MINISTER’S INTRODUCTION

I am pleased to submit the annual report on the operation of the National Witness Protection Program under the provisions of the Witness Protection Act 1994 for the 2012–13 financial year.

The report sets out the provisions of the legislation and relevant activity for the reporting period. The costs of the program are shown in the tables at the end of this report.

The task of providing witness protection is a highly sensitive area of law enforcement and I commend those involved with the administration and maintenance of the program.

This report has been prepared to provide as much detail as possible without prejudicing the effectiveness of the security of the National Witness Protection Program.

The Hon Michael Keenan MP
Minister for Justice
1 October 2013
INTRODUCTION

In 1988 the Parliamentary Joint Committee on the National Crime Authority inquired into witness protection in Australia. The committee recommended that the Australian Federal Police (AFP) perform an expanded national witness protection role and the Witness Protection Act 1994 (Cth) (the Act) was drafted. The Act created the National Witness Protection Program (NWPP) and gave the Commissioner of the AFP responsibility for the maintenance of the program.

The Act received royal assent on 18 October 1994 and commenced operation on 18 April 1995.

Subsection 30(2) requires that an annual report be prepared which advises both houses of parliament on the general operations, performance and effectiveness of the NWPP. The report must be prepared in a manner that does not prejudice the effectiveness or security of the NWPP.

The Act provides a statutory basis for the provision of protection and assistance to:

(a) persons who have given or agreed to give evidence on behalf of the Crown in criminal or prescribed proceedings; or
(b) persons who have otherwise given or agreed to give evidence in relation to a criminal offence; or
(c) persons who have made a statement in relation to an offence; or
(d) persons who may require protection and assistance for any other reason; or
(e) persons who are related to or associated with such persons.

In providing that protection and assistance, the NWPP employs operating methods designed to facilitate the safe integration into the community of witnesses and their families that are in the program.

The Act contains regulatory mechanisms for maintaining the integrity of the NWPP.

THE ACT

The Act requires the AFP Commissioner to maintain the NWPP. In so doing, the Commissioner can enter into arrangements with an ‘approved authority’, which includes state and territory police commissioners, the Chief Executive Officer of the Australian Crime Commission and the Integrity Commissioner, to enable protection and assistance to be provided to witnesses involved in operations run by those organisations. NWPP operational costs are shared between the AFP and the approved authority referring the witness for protection and assistance.

Section 3 of the Act sets out the threshold criteria for a person to be considered a ‘witness’. A person being assessed for inclusion in the NWPP is described as a witness; a witness becomes a ‘participant’ once he or she has been accepted into the NWPP.

A ‘Commonwealth participant’ means a person who is a participant in relation to an offence against a law of the Commonwealth or a Royal Commission under the Royal Commissions Act 1902 or an inquiry instituted by a house of the parliament or a person who is a foreign citizen or resident who is participating in the NWPP under sections 10 or 10A of the Act.

A ‘state participant’ means a person who is a participant in relation to a state offence that may or may not have a federal aspect or in relation to a commission of inquiry under a law of a state.

A ‘territory participant’ means a person who is a participant in relation to an offence against the law of a territory or a commission or inquiry under a law of a territory.
Section 5 prohibits witnesses being included in the NWPP as a reward or as a means of persuading or encouraging the witness to give evidence or make a statement.

Sections 7, 8, 9, 18 and 19 provide the AFP with statutory procedures to govern the inclusion of witnesses in the NWPP, including the signing of memoranda of understanding, and the termination of inclusion in the NWPP.

Sections 10 and 10A provide for the inclusion of foreign nationals or residents in the NWPP at the request of foreign law enforcement agencies or the International Criminal Court.

Section 11 establishes a register of participants who are or who have been in the NWPP. The register contains information related to each participant, including the person’s name, new identity, address and details of any offences for which the participant has been convicted (if applicable).

Sections 20 and 27 provide mechanisms to ensure that participants do not use their new identity to avoid civil or criminal liability.

Section 22, 22A and 22B create offences related to disclosure of information without lawful authority about Commonwealth, territory or state participants and create offences that apply to participants in the event that they disclose information related to the NWPP.

Section 24 safeguards the integrity of Commonwealth identity documents. It provides that identity documents for persons in state or territory witness protection programs will not be issued unless there is complementary legislation in place in the relevant state or territory and there are ministerial arrangements in place with the relevant state or territory related to the issue of Commonwealth identity documents.

Amendment to the Act and related matters

There have been no legislative amendments to the Act within the reporting period.

ADMINISTRATION OF THE NWPP

The AFP Commissioner administers the NWPP through the Witness Protection Committee and Coordinator Witness Protection. The Witness Protection Committee comprises the AFP Deputy Commissioner National Security, to whom a number of responsibilities are delegated, and two senior AFP officers, being the National Manager Protection and National Manager Serious and Organised Crime.

The Witness Protection Committee makes recommendations on the inclusion and exit of witnesses to and from the NWPP and on the conditions of their inclusion and exit. Coordinator Witness Protection is responsible for the day-to-day operations of the NWPP.
GENERAL OPERATIONS OF THE NWPP

The NWPP provides an environment in which participants are able to give evidence in criminal trials that involve a significant degree of criminality at both the Commonwealth and state levels without fear of retribution. The majority of participants in the NWPP have been accepted into the program because of their involvement as witnesses in prosecutions related to organised crime, large-scale importation of illegal drugs or corruption matters. A consideration of inclusion into the NWPP is that there are no other viable methods of protecting the witness.

Inclusion in the NWPP can entail an initial period of a restricted and arduous lifestyle for the participant/s due to strict security directions employed by the NWPP that are required to provide protection. This lifestyle generally relaxes in time with integration and self-sustainability of participants within a community. The issue of self-sustainability is a key factor regarding the length of time that participants remain on the program.

In the financial year ending 30 June 2013 the NWPP managed 24 active witness protection operations providing protection and assistance to 38 people.

There were two assessments conducted for inclusion into the NWPP, resulting in four persons joining the program. Two operations were concluded, resulting in three participants departing the NWPP.

The AFP’s role in law enforcement is at the national and international level, as well as the community policing level in the ACT. The ACT does not have a separate witness protection scheme and any witnesses who fall under the Witness Protection Act 1996 (ACT) are assessed for inclusion in the NWPP.

Any costs incurred as a result of this arrangement are subject to the policing arrangement between the AFP and the ACT Government.

INTEGRITY AND ACCOUNTABILITY OF THE NWPP

Safeguards in the Act assist in ensuring the integrity and accountability of the NWPP are maintained. AFP employees deployed to the NWPP either hold or occupy designated positions which have national security clearance to the level of Top Secret.

Members of Witness Protection are subject to AFP anti-corruption strategies which include drug testing in accordance with section 40M of the Australian Federal Police Act 1979.

The NWPP is subject to the AFP Governance Instrument Framework, which includes auditing of financial and performance management processes and compliance with the Act.

Coordinator Witness Protection presents applications for the placement of persons in the NWPP to the Witness Protection Committee. Officers investigating the criminal matters to which the protection and assistance of the witness relates, as well as those Witness Protection members preparing submissions to the committee, are not involved in the decision-making process for that person’s inclusion in the NWPP. This separation of responsibilities assists in ensuring that decisions are made independently of operational considerations.
In deciding whether to include a witness in the NWPP, the Commissioner must consider:

- whether the witness has a criminal record and whether that record indicates a risk to the public if the witness is included in the NWPP
- whether there are any viable alternative methods of protecting the witness
- any psychological or psychiatric examination which has been conducted to determine the witness’s suitability for inclusion in the NWPP
- the nature of the perceived danger to the witness.

A person will not be included in the NWPP unless he or she has signed a memorandum of understanding setting out the basis of his or her participation.

The Commissioner’s powers under sections 6, 8, 14, 16, 18, 20, 27, 27A and subsections 12(2) and (3) may only be delegated to the position of Deputy Commissioner of the AFP. The Commissioner’s powers and functions under subsections 13(5) and (7) may only be delegated to a Deputy Commissioner or Assistant Commissioner (or a person holding an equivalent or higher rank) of the AFP.

A participant may be removed from the NWPP or protection and assistance may be terminated where:

- the participant deliberately breaches a term or terms of the memorandum of understanding
- the participant has knowingly given information to the Commissioner that is false or misleading in a material particular
- the integrity of the NWPP is likely to be compromised by a participant’s conduct or threatened conduct, or
- due to the passage of time and the successful relocation and integration of a witness into a new community, he or she is no longer in a high-risk category.

The participant will be advised of any such decision before protection or assistance is withdrawn. Protection and assistance under the NWPP must, however, be terminated if the participant requests termination in writing pursuant to section 18 of the Act.

Section 27 was included in the Act as a result of concerns in 1994 of the Senate Standing Committee on Legal and Constitutional Affairs before the legislation was enacted. That committee believed that the course of justice might be affected by the inability of an interested party to cross-examine a witness with a new identity about his or her prior convictions for the purpose of testing his or her credibility.

Section 27 provides that, if a participant (or a former participant) with a new identity is to be a witness in a criminal proceeding using that new identity and the person has a criminal record under his or her former identity, the person must notify the Commissioner that he or she will be a witness in the proceeding. The Commissioner may then take any action he or she considers appropriate in the circumstances, including disclosing to the court, the prosecutor and the accused person or that person’s legal representative the criminal record of the participant or former participant.

The Commissioner made no disclosures under section 27 during the reporting period.
COMPLAINTS/REVIEW OF DECISIONS

As the protection of information related to participants in the NWPP is of paramount concern, decisions made under the Act are not subject to the Administrative Decisions (Judicial Review) Act 1977.

AFP officers administering the NWPP are subject to the same obligations as other members of the AFP. If a complaint is received, it will be dealt with in accordance with the Australian Federal Police Act 1979. Complaints against officers may also be the subject of investigation by the Commonwealth Ombudsman under the Ombudsman Act 1976.

To facilitate the investigation of such complaints, the Ombudsman has a right of access to the relevant NWPP documents. The Act enables participants, former participants or persons who have or are undergoing assessment for inclusion in the NWPP to make disclosures for the purposes of making a complaint or to provide information to the Ombudsman under either the Ombudsman Act 1976 or the Australian Federal Police Act 1979 and to the Integrity Commissioner under the Law Enforcement Integrity Commissioner Act 2006.


Subsection 18(3) of the Act provides for a participant to apply to the Commissioner to review a decision by the Deputy Commissioner to remove that person from the NWPP. This application must be submitted within 28 days of the decision.

Subsection 19(3) of the Act provides for a participant to apply to the Commissioner to review a decision by the Deputy Commissioner to restore the original identity of that person. This application must be submitted within 10 days of the decision.

In the financial year 2012–13 the Commissioner was not required to review any decisions made by the Deputy Commissioner to remove a person from the NWPP involuntarily or to restore a person’s former identity.

PERFORMANCE AND EFFECTIVENESS OF THE NWPP

There have previously been attempts made to locate and identify participants by entities that could compromise the security of those participants. There were no recorded instances of direct physical attack on any participant in the NWPP in the reporting period.

Section 28 of the Act protects participants’ identities during court proceedings. Where the identity of such a participant is in issue or may be disclosed during court proceedings the court must, unless it considers it is not in the interest of justice to do so, hold in private that part of the proceedings that relates to the identity of the participant. The court must also make such orders that relate to the suppression of publication of the evidence given before it to ensure that the matter referred to is not made public where that publicity may compromise the security of the witness. During the reporting period no suppression orders were required.

AFP Witness Protection members are required to undertake the Skills Maintenance Training Program each year to maintain and enhance operational witness protection skills and performance.
COMPLEMENTARY WITNESS PROTECTION LEGISLATION

Section 24 of the Act provides that once 12 months have elapsed since commencement of the Act, Commonwealth identity documents must not be issued for a person who is on a state or territory witness protection program unless there is a complementary witness protection law in force in the state or territory and there is an arrangement in force between the Commonwealth minister and the relevant state or territory minister. Commonwealth identity documents are defined to include passports, tax file numbers or other prescribed documents (no other documents are currently prescribed). The purpose of section 24 is to protect the integrity of key Commonwealth documents which are needed in order for witnesses to establish new identities.

All jurisdictions have enacted complementary legislation, which has been declared ‘complementary witness protection law’ under section 3 of the Act and signed section 24 arrangements are in place with the exception of Tasmania and the Northern Territory.

INCLUSION OF FOREIGN NATIONALS OR RESIDENTS IN THE NWPP

Under sections 10 and 10A of the Act, foreign nationals or residents can be considered for inclusion in the NWPP at the request of an appropriate authority of a foreign country (the agency) or the International Criminal Court. Reciprocal arrangements exist with some foreign law enforcement agencies, providing an avenue for approved authorities and the NWPP to facilitate security arrangements and relocation of witnesses outside of Australia.

Consideration for the inclusion of foreign witnesses in the NWPP is a process involving the Minister for Home Affairs and Justice and the AFP Commissioner. If the Minister is satisfied that the agency or International Criminal Court has provided all material necessary to support the request and that it is appropriate in all the circumstances, the Minister will refer that request to the Commissioner.

If the Commissioner decides that the witness is suitable for inclusion in the NWPP and the Minister, after considering a report from the Commissioner recommending inclusion of the witness in the NWPP, also decides that it is appropriate in all the circumstances that the witness be included in the NWPP, the Commissioner is to include that person in the NWPP provided that two further conditions are satisfied:

1. that the person has been granted a visa for entry to Australia
2. that the Commissioner has entered an arrangement (which includes the foreign authority paying the costs associated with providing protection for the nominated person and any associated persons) with the foreign authority for the purpose of making services under the NWPP available to that foreign authority.

During the reporting period the AFP provided information to foreign law enforcement agencies regarding the operation and application processes of the NWPP.

Details of the nature or origin of these inquiries or the actual movement of witnesses into or out of Australia or arrangements entered into between Australia and other governments cannot be reported without the possibility of compromising either the safety of the individuals concerned or the integrity of the NWPP.

RELOCATION OF AUSTRALIAN WITNESSES OVERSEAS

If it is considered necessary to relocate witnesses overseas (who are on either the NWPP or state or territory witness protection programs), the Australian Government is able to negotiate the relocation with the relevant foreign government.

Details of the actual movement of witnesses into or out of Australia cannot be reported without the possibility of compromising either the safety of the individuals concerned or the integrity of the NWPP. The movement of witnesses into or out of Australia remains an element of the NWPP.

FINANCE

The NWPP is administered and operated by the AFP. Basic administration costs and the base salaries of members and staff members involved in witness protection activities are met from within the AFP budget.

Other agencies with witnesses in the NWPP are, by arrangement with the AFP, responsible for costs, including those related to the security and subsistence needs of their witness and any operational expenses incurred by AFP Witness Protection.

The AFP is responsible for costs associated with AFP-sponsored witnesses in the NWPP.

A table of costs for the previous 10 financial years related to the NWPP is in Table 2. Expenditure for earlier years is recorded in the 2011–12 annual report. The figures do not include the salaries and overhead costs of administering the NWPP. Figures provided are as at 30 June 2013.

TABLE 1. NATIONAL WITNESS PROTECTION PROGRAM: EXPENDITURE, 1 JULY 2012 – 30 JUNE 2013

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>AFP expenditure on NWPP</td>
<td>$1,179,698.65</td>
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<tr>
<td>Less amounts recovered</td>
<td>($705,164.08)</td>
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<tr>
<td>Total AFP expenditure on NWPP</td>
<td>$474,534.57</td>
</tr>
</tbody>
</table>

TABLE 2. TOTAL EXPENDITURE (BEFORE COSTS WERE RECOVERED) IN PREVIOUS YEARS

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 July 2011 – 30 June 2012</td>
<td>$899,942.79</td>
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<tr>
<td>1 July 2010 – 30 June 2011</td>
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<td>1 July 2007 – 30 June 2008</td>
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<td>1 July 2006 – 30 June 2007</td>
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<tr>
<td>1 July 2003 – 30 June 2004</td>
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<tr>
<td>1 July 2002 – 30 June 2003</td>
<td>$647,524.25</td>
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