

Witness Protection Regulation 2021

Explanatory notes for SL 2021 No. 128

Made under the

Witness Protection Act 2000

General Outline

Short Title

Witness Protection Regulation 2021

Authorising law

Section 51 of the *Witness Protection Act 2000*

Policy objectives and the reasons for them

Under section 54 of the *Statutory Instruments Act 1992* (SIA) subordinate legislation expires on 1 September after the tenth anniversary of its making. The *Witness Protection Regulation 2011* (2011 Regulation) is due to expire on 1 September 2021.

The *Witness Protection Regulation 2021* (the 2021 Regulation), which commences on 1 September 2021, remakes the 2011 Regulation to support the main objective of the *Witness Protection Act 2000* (the Act).

The main objective of the Act is to provide protection for witnesses.

The provision of assistance by witnesses is essential to law enforcement agencies and the courts. The need to protect those witnesses from harm because of that assistance is recognised worldwide, particularly where those witnesses are providing evidence of major and organised crime. Witness protection provides security to persons and an incentive to give assistance where, in the absence of such protection, assistance may not be forthcoming. Witness protection also recognises the responsibility of government to provide protection for persons who put themselves at great risk to personal safety.

The Act establishes the parameters of the Witness Protection Program. It also includes a statutory basis for various arrangements with witness protection authorities in other jurisdictions across Australia.

Schedule 2 of the Act contains definitions for an 'approved authority', a 'complementary witness protection law' and a 'law enforcement agency' and each of those definitions allows for authorities, laws and agencies in other jurisdictions to be declared by a regulation for the purpose of the Act.

The 2011 Regulation prescribes the following:

- a list of approved authorities for the purpose of the definition of an ‘approved authority’ to which the Chairperson of the Crime and Corruption Commission (CCC) may share information in specified circumstances under section 43 of the Act;
- a list of complementary witness protection laws for the purpose of the definition of ‘complementary witness protection law’ which facilitates the mutual recognition of protected witnesses; and
- a list of law enforcement agencies for the purpose of the definition of ‘law enforcement agency’.

Achievement of policy objectives

The purpose of the 2021 Regulation is to remake the 2011 Regulation in its current form with amendments to ensure its currency. These amendments include:

- the prescription of approved authorities, complementary witness protection laws and law enforcement agencies for the Northern Territory and the Australian Capital Territory; and
- changes to the names of various approved authorities since the making of the 2011 Regulation; and
- corresponding changes to associated definitions.

Consistency with policy objectives of authorising law

The 2021 Regulation is consistent with the policy objective of the Act, that is, the protection of witnesses via the establishment and operation of the witness protection program, which complements, and provides a statutory basis for recognition of, witness protection arrangements in place in other Australian jurisdictions.

Inconsistency with policy objectives of other legislation

The 2021 Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The 2021 Regulation supports the effective operation of the witness protection program under the Act and corresponding witness protection arrangements, across Australia.

There are no anticipated additional costs associated with the implementation of the 2021 Regulation.

Consistency with fundamental legislative principles

The 2021 Regulation is consistent with fundamental legislative principles.

Consultation

Consultation was undertaken with the CCC as the authority in Queensland responsible for administering the Witness Protection Program. Feedback provided by the CCC was considered in settling the 2021 Regulation.

Equivalent interstate authorities responsible for the administration of witness protection across Australia and key legal stakeholders were also consulted on the making of the 2021 Regulation. No significant concerns were raised.

The Office of Best Practice Regulation (OBPR) was consulted regarding the requirements under the '*Queensland Government Guide to Better Regulation*' (Guidelines) for the remake of the 2011 Regulation. OBPR considers that the objectives for sunset reviews under the Guidelines have been satisfied and that no further regulatory impact analysis was required.