

Evidence Regulation 2017

Explanatory notes for SL 2017 No. 134

Made under the

Evidence Act 1977

General Outline

Evidence Regulation 2017

Authorising law

Sections 21C, 39C, 107, 134A and 135 of the *Evidence Act 1977*.

Policy objectives and the reasons for them

In Queensland, the rules of evidence are principally contained in the *Evidence Act 1977* (the Act), court rules and the common law. The Act is not a code, but instead contains a series of statutory amendments to modify or supplement aspects of the common law.

Section 135(1) of the Act provides that the Governor in Council may make regulations under the Act. Section 135(2) provides that a regulation may be made about fees to be charged under the Act, or the payment of fees and expenses for, or incurred in, taking evidence under part 3, division 2 (*Summary procedure to obtain evidence for Queensland or other jurisdictions*). A number of provisions in the Act also allow for regulations to be made for particular matters.

Under section 54 of the *Statutory Instruments Act 1992*, the *Evidence Regulation 2007* (the Regulation) will expire on 1 September 2017.

It is necessary for the Regulation to be remade as the *Evidence Regulation 2017* (the 2017 Regulation), as it is required to support the effective operation of certain provisions in the Act.

The 2017 Regulation will provide for the same matters as dealt with by the Regulation. Only minor changes have been made to reflect current drafting practices and include a relevant transitional provision as required.

The Regulation currently prescribes the following matters for the Act:

- Under the definition of *corresponding law* in section 21C (*Definitions for division 5*) of the Act – section 3 of the Regulation specifies the corresponding laws for the purposes of Part 2, division 5 (*Witness identity protection*) of the Act.

This division permits, in certain circumstances, that certificates can be issued by law enforcement agencies in order to protect the identity of operatives. Section 21KH of the Act provides for the recognition in Queensland of *corresponding witness identity protection certificates* given under a *corresponding law*.

- Under the definition of *Queensland court* in section 39C (*Definitions for part 3A*) of the Act – section 4 of the Regulation declares the Queensland Civil and Administrative Tribunal (QCAT) to be a court for the purposes of part 3A (*Audio visual links and audio links*) of the Act, which facilitates the giving and receiving of evidence in court proceedings by audio visual link or audio link;
- For section 107 (*Use of photographing machines*) of the Act – section 5 of the Regulation declares *approved machines* for the purpose of part 7 (*Reproduction of documents*) of the Act. The approved machines are listed in Schedule 1.
- For section 134A of the Act (*Production of documents by agencies in relation to civil proceedings*) – section 6 of the Regulation prescribes the fees for the inspection, copying, or taking an extract, of the document; and section 7 declares persons or bodies that are not agencies for the purposes of the section.

The 2017 Regulation will commence on 2 September 2017.

Achievement of policy objectives

The objective is achieved by making the 2017 Regulation which replaces the Regulation on its expiration. This will ensure that the prescribed matters under the Act continue to support the effective operation of the Act.

Consistency with policy objectives of authorising law

The 2017 Regulation is consistent with the policy objectives of the authorising provisions in the Act.

Inconsistency with policy objectives of other legislation

The 2017 Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The benefit of the 2017 Regulation is that by prescribing the matters required it continues to complement the operation of the Act.

There are no anticipated implementation costs associated with the 2017 Regulation.

Consistency with fundamental legislative principles

The 2017 Regulation is consistent with the fundamental legislative principles.

Consultation

A consultation draft of the proposed 2017 Regulation was circulated to the following key legal stakeholders and any comments provided were taken into account in drafting: the Chief Justice of the Supreme Court, the President of the Court of Appeal, the Chief Judge of the District Court, the Chief Magistrate, the Crime and Corruption Commission, the Queensland Law Society, the Bar Association of Queensland, the Aboriginal and Torres Strait Islander Legal Service, Legal Aid Queensland, the Director of Public Prosecutions (Queensland), and the Crown Solicitor.

A self-assessment by the Department of Justice and Attorney-General has determined that no further Regulatory Impact Analysis is required as the regulatory proposal is excluded under: category (g) as regulatory proposals that are of a machinery nature; and (j) as regulatory proposals relating to general criminal laws and the administration of courts and tribunals.