

## **LEGISLATIVE COUNCIL BRIEF**

### **WITNESS PROTECTION BILL**

#### **INTRODUCTION**

At the meeting of the Executive Council on 4 May 1999, the Council ADVISED and the Chief Executive ORDERED that the Witness Protection Bill, at Annex A, should be introduced into the Legislative Council to put the existing Witness Protection Programme (WPP) on a statutory basis with an enhanced feature to change the identities of high-risk witnesses thoroughly.

#### **BACKGROUND AND ARGUMENT**

##### **General Background**

2           In October 1992, a murder trial collapsed because a key prosecution witness declined to give evidence. It aroused great community concern, particularly from the then Legislative Council (LegCo) on the adequacy of protection provided to witnesses. In response, the Fight Crime Committee (FCC) set up an Ad Hoc Committee to review the witness protection arrangements. In addition, the then Governor appointed Mr Justice

Kempster to head an independent Commission of Inquiry to look into, inter alia, the existing arrangements for the protection of prosecution witnesses. The recommendations of the FCC Ad Hoc Committee were submitted to the Commission of Inquiry which accepted most of them. The Commission of Inquiry submitted its final report to the then Governor in July 1993. One of the recommendations in the report was that ‘the advisability of legislation to facilitate changes of identity should be considered’.

3           On 11 June 1996, the then Governor in Council directed that the Witness Protection Bill should be introduced into the then LegCo. The Bill was introduced on 3 July 1996 but it eventually lapsed because the LegCo did not have time to study the Bill. The Bill at Annex A is basically the same as the one introduced in 1996.

4           At present, the Police Witness Protection Unit and the Independent Commission Against Corruption (ICAC) Witness Protection and Firearms Section are responsible for operating the WPP, the key elements of which are described in Annex B. The main purpose of the WPP is to encourage members of the public to come forward to give evidence as witnesses in criminal cases by offering effective protection to them.

5           Changing the identity of witnesses is not a feature of the existing WPP. At present, the Police and the ICAC can only change the name of a protected witness by means of a deedpoll, thus granting a new name to a protected witness in his identity card and travel document. However, this does not provide sufficient reassurance since consequential changes cannot be made to his birth and marriage certificates.

## Argument

6 Judging from operational experience, the number of high-risk witnesses who will require a change of identity should be very small. However, we have concluded that we should legislate for witness protection because -

- (a) given the special investigative powers to require persons to furnish information or produce materials under the Organised and Serious Crimes Ordinance (Cap 455), the community expects the Government to take all necessary steps, including legislation, to provide witness protection;
- (b) the merit of legislating for witness protection should not be assessed by the level of demand for such protection. The reassurance brought about by the legislation should help to overcome fear of vengeance, especially in cases involving serious crimes. Such cases are usually of great concern to the community;
- (c) we believe that the effectiveness of the WPP will be enhanced by giving it legal backing; and
- (d) legislating for witness protection has the keen support of the previous LegCo as well as the Provisional LegCo Panel on Security.

We therefore recommend introducing the Bill at Annex A.

## The Proposals

7. We propose that legislation should be introduced to provide for-
- (a) a legal framework for the WPP;
  - (b) authority to change the identity of a protected witness by empowering relevant authorities to issue new documents pertaining to the identity of the witness, based on fictitious information;
  - (c) the creation of offences for the disclosure of any information under the WPP without lawful authority or reasonable excuse; and
  - (d) protection from civil or criminal liability for Government officials and other authorised persons for acts done under the WPP.

8 For the purpose of paragraph 7(a), the key features of the existing WPP will be provided for in the proposed legislation. This will enhance the effectiveness of the WPP by giving it legal backing.

9 On paragraph 7(b), we propose that Government officials, or other authorised persons, should be empowered to re-issue official documentation pertaining to a protected witness, to give him a new fictitious persona designed by WPP officers, without indicating that any change of

identity has taken place. The witness concerned will not be given any academic or professional qualifications which he does not have, or benefits to which he is not entitled. Details of the proposed scheme are at Annex C. The high level of approving authority - i.e. personal recommendation by the Commissioner of Police or the Commissioner, ICAC, and the Chief Executive's approval - should ensure that the scheme will not be abused.

10 On paragraph 7(c), we propose that it should be an offence for any disclosure of details of the WPP, or the identity of any officer involved, without lawful authority or reasonable excuse, by witnesses currently or previously admitted to the WPP, or those who have been refused admission to the WPP. Such an offence should be punishable on conviction by imprisonment for a maximum term of five years. Moreover, disclosure of any information by anyone without lawful authority or reasonable excuse, as to the identity or location of a witness in the WPP , or any information which compromises the security of the witness, should be punishable on conviction by imprisonment for a maximum of ten years.

11 On paragraph 7(d), we propose that any officials and authorised persons, while acting in good faith and in the due execution of their duties in relation to the WPP, should be protected from any civil or criminal liability. This will reassure persons performing functions under the WPP.

## **THE BILL**

12 **Clause 3** provides for the establishment of the WPP operated by the Police and the ICAC.

13           **Clauses 4 to 7** make provision for the existing features of the WPP, including the requirement of witnesses to provide certain information to the approving authority, the assessment criteria for inclusion in the WPP, the signing of a memorandum of understanding and actions to protect a witness included in, or being assessed for, the WPP.

14           **Clause 8** provides for the establishment of a new identity for certain witnesses.

15           **Clause 9** requires a witness to continue to honour outstanding legal rights or obligations.

16           **Clause 10** empowers a witness, who has received a new identity, not to disclose his former identity in circumstances where he would normally be obliged to do so.

17           **Clause 11** empowers the approving authority to terminate protection of a witness, subject to a review.

18           **Clause 12** empowers the approving authority to restore a witness's former identity where protection has been terminated.

19           **Clauses 13 and 14** give a witness the right of review of the approving authority's decision not to include him in the WPP or to terminate his protection under the WPP.

20           **Clauses 15 to 20** provide for miscellaneous provisions, including

those for protecting public officers involved in creating a new identity, creating offences, providing for searches of persons entering a court room where a protected witness is to give evidence, and the regulation-making power of the Chief Executive in Council.

## **LEGISLATIVE TIMETABLE**

21           The legislative timetable will be -

Publication in the Gazette	14 May 1999
First Reading and commencement of Second Reading debate	26 May 1999
Resumption of second Reading debate, committee stage and Third Reading	to be notified

## **HUMAN RIGHTS IMPLICATIONS**

22           The Department of Justice advises that the proposed legislation is consistent with the human rights of the Basic Law.

## **BINDING EFFECT OF THE LEGISLATION**

23           The offence provisions of the Bill apply to all persons whether acting in a private or an official capacity.

## **FINANCIAL AND STAFFING IMPLICATIONS**

24           Resources have been provided for the Police and ICAC WPP and they are already in operation. Fees required under the law for the issue of various identity documents will also be paid from resources provided for WPP. The number of witnesses who will require a change of identity and the number of requests for review of a decision of the approving authority should be very small. The financial and staffing implications of the proposal will therefore be negligible and will be absorbed within the existing resources of the Police and the ICAC.

## **PUBLIC CONSULTATION**

25           We consulted the previous LegCo Panel on Security on the legislative proposals on 2 April 1996 and Members were generally supportive. Some Panel Members, however, raised questions about the possible abuse of the scheme and whether Government had any obligations to settle debts for witnesses, prior to changing their identities.

26           We also consulted the Provisional LegCo Panel on Security on 19 March 1998. The Panel was supportive of our proposals.

## **PUBLICITY**

27. A press release and a LegCo brief will be issued on 12 May 1999. A spokesman will be available to handle media enquiries.

## **ENQUIRIES**

28. Any enquiries to this brief could be directed to Mr Tony LAM, Assistant Secretary for Security, at 2810 2433.

**Security Bureau**

**12 May 1999**

## **Witness Protection Bill : Annexes**

- Annex A - Witness Protection Bill
- Annex B - Key Features of the Police and ICAC Witness Protection Programme
- Annex C - Scheme for change of identity of Witnesses

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WITNESS PROTECTION BILL

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A BILL

To

Provide for the establishment of a programme for the protection of certain witnesses and persons associated with witnesses.

Enacted by the Legislative Council.

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Witness Protection Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

PART I  
INTERPRETATION

**2. Interpretation**

- In this Ordinance, unless the context otherwise requires -
- "approving authority" (批准當局) means a person designated in writing by the Commissioner to be the approving authority;
- "Commissioner" (處長、專員) means each of the Commissioner of Police and the Commissioner of the Independent Commission Against Corruption;
- "memorandum of understanding" (諒解備忘錄) means a memorandum of understanding entered into by the approving authority and a witness under section 6 setting out the basis on which the witness will be included in the witness protection programme;

"participant" (參與者) means a witness who has been included in the witness protection programme;

"witness" (證人) means -

- (a) a person who has given, or who has agreed to give, evidence on behalf of the Government in proceedings for an offence;
- (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;
- (c) a person who has provided a statement or other assistance to a public officer in relation to an offence;
- (d) a person who, for any other reason, may require protection or other assistance under the witness protection programme; or
- (e) a person who, because of his relationship to or association with a person referred to in paragraphs (a) to (d), may require protection or other assistance under the witness protection programme;

"witness protection programme" (保護證人計劃) means the witness protection programme established under this Ordinance.

PART II  
WITNESS PROTECTION PROGRAMME

**3. Establishment of witness protection programme**

The approving authority shall establish and maintain a programme, to be known as the witness protection programme, under which he arranges for or provides protection and other assistance for witnesses whose personal safety or well-being may be at risk as a result of being witnesses.

**4. Selection for inclusion in witness protection programme**

(1) Subject to a review under Part III, the approving authority has the sole responsibility of deciding whether or not to include a witness in the witness protection programme.

- (2) A witness may be included in the witness protection programme only if -
- (a) the approving authority has decided that the witness be included;
  - (b) the witness agrees to be included; and
  - (c) the witness signs a memorandum of understanding in accordance with section 6 or -
    - (i) if the witness is under 18 years, a parent or guardian of the witness signs such a memorandum; or
    - (ii) if the witness otherwise lacks legal capacity to sign the memorandum, a guardian or other person who is usually responsible

for the care and control of the witness signs such a memorandum.

(3) The approving authority shall, in deciding whether or not to include a witness in the witness protection programme, have regard to -

- (a) whether the witness has a criminal record, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the witness protection programme;
- (b) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness' suitability for inclusion in the witness protection programme, that examination or evaluation;
- (c) the seriousness of the offence to which the relevant evidence or statement relates;
- (d) the nature and importance of that evidence or statement;
- (e) whether or not there are viable alternative methods of protecting the witness;
- (f) the nature of the perceived danger to the witness; and
- (g) the nature of the witness' relationship to other witnesses being assessed for inclusion in the witness protection programme,

and may have regard to such other matters as the approving authority considers relevant.

(4) If -

- (a) a parent or guardian of a witness signs a memorandum of understanding because the witness was under 18 years; and
- (b) the witness is included in the witness protection programme and remains a participant until after he turns 18 years,

the approving authority may require the participant to sign another memorandum of understanding on or after reaching 18 years.

**5. Witness to disclose necessary information before being included in witness protection programme**

(1) The approving authority shall not include a witness in the witness protection programme unless he is satisfied that the witness has provided him with all information that the approving authority considers is necessary to decide whether or not the witness should be included.

- (2) Without limiting the generality of subsection (1), the approving authority may -
  - (a) require a witness to undergo -
    - (i) medical tests or examinations; or
    - (ii) psychological or psychiatric examinations, and make the results available to the approving authority; or
  - (b) make such other inquiries and investigations as the approving authority considers necessary,

for the purposes of assessing whether or not the witness should be included in the witness protection programme.

**6. Memorandum of understanding**

- (1) A memorandum of understanding shall -
  - (a) set out the basis on which a participant is included in the witness protection programme and details of the protection and assistance that is to be provided; and
  - (b) contain a provision to the effect that protection and assistance under the witness protection programme may be terminated if the participant breaches a term of the memorandum of understanding.
- (2) A memorandum of understanding in relation to a participant may also contain -
  - (a) the terms and conditions on which protection and assistance is to be provided to the participant, which may include a condition that protection and assistance may be withdrawn if -
    - (i) the participant commits an offence;
    - (ii) the participant engages in activities of a kind specified in the memorandum of understanding;
    - (iii) the participant compromises the integrity of the witness protection programme;
    - (iv) the participant breaches a term of the memorandum of understanding;
    - (v) the participant notifies the approving authority in writing that he wishes to terminate his protection; or
    - (vi) the approving authority reasonably believes that the circumstances on which he based his

- decision to include the participant in the witness protection programme no longer exist or, for other reasons, it is no longer appropriate to extend protection or assistance to the participant;
- (b) an agreement by or on behalf of the participant not to compromise, directly or indirectly, any aspect of the protection and assistance being provided;
  - (c) an agreement by or on behalf of the participant that the participant will comply with all reasonable directions of the approving authority in relation to the protection and assistance provided to the participant;
  - (d) an agreement by or on behalf of the participant that the participant will, if required to do so by the approving authority -
    - (i) undergo medical, psychological or psychiatric tests or examinations and make the results available to the approving authority; or
    - (ii) undergo drug or alcohol counselling or treatment;
  - (e) a list of -
    - (i) the outstanding legal obligations (including family maintenance obligations and taxation obligations) of the participant; and
    - (ii) any other obligations of the participant,

and an agreement by or on behalf of the participant as to how those obligations are to be met;

- (f) a financial support arrangement;
- (g) an agreement by or on behalf of the participant that the participant will disclose to the approving authority details of any criminal charges that are made against, and any civil or bankruptcy proceedings that are made in relation to, the participant after the participant is included in the witness protection programme; and
- (h) such other terms and conditions as the approving authority may consider necessary in the circumstances of a particular case.

(3) A witness becomes included in the witness protection programme when the approving authority signs the memorandum of understanding.

(4) The approving authority shall, as soon as practicable after signing a memorandum of understanding, notify the relevant participant that it has been signed.

(5) The approving authority may, by notice in writing served personally on a participant, vary the memorandum of understanding, provided that the variation does not have the effect of removing from the memorandum of understanding the provisions referred to in subsection (1).

(6) A variation takes effect on the day on which the participant receives notice of it.

**7. Action where witness is included in witness protection programme**

If a witness is included in the witness protection programme, or is being assessed for inclusion in the witness protection programme, the approving authority shall take such action as he considers necessary and reasonable to protect the witness' safety and welfare.

**8. Establishing new identity for participant in witness protection programme**

(1) In this section, "public officer" (公職人員) means -

- (a) the "Registrar" as defined in the Births and Deaths Registration Ordinance (Cap. 174);
- (b) the "Commissioner" as defined in the Registration of Persons Ordinance (Cap. 177);
- (c) the "Registrar" as defined in the Marriage Ordinance (Cap. 181).

(2) Subject to the recommendation of the Commissioner and the approval of the Chief Executive, the approving authority may establish a new identity for a participant.

(3) Where a decision is made to establish a new identity for a participant after he has been included in the witness protection programme, a new memorandum of understanding shall be prepared and signed by the participant before the new identity is created.

(4) Notwithstanding any other Ordinance, where approval has been given to establish a new identity for a participant -

- (a) the approving authority shall notify the relevant public officer giving particulars of the new identity to be established and the documents that must be issued; and

(b) on receiving such notification, the public officer shall take such steps as are necessary to issue those documents to the approving authority.

(5) A participant for whom a new identity is being established shall, on request, attend before the public officer and sign such documents or records or take such other steps as may be necessary to facilitate the establishing of the new identity.

(6) A document issued under the authority of this section shall be deemed to have been lawfully issued by the relevant public officer in accordance with the requirements of this Ordinance under which he purported to issue it.

(7) The approving authority shall not, under his powers under subsection (4), do anything which would cause a person to believe that a participant -

- (a) has qualifications that he does not, in fact, have; or
- (b) is entitled to benefits that he is not, in fact, entitled to.

**9. Dealing with rights and obligations of participant**

(1) If a participant has outstanding legal rights or obligations or is subject to legal restrictions, the approving authority shall take such steps as are reasonably practicable to ensure that -

- (a) those rights or obligations are dealt with according to law; or
- (b) those restrictions are complied with.

(2) If the approving authority is satisfied that a participant who has been provided with a new identity under the witness protection programme is using the new identity to -

- (a) avoid obligations that were incurred before the new identity was established; or
- (b) avoid complying with restrictions that were imposed on the person before the new identity was established,

the approving authority shall give notice in writing, served personally on the participant, stating that he is so satisfied.

(3) A notice under subsection (2) shall also state that, unless the participant satisfies the approving authority that the obligations will be dealt with according to law or the restrictions will be complied with, the approving authority will take such action as he considers reasonably necessary to ensure that they are dealt with according to law or complied with.

(4) The action under subsection (3) by the approving authority may include informing a person who is seeking to enforce rights against the participant of the details of any property (whether real or personal) owned by the participant under his former identity.

#### **10. Non-disclosure of former identity of participants**

(1) Where -

- (a) a participant who has been provided with a new identity under the witness protection programme would, apart from this section, be required by or under a law of Hong Kong to disclose his former identity for a particular purpose; and
- (b) the approving authority has given the participant written permission not to disclose his former identity for that purpose,

the participant is not required to disclose his former identity to any person for that purpose.

(2) If a participant has been given permission under subsection (1) not to disclose his former identity for a particular purpose, it is lawful for the participant, in any proceedings or for any purpose under or in relation to the relevant law of Hong Kong, to claim that his new identity is his only identity.

#### **11. Termination of protection**

(1) Subject to a review under Part III, the approving authority may terminate the protection of a participant.

(2) The approving authority shall, before terminating the protection, advise the participant in writing, which shall be served personally, of his intention to terminate the protection.

#### **12. Restoration of former identity**

(1) If -

- (a) a participant has been provided with a new identity under the witness protection programme; and
- (b) protection and assistance under the witness protection programme to the participant is terminated,

the approving authority may, with the approval of the Chief Executive or without such approval if the consent of the former participant is obtained, take such action as is necessary to restore the former participant's former identity.

(2) The approving authority shall take reasonable steps to notify the former participant of a decision under subsection (1).

(3) If the approving authority -

- (a) takes action under this section to restore the former identity of a person who was a participant; and
- (b) notifies the former participant in writing that he is required to return to the approving authority all documents provided to the former participant that relate to the new identity provided under the witness protection programme,

the former participant shall not, without reasonable excuse, refuse or fail to return those documents to the approving authority within 7 days after receiving the notice.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 2.

### PART III REVIEW OF APPROVING AUTHORITY'S DECISION

#### **13. Request for review**

(1) A person who is aggrieved by a decision of the approving authority under this Ordinance -

- (a) not to include him; or
- (b) to terminate his protection as a participant,

in the witness protection programme may request in writing that the approving authority's decision be reviewed by a more senior officer designated by the Commissioner for that purpose.

(2) Within 7 days after receiving the decision of the approving authority, the aggrieved person shall deliver to the approving authority a request for review stating the reasons for his request.

(3) After receiving such a request, the approving authority shall forward it and all relevant documents to the officer designated by the Commissioner under subsection (1).

(4) A request for a review under this section against a decision of the approving authority not to include a person in the witness protection programme does not suspend the approving authority's decision unless he decides otherwise.

**14. Review of decision**

(1) The officer designated by the Commissioner under section 13(1) shall, after consultation with such persons as are appointed by the Chief Executive to give such officer the benefit of their views, decide whether or not the approving authority's decision should be upheld.

(2) The approving authority and the person who requested the review shall be advised in writing of the designated officer's decision and, where the approving authority's decision is not upheld, the approving authority shall amend his decision accordingly.

PART IV  
MISCELLANEOUS

**15. Provision of information to officers and law enforcement agencies**

If -

- (a) a participant has been provided with a new identity or has been relocated under the witness protection programme; and

- (b) an officer under the Commissioner's authority or another law enforcement agency notifies the approving authority that the participant has been arrested or is liable to arrest for an arrestable offence,

the approving authority may -

- (i) release to the officer or law enforcement agency the new identity or new location of the participant;
- (ii) provide the officer or law enforcement agency with the criminal record of the participant and the participant's fingerprints;
- (iii) release to the officer or law enforcement agency such other information relating to the witness protection programme as the approving authority considers appropriate in the circumstances; and
- (iv) if the approving authority considers it appropriate to do so in the circumstances, allow officers of the law enforcement agency to interview him, or any officer working with him in the witness protection programme, in relation to the participant.

**16. Officers protected from suit in respect of decisions under Ordinance**

The approving authority, officers working with him and any other public officer or person performing functions in relation to the witness protection programme are not liable to any action, suit or proceedings (including criminal proceedings) under a law in force in Hong Kong in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by this Ordinance.

**17. Offences**

(1) A person shall not, without lawful authority or reasonable excuse, disclose information -

- (a) about the identity or location of a person who is or has been a participant or who has been considered for inclusion in the witness protection programme; or
- (b) that compromises the security of such a person.

(2) A person who is or has been a participant, or a person who has undergone assessment for inclusion in the witness protection programme as a participant, shall not disclose -

- (a) the fact that he is or has been a participant or has undergone assessment for inclusion in the witness protection programme;
- (b) information as to the way in which the witness protection programme operates;
- (c) information about any officer who is or has been involved in the witness protection programme;
- (d) the fact that he has signed a memorandum of understanding; or
- (e) any details of a memorandum of understanding that he has signed,

unless the person has been authorized by the approving authority to make the disclosure or has a reasonable excuse for doing so.

(3) A person who supplies information to the approving authority for the purpose of assisting the approving authority in deciding whether or not to include him in the witness protection programme shall not supply information which he knows or ought reasonably to know is false.

- (4) A person who contravenes -
  - (a) subsection (1) commits an offence and is liable on conviction on indictment to imprisonment for 10 years;
  - (b) subsection (2) commits an offence and is liable on conviction on indictment to imprisonment for 5 years;
  - (c) subsection (3) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.
- (5) Notwithstanding anything in the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under subsection (4) (c) may be brought at any time within 6 months after the first discovery of the offence by the approving authority.
- (6) This section applies to all persons whether acting in a private or an official capacity.

**18. Approving authority and officer not to be required to disclose information**

- (1) Subject to subsection (2), the approving authority, officers working with him and any other public officer or person performing functions in relation to the witness protection programme shall not be required -
  - (a) to produce in a court or before a tribunal, commission or official inquiry any document that has come into his or their custody or control in the course of, or because of, the performance of his or their duties in relation to the witness protection programme; or
  - (b) to divulge or communicate to or before such a body any matter or thing that has come to his or their notice

in the performance of his or their duties in relation to the witness protection programme,  
except where it is necessary to do so for the purpose of carrying out the provisions of such programme.

(2) If it is essential to the determination of legal proceedings under or in relation to a law of Hong Kong that the judge or magistrate presiding over the proceedings be advised of a participant's location and circumstances, a person referred to in subsection (1) shall disclose the relevant information to the judge or magistrate in chambers, but the person shall not disclose the information unless he and the judge or magistrate are the only persons present.

(3) The judge or magistrate shall not disclose any information disclosed to him under subsection (2) otherwise than in accordance with this Ordinance.

#### **19. Protection of witness giving evidence in court**

(1) Where a participant is to give evidence for the Government in legal proceedings, a police officer or an officer of the Independent Commission Against Corruption may require all members of the public wishing to enter the courtroom to -

- (a) identify themselves to the satisfaction of the officer; and
- (b) undergo such search as the officer may require to ensure that they are not carrying into the courtroom anything which the officer considers would pose a threat to the security or well-being of the participant.

(2) Where a person refuses to comply with subsection (1) or the officer is not satisfied that he is not carrying anything referred to

in subsection (1) (b), the officer may prevent him from entering the courtroom.

## **20. Regulations**

The Chief Executive in Council may make regulations for the better implementation of the provisions of this Ordinance.

### Explanatory Memorandum

The purpose of this Bill is to provide for a witness protection programme to protect witnesses who may place themselves and their families in jeopardy by agreeing to give evidence in legal proceedings.

#### 2. The Bill -

- (a) provides for the establishing of the witness protection programme ("the wpp") (clause 3);
- (b) establishes the criteria for inclusion in the wpp (clause 4);
- (c) requires a witness to provide information to the approving authority to determine whether or not he should be included in the wpp (clause 5);
- (d) provides for a memorandum of understanding to be entered into by the approving authority and the witness (clause 6);
- (e) empowers the approving authority to protect a witness included in, or being assessed for, the wpp (clause 7);
- (f) provides for the establishing of a new identity for some witnesses (clause 8);
- (g) requires a witness to continue to honour outstanding legal rights or obligations (clause 9);

- (h) empowers a witness who has received a new identity not to disclose his former identity in circumstances where he would normally be obliged to do so (clause 10);
- (i) empowers the approving authority to terminate protection of a witness, subject to a review (clause 11);
- (j) empowers the approving authority to restore a witness' former identity where protection has been terminated (clause 12);
- (k) gives a witness a right of review of a decision of the approving authority not to include him in the wpp or to terminate his protection under the wpp (clauses 13 and 14);
- (l) provides for miscellaneous provisions including protecting public officers involved in creating a new identity, creating offences and providing for searches of persons entering a courtroom where a protected witness is to give evidence (clauses 15 to 20).

**Key Features of the Police and ICAC  
Witness Protection Programme (WPP)**

The key features of the existing Police/ICAC WPP are set out below:

- (a) a professional threat assessment system to ascertain justifications for providing protection for a witness. This is currently conducted by the Police Witness Protection Unit and the ICAC Witness Protection and Firearms Section;
- (b) a high level approving authority to determine the protection package/benefits to be provided for a witness. The approving authority for the Police and ICAC WPP are the Director of Crime and Security and the Director of Investigations respectively;
- (c) a written undertaking of acceptance (memorandum of understanding - MOU) to be signed by the witness and the Police or ICAC setting out the conditions under which protection is made;
- (d) relocation arrangements within Hong Kong and outside Hong Kong, subject to the acceptance of a third country. In the case of relocation within Hong Kong, the protected witness may be placed in special accommodation called safehouses with round-the-clock protection by WPP officers, or arrangements can be made with the

Housing Department to allocate a new housing unit for the protected witness. In the case of relocation overseas, there is no formal mutual agreement with other countries. The understanding reached is that when there is a genuine need, they will be approached to consider relocating the witnesses in their countries on a case-by-case basis;

- (e) a notification of termination to be signed by the witness and the Police or ICAC to formalize the termination of protection; and
- (f) a mechanism for appeals against decisions of the Police/ICAC to refuse to admit a witness into the WPP or to withdraw protection from a witness who has entered the WPP.

The Police Witness Protection Appeal Board is chaired by the Deputy Commissioner of Police (Operation). Members include the Deputy Secretary for Security and four non-official members appointed by the Chief Executive. For each hearing, the Board should comprise the Chairman, the Deputy Secretary for Security and two of the four non-official members. As for the ICAC, they have no formal appeal Board at present. Appeals are made to the Commissioner of ICAC.

## **Scheme for the Change of Identity of Witnesses**

The proposed scheme for the change of identity of witnesses is as follows:-

- (a) witnesses (including their spouses and children) formally admitted to the WPP may change their identities at the personal recommendation of the Commissioner of Police, or Commissioner, ICAC, which will be submitted to the Chief Executive for approval;
- (b) the old identity will no longer generate any new documentation (as if the witness is deceased) . There would be no removal, replacement or alteration of any records held by any Government or non-government agencies;
- (c) a new identity is created by fictitious information supplied by designated Police/ICAC officers e.g. a “fictitious” Birth Certificate will be issued and his birth will be re-registered despite his previous birth registration;
- (d) from a new Birth Certificate, other new documents can be created;
- (e) the witness must be required under the MOU to:

- sever all his existing social ties in the community, e.g. work, housing, schooling, banks, ownership of property etc;
  - settle all outstanding debts and tax; and
  - inform WPP officers in advance whenever he has the intention to send any of the fictitious documents, or copies of them, to a third party, etc;
- (f) any falsification of official documents should be authorised by and restricted to a small group of designated senior staff;
- (g) official documents, pertaining to the protected witness' original identity held by the witness, will be handed to designated Police/ICAC officers for retention, but official documents kept by other Government Departments will remain there; and
- (h) the original identity of the reidentified witness can be restored at his own request or at the personal recommendation of the Commissioner of Police or Commissioner, ICAC; in the latter case, the recommendation has to be submitted to the Chief Executive for approval. The set of official documents on the old identity retained by the Police/ICAC will then be returned to the witness upon the surrender of documents issued under the fictitious identity.