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‘A critical examination of
witness protection in Australia’

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As I have found through the study for this thesis, such a pursuit can be lonely and forbidding, exciting and enthralling. It is an Everest of a journey that could not be completed without the support of family, friends and colleagues who give freely and willingly of their time, asking for nothing but contributing enormously. Throughout my journey one thought persisted; ‘You must unlearn what you have learned ... Try not! Do! Or do not! There is no try.’ (Yoda, Star Wars, Season 2, Episode 8).

This PhD is dedicated to those closest to me, my family. To Diana whose never-ending and unwavering belief in me through everything I have done in life humbles and inspires me. To my father and mother, Neil and Rene, my sisters, Janny and Wendy and their families for their encouragement, support and enthusiasm even through their busy lives, in all of my studies.

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Abstract

Witness protection is a significant arm of Australian justice and the programs are an essential element in the fight against serious and organised crime. Although witness protection is a vital part of the criminal justice system, it has only been legislated for since 1991 in Victoria and 1994 in the rest of Australia. Prior to this, witness protection programs operated under administrative arrangements in most Australian states and territories.

The operation of these programs in all Australian police forces consumes considerable resources. Despite the expenditure there has been no attempt to critically and systematically assess these programs since legislation was passed in 1994. This thesis seeks to address that deficit by undertaking research grounded in the six primary themes highlighted by the report of the Parliamentary Joint Committee on the National Crime Authority in 1988, which ultimately informed the development of the current Australian legislation.

At the outset it is necessary to define what witness protection is and what a witness is for the purposes of the programs. The thesis then examines the origins of witness protection in the United States of America and its emergence in Australia and in other countries. It considers the legislative frameworks that now support it; the policy issues that generated the decision to establish witness protection in Australia; and the implementation and operation of programs at the Commonwealth, state and territory levels, since inception.

The thesis questions whether the programs are achieving intended outcomes, and identifies strengths, weakness, gaps and issues in extant protection and assistance arrangements. This frames discussion on the adequacy of legislation and operations and to what extent reforming the existing legislation and other arrangements would improve the overall delivery of witness protection in Australia. The thesis proposes the adoption of a uniform witness protection act covering all Australian witness protection
programs, an alternative model for the delivery of witness protection in Australia and improved accountability measures.

The research adopted a mixed methods approach, using qualitative and quantitative methodologies, to gather data and triangulate the analysis. A thematic examination of the available documents on witness protection was used in addition to an online survey of the Australian legal professions. A request to law enforcement agencies was put forward in order to gather information on the effectiveness and efficiency of the Australian programs. One limitation of this study was that empirical information was limited due to poor responses. It is suggested that the reach of the secrecy provisions is unnecessarily broad and unduly impairs any attempt to assess the programs that are in place. The research was constrained by the limited availability of information on the public record and that gathered through empirical research.

It is argued that more robust reporting arrangements are required and that legislation mandate more comprehensive annual reporting by all protection providers in Australia.
Certification

I certify that the substance of this thesis has not already been submitted for any degree and is not currently being submitted for any other degree or qualification.

I certify that any help received in preparing this thesis, and all sources used, have been acknowledged in this thesis.

Philip Neil Kowalick
To find where the truth resides, in these matters of equality and justice, is a very difficult task. Nevertheless it is an easier task than that of persuading men to act justly, if they have power enough to secure their own selfish interests.

Aristotle (384-322 BC)
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<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACC</td>
<td>Australian Crime Commission</td>
</tr>
<tr>
<td>AFP</td>
<td>Australian Federal Police</td>
</tr>
<tr>
<td>APMC</td>
<td>Australian Police Ministers Council</td>
</tr>
<tr>
<td>CCC</td>
<td>Corruption and Crime Commission</td>
</tr>
<tr>
<td>CMC</td>
<td>Crime and Misconduct Commission</td>
</tr>
<tr>
<td>MOU</td>
<td>Memoranda of Understanding</td>
</tr>
<tr>
<td>NCA</td>
<td>National Crime Authority</td>
</tr>
<tr>
<td>NPRU</td>
<td>National Police Research Unit</td>
</tr>
<tr>
<td>NWPLC</td>
<td>National Witness Protection Liaison Committee</td>
</tr>
<tr>
<td>NWPP</td>
<td>National Witness Protection Program</td>
</tr>
<tr>
<td>OPI</td>
<td>Office of Police Integrity</td>
</tr>
<tr>
<td>JSCCCC</td>
<td>Joint Standing Committee on the Corruption and Crime Commission</td>
</tr>
<tr>
<td>PCCMC</td>
<td>Parliamentary Crime and Misconduct Committee</td>
</tr>
<tr>
<td>PJC</td>
<td>Parliamentary Joint Committee</td>
</tr>
<tr>
<td>RCMP</td>
<td>Royal Canadian Mounted Police</td>
</tr>
<tr>
<td>UNDCP</td>
<td>United Nations Drug Control Program</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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