

Authorised Version No. 017
Crimes (Assumed Identities) Act 2004

No. 15 of 2004

Authorised Version incorporating amendments as at
1 July 2014

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purposes	1
2 Commencement	1
3 Definitions	2
PART 2—AUTHORITY FOR ASSUMED IDENTITY	9
4 Application for authority to acquire or use assumed identity	9
5 Determination of applications	10
6 Form of authority	12
7 Period of authority	14
8 Variation or cancellation of authority	14
9 Yearly review of authority	15
10 Making entries in register of births, deaths and marriages	15
11 Cancellation of authority affecting entry in register of births, deaths and marriages	16
12 Cancelling entries in register of births, deaths and marriages	17
PART 3—EVIDENCE OF ASSUMED IDENTITY	18
13 Request for evidence of assumed identity	18
14 Government issuing agencies to comply with request	18
15 Non-government issuing agencies may comply with request	18
16 Cancellation of evidence of assumed identity	19
17 Protection from criminal liability—officers of issuing agencies	19
18 Indemnity for issuing agencies and officers	19
PART 4—EFFECT OF AUTHORITY	20
19 Assumed identity may be acquired and used	20
20 Protection from criminal liability—authorised persons	20
21 Indemnity for authorised persons	21
22 Particular qualifications	21
23 Effect of being unaware of variation or cancellation of authority	22

<i>Section</i>	<i>Page</i>
PART 5—MUTUAL RECOGNITION	23
24 Requests to a participating jurisdiction for evidence of assumed identity	23
25 Requests from a participating jurisdiction for evidence of assumed identity	23
26 Directions from a participating jurisdiction to cancel evidence of assumed identity	24
27 Indemnity for issuing agencies and officers	24
28 Application of this Act to authorities under corresponding laws	25
PART 6—COMPLIANCE AND MONITORING	26
Division 1—Misuse of assumed identity and information	26
29 Misuse of assumed identity	26
30 Disclosing information about assumed identity	27
Division 2—Reporting and record-keeping	28
31 Reports about authorities for assumed identities etc.	28
32 Record keeping	30
33 Audit of records	30
PART 7—GENERAL	32
34 Delegation of chief officer's functions	32
34A Deputy Commissioners of Victoria Police	33
35 Regulation-making power	33
36 Transitional provisions	34
37 Transitional provisions— Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012	34
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	37
1. General Information	37
2. Table of Amendments	38
3. Explanatory Details	39

Authorised Version No. 017
Crimes (Assumed Identities) Act 2004

No. 15 of 2004

Authorised Version incorporating amendments as at
1 July 2014

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

S. 1 (Heading)
substituted by
No. 83/2012
s. 34(1).

(1) The main purposes of this Act are—

S. 1(1)
substituted by
Nos 87/2005
s. 3, 83/2012
s. 34(2).

(a) to facilitate, for law enforcement or security purposes, investigations, intelligence gathering and other related activities, including activities extending beyond Victoria; and

(b) to enable the safe and effective exercise of functions in administering the Victorian witness protection program.

(2) The main ways in which those purposes are to be achieved under this Act include—

S. 1(2)
amended by
No. 83/2012
s. 34(3).

(a) providing for the lawful acquisition and use of assumed identities; and

(b) facilitating mutual recognition of things done in relation to assumed identities under corresponding laws.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Definitions

In this Act—

acquire an assumed identity, means acquire evidence of the identity and includes taking steps towards acquiring evidence of the identity;

agency means—

- (a) an issuing agency; or
- (b) a law enforcement agency;

Australian Crime Commission means Australian Crime Commission established by the Australian Crime Commission Act 2002 of the Commonwealth;

authorised civilian means a person (other than a law enforcement officer) who is authorised under an authority to acquire or use an assumed identity;

authorised officer means a law enforcement officer who is authorised under an authority to acquire or use an assumed identity;

authorised person means—

- (a) an authorised civilian; or
- (b) an authorised officer;

authority means an authority granted under section 5 to acquire and use an assumed identity, including the authority as varied under section 8;

chief officer—

- (a) of a law enforcement agency, means—
 - (i) in relation to Victoria Police—the Chief Commissioner of Police;

S. 3 def. of
chief officer
amended by
Nos 63/2004
s. 17(b),
82/2012
s. 82(3).

(ii) in relation to the Australian Crime Commission—the Chief Executive Officer of the Australian Crime Commission;

(iii) in relation to the IBAC—the Commissioner;

(b) of an issuing agency—means the chief executive officer (however described) of the agency;

Commissioner has the same meaning as it has in the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3 def. of *Commissioner* inserted by No. 82/2012 s. 82(2).

conduct includes any act or omission;

corresponding authorised civilian means a person (other than a corresponding authorised officer) who is authorised, under a corresponding authority issued to a corresponding authorised officer, to acquire or use an assumed identity;

S. 3 def. of *corresponding authorised civilian* inserted by No. 87/2005 s. 4.

corresponding authorised officer means an officer of a corresponding participating agency who is authorised under a corresponding authority to acquire or use an assumed identity;

S. 3 def. of *corresponding authorised officer* inserted by No. 87/2005 s. 4.

corresponding authority means—

- (a) an authority under a corresponding law to acquire or use an assumed identity in this jurisdiction; or
- (b) an authority under a corresponding law to request the production of evidence of an assumed identity;

Crimes (Assumed Identities) Act 2004
No. 15 of 2004
Part 1—Preliminary

s. 3

S. 3 def. of
corresponding chief officer
inserted by
No. 87/2005
s. 4.

corresponding chief officer of a corresponding participating agency, means the person who is the chief officer (within the meaning of the corresponding law) of the corresponding participating agency;

S. 3 def. of
corresponding participating agency
inserted by
No. 87/2005
s. 4.

corresponding law means a law of another jurisdiction that is declared by the regulations to correspond to this Act;

corresponding participating agency means a body in a participating jurisdiction officers of which, under the corresponding law of that jurisdiction, may be granted a corresponding authority, other than a body that is declared by the regulations not to be a corresponding participating agency for that jurisdiction;

S. 3 def. of
corresponding supervisor
inserted by
No. 87/2005
s. 4.

corresponding supervisor of a corresponding authorised civilian, means a person who supervises or is to supervise the acquisition or use of an assumed identity by the corresponding authorised civilian;

criminal activity means conduct that involves the commission of an offence by one or more persons;

S. 3 def. of
Director
inserted by
No. 63/2004
s. 17(a),
amended by
No. 34/2008
s. 143(Sch. 2
item 4.1(a)),
repealed by
No. 82/2012
s. 82(1).

* * * * *

doing a thing, includes failing to do the thing;

evidence of identity, means a document or other thing that evidences or indicates, or can be used to evidence or indicate, a person's identity or any aspect of a person's identity;

government issuing agency, in relation to an authority, means any of the following named in the authority that issues evidence of identity—

- (a) a person or body (whether incorporated or not) that performs any function of the government of this jurisdiction; or
- (b) a person or body (whether incorporated or not) prescribed by the regulations for the purposes of this definition;

IBAC means the Independent Broad-based Anti-corruption Commission established under the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3 def. of **IBAC** inserted by No. 82/2012 s. 82(2).

issuing agency means—

- (a) a government issuing agency; or
- (b) a non-government issuing agency;

jurisdiction means the Commonwealth or a State or Territory of the Commonwealth;

law enforcement agency means the following agencies—

- (a) Victoria Police;
- (b) the Australian Crime Commission;
- (c) the IBAC;

S. 3 def. of **law enforcement agency** amended by Nos 63/2004 s. 17(c), 82/2012 s. 82(4).

S. 3 def. of *law enforcement officer* substituted by No. 63/2004 s. 17(d), amended by Nos 82/2012 s. 82(5), 37/2014 s. 10(Sch. item 37.1(b)).

law enforcement officer means—

- (a) in relation to Victoria Police—
 - (i) a police officer; or
 - (ii) a person who is seconded to Victoria Police, including (but not limited to) a member of the police force or police service (however described) of another jurisdiction;
- (b) in relation to the Australian Crime Commission—
 - (i) a member of staff of the Australian Crime Commission; or
 - (ii) a person who is seconded to the Australian Crime Commission, including (but not limited to) a member of the police force or police service (however described) of another jurisdiction;
- (c) in relation to the IBAC—a prescribed IBAC Officer;

S. 3 def. of *member* repealed by No. 37/2014 s. 10(Sch. item 37.1(c)).

* * * * *

non-government issuing agency, in relation to an authority, means a person, body or entity (other than a government issuing agency) named in the authority that issues evidence of identity;

Crimes (Assumed Identities) Act 2004
No. 15 of 2004
Part 1—Preliminary

s. 3

* * * * *

S. 3 def. of *Office of Police Integrity* inserted by No. 63/2004 s. 17(a), amended by No. 34/2008 s. 143(Sch. 2 item 4.1(b)), repealed by No. 82/2012 s. 82(1).

officer of an agency, includes a person employed or engaged in the agency;

participating jurisdiction means a jurisdiction in which a corresponding law is in force;

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3 def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 37.1(a)).

prescribed IBAC Officer means a sworn IBAC Officer within the meaning of section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** who holds a position, or is a member of a class, that is prescribed by the regulations for the purposes of this definition;

S. 3 def. of *prescribed IBAC Officer* inserted by No. 82/2012 s. 82(2).

* * * * *

S. 3 def. of *prescribed member of staff of the Office of Police Integrity* inserted by No. 63/2004 s. 17(a), repealed by No. 82/2012 s. 82(1).

Crimes (Assumed Identities) Act 2004
No. 15 of 2004
Part 1—Preliminary

s. 3

supervisor of an authorised civilian—means the law enforcement officer who supervises or is to supervise the acquisition or use of an assumed identity by the authorised civilian;

this jurisdiction means Victoria;

use an assumed identity, includes representing (whether expressly or impliedly, or by saying or doing something) the identity to be real when it is not;

Victoria Police has the same meaning as in the **Victoria Police Act 2013**;

S. 3 def. of *Victoria Police* amended by No. 83/2012 s. 35(a), substituted by No. 37/2014 s. 10(Sch. item 37.1(d)).

Victoria Police employee has the same meaning as in the **Victoria Police Act 2013**;

S. 3 def. of *Victoria Police employee* inserted by No. 37/2014 s. 10(Sch. item 37.1(a)).

Victorian witness protection program has the same meaning as it has in the **Witness Protection Act 1991**.

S. 3 def. of *Victorian witness protection program* inserted by No. 83/2012 s. 35(b).

PART 2—AUTHORITY FOR ASSUMED IDENTITY

4 Application for authority to acquire or use assumed identity

- (1) A law enforcement officer of a law enforcement agency may apply to the chief officer of the agency for an authority for the law enforcement officer or any other person to do either or both of the following—
 - (a) acquire an assumed identity;
 - (b) use an assumed identity.
- (2) A separate application must be made in respect of each assumed identity to be acquired or used.
- (3) An application—
 - (a) must be in writing in the form approved by the chief officer; and
 - (b) must contain—
 - (i) the name of the applicant; and
 - (ii) the name of the person to be authorised to acquire or use an assumed identity (if not the applicant); and
 - (iii) if the person referred to in subparagraph (ii) is not a law enforcement officer—the name and rank or position of the person proposed to be appointed as supervisor and an explanation of why it is necessary for a person who is not a law enforcement officer to acquire or use the assumed identity; and
 - (iv) details of the proposed assumed identity; and
 - (v) reasons for the need to acquire or use an assumed identity; and

S. 4(3)(b)(vi)
substituted by
No. 83/2012
s. 36.

(vi) if the assumed identity is to be used in an investigation or for intelligence-gathering, details of the investigation or intelligence-gathering exercise (to the extent known); and

S. 4(3)(b)(via)
inserted by
No. 83/2012
s. 36.

(via) if the assumed identity is to be used to ensure the effective and safe exercise of functions in administering the Victorian witness protection program, details of the functions concerned; and

(vii) details of any issuing agencies and the types of evidence to be issued by them; and

(viii) details of any application to be made for an order under section 10 (making entries in register of births, deaths or marriages) in respect of the assumed identity.

(4) The chief officer may require the applicant to furnish any additional information concerning the application that is necessary for the chief officer's proper consideration of the application.

Note

The chief officer may delegate functions under this section—see section 34.

5 Determination of applications

(1) After considering an application for an authority to acquire or use an assumed identity, and any additional information under section 4(4), the chief officer—

(a) may grant an authority to acquire or use the assumed identity, either unconditionally or subject to conditions; or

(b) may refuse the application.

(2) An authority to acquire or use an assumed identity may not be granted unless the chief officer is satisfied on reasonable grounds—

(a) that the assumed identity is necessary for the purposes of—

S. 5(2)(a) substituted by No. 83/2012 s. 37.

(i) an investigation or intelligence-gathering in relation to criminal activity; or

(ii) enabling police officers to exercise their functions in administering the Victorian witness protection program and ensuring their safety while doing so; and

S. 5(2)(a)(ii) amended by No. 37/2014 s. 10(Sch. item 37.2(a)).

(ab) in relation to an application for an assumed identity that is to be used to ensure the effective and safe exercise of functions in administering the Victorian witness protection program, that the person to be authorised is—

S. 5(2)(ab) inserted by No. 83/2012 s. 37.

(i) a police officer; or

S. 5(2)(ab)(i) substituted by No. 37/2014 s. 10(Sch. item 37.2(b)).

(ii) a Victoria Police employee; and

S. 5(2)(ab)(ii) substituted by No. 37/2014 s. 10(Sch. item 37.2(b)).

(b) that the risk of abuse of the assumed identity by the authorised person is minimal; and

(c) if the application is for authorisation of an assumed identity for a person who is not a law enforcement officer—that it would be impossible or impracticable in the circumstances for a law enforcement officer to acquire or use the assumed identity for the purpose sought.

S. 5(4)
substituted by
No. 63/2004
s. 18.

S. 5(4)(c)
amended by
No. 82/2012
s. 83.

- (3) If an authority is granted for an authorised civilian, the chief officer must appoint a law enforcement officer of the law enforcement agency to supervise the acquisition or use of the assumed identity by the authorised civilian.
- (4) The law enforcement officer appointed as supervisor must be—
 - (a) of or above the rank of sergeant, in the case of Victoria Police;
 - (b) of or above the rank of senior investigator, in the case of the Australian Crime Commission;
 - (c) a person who holds a position, or is a member of a class, that is prescribed by the regulations, in the case of the IBAC.
- (5) An authority may also authorise any one or more of the following—
 - (a) an application for an order for an entry in a register of births, deaths or marriages under section 10 or a corresponding law;
 - (b) a request under section 13 or 24;
 - (c) the use of an assumed identity in a participating jurisdiction.
- (6) A separate authority is required for each assumed identity.

Note

The chief officer may delegate functions under this section—see section 34.

6 Form of authority

- (1) An authority must be—
 - (a) in writing in the form approved by the chief officer; and
 - (b) signed by the person granting it.

-
- (2) An authority must state the following—
- (a) the name of the person granting the authority; and
 - (b) the date of the authority; and
 - (c) details of the assumed identity authorised; and
 - (d) details of any evidence of the assumed identity that may be acquired under the authority; and
 - (e) the conditions (if any) to which the authority is subject; and
 - (f) why the authority is granted; and
 - (g) if the authority relates to an authorised officer—the name of the officer; and
 - (h) if the authority relates to an authorised civilian—
 - (i) the name of the authorised civilian; and
 - (ii) the name of his or her supervisor under the authority; and
 - (iii) the period for which the authority will remain in force, being a period not exceeding 3 months.
- (3) The authority must also state the following—
- (a) each issuing agency to which a request may be made under section 13 or 24; and
 - (b) whether it authorises an application for an order for an entry in a register of births, deaths or marriages under section 10 or a corresponding law; and

- (c) each participating jurisdiction in which an assumed identity may be used.

Note

The chief officer may delegate functions under this section—see section 34.

7 Period of authority

- (1) An authority for an authorised officer remains in force until cancelled under section 8.
- (2) An authority for an authorised civilian remains in force until the end of the period specified in the authority in accordance with section 6(2)(h)(iii), unless the authority is cancelled sooner under section 8.

8 Variation or cancellation of authority

- (1) The chief officer who grants an authority—
 - (a) may vary or cancel the authority at any time; and
 - (b) must cancel the authority if the chief officer is satisfied (on a review under section 9 or otherwise) that use of the assumed identity is no longer necessary.
- (2) The chief officer must give written notice of the variation or cancellation to—
 - (a) the authorised person to whom it relates; and
 - (b) if the authorised person is an authorised civilian—the authorised person's supervisor.
- (3) The notice must state why the authority is varied or cancelled.
- (4) The variation or cancellation takes effect—
 - (a) on the day the written notice is given to the authorised person; or

- (b) if a later date of effect is stated in the notice—on the day stated.

Note

The chief officer may delegate functions under this section—see section 34.

9 Yearly review of authority

- (1) The chief officer must periodically review each authority granted by the chief officer or a delegate of the chief officer under this Act.
- (2) A review of an authority under this section is to be conducted at least once every 12 months.
- (3) The purpose of a review is to determine whether use of the assumed identity under the authority is still necessary.
- (4) If the chief officer is satisfied on a review that use of the assumed identity under the authority is no longer necessary, he or she must cancel the authority under section 8.
- (5) If the chief officer is satisfied on a review that use of the assumed identity under the authority is still necessary, he or she must record his or her opinion, and the reasons for it, in writing.

Note

The chief officer may delegate functions under this section—see section 34.

10 Making entries in register of births, deaths and marriages

- (1) The Supreme Court may order the Registrar of Births, Deaths and Marriages to make an entry in the Register under the **Births, Deaths and Marriages Registration Act 1996** in relation to the acquisition of an assumed identity under an authority or corresponding authority.

S. 10(2)(a)(ii)
substituted by
No. 87/2005
s. 5(1)(a).

- (2) The Court may make the order only—
- (a) on application by—
 - (i) the chief officer of a law enforcement agency; or
 - (ii) the corresponding chief officer of a corresponding participating agency; and
 - (b) if satisfied the order is justified having regard to the nature of the activities undertaken or to be undertaken by the officer or person under the authority or corresponding authority.
- (3) The application must be heard in closed court.
- (4) The Registrar of Births, Deaths and Marriages must give effect to an order—
- (a) within the period stated in the order; or
 - (b) if no period is stated in the order—within 28 days after the day the order is made.

Note

The chief officer may delegate functions under this section—see section 34.

11 Cancellation of authority affecting entry in register of births, deaths and marriages

- (1) This section applies if—
- (a) the chief officer cancels an authority for an assumed identity; and
 - (b) there is an entry in relation to that identity—
 - (i) in the Register under the **Births, Deaths and Marriages Registration Act 1996** because of an order under section 10; or

-
- (ii) in a register of births, deaths or marriages in a participating jurisdiction because of an order under a corresponding law of the jurisdiction.
- (2) If subsection (1)(b)(i) applies, the chief officer must apply for an order under section 12 within 28 days after the day the authority is cancelled.
- (3) If subsection (1)(b)(ii) applies, the chief officer must apply for an order under the corresponding law to cancel the entry within 28 days after the day the authority is cancelled.

12 Cancelling entries in register of births, deaths and marriages

- (1) The Supreme Court may order the Registrar of Births, Deaths and Marriages to cancel an entry that has been made in the Register under the **Births, Deaths and Marriages Registration Act 1996** under an order under section 10.
- (2) The Court may make the order only on application by the chief officer or corresponding chief officer who applied for the order under section 10.
- (3) The application must be heard in closed court.
- (4) The Registrar of Births, Deaths and Marriages must give effect to the order within 28 days after the day the order is made.

S. 12(2)
amended by
No. 87/2005
s. 5(1)(b).

PART 3—EVIDENCE OF ASSUMED IDENTITY

13 Request for evidence of assumed identity

- (1) This section applies if an authority granted under section 5 authorises a request under this section.
- (2) The chief officer who grants the authority may request the chief officer of an issuing agency stated in the authority to—
 - (a) produce evidence of an assumed identity in accordance with the authority; and
 - (b) give evidence of the assumed identity to the authorised person named in the authority.
- (3) The request must state a reasonable period for compliance with the request.
- (4) A request cannot be made under this section for an entry in the Register under the **Births, Deaths and Marriages Registration Act 1996**.
- (5) In this section—

evidence means evidence similar to that ordinarily produced or given by the issuing agency.

Note

The chief officer may delegate functions under this section—see section 34.

14 Government issuing agencies to comply with request

The chief officer of a government issuing agency who receives a request under section 13 must comply with the request within the reasonable period stated in the request.

15 Non-government issuing agencies may comply with request

The chief officer of a non-government issuing agency who receives a request under section 13 may comply with the request.

16 Cancellation of evidence of assumed identity

- (1) The chief officer of an issuing agency who produces evidence of an assumed identity under this Part must cancel the evidence if directed in writing to do so by the chief officer who requested the evidence.
- (2) In this section—
cancel includes delete or alter an entry in a record of information.

17 Protection from criminal liability—officers of issuing agencies

The chief officer, or an officer, of an issuing agency (whether government or non-government) who does something that, apart from this section, would be an offence, is not criminally responsible for the offence if the thing is done to comply with a request under section 13 or a direction under section 16.

18 Indemnity for issuing agencies and officers

- (1) This section applies if the chief officer of a law enforcement agency makes a request under section 13 or gives a direction under section 16 to the chief officer of an issuing agency, whether government or non-government.
- (2) The law enforcement agency must indemnify the issuing agency, or an officer of the agency, for any liability incurred by the agency or officer (including reasonable costs) if—
 - (a) the liability is incurred because of something done by the agency or officer to comply with the request or direction in the course of duty; and
 - (b) any requirements prescribed under the regulations have been met.

PART 4—EFFECT OF AUTHORITY

19 Assumed identity may be acquired and used

- (1) An authorised officer may acquire or use (or both) an assumed identity if the acquisition or use (or both) are—
 - (a) in accordance with an authority; and
 - (b) in the course of duty.
- (2) An authorised civilian may acquire or use (or both) an assumed identity if the acquisition or use (or both) are in accordance with—
 - (a) an authority; and
 - (b) any direction by the person's supervisor under the authority.

20 Protection from criminal liability—authorised persons

If an authorised person does something (whether in this jurisdiction or elsewhere) that, apart from this section, would be an offence, the officer or person is not criminally responsible for the offence if—

- (a) the thing is done in the course of acquiring or using an assumed identity in accordance with an authority; and
- (b) the thing is done—
 - (i) in the case of an authorised officer—in the course of his or her duty; or
 - (ii) in the case of an authorised civilian—in accordance with any direction by his or her supervisor under the authority; and
- (c) doing the thing would not be an offence if the assumed identity were the person's real identity.

21 Indemnity for authorised persons

- (1) This section applies if the chief officer of a law enforcement agency grants an authority.
- (2) The law enforcement agency must indemnify the authorised person under the authority for any liability incurred by the person (including reasonable costs) because of something done by the person (whether in this jurisdiction or elsewhere) if—
 - (a) the thing is done in the course of acquiring or using an assumed identity in accordance with the authority; and
 - (b) the thing is done—
 - (i) in the case of an authorised officer—in the course of his or her duty; or
 - (ii) in the case of an authorised civilian—in accordance with any direction by his or her supervisor under the authority; and
 - (c) any requirements prescribed under the regulations have been met.

22 Particular qualifications

- (1) Sections 20 and 21 do not apply to anything done by an authorised person if—
 - (a) a particular qualification is needed to do the thing; and
 - (b) the person does not have that qualification.
- (2) Subsection (1) applies whether or not the person has acquired, as evidence of an assumed identity, a document that indicates that he or she has that qualification.

23 Effect of being unaware of variation or cancellation of authority

- (1) If an authority has been varied in a way that limits its scope, this Part continues to apply to the authorised person to whom it relates as if it had not been varied in that way, for as long as the person—
 - (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the variation.
 - (2) If an authority has been cancelled, this Part continues to apply to the authorised person to whom it related as if it had not been cancelled, for as long as the person—
 - (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.
 - (3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority if—
 - (a) the person is aware of a substantial risk that the authority has been varied or cancelled; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
-

PART 5—MUTUAL RECOGNITION

24 Requests to a participating jurisdiction for evidence of assumed identity

- (1) This section applies if an authority granted under section 5 authorises a request under this section.
- (2) The chief officer who grants the authority may request the chief officer of an issuing agency of a participating jurisdiction stated in the authority to—
 - (a) produce evidence of the assumed identity in accordance with the authority; and
 - (b) give evidence of the assumed identity to the authorised person named in the authority.

Note

The chief officer may delegate functions under this section—see section 34.

25 Requests from a participating jurisdiction for evidence of assumed identity

- (1) This section applies if—
 - (a) an authority under a corresponding law authorises a request for—
 - (i) the production of evidence of an assumed identity in this jurisdiction; and
 - (ii) the giving of evidence of the assumed identity to the authorised person named in the authority; and
 - (b) the request is made to the chief officer of an issuing agency of this jurisdiction; and
 - (c) the request states a reasonable period for compliance with the request.

- (2) The chief officer of a government issuing agency who receives the request must comply with the request within the reasonable period stated in the request.
- (3) The chief officer of a non-government issuing agency who receives the request may comply with the request.

26 Directions from a participating jurisdiction to cancel evidence of assumed identity

- (1) The chief officer of an issuing agency who produces evidence of an assumed identity because of a request mentioned in section 25 must cancel the evidence if directed in writing to do so by the chief officer who made the request.
- (2) In this section—
cancel includes delete or alter an entry in a record of information.

27 Indemnity for issuing agencies and officers

- (1) This section applies if the chief officer of a law enforcement agency makes a request to the chief officer of an issuing agency of a participating jurisdiction under section 24.
- (2) The law enforcement agency must indemnify the issuing agency and any officer of the issuing agency, for any liability incurred by the agency or officer (including reasonable costs) if—
 - (a) the liability is incurred because of something done (whether in this jurisdiction or elsewhere) by the agency or officer to comply with the request in the course of duty; and
 - (b) any requirements prescribed under the regulations have been met.

28 Application of this Act to authorities under corresponding laws

S. 28
amended by
No. 87/2005
s. 5(2) (LA
s. 39B(1)).

- (1) The following provisions apply to anything done in this jurisdiction in relation to a corresponding authority as if it were an authority granted under section 5—
- (a) section 17 (Protection from criminal liability—officers of issuing agencies);
 - (b) section 19 (Assumed identity may be acquired and used);
 - (c) section 20 (Protection from criminal liability—authorised persons);
 - (d) section 22 (Particular skills or qualifications);
 - (e) section 23 (Effect of being unaware of variation or cancellation of authority);
 - (f) section 29 (Misuse of assumed identity);
 - (g) section 30 (Disclosing information about assumed identity).
- (2) The provisions referred to in subsection (1) apply to anything done in this jurisdiction in relation to a corresponding authority as if a reference in those provisions—
- (a) to an authorised officer were a reference to a corresponding authorised officer;
 - (b) to an authorised civilian were a reference to a corresponding authorised civilian;
 - (c) to an authorised person were a reference to a corresponding authorised officer or corresponding authorised civilian;
 - (d) to a supervisor were a reference to a corresponding supervisor.

S. 28(2)
inserted by
No. 87/2005
s. 5(2).

PART 6—COMPLIANCE AND MONITORING

Division 1—Misuse of assumed identity and information

29 Misuse of assumed identity

- (1) An authorised officer is guilty of an offence if—
- (a) he or she intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by his or her authority; and
 - (b) he or she knows that, or is reckless as to whether, the acquisition or use is not—
 - (i) in accordance with his or her authority; or
 - (ii) in the course of duty.

Penalty: Imprisonment for 2 years.

- (2) An authorised civilian is guilty of an offence if—
- (a) he or she intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by his or her authority; and
 - (b) he or she knows that, or is reckless as to whether, the acquisition or use is not in accordance with—
 - (i) his or her authority; or
 - (ii) the directions of his or her supervisor under the authority.

Penalty: Imprisonment for 2 years.

30 Disclosing information about assumed identity

- (1) A person is guilty of an offence if—
- (a) the person intentionally, knowingly or recklessly discloses any information; and
 - (b) the person knows that, or is reckless as to whether, the information reveals, or is likely to reveal, that an assumed identity acquired or used by another person is not the other person's real identity; and
 - (c) the person knows that, or is reckless as to whether, the disclosure is not made—
 - (i) in connection with the administration or execution of this Act or a corresponding law; or
 - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this Act or a corresponding law or of any report of any such proceedings; or
 - (iii) in accordance with any requirement imposed by law.

Penalty: Imprisonment for 2 years.

- (2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to—
 - (i) endanger the health or safety of any person; or
 - (ii) prejudice the effective conduct of an investigation or intelligence-gathering in relation to criminal activity; or

S. 30(2)(a)
amended by
No. 87/2005
s. 5(3),
substituted by
No. 83/2012
s. 38(1).

S. 30(2)(b)(ii)
amended by
Nos 87/2005
s. 5(3),
83/2012
s. 38(2).

S. 30(2)(b)(iii)
inserted by
No. 83/2012
s. 38(3).

- (iii) prejudice the implementation of the Victorian witness protection program;
or
- (b) knows that, or is reckless as to whether, the disclosure of the information—
 - (i) endangers or will endanger the health or safety of any person; or
 - (ii) prejudices or will prejudice the effective conduct of an investigation or intelligence-gathering in relation to criminal activity; or
 - (iii) prejudices or will prejudice the implementation of the Victorian witness protection program.

Penalty: Imprisonment for 10 years.

- (3) An offence against subsection (2) is an indictable offence.
- (4) For the purposes of the **Freedom of Information Act 1982**, information referred to in subsection (1) is information of a kind to which section 38 of that Act applies.

Division 2—Reporting and record-keeping

31 Reports about authorities for assumed identities etc.

- (1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must submit a report to the Minister that includes the following information for the year—
 - (a) the number of authorities granted during the year; and

-
- (b) a general description of the activities undertaken by authorised persons when using assumed identities under this Act during the year; and
 - (c) the number of applications for authorities that were refused during the year; and
 - (d) a statement whether or not any fraud or other unlawful activity was identified by an audit under section 33 during the year; and
 - (e) any other information relating to authorities and assumed identities and the administration of this Act that the Minister considers appropriate.
- (2) The chief officer must advise the Minister of any information in the report that, in the chief officer's opinion, should be excluded from the report before the report is laid before Parliament because the information, if made public, could reasonably be expected to—
- (a) endanger a person's safety; or
 - (b) prejudice an investigation or prosecution; or
 - (c) compromise any law enforcement agency's operational activities or methodologies.
- (3) The Minister must—
- (a) exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2); and
 - (b) cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the day on which the Minister receives the report.

32 Record keeping

- (1) The chief officer of a law enforcement agency must cause appropriate records to be kept about the operation of this Act in respect of the agency.
- (2) The records must include the following, in respect of authorities granted, varied or cancelled under this Act in respect of the agency—
 - (a) the date on which an authority was granted, varied or cancelled and the name of the person who granted, varied or revoked it; and
 - (b) the name of the authorised person under the authority, together with details of the assumed identity to which the authority applies; and
 - (c) details of any request made to an issuing agency under section 13 (Request for evidence of assumed identity) in respect of the authority; and
 - (d) the general nature of the duties undertaken by the authorised person under the assumed identity; and
 - (e) general details of relevant financial transactions entered into using the assumed identity; and
 - (f) details of reviews of the authority under section 9.

33 Audit of records

- (1) The chief officer of a law enforcement agency must arrange for the records kept under section 32 for each authority in respect of the agency to be audited—
 - (a) at least once every 6 months while the authority is in force; and

-
- (b) at least once in the 6 months after the cancellation or expiry of the authority.
- (2) The audit is to be conducted by a person appointed by the chief officer.
- (3) The person appointed to conduct the audit—
- (a) may but need not be an officer of the law enforcement agency;
 - (b) must not be a person—
 - (i) who granted, varied or cancelled any of the authorities to which the records under section 32 relate; or
 - (ii) who is or was an authorised person under any of the authorities to which those records relate.
- (4) The results of an audit are to be reported to the chief officer.
-

PART 7—GENERAL

34 Delegation of chief officer's functions

- (1) Except as provided by this section (and despite any other Act or law to the contrary) the functions of a chief officer under this Act may not be delegated to any other person.
- (2) A chief officer may delegate to a senior officer of the law enforcement agency any of the chief officer's functions under this Act relating to the granting, variation and cancellation of authorities (including conducting reviews under section 9, making applications under section 10 or 12, or making requests under section 13 or 24).
- (3) No more than 4 delegations may be in force under this section at any one time in respect of any one law enforcement agency.
- (4) For the avoidance of doubt, this section prevails over section 19 of the **Victoria Police Act 2013** and section 32 of the **Independent Broad-based Anti-corruption Commission Act 2011**.

S. 34(4)
amended by
Nos 63/2004
s. 19(a),
34/2008
s. 143(Sch. 2
item 4.2),
82/2012
ss 84(1), 306,
37/2014
s. 10(Sch.
item 37.3(a)).

- (5) In this section—

senior officer means—

- (a) in relation to Victoria Police—a police officer of or above the rank of superintendent;
- (b) in relation to the Australian Crime Commission—
 - (i) the Director National Operations;
or
 - (ii) a Director; or

S. 34(5) def. of
senior officer
amended by
Nos 63/2004
s. 19(b)(c),
82/2012
s. 84(2),
37/2014
s. 10(Sch.
item 37.3(b)).

- (iii) the General Manager National Operations; or
 - (iv) a member of staff of the Australian Crime Commission who is an SES employee or acting SES employee (within the meaning of the Australian Crime Commission Act 2002 of the Commonwealth) and who holds a position that is prescribed by the regulations for the purposes of this definition;
- (c) in relation to the IBAC—an IBAC Officer who holds a position, or is a member of a class, that is prescribed for the purposes of this definition.

34A Deputy Commissioners of Victoria Police

A police officer who is a Deputy Commissioner appointed under section 21 of the **Victoria Police Act 2013** may exercise the powers and perform the functions of the Chief Commissioner of Police under this Act as if the Deputy Commissioner were the Chief Commissioner of Police.

S. 34A
inserted by
No. 37/2014
s. 10(Sch.
item 37.4).

Note

Paragraph (a)(i) of the definition of *chief officer* provides that the chief officer of a law enforcement agency means, in relation to Victoria Police, the Chief Commissioner of Police.

35 Regulation-making power

- (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

-
- (2) The regulations—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances.

36 Transitional provisions

- (1) An authority to use an assumed identity granted in accordance with the policies and procedures of Victoria Police to a member of Victoria Police that was in force immediately before the commencement day is taken, for the period referred to in subsection (2), to be an authority granted under this Act to use the assumed identity.
- (2) The period is from the start of the commencement day until the earlier of the following—
 - (a) the day on which cancellation of the authority under section 8 takes effect; or
 - (b) 6 months after the commencement day.
- (3) Nothing in subsection (1) prevents the law enforcement officer from applying for and being granted an authority under this Act in relation to the assumed identity.
- (4) An authority may be granted under this Act in relation to criminal activity occurring before, on or after the commencement day.
- (5) In this section—

commencement day means the day on which this section comes into operation.

37 Transitional provisions—Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012

- (1) On and from the commencement day, an authority to acquire or use an assumed identity granted by the Director or the Director's delegate to an

S. 37
inserted by
No. 82/2012
s. 85.

authorised officer continues in force despite the amendments to this Act by the **Integrity and Accountability Legislation Amendment Act 2012** if that authorised officer is employed by the IBAC on that day.

- (2) An authority referred to in subsection (1) is taken to be an authority granted by the Commissioner.
- (3) An authorised officer in respect of whom an authority referred to in subsection (1) is continued is taken to be a prescribed IBAC Officer for the purposes of that authority only.
- (4) On and from the commencement day, an authority to acquire or use an assumed identity granted by the Director or the Director's delegate to an authorised civilian that is in force immediately before that day—
 - (a) subject to section 7, continues in force in accordance with its terms (unless cancelled sooner); and
 - (b) is taken to have been granted by the Commissioner; and
 - (c) the Commissioner is taken to be the supervisor in respect of that authority.
- (5) If, before the commencement day, the Director had not prepared the report required by section 31 for the financial year ending before the commencement day, the Commissioner must prepare that report.
- (6) If, before the commencement day, the Director had not conducted the audit required by section 33, the Commissioner must conduct that audit as if the authority was granted by the Commissioner.

(7) In this section—

commencement day means the day on which section 16 of the **Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012** comes into operation;

Director means the Director, Police Integrity under section 7 of the **Police Integrity Act 2008** as in force immediately before its repeal.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 1 April 2004

Legislative Council: 11 May 2004

The long title for the Bill for this Act was "to provide for the lawful acquisition and use of assumed identities for law enforcement purposes and the recognition of things done in relation to assumed identities in other jurisdictions and for other purposes."

The **Crimes (Assumed Identities) Act 2004**, No. 15/2004 was assented to on 18 May 2004 and came into operation on 1 July 2006: Government Gazette 29 June 2006 page 1314.

Crimes (Assumed Identities) Act 2004
No. 15 of 2004

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Crimes (Assumed Identities) Act 2004** by Acts and subordinate instruments.

Major Crime Legislation (Office of Police Integrity) Act 2004, No. 63/2004

Assent Date: 12.10.04
Commencement Date: Ss 17–19 on 1.7.06: Government Gazette 29.6.06 p. 1314
Current State: This information relates only to the provision/s amending the **Crimes (Assumed Identities) Act 2004**

Investigative, Enforcement and Police Powers Acts (Amendment) Act 2005, No. 87/2005

Assent Date: 29.11.05
Commencement Date: Ss 3–5 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes (Assumed Identities) Act 2004**

Police Integrity Act 2008, No. 34/2008

Assent Date: 1.7.08
Commencement Date: S. 143(Sch. 2 item 4) on 5.12.08: Special Gazette (No. 340) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Crimes (Assumed Identities) Act 2004**

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date: 18.12.12
Commencement Date: Ss 82–85 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2; s. 306 on 11.2.13: s. 2(5)
Current State: This information relates only to the provision/s amending the **Crimes (Assumed Identities) Act 2004**

Justice Legislation Amendment (Family Violence and Other Matters) Act 2012, No. 83/2012

Assent Date: 18.12.12
Commencement Date: Ss 34–38 on 20.12.12: Special Gazette (No. 444) 19.12.12 p. 1
Current State: This information relates only to the provision/s amending the **Crimes (Assumed Identities) Act 2004**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 37) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Crimes (Assumed Identities) Act 2004**

3. Explanatory Details

No entries at date of publication.