

CRIMINAL EVIDENCE (WITNESS ANONYMITY) ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Section 10: Pre-commencement anonymity orders: existing proceedings

46. As indicated in *subsection (1)*, section 10 deals with trials that are in progress at the time the Act comes into force. The section deals differently with the situations (1) where the witness has not yet started giving evidence, and (2) where evidence has been given in accordance with the order (whether or not the witness has finished giving their evidence).
47. In the former case, *subsection (3)* provides that the court may direct that the order remain in force, if the court is satisfied that the order is one that could have been made under the new law. If the old order could not have been made under the new law, the judge is required to discharge the order and consider whether to make one under the new law. It is not intended that the witness's identity should be disclosed to the defendant (or, in the case of an order obtained by a defendant, other defendants) while this process of consideration is going on.
48. Where evidence has already been given in accordance with the order, *subsection (6)* requires the judge to consider whether the trial has been made unfair as a result, taking into account whether a witness anonymity order could have been made under the new law and whether any potential unfairness could be corrected by giving an appropriate direction to the jury. The judge will then decide whether the trial or hearing is to continue in the usual way. If he or she considers that the defendant has been prevented from receiving a fair trial, *subsection (7)* requires the judge to consider how to bring the proceedings to a conclusion. It is open to the judge to consider ordering a re-trial.