

Justice Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 212

Made under the

Crime and Corruption Act 2001

Criminal Code Act 1899

Witness Protection Act 2000

General Outline

Justice Legislation Amendment Regulation 2024 (the Amendment Regulation)

Authorising law

Section 348 of the *Crime and Corruption Act 2001*

Section 708 of the *Criminal Code Act 1899*

Section 51 of the *Witness Protection Act 2000*

Policy objectives and the reasons for them

On 1 July 2023, the National Anti-Corruption Commission (NACC), established under the *National Anti-Corruption Commission Act 2022* (Cwlth) (NACC Act), commenced. The NACC is an independent Commonwealth agency established to detect and report on serious and systemic corrupt conduct in the Commonwealth public sector. Upon commencement of the NACC the Australian Commission for Law Enforcement Integrity (ACLEI) was subsumed into the NACC and the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth) (LEIC Act) was repealed.

The *Witness Protection Regulation 2021* (WP Regulation) and the *Criminal Code (External Agencies) Regulation 2016* (CCEA Regulation) contain references to the LEIC Act, ACLEI and the Integrity Commissioner under the LEIC Act. The Amendment Regulation seeks to update references in the WP Regulation and the CCEA Regulation to reflect the enactment of the NACC.

Following the commencement of the NACC, it is also appropriate to update the *Crime and Corruption Regulation 2015* (CC Regulation) to ensure its currency.

Achievement of policy objectives

Criminal Code (External Agencies) Regulation 2016

Section 86 of the *Criminal Code Act 1899* (Criminal Code) makes it an offence to obtain, or disclose, secret information in the possession of a law enforcement agency or officer about the identity of a criminal organisation informant.

For the offence to apply the secret information must relate to a criminal organisation informant, which is defined to include a person who has given to the police service or an external agency, criminal intelligence about a criminal organisation or participant.

Section 86(3) of the Criminal Code defines external agency as entities including the Crime and Corruption Commission (CCC), the Australian Federal Police, a police force or service of another State and another entity declared by regulation to be an 'external agency'. The CCEA Regulation is amended to replace the current prescription of the ACLEI under the LEIC Act as an external agency with the NACC established under the NACC Act.

Witness Protection Regulation 2021

The *Witness Protection Act 2000* (WP Act) establishes the statutory regime for the protection of witnesses who assist law enforcement agencies and courts. The witness protection program in Queensland is administered by the Crime and Corruption Commission (CCC).

The WP Act also provides a statutory basis for recognition of witness protection arrangements in place in other Australian jurisdictions under a national coordinated witness protection scheme. Relevant provisions include provisions allowing law enforcement agencies from other jurisdictions to make applications for a person to be included in the witness protection program or notification that a protected person is being investigated or has been arrested or charged with a serious offence.

Schedule 2 of the WP Act defines the terms 'approved authority' (for the purposes of section 43 only) and 'law enforcement agency' under the WP Act to include entities prescribed by regulation. The WP Regulation is updated by omitting the current prescription of the Integrity Commissioner under the LEIC Act as both an approved authority and law enforcement agency and replacing this with references to the NACC under the NACC Act.

Crime and Corruption Regulation 2015

The CCC is established as an independent statutory body under the *Crime and Corruption Act 2001* (CC Act) to combat and reduce the incidence of major crime, and continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.

The CC Regulation prescribes a number of relevant entities as 'declared agencies' under the CC Act.

Section 130 of the CC Act restricts the disclosure of information obtained using a surveillance warrant where this information has not been disclosed in open court except to certain entities as provided for under the section. A 'declared agency' is referred to at section 130(2)(g) as an entity to whom the CCC may provide such information.

Prescription as a declared agency is also relevant for the purposes of the definition of 'commission officer' as it applies under Chapter 3, Part 6A of the CC Act. Chapter 3, Part 6A deals with controlled operations and controlled activities for corruption offences, including who may assist in controlled operations as a covert operative. A covert operative is defined in Schedule 2 to the CC Act as a commission officer or another person named in an approval under Chapter 3, Part 6A as a covert operative. A commission officer is then defined to include, for the purposes of Chapter 3, Part 6A, 'an officer or employee of a 'declared agency''.

The CC Regulation is amended to prescribe the NACC as a declared agency. This will ensure that the CCC are able to share information about individuals obtained pursuant to a surveillance device with the NACC and allow NACC officers to engage in controlled operations.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising laws.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

Any costs arising from the proposal will be met from existing agency resources.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles set out in the *Legislative Standards Act 1992*.

Consultation

Consultation was undertaken with the Crime and Corruption Commission, Director of Public Prosecutions, Queensland Police Service and the Commonwealth Attorney-General's Department in relation to the proposed amendments contained in the Amendment Regulation.

Broader consultation was not undertaken as the amendments contained in the Amendment Regulation are minor and machinery in nature and do not alter current arrangements.