

EXPLANATORY STATEMENT

Witness Protection (Complementary Witness Protection Laws) Declaration 2021

Witness Protection Act 1994

The *Witness Protection Act 1994* (the Act) provides a statutory basis for the National Witness Protection Program (NWPP) administered by the Australian Federal Police (AFP).

The NWPP provides protection and assistance to people who are assessed as being in danger because they have given, or have agreed to give, evidence or a statement on behalf of the Crown in criminal or certain other proceedings, or because of their relationship to such persons. For example, if a person gives evidence in a serious or high profile criminal trial, that person's security, and that of their family, may be at risk as a result.

Section 3AA of the Act provides that for the purposes of the Act the Minister may, by legislative instrument, declare a law of a State or Territory to be a ***complementary witness protection law***. Section 3 of the Act provides that, a law of a State or Territory which is so declared under section 3AA, and which makes provision for the protection of witnesses, is a ***complementary witness protection law***.

Each State and Territory has its own witness protection legislation. Declaring a law of a State or Territory to be a ***complementary witness protection law*** allows the AFP Commissioner to arrange or provide protection and other assistance for witnesses and other participants under the NWPP, consistent with the powers and functions conferred on the Commissioner under a ***complementary witness protection law*** (section 4). For example, it allows the AFP to apply to the court of a State or Territory with a declared complementary witness protection law to issue State or Territory identity documents for a participant's new identity.

The *Witness Protection (Complementary Witness Protection Laws) Declaration 2021* (the Declaration) repeals the *Witness Protection (Complementary witness protection laws) Declaration 2011*, which was otherwise due to sunset on 1 April 2021.

The purpose of the Declaration is to ensure that the AFP Commissioner can continue to provide protection and other assistance for witnesses and other participants under the NWPP under State and Territory witness protection laws as necessary and appropriate. In addition, the Declaration facilitates public access to laws that have been declared complementary witness protection laws.

The AFP was consulted on the Declaration. No further consultation was undertaken as the Declaration is of a minor and machinery nature and does not substantially alter current arrangements.

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment A.

The Declaration commences on the day after it is registered on the Federal Register of Legislation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Witness Protection (Complementary Witness Protection Laws) Declaration 2021

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of *the Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Witness Protection (Complementary Witness Protection Laws) Declaration 2021* (“the Declaration”) is made under section 3AA of the *Witness Protection Act 1994* (“the Act”). Under section 3AA of the Act the Minister may, by legislative instrument, declare a law of a State or Territory to be a **complementary witness protection law** for the purposes of the Act. Declaring a law of a State or Territory to be a complementary witness protection law allows the Australian Federal Police (AFP) Commissioner to arrange for or provide protection and other assistance to witnesses and other participants under the National Witness Protection Program (NWPP), consistent with powers and functions conferred on the AFP Commissioner by complementary witness protection laws.

The Declaration declares that the following laws of the States and Territories are complementary witness protection laws for the purposes of the Act:

Item	Law
1	<i>Witness Protection Act 1995</i> (NSW)
2	<i>Witness Protection Act 1991</i> (Vic)
3	<i>Witness Protection Act 2000</i> (Qld)
4	<i>Witness Protection (Western Australia) Act 1996</i> (WA)
5	<i>Witness Protection Act 1996</i> (SA)
6	<i>Witness Protection Act 2000</i> (Tas)
7	<i>Witness Protection Act 1996</i> (ACT)
8	<i>Witness Protection (Northern Territory) Act 2002</i> (NT)

The Declaration repeals and replaces the *Witness Protection (Complementary witness protection laws) 2011*, which was otherwise due to sunset on 1 April 2021.

Human rights implications

To the extent that the Declaration extends the protection currently afforded by witness protection arrangements under a complementary witness protection law, to State and Territory witnesses, the Declaration positively engages Articles 14 and 17 of the *International Covenant on Civil and Political Rights* (ICCPR).

Article 14 of the ICCPR provides amongst other things, that all persons shall be equal before the courts and tribunals and that the press and the public may be excluded from all or part of a

trial when the interest of the private lives of the parties so requires.

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation, and that everyone has the right to the protection of the law against such interference or attacks.

This Disallowable Legislative Instrument positively engages Articles 14 and 17 of the ICCPR by allowing States and Territories to continue to refer witnesses into the NWPP where required, ensuring the ability of witnesses to testify in court or cooperate with law enforcement investigations through protection under the law, and without fear of intimidation or retaliation, which is a critical part of a successful criminal justice system.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights, as it promotes the right to equality before the courts and protection against unlawful interference with privacy under Articles 14 and 17 of the ICCPR respectively.