particulars will infringe on any law or regulation of the state or Commonwealth
- an issuing agency will require civil or criminal indemnity arising out of the issuance of a particular instrument
- possession or use of the instrument infringes upon a law or regulation of the state or Commonwealth
- possession or use of the instrument may bring about civil litigation.

s37(1)(b), s37(2)(b), s47E(d)

## 11. Varying assumed identities

s37(1)(b), s37(2)(b), s47E(d)

An authorising person may vary an AI at any time, however, must give the holder of the AI written notice of the variation.

## 12. Revoking assumed identities

Assumed identities (AIs) must be revoked as soon as they are no longer needed.

s37(1)(b), s37(2)(b), s47E(d)

s37(1)(b), s37(2)(b), s47E(d)

## 13. Requests to an issuing agency

s37(1)(b)

Under Division 3, Part 1AC of the [Crimes Act 1914](#) (Cth) (the Act), a Commonwealth issuing agency **must comply** with a request from an authorising person of the AFP. State, territory and non-government bodies **may comply** with such requests.

Section 15KI of the Act imposes requirements on the form in which an application for evidence of an AI must take.

s37(1)(b), s37(2)(b), s47E(d)

## 14. Record keeping and auditing

All original documents must be forwarded to the National Registrar (NR) via safe hand, as soon as practicable. The NR must maintain the central national database containing all AFP held assumed identity (AI) information both in hard copy and electronically on the National Assumed Identities Register (NAIR).

The deputy registrar (DR) must maintain copies of all AI records created for a particular area and record the information electronically in their respective regions. The DR must maintain these records while an authorisation is in force and for at least 12 months after the authorisation has been revoked.

The NAIR must record all statutory information imposed by the Act, as well as sufficient detail to provide accountability over the issue of evidential instruments, correspondence with issuing agencies, receipt and storage of AI related material and day to day management of AIs for a particular region or business unit.

In accordance with the [Crimes Act 1914](#) (Cth) (the Act), records must be audited every 6 months while the authorisation is in force and at least once after revocation.

The **Manager Operations Intelligence** must ensure that a biannual audit of all NAIR holdings is conducted by Professional Standards, per the Act.

The **National Manager Intelligence** must ensure that a quality assurance review of the above audits is conducted every 2 years by Internal Audit and reported to the Audit Committee and Deputy Commissioner.

As soon as is practicable at the end of the fiscal year, the NR must ensure that an annual report is compiled which details the matters contained in s. 15LD of the Act. Upon receiving the Commissioner's approval, the report must be published and submitted to the Minister.

The Commissioner or his/her delegate must complete and annual review of the ongoing necessity for each authorised AI pers. 15KF of the Act.

s37(1)(b)

## 15. Evidential instrument obligations and usage

AFP members must not apply for any evidential instrument, or vary any existing details of an authorised assumed identity (AI) without express authority of the relevant deputy registrar, National Registrar or authorising person.

Evidential instruments supporting an AI must only be used by an AFP member in the course of their duty and in accordance with any conditions imposed by the authorising person.

When in use, evidential instruments relating to an AI should be carried separately from any official documentation that discloses a person's true identity or station within law enforcement.

When in possession of evidential instruments, or when an AI is in use, members should equip

themselves with a suitable cover story that will prevent compromise of the AI if scrutinised through any foreseeable circumstance.

Members are only authorised to possess the evidential instruments pertaining to an AI relevant and necessary to their AFP duties. Except in circumstances of operational necessity, members must return evidential instruments and store appropriately when:

- not operationally required
- on recreation or other extended leave.

Members must be lawfully qualified to perform any functions authorised under evidential instruments (Cth). s37(1)(b) per s. 15KT of the [Crimes Act 1914](#)

AFP members who misuse or unlawfully disclose information relating to an AI are liable to disciplinary and criminal charges.

## 16. Loss or theft of evidential instruments

The loss or theft of evidential instruments relating to an assumed identity (AI) must be reported immediately to the National Registrar or relevant deputy registrar who must then take the necessary steps through the relevant issuing authority to have the evidential instruments cancelled and if necessary revoke the AI.

## 17. Financial transactions

s37(2)(b), s47E(d)

## 18.

s37(2)(b), s47E(d)

s37(2)(b), s47E(d)

## 19. Witness identity protection certificates

Witness identity protection certificates must only be issued by the Commissioner or his/her delegate per s. 15ME of the [Crimes Act 1914](#) (Cth) (the Act). These certificates prevent the disclosure of an operative's true identity in any court proceeding or judicial process. Once issued, the certificate may not be examined or questioned beyond its face and allows operatives to give sworn evidence under an assumed identity.

The Commissioner may only delegate this authority to a Deputy Commissioner or Assistant Commissioner (s. 15MX of the Act).

s37(2)(b), s47E(d)

Operatives must complete a statutory declaration addressing the issues outlined in s. 15MF of the Act to request a certificate.

Program Axiom must then conduct inquiries with Professional Standards to satisfy the requirements of s.15MG(h)(2) of the Act, namely the disclosure of any outstanding allegations of professional misconduct against the operative.

Once this information is obtained, an application must be made before the Commissioner or his/her authorised delegate to issue a witness identity protection certificate. The certificate may be granted if the issuing officer is satisfied on reasonable grounds that disclosure of the operative's identity or where the operative lives is likely to:

- endanger the safety of the operative or another person and/or
- prejudice any current or future:
  - investigation
  - activity relating to security.

All issued and declined witness identity protection certificates should/must be managed and recorded by Program Axiom, who must provide the Commissioner with a report on certificates issued each year per s. 15MU of the Act for provision to the Minister.

## 20. Further advice

Queries about the content of this guideline should be referred to the National Coordinator Program Axiom.

## 21. References

### Legislation

- [Australian Federal Police Act 1979](#) (Cth)
- [Crimes Act 1914](#) (Cth)

### AFP governance

- [AFP Practical Guide on auditing the National Assumed Identity Register](#)

## 22. Attachments

- [Attachment 1 - Authorising persons - assumed identities](#)

Attachment 2 - Issuing officers - witness identity protection certificates

- [Attachment 3 - Appointed deputy registrars - assumed identities.](#)