



Australian Capital Territory

# **Evidence Act 1971**

**A1971-4**

**Republication No 6**

**Effective: 22 March 2004**

Republication date: 22 March 2004

Last amendment made by A2004-2

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Evidence Act 1971* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 22 March 2004. It also includes any amendment, repeal or expiry affecting the republished law to 22 March 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Evidence Act 1971

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Australian Capital Territory

# Evidence Act 1971

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An Act relating to evidence

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Evidence Act 1971*.

### 6 Definitions for Act

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

*Australia* includes the external Territories.

*banker's book* includes a ledger, daybook, cashbook, account book, diary and any other document used in the ordinary course of the business of a bank.

*court* includes any tribunal or person having authority under a law in force in the ACT or by consent of parties to receive evidence.

*diplomatic or consular representative* means a person appointed to hold or act in any of the following offices:

- (a) ambassador;
- (b) high commissioner;
- (c) minister;
- (d) head of a mission;
- (e) commissioner;
- (f) chargé d'affaires;
- (g) counsellor, secretary or attaché at an embassy, high commissioner's office, legation or other post;
- (h) consul general;

- (i) consul;
- (j) vice-consul;
- (k) proconsul;
- (l) trade commissioner;
- (m) consular agent.

**document** includes—

- (a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) a sound recording.

**government department** means an administrative unit (however described) of—

- (a) the Territory government; or
- (b) the public service of the Commonwealth, a State or another Territory.

**judge** means the member or members of a court.

**proceeding** means a matter or inquiry, whether civil or criminal, heard or conducted by a court in which evidence is, or may be, received.

**public authority** means a Territory authority or an authority established by or under the law of the Commonwealth, a State or another Territory.

**statement** includes any representation of fact, whether made in words or by other means.

**7 Application of Act**

Unless the contrary intention appears in this Act, the provisions of this Act apply to every proceeding.

## Part 3                      Proof of official documents and certificates

### 11                      Public documents

If a document is of such a nature that it is admissible in evidence on its production from proper custody, evidence of any of the contents of the document may, subject to any other law in force in the ACT, be given in a proceeding by the production of—

- (a) an examined copy of, or extract from, the document; or
- (b) a copy of, or extract from the document that purports to be certified as a true copy or extract by a person described in the certificate as having the custody of the document.

### 12                      Proof of certain documents

If, under a Territory law—

- (a) a certificate; or
- (b) an official or public document; or
- (c) a document of a corporation; or
- (d) a copy of, or extract from, a document, register or book;

is admissible in evidence in a proceeding to prove a matter or fact, a paper purporting to be the certificate, document, copy or extract shall, unless the contrary is proved, be taken to be that certificate, document, copy or extract.

### 13                      Proof of birth, death or marriage

A document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Australia or elsewhere is evidence in a proceeding of the facts stated in the document.

**14 Evidentiary effect of probate and letters of administration**

- (1) The probate of a will or letters of administration with a will annexed are evidence of the due execution of the will.
- (2) The copy of a will annexed to a probate or to letters of administration is evidence of the contents of the will.
- (3) The probate of a will is evidence of the death of the testator and, if the probate states the date of death of the testator, of the date of death.
- (4) Letters of administration of the estate of a deceased person are evidence of the death of the person and, if the letters of administration state the date of death of the person, of the date of death.
- (5) In this section—
  - (a) a reference to *probate* is a reference to probate, and to an exemplification of probate, whether granted within or outside the ACT; and
  - (b) a reference to *letters of administration* is a reference to—
    - (i) letters of administration, or an exemplification of letters of administration, whether granted within or outside the ACT; or
    - (ii) an order to collect and administer being carried out by the public trustee.

**15 Admissibility of machine copies and reproductions of official documents**

- (1) In this section:  
*appropriate officer* means—
  - (a) in relation to a document lodged with, or registered or issued by, a government department or public authority—the person

having custody of the official records of the department or authority; or

- (b) in relation to a document lodged with, or registered or issued by, a public official—that official.

**document** means a document that, under a law of the Territory, the Commonwealth, a State or another Territory, has been lodged with, or registered or issued by—

- (a) a government department; or  
(b) a public authority; or  
(c) a public official.

**machine copy** in relation to a document, means a copy, other than a reproduction, of the document made by a photographic or other machine, whether the copy is enlarged or not.

**public official** means—

- (a) a public servant; or  
(b) an officer of the Commonwealth, a State, another Territory or a public authority.

**reproduction**, in relation to a document, means a print, whether enlarged or not, made from a transparent photograph of a document.

- (2) If a document would be admissible in evidence in a proceeding, a machine copy or a reproduction of the document is admissible as evidence of the document if—
- (a) the machine copy or the reproduction of the document bears, or has annexed to it, a certificate purporting to have been signed by the appropriate officer certifying—
- (i) for a machine copy—that the machine copy of the document was made while the document was in the control or custody of the government department, the public authority or that officer (as the case requires); or

- (ii) for a reproduction—that the reproduction is a print made from a transparent photograph of the document taken while the document was in the control or custody of the government department, the public authority or that officer (as the case requires); or
  - (b) the machine copy or reproduction of the document bears, or has annexed to it, a copy of such a certificate made at the same time as the machine copy or print of the document was made.
- (3) This section applies whether or not evidence is given that the document a machine copy or a reproduction of which is produced is or is not still in existence.



## Part 4                      Proof of attestation of documents

### 16                      Proof of attestation of documents

- (1) A document (other than a document to the validity of which attestation is required) may, if its execution has been attested, be proved in evidence in a proceeding, notwithstanding the attestation, in any way in which such a document, if not attested, may be proved.
- (2) A document (other than a will or a codicil to a will) to the validity of which attestation is required that purports to have been attested may be proved in a proceeding by evidence that the signature or the person by whom the document purports to have been executed is the signature of that person and by evidence that the signature of the person or of 1 of the persons by whom the document purports to have been attested is the signature of the person whose signature it purports to be.
- (3) Subsection (2) does not prevent the proof of a document by an attesting witness.

### 17                      Documents attested outside ACT

- (1) This section applies to a document (other than a will or a codicil to a will) to the validity of which attestation is required.
- (2) If a document to which this section applies purports to have been executed at a place in Australia and to have been attested by—
  - (a) a person before whom a statutory declaration may be made; or
  - (b) a lawyer;the signature of the person by whom the document purports to have been attested shall, in the absence of proof to the contrary, be

deemed to be, for section 16 (2), the signature of the person whose signature it purports to be and evidence that the signature is the person's signature and that he or she is such a person is not, for that subsection, required in a proceeding.

- (3) If a document to which this section applies purports to have been executed in a Commonwealth country or part of a Commonwealth country and to have been attested by a person who is a judge, notary public, the mayor or chief officer of a municipal or local government corporation or a governor, government resident or chief secretary in, or in that part of that country, or is a justice of the peace for that country or for that part of that country, the signature of the person by whom the instrument purports to have been attested shall be deemed, for section 16 (2), to be the signature of the person whose signature it purports to be and evidence that the signature is the person's signature and that he or she is such a person is not, for that subsection, required in a proceeding.
- (4) If a document to which this section applies purports to have been executed in a country outside Australia and to have been attested by a person who is an Australian or British diplomatic or consular representative in that country, the signature of the person by whom the document purports to have been attested shall be deemed, for section 16 (2), to be the signature of the person whose signature it purports to be and evidence that the signature is the person's signature and that he or she is such a person is not, for that subsection, required in a proceeding.

## **18 Declarations of due attestation made outside ACT**

- (1) This section applies to a document (other than a will or a codicil to a will)—
  - (a) to the validity of which attestation is required; and
  - (b) that purports to have been executed outside Australia and to have been attested by a person other than a person referred to in section 17.

(2) If—

- (a) there is endorsed on, or annexed to, a document to which this section applies a declaration by the person by whom it purports to have been attested that the document was duly executed and attested as it purports to have been executed and attested; and
- (b) the declaration referred to in paragraph (a) purports to have been made before, and attested by, a person who is an Australian or British diplomatic or consular officer in the country in which the document purports to have been executed and attested;

the signature of the person by whom the document purports to have been attested shall be deemed, for section 16 (2), to be the signature of the person whose signature it purports to be, the signature of the person before whom the declaration is made shall be deemed to be the signature of the person whose signature it purports to be and evidence that the signature of either of those persons is the person's signature and that the person before whom the declaration is made is an Australian or British consular officer in the country is not, for that subsection, required in a proceeding.

## **19 Capacity of attesting witnesses**

If—

- (a) it is proved that the signature of a person by whom a document purports to have been attested is the signature of that person; or
- (b) the signature of a person by whom a document purports to have been attested is to be deemed to be the signature of that person;

and in the attestation, the person is described as having a specified description or as having attested the document in a specified capacity, that person shall, unless the contrary is proved, be deemed to have, at the time of the attestation, been a person of that

description or to have attested the document in that capacity, as the case may be.

**20 Proof—justices of the peace**

The words ‘justices of the peace’ or the letters ‘J.P.’ appearing after a signature on a document are evidence that the person whose signature it purports to be is a justices of the peace and, if the place where the signature of that person purports to have been attached or appended is specified in the document (whether that place is within or outside the ACT), that person shall, unless the contrary is proved, be deemed to be a justice of the peace for the State, Territory, Commonwealth country or part of the Commonwealth country where that place is situated.

## Part 5 Bankers' books

### 21 Proof of entries in bankers' books by means of copies

Subject to this part, a copy of an entry in a banker's book is admissible in a proceeding as evidence of the entry, and of the matters, transactions and accounts recorded in the entry.

### 22 Proof that entry made in bankers' book

- (1) A copy of an entry in a banker's book is not admissible under this part in a proceeding unless it is proved that—
  - (a) the book was, at the time when the entry was made, one of the ordinary books of the bank; and
  - (b) the entry was made in the ordinary course of business; and
  - (c) the book is in the custody or control of the bank; and
  - (d) the copy has been compared with the original entry and found to be a true copy.
- (2) The matters referred to in subsection (1) shall be proved by the evidence of an officer of the bank given orally or by affidavit.

### 23 Compellability of bankers

In a proceeding to which a bank is not a party, neither the bank nor an officer of the bank is compellable, unless the court or judge otherwise orders—

- (a) to produce a book the entries in which may be proved under this part; or
- (b) to attend for the purpose of giving evidence of the matters, transactions and accounts recorded in such a book.

**24 Inspection of bankers' books**

- (1) On the application of a party to a proceeding, the court or judge may, by order, direct a bank or the manager of a bank or of a branch of a bank, whether within or outside the ACT, to permit the party to inspect, and take copies of, the books specified in the order.
- (2) An application for an order under subsection (1) shall not be served on the bank against which the order is sought unless the court or judge directs that the application be so served.
- (3) A bank on which an order under subsection (1) is served is not obliged to comply with the order until the end of 3 days after the date when the order is so served.
- (4) The period referred to in subsection (3) shall be reckoned exclusive of a Saturday, a Sunday or a day that is a public or bank holiday.

**25 Proof of bank account, amount of credit etc**

- (1) If it is necessary, for the purposes of a proceeding, to prove—
  - (a) that a person did or did not, at a given time, have an account at a bank; or
  - (b) that at a given time there were, or were not, funds standing to a person's credit at a bank; or
  - (c) the state of an account at a bank;

evidence of the fact may be given orally or by affidavit by an officer of the bank who has examined the books of the bank.

- (2) Evidence given under subsection (1) is admissible notwithstanding that the books of the bank are not produced.

**26 Costs**

- (1) The costs of—
  - (a) an application to a court or judge under or for this part; or

- (b) anything done or to be done under an order of a court or judge made under or for this part;

are in the discretion of the court or judge, and the court or judge may order those costs or any part of those costs to be paid to a party by the bank if those costs or any part of those costs have been occasioned by default or delay on the part of the bank.

- (2) An order under subsection (1) may be enforced against a bank as if it were a judgment of the court for the payment of money by the bank to the party.

## **27**      **References to Supreme Court**

In the application of sections 23, 24 and 26 to and in relation to a proceeding other than a proceeding in the Supreme Court or in the Magistrates Court—

- (a) a reference to the *court* is a reference to the Supreme Court; and
- (b) a reference to the *judge* is a reference to the judge of the Supreme Court.

## Part 6 Admissibility of statements in documents

### 28 Documentary evidence—maker of document called as witness

- (1) If direct oral evidence of a fact or of an opinion would be admissible in a proceeding, a statement made by a person in a document tending to establish the fact or expressing the opinion, as the case may be, is, subject to this part, admissible as evidence of the fact or the opinion in the proceeding if—
  - (a) for a statement tending to establish a fact—the maker of the statement had personal knowledge of the matters dealt with by the statement or, for a statement expressing an opinion, the person expressing the opinion is qualified to give evidence of that opinion; and
  - (b) the maker of the statement is called as a witness in the proceeding; and
  - (c) the court is satisfied that the statement was made at a time when the facts stated in the document were fresh in the memory of the witness or, for a statement expressing an opinion, the facts on which the opinion was based were fresh in the mind of the person expressing the opinion.
- (2) Subsection (1) applies whether the statement is or is not consistent with the evidence given by the maker of the statement but, if—
  - (a) the statement is tendered by the party by whom the witness is being called; and
  - (b) the statement is inconsistent with the evidence given by the witness in the proceeding;



the statement is admissible in evidence only with the leave of the court.

- (3) A statement referred to this section shall not, without the leave of the court, be tendered in evidence by the party by whom the witness has been called except at the conclusion of the examination-in-chief of the witness and before the witness is cross-examined.

**29 Documentary evidence—maker of document unable to be called as witness**

- (1) If direct oral evidence of a fact would be admissible in a proceeding, a statement made by a person in a document tending to establish that fact is, subject to this part, admissible as evidence of that fact in the proceeding if the maker of the statement had personal knowledge of the matters dealt with in the statement and if—
- (a) the maker of the statement is dead; or
  - (b) the maker of the statement is outside Australia and it is not reasonably practicable to secure his or her attendance; or
  - (c) the maker of the statement is unfit because of old age or bodily or mental condition to appear as a witness; or
  - (d) the maker of the statement cannot with reasonable diligence be found.
- (2) If direct oral evidence of a fact would be admissible in a proceeding, a statement made by a person in a document tending to establish the fact is, subject to this part, admissible as evidence of that fact if the document was made—
- (a) by a person acting under a duty to make the statement; or
  - (b) in the course of, and as a record or part of a record relating to, any business; or

- (c) in the course of, or as a record or part of a record relating to, the administration of, or the exercise of the functions of, a government department;

from information supplied (whether directly or indirectly) by a person who had, or might reasonably be supposed to have had, personal knowledge of the matters dealt with in the information and if—

- (d) the person who supplied the information is dead; or
- (e) the person who supplied the information is outside Australia and it is not reasonably practicable to secure his or her attendance as a witness; or
- (f) the person who supplied the information is unfit because of old age or of bodily or mental condition to appear as a witness; or
- (g) the person who supplied the information cannot with reasonable diligence be identified or found; or
- (h) the person who supplied the information cannot reasonably be expected, having regard to the time that has elapsed since the information was supplied and to all other relevant circumstances, to recollect the matters dealt with in the information.
- (3) If, in a civil proceeding, direct oral evidence of a fact would be admissible, the statement made by a person in a document tending to establish that fact is (whether or not it would be admissible under subsection (1) or (2)) admissible in such a proceeding as evidence of that fact if—
- (a) the maker of the statement had personal knowledge of the matters dealt with in the statement; and
- (b) the court or judge is satisfied that undue delay or expense would be caused by requiring the attendance as a witness of the maker of the statement.

(4) In subsection (2) (a):

*acting under a duty*, in relation to a person, includes—

- (a) acting in the course of any trade, business, profession or other calling or occupation in which the person was engaged or employed; and
- (b) acting for the purposes of any paid or unpaid office held by the person.

### **30 Documentary evidence of opinions**

(1) If direct oral evidence of an opinion would be admissible in a proceeding, an opinion expressed in a document made by a person expressing the opinion or by another person under the first person's direction is, subject to this part, admissible as evidence of the opinion in the proceeding if—

- (a) the person expressing the opinion would, if called as a witness in the proceeding, have been qualified to give evidence of the opinion; and
- (b) the court is satisfied that the facts on which the opinion was based sufficiently appear from—
  - (i) the form or contents of the document; or
  - (ii) the circumstances in which the document expressing the opinion was made; and

and that those facts are facts in relation to which evidence is given in the proceedings; and

- (c) the person expressing the opinion—
  - (i) is dead; or
  - (ii) is outside Australia and it is not reasonably practicable to secure his or her attendance; or

- (iii) is unfit because of old age or bodily or mental condition to appear as a witness; or
  - (iv) cannot with reasonable diligence be found.
- (2) If, in a civil proceeding, direct oral evidence of an opinion would be admissible, a statement in a document expressing that opinion is (whether or not it would be admissible under subsection (1)) evidence of that opinion if—
  - (a) the conditions referred to in subsection (1) (a) and (b) are satisfied; and
  - (b) the court or judge is satisfied that undue delay or expense would be caused by requiring the attendance as a witness of the person expressing the opinion.

### **31 Documentary evidence—criminal proceedings**

Nothing in this part renders admissible as evidence in a criminal proceeding a statement in a document made at a time when that proceeding was pending or at a time when it might reasonably have been contemplated that criminal proceedings would be instituted.

### **32 Weight of documentary evidence**

In estimating the weight (if any) to be given to a statement admitted in evidence under this part, a court shall have regard to all the circumstances from which an inference can reasonably be drawn about the correctness or otherwise of the statement including—

- (a) for a statement tending to establish a fact—
  - (i) the time when the statement was made in relation to the occurrence or existence of the fact that the statement is tendered to prove; and
  - (ii) the question whether or not the maker of the statement or any person by or through whom the information was

supplied to the maker of the statement had any incentive to conceal or misrepresent facts; and

- (b) for a statement expressing an opinion—
- (i) the time when the statement expressing the opinion was made in relation to the time when the facts on which the opinion was based were fresh in the mind of the person expressing the opinion; and
  - (ii) the question whether or not the person expressing the opinion had any incentive to misrepresent the opinion.

### **33 Corroborative value of documentary evidence**

- (1) In any proceeding, a statement admitted in evidence under section 28 is not to be taken to corroborate the oral evidence given by the maker of the statement.
- (2) In any proceeding, a statement admitted in evidence in the circumstances referred to in section 29 (2) (h) is not to be taken to corroborate any oral evidence given by the maker of the statement.

### **34 Production of documents and copies**

For this part, proof that a statement has been made in a document may be given on production of the document or may, with the leave of the court, be given by the production of a copy of the document proved to be a true copy of the document or of a copy of the document certified or authenticated in any way the court approves.

### **35 Signatures etc—proof of statements in documents**

For this part, a statement in a document shall be deemed to have been made by a person if the document or the material part of the document—

- (a) was written, made or produced by the person with his or her own hand; or

- (b) was signed or initialled by the person; or
- (c) was otherwise acknowledged by the person as his or her statement.

**36 Admissibility of documentary evidence—judicial discretion**

- (1) The court may, for the purpose of deciding whether a document tendered in evidence should or should not be admitted in evidence under this part, draw any reasonable inference from the circumstances in which the statement was made and from the form or contents of the document in which the statement is contained.
- (2) In a criminal proceeding, the judge may refuse to admit in evidence under this part a document tendered in evidence if he or she has reason to doubt its reliability or is satisfied that it would be unfair to the person charged to admit the document in evidence.

**37 Medical certificates**

The court may, in deciding, for this part, whether a person is or is not fit to attend as a witness, accept an opinion in a document purporting to be a certificate by a doctor.

**38 Documentary evidence of wages**

- (1) Subject to this section, a document that states that—
  - (a) during a period specified in the document, a person was employed by the person by whom, or on whose behalf, the document is signed; and
  - (b) in relation to that period or a specified part of that period, the firstmentioned person was paid, as wages or salary, an amount specified in the document;

is evidence in a proceeding that, in relation to that period or the specified part of that period, the firstmentioned person received

wages or salary, as the case may be, in the amount specified in the document.

- (2) For this section, a document that purports to be signed by, or on behalf of, a person shall, unless the contrary is proved, be deemed to be so signed.
- (3) Except with the leave of the court, a document shall not be tendered in evidence under this section unless the party tendering the document has given to each of the other parties to the proceeding not less than 7 days written notice.

## Part 7 Admissibility of documents produced by computers

### 39 Computers

- (1) A reference in this part to a *computer* is a reference to—
  - (a) a device that stores information; or
  - (b) a device that processes information; or
  - (c) a device that stores and processes information.
- (2) If the function of storing or processing information was performed by 2 or more computers whether—
  - (a) by a combination of computers; or
  - (b) by different computers operating in succession; or
  - (c) by different combinations of computers operating in succession; or
  - (d) by the successive operation of 1 or more computers and 1 or more combinations of computers;all those computers shall be regarded, for this part, as constituting a single computer.

### 40 Information supplied to computers

- (1) For this part—
  - (a) information shall be taken to be supplied to a computer if it is supplied to the computer in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; and
  - (b) if, in the course of activities of a kind referred to in section 42 (a), information is supplied with a view to its being



stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if supplied to that computer, shall be taken to have been supplied to it in the course of those activities; and

- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.
- (2) In this part, a reference to information being derived from other information is a reference to information derived from other information whether by calculation, comparison or by any other process.

#### **41 Appropriate rules of court**

In this part, a reference to the *appropriate rules of court* is a reference—

- (a) for a proceeding in the Supreme Court—to the *Supreme Court Rules*; or
- (b) for a proceeding in the Magistrates Court—to the *Magistrates Court (Civil Jurisdiction) Act 1982*.

#### **42 Admissibility of statements produced by computers**

In a proceeding (other than a criminal proceeding) in the Supreme Court or in the Magistrates Court, a statement contained in a document produced by a computer is, subject to this part and to the appropriate rules of court, admissible as evidence of any facts stated in the document of which direct oral evidence would be admissible if—

- (a) the document was produced by the computer during a period when the computer was used to store or process information relating to activities carried on, whether for profit or not—

- (i) by a person; or
  - (ii) by a body, association or institution, whether corporate or not; or
  - (iii) by a government department; or
  - (iv) by a public authority; and
- (b) information of the kind contained in the statement or of the kind from which the information contained in the statement is derived was in that period regularly supplied to the computer in the ordinary course of the carrying on of those activities; and
  - (c) the computer was, throughout the material part of that period operating properly or, if it was not, that any respect in which it was not operating properly or was out of operation during part of that period was not such as to affect the production of the document or the accuracy of its contents; and
  - (d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the carrying on of those activities.

**43 Admissibility of computer statements—judicial discretion**

- (1) The court may, if it has reason to doubt the accuracy or authenticity of a document sought to be tendered in evidence under this part, or of the facts stated in such a document, refuse to admit the document in evidence.
- (2) For the purpose of deciding whether to admit or refuse to admit the document, the court may draw any reasonable inference from the circumstances in which the information contained in the statement was obtained or the information from which the statements contained in the document was derived was obtained and from any other circumstances, including the form and contents of the document and of the information.

**44 Evidentiary weight of computer statements**

In estimating the weight (if any) to be given to a statement admitted in evidence under this part, the court shall have regard to all the circumstances from which an inference can reasonably be drawn as to the correctness or otherwise of the statement, including—

- (a) the relationship in time between—
  - (i) the time when the information that the statement reproduces or from which it is derived was supplied to the relevant computer or was recorded for the purpose of being supplied to the relevant computer; and
  - (ii) the occurrence or existence of the facts that the statement is tendered to prove; and
- (b) the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent facts.

**45 Failure to comply with court rules**

If, apart from this section, a document produced by a computer would be inadmissible in evidence because of a failure to comply with the provisions of appropriate rules of court, the court may, if it considers that it is just to do so, admit the statement in evidence notwithstanding the failure to comply with those provisions.

## Part 8 Proof of foreign laws and documents

### 46 References to *statute*

In this part, a reference to a *statute* includes a reference to an instrument of a legislative nature made, granted or issued under a statute.

### 47 Proof of written laws of overseas countries

- (1) Evidence of a statute, proclamation, treaty or act of state of an overseas country may be given in a proceeding by the production of—
  - (a) a book or pamphlet purporting to be published by the authority of the government of that country or by the government or official printer of that country, or in a book or publication that appears to the court to be a reliable source of information, containing the statute, proclamation, treaty or act of state; or
  - (b) a book or pamphlet that is proved to the satisfaction of the court to be admissible in the courts in that country as evidence of the statutes, proclamations, treaties or acts of state of that country contained in that book; or
  - (c) a copy of the statute, proclamation, treaty or act of state that is proved to be an examined copy; or
  - (d) a document that purports to be a copy of the statute, proclamation, treaty or act of state if there is endorsed on or annexed to the copy so produced a certificate by the person having custody of the original that the copy is a true copy of the document of which it purports to be a copy.

**48 Proof of law reports of overseas countries**

A book containing reports of 1 or more of the courts in an overseas country is evidence in a proceeding of the unwritten or common law of that country if the book purports to be published by the authority of that court or those courts or by the person or authority responsible for the publication of those reports or for the administration of justice in that country.

**49 Proof of judicial proceedings of overseas country**

Evidence of an instrument that is a judgment, decree, rule, order or other judicial proceeding of a court in an overseas country (including an affidavit, pleading or other legal document filed or deposited in such a court) may be given in a proceeding by the production of—

- (a) a copy that is proved to be an examined copy of the instrument; or
- (b) a document that purports to be a copy of the instrument if there is endorsed on or annexed to the copy so produced a certificate by the person having custody of the original instrument that is a true copy of the instrument of which it purports to be a copy.

**50 Proof of public books and documents of overseas countries**

If it is proved that—

- (a) a book or document of an overseas country is of such a public nature as to be admissible in evidence in the courts in that country on its mere production from proper custody; or
- (b) a book or document is, under the law of a Commonwealth country, admissible in evidence in the courts in that country by the production of a copy of the book or document; or

- (c) a copy of a document kept at an office for the registration of companies in a Commonwealth country is admissible in evidence in the courts in that country;

evidence of the book or document or of an extract from that book or document may be given in a proceeding by the production of—

- (d) a copy of the book or document or an extract, from the book or document that is proved to be an examined copy of the book, document or extract; or
- (e) of a document that purports to be a copy of the book, document or extract if there is endorsed on or annexed to the copy so produced a certificate by the person having custody of the original book or document that the document is a true copy of the book, document or extract of which it purports to be a copy.

**51 Certificates under s 47, s 49 or s 50**

The production of a document purporting to be a certificate referred to in section 47, 49 or 50 is evidence in a proceeding that the person by whom the certificate purports to be signed is the person who has custody of the original book, document or instrument referred to in the certificate without further proof of that fact.

## Part 9                      Witnesses and evidence in proceedings generally

### 52                      Examination without subpoena or other court process

- (1) A person who is present at the hearing of a proceeding may, subject to this Act and any other Territory law, be ordered to give evidence and to produce documents notwithstanding that the person has not been duly served with a subpoena or other process requiring his or her attendance for that purpose.
- (2) A person who is ordered under subsection (1) to give evidence or to produce documents is subject to the same penalties and liabilities as if the person had been duly served with a subpoena or other process requiring him or her to give evidence or produce documents.

### 53                      Witness not disqualified by interest or crime

A person is not disqualified to give evidence in a proceeding because—

- (a) he or she has, or may have, an interest in the result of the proceeding; or
- (b) he or she has been convicted of an offence.

### 56                      Evidence about character

- (1) If evidence with regard to the character of a person is admissible in a proceeding, a witness may, in the proceeding, give evidence of the general reputation of the person and of the witness's own knowledge of the habits, disposition and conduct of the person.
- (2) A witness shall not be permitted to state that he or she would not believe another person on his or her oath.

**58 Disallowance of certain questions**

If any question put to a witness in cross-examination is not relevant to the subject matter of the proceeding, except so far as the truth of the matter suggested by the question could affect the credit of the witness by injuring his or her character, the court has a discretion to disallow the question if, in its opinion, the subject matter of the question is so remote in time or is of such a nature that an admission of its truth would not materially affect the credibility of the witness.

**59 Scandalous and insulting questions**

- (1) A court may disallow a question that, in the opinion of the court, is indecent or scandalous unless the question relates to a fact in issue in the proceeding or to matters necessary to be known to determine an issue of fact in the proceeding.
- (2) A court may disallow a question that, in the opinion of the court, is intended only to insult or annoy or is needlessly offensive in form.

**60 Party's discrediting of own witness**

- (1) The party by whom a witness is called is not entitled to impeach the credit of the witness by general evidence of bad character.
- (2) On the application of the party by whom a witness has been called, the court may grant leave to the party—
  - (a) to prove that the witness has, at another time, made a statement inconsistent with his or her own evidence; or
  - (b) to cross-examine the witness as to whether the witness has, at any time, made a statement inconsistent with his or her own evidence.
- (3) The court may grant an application under subsection (2) whether or not it is alleged or proved that the witness is adverse to the party by whom he or she was called.



- (4) A party is not entitled to prove that a witness has made a statement inconsistent with his or her own evidence unless the witness has been informed of sufficient of the circumstances of the making of the statement to identify the occasion on which the statement was made and has been asked whether he or she made the statement.

### **61 Proof of prior inconsistent statement of witnesses**

- (1) Subject to subsection (2), if a witness, on cross-examination about a statement alleged to have been made by him or her relating to the subject matter of the proceedings and inconsistent with his or her own evidence, does not admit to making the statement, evidence of the making of the statement is admissible.
- (2) Evidence of the making by a witness of a statement referred to in subsection (1) is not admissible unless the witness has been informed of sufficient of the circumstances of the making of the statement to identify the occasion on which the statement was made and has been asked whether he or she made the statement.

### **62 Cross-examination about previous statements**

- (1) Subject to subsection (2), a witness may be cross-examined about—
- (a) statement made by the witness in writing or by the witness and reduced into writing whether by the witness or another person;  
or
  - (b) evidence given by the witness before a court;
- without the statement, or the deposition or transcript containing the evidence, being shown to the witness.
- (2) Proof of the making of a statement or of the giving of the evidence referred to in subsection (1) shall not be given for the purpose of contradicting the witness unless the attention of the witness has been directed towards those parts of the statement or evidence that are to be used to contradict him or her.

- (3) Notwithstanding subsection (2), a court may at any time during the hearing of a proceeding direct that the writing containing a statement or the deposition or transcript containing the evidence referred to in subsection (1) be produced to the court, and the court may make any use in the proceeding of the writing, deposition or transcript that the court considers appropriate.

### **63 Evidence in writing**

In a proceeding, a party or a witness may give evidence in writing if the court is satisfied that he or she is unable to communicate effectively otherwise than in writing, even with the assistance of a competent interpreter within the meaning of section 63A.

#### **63A Interpreters**

- (1) In a proceeding, if a party or a witness is—
- (a) unable to communicate effectively in English; or
  - (b) unable to hear, or to speak, effectively;
- the court shall permit the party or witness to be assisted by a competent interpreter, subject to subsection (2).
- (2) A court shall not permit a party or a witness in a proceeding to be assisted by an interpreter if the court considers that it would not be in the interests of justice to do so.
- (3) A competent interpreter shall be provided for subsection (1) by—
- (a) for a criminal proceeding—the prosecutor; or
  - (b) in any other case—the party requiring the assistance of the interpreter, or the party whose witness requires that assistance, as the case may be.
- (4) In this section:

*competent interpreter*, in relation to assistance required by a party or a witness, means any person competent to provide assistance of the type required.

#### **64 Unsworn evidence of young children**

- (1) If the evidence of a child who has not attained 14 years old is required in a proceeding, the court may receive that evidence without administering an oath or requiring an affirmation or declaration and, subject to subsection (2), without any formality.
- (2) The court shall, before receiving evidence under subsection (1), explain, or cause it to be explained, to the child that he or she is required to tell truthfully what he or she knows about the matter to which the evidence relates.

#### **65 Dying declarations**

A statement made orally by a person before his or her death relating to the circumstances resulting in that death is admissible in evidence in a proceeding if—

- (a) at the time when the person made the statement, he or she knew or believed, or may be reasonably supposed by the court to have known or believed, that his or her death was imminent, whether or not the person entertained, at that time, any hope of recovery; and
- (b) at the time when the person made the statement, he or she would have been a competent witness in a proceeding; and
- (c) the person making the statement could, if he or she had not died, have given direct oral evidence in the proceeding of the matters in the statement.

## Part 10 Evidence in criminal proceedings

### 67 Admission by accused person

In a criminal proceeding, the person charged with the offence may, if advised to do so by his or her lawyer, make any admissions with regard to matters of fact, and give any consent, that a party to a civil proceeding may make or give.

### 68 Admissibility of confessions or admissions

- (1) Subject to subsection (2), a confession or admission made by a person charged in a criminal proceeding is not admissible in evidence against that person unless it was made voluntarily by that person.
- (2) A concession or admission tendered in evidence against the person charged in a criminal proceeding shall not be rejected only on the ground that a promise, threat or other inducement (other than the exercise of violence, force or other form of compulsion) has been held out to or exercised on the person making the confession or admission, if the judge is satisfied that the means by which the confession or admission was obtained were not in fact likely to cause an untrue admission of guilt to be made.
- (3) The judge has, in a criminal proceeding, a discretion to reject a confession or admission (whether or not it is a confession or admission to which subsection (2) applies) made by the person charged if, having regard to the circumstances in which, or the means by which, the confession or admission was obtained, the judge is satisfied that it would be unfair to the person charged to admit the confession or admission in evidence.

**68A Abolition of right of accused to make unsworn statement**

- (1) Any rule of law or procedure or any practice permitting an accused person in criminal proceedings to make an unsworn statement or to give unsworn evidence in defence is abolished.
- (2) Subsection (1) does not affect the operation of section 64.

**69 Incriminating questions**

Subject to section 70, a person charged in a criminal proceeding, if he or she gives evidence in the proceeding, may be asked, and is bound to answer, a question notwithstanding that the answer to the question may tend to incriminate the person in relation to the offence to which the proceeding relates.

**70 Questioning of accused about prior convictions and general reputation**

- (1) Except as provided by this section, a person charged in a criminal proceeding shall not, if he or she gives evidence in the proceeding, be asked a question tending to show that the person has committed or has been convicted of or has been charged with an offence (other than the offence to which the proceeding relates), that the person has otherwise engaged in improper conduct or that the person has a bad reputation, if the question is asked merely for the purpose—
  - (a) of showing that the person charged is guilty of the offence to which the proceeding relates because of the person's disposition towards wrongdoing, his or her tendency to commit crime or his or her bad character; or
  - (b) of attacking the credibility of the person charged.
- (2) If, in a criminal proceeding—
  - (a) the person charged has, personally or by his or her lawyer, asked questions of a witness for the prosecution with a view to establishing his or her own good character; or

- (b) the person charged has given or called evidence of his or her own good character; or
- (c) the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or a witness for the prosecution, being imputations that are not such as would necessarily arise from a proper presentation of the defence; or
- (d) the person charged has given evidence against another person tried jointly with him or her for the offence with which the person is charged;

the person charged, if he or she gives evidence, may, with the permission of the court, be asked and is bound to answer a question of a kind referred to in subsection (1).

- (3) A court shall not, because of the operation of subsection (2), permit a question of the kind referred to in subsection (1) to be asked of the person charged unless the court is of the opinion that the question is relevant to his or her credibility as a witness and that, in the interests of justice and in the circumstances of the case, it is proper to permit the question to be asked.

## **71 Evidence about character of accused**

If evidence about the character of a person charged with an offence is admitted in a criminal proceeding, the court may take that evidence into account in relation to the question whether the person is guilty of the offence charged.

## **72 Depositions of persons dangerously ill**

- (1) In this section:

*trial* means—

- (a) a proceeding before the Supreme Court in relation to an indictable offence; or

(b) a proceeding under the *Magistrates Court Act 1930* in relation to an indictable offence.

(2) If a magistrate is satisfied that—

- (a) a person is or may be able to give evidence relating to an indictable offence or on behalf of a person charged with such an offence; and
- (b) that the firstmentioned person is dangerously ill and is not likely to recover from the illness; and
- (c) because of that illness, the firstmentioned person is or may be unable to give evidence at the trial of a person who has been, or may be, charged with an indictable offence;

the magistrate may take the evidence of the firstmentioned person in the ACT or elsewhere in Australia.

(3) Before taking the evidence of a person under this section, the magistrate shall—

- (a) if a person has been charged with the commission of an indictable offence to which the evidence relates; or
- (b) if it appears to the magistrate that a person may be charged with an indictable offence to which the evidence relates;

give a notice to the person charged or who may be charged, and, if the evidence is evidence on behalf of the person charged and it is practicable to do so, also give notice to the director of public prosecutions, or a person authorised by the director of public prosecutions, of the fact that the magistrate proposes to take the evidence of the firstmentioned person under this section and of the time and place where the magistrate proposes to take that evidence.

(4) Any person to whom a notice is given under subsection (3) (including the director of public prosecutions or a person authorised by the director of public prosecutions) may—

- (a) be present while the relevant evidence is being taken; and

- (b) cross-examine the person giving the evidence.
- (5) The magistrate before whom the evidence is taken—
- (a) shall cause the evidence (including evidence given under cross-examination) to be recorded; and
  - (b) shall, if the person whose evidence is taken is able to write, cause that person to sign the evidence; and
  - (c) shall endorse on or annex to that evidence a statement setting out the reasons for taking the evidence, the date and time and the place where it was taken and of the names of the persons present at the taking of the evidence.
- (6) If, on the trial of a person charged with an offence to which the evidence contained in the record made under this section relates, the court is satisfied—
- (a) that the person by whom the evidence was given is dead, or is, because of illness, unable to attend the trial; and
  - (b) that—
    - (i) the person charged, or his or her lawyer, was present when the evidence was taken; or
    - (ii) reasonable notice of the time and place fixed for the taking of the evidence was given to the person charged or to his or her lawyer;

the record of the evidence is admissible, to the extent that the evidence would have been admissible at the trial if given orally.

- (7) The record of the evidence taken under this section shall, if a person is charged with an indictable offence to which the evidence relates, be deemed to form part of the depositions taken on the proceedings against that person for that offence in the Magistrates Court.



**75 Admissibility of certificates of scientific examination**

- (1) A written certificate signed by a person who has made a scientific examination of an article or body setting out—
  - (a) the person's scientific qualifications; and
  - (b) that the person has made the examination; and
  - (c) the facts ascertained and the conclusions reached;is admissible in evidence—
  - (d) on the hearing of a proceeding before the Magistrates Court for an indictable offence; and
  - (e) on an inquest or inquiry held under the *Coroners Act 1997*.
- (2) Nothing in subsection (1) prevents the Magistrates Court or the coroner from requiring the person by whom such a certificate has been given to attend and give evidence before the court or the coroner.
- (3) If a certificate referred to in subsection (1) is tendered in a proceeding before the Magistrates Court, the court shall not dispose of the case summarily except with the consent of the person charged.

**76 General discretion to reject evidence**

Nothing in this Act derogates from the court's discretion to exclude evidence in a criminal proceeding if the court is satisfied that it would be unfair to the person charged to admit that evidence.

## **U** Part 10A Evidence in sexual offence proceedings

### **U** 76A Application of pt 10A

This part applies to a proceeding in the Supreme Court or the Magistrates Court and to an inquest or inquiry under the *Coroners Act 1997*.

### **U** 76B Definitions for pt 10A

In this part:

***accused person***, in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in the proceedings with a prescribed sexual offence.

***complainant***, in relation to any proceedings, means the person, or any of the persons, in relation to whom the accused person is alleged to have committed a prescribed sexual offence.

***prescribed sexual offence*** means—

- (a) an offence against a provision of the *Crimes Act 1900*, part 3; and
- (b) if a person charged with any offence is alleged, as an element of that offence, to have intended to commit an offence against a provision of that Act, part 3—the offence with which the person is charged.

***prescribed sexual offence proceedings*** means proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

**U 76C Evidence of complaint**

- (1) Any rule of law or practice permitting evidence to be admitted in any proceedings in relation to a sexual offence, being evidence relating to the making of a complaint, or the terms of a complaint, by the complainant, is abolished and no such evidence shall be admitted in any prescribed sexual offence proceedings.
- (2) Nothing in this section affects the admissibility of evidence in relation to a complaint, or the terms of a complaint, by the complainant in prescribed sexual offence proceedings if that evidence is otherwise admissible under any other rule of law or practice.

**U 76D Proceedings in camera**

- (1) Any evidence given by the complainant in prescribed sexual offence proceedings (including evidence given under cross-examination) shall, if the court so directs, be given in camera.
- (2) If the complainant in prescribed sexual offence proceedings gives evidence in camera under subsection (1), a person nominated by the complainant is entitled to be present in court when the complainant gives that evidence in those proceedings.

**U 76E Prohibition of publication of identity of complainant**

A person shall not, without the consent of the complainant in any prescribed sexual offence proceedings, publish the name of that complainant or any reference or allusion by which the identity of that complainant is disclosed or from which the identity of the complainant might reasonably be inferred.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**U 76F Abolition of rules about corroboration**

- (1) Any rule of law or practice requiring the corroboration of evidence or requiring the judge to give a warning to the jury in criminal proceedings to the effect that it is unsafe to convict a person on uncorroborated evidence is abolished so far as the rule applies to or in relation to evidence given by the complainant in the trial of a person for a prescribed sexual offence.
- (2) Nothing in this section shall affect the right of the judge in prescribed sexual offence proceedings to comment on any evidence that may be unreliable but the judge shall not, in such proceedings, give a warning to the jury to the effect that it is unsafe to convict the accused person on the uncorroborated evidence of the complainant.
- (3) Nothing in this section affects the operation of any rule of law or practice which requires—
  - (a) a judge, on the trial of a person for a sexual offence alleged to have been committed before 28 November 1985, to give the jury a warning as referred to in subsection (1); or
  - (b) a judge, on the trial of any person, to give the jury a warning to the effect that it is unsafe to convict a person on the uncorroborated sworn evidence of a child.

**U 76G Admissibility of evidence of sexual reputation**

- (1) In prescribed sexual offence proceedings, evidence relating to the sexual reputation of the complainant is inadmissible.
- (2) No evidence may be adduced and no question may be asked in prescribed sexual offence proceedings, except with the leave of the judge, relating to any sexual experience of the complainant with a person other than the accused person.
- (3) The judge shall not give leave under subsection (2) for any evidence to be adduced or any question to be asked unless—

- (a) an application for leave is made to the judge, in the absence of the jury; and
  - (b) the judge is satisfied that a refusal to allow the evidence to be adduced or the question to be asked would prejudice the fair trial of the accused person.
- (4) Nothing in this section authorises the admission of evidence of a kind which was inadmissible immediately before 28 November 1985.

## Part 11 Admissibility of convictions in civil proceedings

### 77 Proof of convictions

- (1) In this section:  
*civil proceeding* does not include an action for libel or slander.
- (2) The fact that a person has been convicted of an offence by a court is admissible in evidence for the purposes of proving, if to do so is relevant to an issue in a civil proceeding, that the person committed that offence, and, if a person is, in a civil proceeding, proved to have been convicted of an offence by a court, the person shall, unless the contrary is proved, be taken to have committed that offence.
- (3) This section applies—
  - (a) whether or not a person was convicted on a plea of guilty; and
  - (b) whether or not the person convicted is a party to the civil proceeding.

### 78 Proof of convictions—actions for libel and slander

In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue, proof that, at the time when that issue falls to be determined, that person stands convicted by a court of that offence is conclusive evidence that the person committed that offence.

### 79 Evidence identifying facts on which conviction was based

Without prejudice to the reception of any other evidence for the purpose of identifying the facts on which a conviction was based, the statements in any document that is, under section 94, admissible

in evidence, are admissible in evidence in a civil proceeding (including an action for libel or slander) for the purposes of identifying the facts on which the conviction specified in that document was based.

**80 Operation of other laws**

Nothing in this part derogates from the operation of any other Territory law under which a conviction or finding of fact in a criminal proceeding is, for the purposes of any other proceeding, made evidence or conclusive evidence of any fact.

**81 References in pt 11 to *court* or *conviction***

In this part:

- (a) a reference to a *court*—
  - (i) is a reference to a court in a State or Territory; and
  - (ii) does not include a reference to a court martial; and
- (b) a reference to a *conviction* does not include—
  - (i) a reference to a conviction that has been set aside or quashed; or
  - (ii) if the person convicted of an offence has been granted a pardon in relation to that offence, as including a reference to such a conviction.

## Part 12 Publication of evidence

### 82 Application of pt 12

This part applies to a proceeding in the Supreme Court or the Magistrates Court, or to an inquest or inquiry under the *Coroners Act 1997*.

### 83 Prohibition of publication of evidence etc

- (1) If it appears to a court that—
  - (a) the publication of evidence, given or intended to be given, in a proceeding before that court, is likely to prejudice the administration of justice; or
  - (b) in the interests of the administration of justice, it is desirable that the name of a party to, or a witness, or intended witness, in such a proceeding be not published;  
the court may, at any time during or after the hearing of the proceeding, make an order—
    - (c) forbidding the publication of the evidence or a specified part of the evidence, or of a report of the evidence, either absolutely or subject to any conditions that the court specifies or for any period that is specified; or
    - (d) forbidding the publication of the name of such a party or witness.
- (2) If a court makes an order under subsection (1), the court may, if it considers appropriate, also direct that persons specified by the court, or all persons except persons so specified, shall remain outside the courtroom for the period that the court specifies.



**84 Noncompliance with s 83 order**

- (1) A person who contravenes an order or direction under section 83 commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) For section 83 and this section, the publication of a reference or allusion to a party to, or a witness in, a proceeding shall, if the reference or allusion is such as to disclose the identity of the party or witness, be deemed to be a publication of the name of the party or witness.

**85 Questions disallowed under s 58 or s 59**

If a court disallows a question to which section 58 or 59 applies, a person shall not, without the leave of the court, publish the question or any answer given to the question.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## Part 12A Examination of witnesses outside the ACT but within Australia

### 85A Application of pt 12A

This part applies only in relation to an examination within Australia.

### 85B Definitions for pt 12A

In this part:

*examination* includes any proceeding for the taking of evidence of a person conducted by a judicial authority of a place outside the ACT in accordance with a letter of request issued under an order made by the Supreme Court under this part.

*inferior court* means a court of the Territory other than the Supreme Court.

*judicial authority*, in relation to a place outside the ACT, means a court or person prescribed as a judicial authority for that place.

### 85C Supreme Court proceedings

- (1) In any civil or criminal proceeding in the Supreme Court, the court may, if it appears in the interests of justice to do so, make an order—
  - (a) for the examination of a person on oath or affirmation at a place outside the ACT before a judge of the court, an officer of the court or any other person that the court may appoint; or
  - (b) for the issue of a commission for the examination of a person on oath or affirmation at a place outside the ACT; or

- (c) for the issue of a letter of request to a judicial authority of a place outside the ACT to take, or to cause to be taken, the evidence of a person.
- (2) In determining whether it is in the interests of justice to make an order under subsection (1) in relation to the taking of evidence of a person, the Supreme Court shall have regard to—
    - (a) whether the person is willing or able to come to the ACT to give evidence in the proceeding; and
    - (b) whether the person will be able to give evidence material to any issue to be tried in the proceeding; and
    - (c) whether, having regard to the interests of the parties to the proceeding, justice will be better served by making or refusing to make the order.
  - (3) If the Supreme Court makes an order of the kind referred to in subsection (1) (a) or (b), the court may, then or subsequently, give any directions that it considers just in relation to the place, time and manner of the examination, the procedure to be followed in relation to it, and any other matter that the court considers relevant.
  - (4) If the Supreme Court makes an order of the kind referred to in subsection (1) (c), the court may include in the order a request about any matter relating to the taking of the evidence, including any of the following matters:
    - (a) the examination, cross-examination or re-examination of the person, whether the evidence is to be given orally, by affidavit or otherwise;
    - (b) the attendance of the lawyer representing each party to the proceeding and the participation of those lawyers in the examination in appropriate circumstances;
    - (c) any prescribed matter.

- (5) Subject to subsection (6), the Supreme Court may, on the terms (if any) that it considers just, permit a party to the proceeding to tender as evidence in the proceeding the evidence taken in an examination held under an order under subsection (1) or a record of that evidence.
- (6) Evidence so tendered is not admissible if—
  - (a) at the hearing of the proceeding the Supreme Court is satisfied that the person is in the ACT and is able to attend the hearing; or
  - (b) the evidence would not have been admissible had it been given or produced at the hearing.
- (7) If it is in the interests of justice to do so, the Supreme Court may exclude from the proceeding evidence taken in an examination held under an order under subsection (1) even if it is otherwise admissible.
- (8) In this section, a reference to *evidence* taken in an examination includes a reference to—
  - (a) a document produced at the examination; and
  - (b) answers made, whether in writing, or orally and reduced to writing, to any written interrogatories presented at the examination.

### **85D Inferior court proceedings**

- (1) The Supreme Court may, on the application of a party to a civil or criminal proceeding before an inferior court, exercise the same power to make an order of a kind referred to in section 85C (1) for the purpose of that proceeding as the Supreme Court has under that subsection for the purpose of a proceeding in the Supreme Court.
- (2) Sections 85C (5), (6) and (7) apply in relation to evidence taken in an examination held under an order made by the Supreme Court under this section as if—

- (a) in those subsections—
  - (i) a reference to the proceeding were a reference to the proceeding in the inferior court; and
  - (ii) a reference to the Supreme Court were a reference to the inferior court; and
- (b) in sections 85C (5) and (7), a reference to an order under subsection (1) were a reference to an order made by the Supreme Court under this section.

### **85E Other proceedings**

- (1) If the Supreme Court makes an order under section 85D (1) for the purpose of a committal proceeding, it may include in the order an order that evidence taken outside the ACT under the firstmentioned order may, subject to this section, be tendered in a proceeding (a *subsequent proceeding*) that is—
  - (a) a criminal proceeding that results from the committal proceeding; or
  - (b) a related civil proceeding.
- (2) If the Supreme Court makes an order under section 85C (1) or 85D (1) for the purpose of a criminal proceeding other than a committal proceeding, it may include in the order an order that evidence taken outside the ACT under the firstmentioned order may, subject to this section, be tendered in a proceeding (a *subsequent proceeding*) that is a related civil proceeding.
- (3) Subject to subsection (4), if the Supreme Court has included in an order under section 85C (1) or 85D (1) an order under this section, the court before which the subsequent proceedings is instituted may, on the terms (if any) that it considers just, permit a party to the subsequent proceeding to tender as evidence in the subsequent proceeding the evidence of a person taken in an examination held

under the order made under section 85C (1) or 85D (1) or a record of that evidence.

- (4) Evidence so tendered is not admissible if—
- (a) at the hearing of the subsequent proceeding the court is satisfied that the person is in the ACT and is able to attend the hearing; or
  - (b) the evidence would not have been admissible had it been given or produced at the hearing.
- (5) If it is in the interests of justice to do so, the court before which the subsequent proceeding is instituted may exclude from the subsequent proceeding evidence taken in an examination held under an order under section 85C (1) or 85D (1) even if it is otherwise admissible.

- (6) In this section:

*related civil proceeding*, in relation to a criminal proceeding, means any civil proceeding relating to a cause of action arising from the same subject matter.

### **85F Variation or revocation of orders**

- (1) The Supreme Court may vary or revoke an order made under section 85C (1) or 85D (1) (a *primary order*).
- (2) The power given by subsection (1) includes the power to—
- (a) include in a primary order an order under section 85E; or
  - (b) vary or revoke an order under section 85E that is included in a primary order.
- (3) If a primary order that includes an order under section 85E is revoked, the lastmentioned order shall be taken to have been revoked at the same time.

**85G Exclusion of evidence in criminal proceeding**

This part shall not be taken to affect the power of a court hearing a criminal proceeding to exclude evidence that has been obtained illegally or that would, if admitted, operate unfairly against the defendant.

**85H Operation of other laws**

This part is not intended to exclude or limit the operation of any Territory law that makes provision for the examination of witnesses outside the ACT for the purpose of a proceeding in the ACT.

**85I Rules of court for pt 12A**

- (1) Rules of court may be made under the *Supreme Court Act 1933*, section 36 for this part.

*Note* Rules of court must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The rules may make provision in relation to the practice and procedure of the Supreme Court in a proceeding for the making of an order under section 85C (1) or 85D (1).

**85IA Regulation-making power for pt 12A**

The Executive may make regulations for this part.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Part 12B Taking of evidence for foreign and Australian courts

### 85J Definitions for pt 12B

In this part:

*property* includes any land, chattel or other corporeal property of any description.

*request* includes any commission, order or other process issued for the making of an application under section 85K (1).

*requesting court* means a court or tribunal by or on behalf of which a request is issued.

### 85K Power of Supreme Court

- (1) If, on an application made to the Supreme Court for an order for evidence to be obtained in the ACT, the Supreme Court is satisfied—
  - (a) that the application is made under a request issued by or on behalf of a court or tribunal exercising jurisdiction in a place outside the ACT; and
  - (b) that the evidence to which the application relates is sought to be obtained for the purpose of a proceeding that has been or may be instituted before the requesting court;

the Supreme Court may, by order, make any provision for obtaining evidence in the ACT that appears to the court to be appropriate for the purpose of giving effect to the request.

- (2) An order under subsection (1) shall not be made in relation to a criminal proceeding unless the requesting court is a court of a place in Australia or New Zealand.



- (3) Without limiting subsection (1), an order under that subsection may make provision for all or any of the following matters:
- (a) the examination of witnesses, orally or in writing;
  - (b) the production of documents;
  - (c) the inspection, photographing, preservation, custody or detention of property;
  - (d) the taking of samples of property and the carrying out of any experiments on or with property;
  - (e) the medical examination of a person;
  - (f) without limiting paragraph (e), the taking and testing of samples of blood from a person.
- (4) An order under subsection (1) may require a specified person to take any steps that the Supreme Court considers appropriate, being steps of a kind that could be required to be taken to obtain evidence for the purpose of a proceeding in the Supreme Court (whether or not a proceeding of the same kind as that to which the application for the order relates).
- (5) Subsection (4) does not preclude the making of an order requiring a person to give testimony, orally or in writing, otherwise than on oath if this is asked for by the requesting court.
- (6) An order under subsection (1) shall not require a person—
- (a) to state what documents relevant to the proceeding to which the application for the order relates are or have been in the person's possession, custody or control; or
  - (b) to produce any documents other than particular documents specified in the order and appearing to the Supreme Court to be, or to be likely to be, in the person's possession, custody or control.

- (7) A person who, under an order under subsection (1), is required to attend at any place is entitled to the like conduct money and payment for expenses and loss of time on attendance as a witness in a proceeding in the Supreme Court.

**85L Privilege of witnesses**

- (1) A person shall not be compelled under an order under section 85K (1) to give any evidence that the person could not be compelled to give in similar proceedings in—
- (a) the ACT; or
  - (b) the place where the requesting court exercises jurisdiction.
- (2) Subsection (1) (b) does not apply unless the claim of the person to be exempt from giving evidence is—
- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
  - (b) conceded by the applicant for the order.
- (3) If such a claim is not so supported or conceded, the person may, subject to this section, be required to give the evidence to which the claim relates, but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.
- (4) In this section, a reference to giving evidence includes a reference to answering a question or to producing a document.

**85M Operation of other laws**

This part is not intended to exclude or limit the operation of any Territory law that makes provision for the taking of evidence in the ACT for the purpose of a proceeding outside the ACT.

**85N Rules of court**

Rules of court under the *Supreme Court Act 1933*, section 36 may provide for or in relation to—

- (a) how an application under section 85K (1) is to be made; and
- (b) the circumstances in which an order may be made under section 85K (1); and
- (c) how any reference referred to in section 85L (3) is to be made; and
- (d) any incidental, supplementary or consequential matters.

## Part 13 Miscellaneous

### 86 Documents 20 years old

Any presumption that would, immediately before 29 March 1971, have been made in a proceeding in relation to a document proved or purporting to be not less than 30 years old shall, on and after that date, be made in relation to a document of the same kind proved or purporting to be not less than 20 years old.

### 87 Machine copies

If a document has been copied by means of a photographic or other machine that produces a facsimile copy of the document, the copy is, on proof to the satisfaction of a court that the copy was taken or made from the original document by means of the machine, admissible in evidence to the same extent that the original document would be admissible in evidence without—

- (a) proof that the copy was compared with the original; and
- (b) notice to produce the original document having been given.

### 88 Impounding documents

If a document has been tendered or produced before a court, the court may, whether or not the document is admitted in evidence, direct that the document shall be impounded and kept in the custody of an officer of the court or of another person for the period and subject to the conditions that the court considers appropriate.

### 89 Proof of service on notice to produce

An affidavit made by the person by whom a notice to produce a document or article has been served stating the time and manner of service and having annexed to it a copy of the notice is evidence of the service of the notice and of the time when it was served.

**90 Proof of authority to institute proceedings for indictable offences**

An averment or recital, in an information for an indictable offence presented to the Supreme Court, that the offence is prosecuted in the name of a person appointed by the Governor-General to prosecute in that behalf is evidence that the person named in the information has been duly appointed by the Governor-General to prosecute in that behalf.

**92 Maps, charts etc**

If, in a proceeding, there is a question about the territorial limits or situation of an area or place, or the distance between 2 places, a court may admit in evidence—

- (a) a published book, map, chart or document that appears to the court to be a reliable source of information in relation to the question; or
- (b) a certificate purporting to be signed by a person occupying, or performing the duties of, an office that, in the opinion of the court, qualifies the person to express an opinion in relation to the question.

**93 Evidence when letter delivered in ordinary course of post**

- (1) If, in a proceeding, evidence is given that a letter was posted (postage being prepaid) at a specified time, on a specified day, at a specified place and addressed to a specified address, the letter shall, unless the contrary is proved, be deemed to have been delivered to that address at the time when the letter would have been delivered in the ordinary course of post.
- (2) A certificate given by a person duly authorised to do so by Australia Post stating that a letter posted (postage being prepaid) at a specified time, on a specified day, at a specified place and addressed to a specified address would, in the ordinary course of post, have been

delivered at that address on a specified day is evidence of the fact stated.

- (3) For subsection (2), a document purporting to be a certificate referred to in that subsection shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

#### **94            Proof of convictions**

- (1) In a proceeding, a certificate of the conviction of a person for a specified offence by a federal court, a court of a State or Territory of the Commonwealth or a court of a Commonwealth country, being a certificate purporting to be signed by the registrar or other proper officer of that court, is evidence of the fact of the conviction and of any particulars of the offence or of the conviction, including the date when the offence was committed, and of any sentence of imprisonment or other penalty imposed, that are included in the certificate.
- (2) In a proceeding, a certificate purporting to be signed by the registrar or other proper officer of a court referred to in subsection (1) that a person charged with an offence specified in the certificate was acquitted of the offence, or that the charge was dismissed, by that court is evidence of the facts stated in the certificate.
- (3) An affidavit in accordance with the form set out in schedule 1, made by an officer of the police force of a State or another Territory, is, for the purpose of proving before a court the identity of a person alleged to have been convicted in that State or Territory of an offence, evidence in a proceeding that the person whose fingerprints are shown on a fingerprint card referred to in the affidavit and marked by the officer for identification—
- (a) is the person referred to in a certificate of conviction or certified copy of a conviction annexed to the affidavit as having been convicted of an offence; and
- (b) was convicted of that offence; and

- (c) was convicted of any other offence of which he or she is stated in the affidavit to have been convicted.
- (4) In subsection (3), and in schedule 1, where the Australian Federal Police provides policing services to a Territory, a reference to the police force of that Territory includes a reference to the Australian Federal Police.

## **95 Abolition of certain privileges**

- (1) A person is not entitled, for the purposes of a civil proceeding, to refuse to answer a question or to produce a document or thing on the ground that to do so would expose the person to a forfeiture.
- (2) A person is not entitled to refuse to produce a document for the purposes of a legal proceeding on the ground that the document relates to the title of the person to land.
- (3) A party to a civil proceeding is not entitled to refuse to produce a document for the purposes of that proceeding on the ground that the document relates solely to the party's own case and in no way tends to impeach that case or support the case of any opposing party.

## **96 Comparison of disputed writing**

If, in a proceeding, any writing or signature is in dispute, the writing or signature may be compared with other writing or another signature proved to the satisfaction of the court to be the writing or signature of the person alleged to have written the writing or signature in dispute and the writing or signature so proved and the evidence of witnesses respecting the writing or signature so proved shall be evidence of the genuineness or otherwise of the writing or signature in dispute.





## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Evidence Ordinance 1971* No 4 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. The *Australian Capital Territory (Self-Government) Regulations 1989* No 86 (Cwlth) added this Act to the list of ordinances that were converted into ACT enactments on 1 July 1992.

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on its conversion to an ACT enactment on 1 July 1992.

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

The *Evidence Act 1995* (Cwlth) applies to all proceedings in ACT courts until a day fixed by proclamation (see s 4). On the republication date, no day had been fixed by proclamation.

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 28 provides that a provision of an ACT enactment (including the *Evidence Act 1971*) has no effect to the extent that it is inconsistent with a Commonwealth law in force in the ACT (including the *Evidence Act 1995* (Cwlth)), but an ACT provision is taken to be consistent with a Commonwealth law to the extent that it is capable of operating concurrently with the Commonwealth law.

However, the *Evidence Act 1995* (Cwlth), s 8 (4) (a) provides that that Act does not affect the operation of the provisions of the *Evidence Act 1971* specified in the regulations under the *Evidence Act 1995* (Cwlth). The *Evidence Regulations* (Cwlth) regulation 4, specifies these provisions of the *Evidence Act 1971*. The *Evidence Regulations* (Cwlth) can be found at <http://scaleplus.law.gov.au>.

### Legislation before becoming Territory enactment

#### **Evidence Act 1971 No 4**

notified 25 February 1971

commenced 29 March 1971 (s 3)

as amended by

**Public Trustee (Miscellaneous Amendments) Ordinance 1985 No 9 sch 2**

notified 8 March 1985

commenced 28 October 1985 (s 2 and Cwlth Gaz 1985 No G42)

**Evidence (Amendment) Ordinance 1985 No 19**

notified 17 April 1985

commenced 17 April 1985

**Evidence (Amendment) Ordinance (No 2) 1985 No 61**

notified 28 November 1985

commenced 28 November 1985

**Magistrates Court Ordinance 1985 No 67 sch pt 1**

notified 19 December 1985

commenced 1 February 1986 (s 2 and Cwlth Gaz 1986 No G3)

**Children's Services (Miscellaneous Amendments) Ordinance 1986 No 14 s 4**

notified 4 June 1986

commenced 26 April 1988 (s 2 and Cwlth Gaz 1988 No S116)

**Domestic Violence (Miscellaneous Amendments) Ordinance 1986 No 53 s 4**

notified 4 September 1986

commenced 1 October 1986 (s 2 and Cwlth Gaz 1986 No S484)

**Magistrates Court (Amendment) Ordinance (No 3) 1986 No 74 s 90**

notified 14 November 1986

commenced 14 November 1986

**Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

**Evidence (Amendment) Ordinance 1990 No 4**

notified 27 June 1990

commenced 27 June 1990

## Endnotes

3 Legislation history

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### **Evidence (Amendment) Ordinance (No 2) 1990 No 10**

notified 29 June 1990  
commenced 29 June 1990

### **Legislation after becoming Territory enactment**

#### **Evidence (Amendment) Act 1993 No 2**

notified 1 March 1993 (Gaz 1993 No S23)  
commenced 1 March 1993 (s 2)

#### **Evidence (Amendment) Act (No 2) 1993 No 62**

notified 6 September 1993 (Gaz 1993 No S172)  
commenced 6 September 1993 (s 2)

#### **Electoral (Amendment) (Consequential Provisions) Act 1994 No 15 pt 3**

notified 17 May 1994 (Gaz 1994 No S85)  
ss 1-3, pt 3 commenced 17 May 1994 (s 2 (1))

#### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 34**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 34 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

#### **Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994  
No S250)

#### **Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

#### **Evidence (Amendment) Act 1994 No 98**

notified 15 December 1994 (Gaz 1994 No S280)  
commenced 15 December 1994 (s 2)

**Coroners (Consequential Provisions) Act 1997 No 58 sch 1**

notified 9 October 1997 (Gaz 1997 No S300)  
commenced 9 October 1997 (s 2)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Evidence (Amendment) Act 1999 No 21**

notified 14 April 1999 (Gaz 1999 No S16)  
ss 1-3 commenced 14 April 1999 (s 2 (1))  
remainder commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)

**Children and Young People (Consequential Amendments) Act 1999 No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (s 2 (1))  
sch 2 commenced 10 May 2000 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000 (No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
commenced 1 June 2000 (s 2)

**Legislation (Consequential Provisions) Act 2001 No 15 sch 1**

notified 5 April 2001 (Gaz 2001 No 14)  
s 1, s 2 commenced 5 April 2001 (IA s 10B)  
sch 1 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 134**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 134 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

## Endnotes

4 Amendment history

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### **Protection Orders (Consequential Amendments) Act 2001 No 90 sch 1 pt 5**

notified LR 27 September 2001  
s 1, s 2 commenced 27 September 2001 (LA s 75)  
sch 1 pt 5 commenced 27 March 2002 (s 2, see Protection Orders Act  
2001 s 3 and LA s 79)

### **Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.6**

notified LR 31 October 2003  
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))  
sch 2 pt 2.6 awaiting commencement (s 2)  
*Note* default commencement under LA s 79: 30 April 2004

### **Sexuality Discrimination Legislation Amendment Act 2004 A2004-2 sch 2 pt 2.4**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 2 pt 2.4 commenced 22 March 2004 (s 2 and CN2004-4)

## 4 Amendment history

### **Validation**

s 2 sub 1993 No 2 s 4  
om 2001 No 44 amdt 1.1577

### **Commencement**

s 3 am 1993 No 62 sch  
om 2001 No 44 amdt 1.1577

### **Parts**

s 4 om ord 1990 No 4 s 3

### **Certain laws to cease to be in force**

s 5 om 2001 No 44 amdt 1.1577

### **Definitions for Act**

s 6 def **Act of the Territory** ins 1989 No 38 sch 1  
om 1993 No 62 sch  
def **Australia** am 1993 No 62 sch  
def **government department** ins 1993 No 62 sch  
am 1994 No 38 sch 1 pt 34  
def **public authority** ins 1993 No 62 sch  
sub 1994 No 38 sch 1 pt 34  
def **reserved law** ins 1993 No 62 s 5  
om 2001 No 15 amdt 1.1

def ***Territory public servant*** ins 1989 No 38 sch 1  
om 1993 No 62 sch  
def ***Territory Public Service*** ins 1989 No 38 sch 1  
om 1993 No 62 sch

**Evidence of laws, instruments and office holders**

pt 2 hdg sub 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Evidence of Acts, subordinate laws and instruments**

pt 2 div 1 hdg ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Judicial notice—Acts**

s 8 sub 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Judicial notice—enactments**

s 9 sub 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Judicial notice—subordinate laws**

s 10 am 1989 No 38 sch 1  
sub 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Subordinate laws printed by government printer**

s 10A ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Proof of Gazette**

s 10B ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Proof of instruments under Acts and subordinate laws**

s 10C ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Evidence of reserved laws and instruments**

pt 2 div 2 hdg ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Judicial notice—reserved laws**

s 10D ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

**Judicial notice—proclamations**

s 10E ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

## Endnotes

4 Amendment history

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### **Proof of Commonwealth Gazette**

s 10F ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

### **Proof of instruments under reserved laws**

s 10G ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

### **Evidence of office holders**

pt 2 div 3 hdg ins 1993 No 62 s 6  
om 2001 No 15 amdt 1.2

### **Judicial notice—signatures and seals**

s 10H ins 1993 No 62 s 6  
am 1994 No 15 s 10; 1994 No 38 sch 1 pt 34; 1994 No 60 sch  
1  
om 2001 No 15 amdt 1.2

### **Proof of certain documents**

s 12 am 1993 No 62 sch

### **Evidentiary effect of probate and letters of administration**

s 14 am 1985 No 9 sch 2; 1993 No 62 sch

### **Admissibility of machine copies and reproductions of official documents**

s 15 am 1989 No 38 sch 1; 1993 No 62 sch; ss renum R5 LA

### **Proof of attestation of documents**

s 16 am 1993 No 62 sch

### **Documents attested outside ACT**

s 17 am 1993 No 62 sch; 1997 No 96 sch 1

### **Declarations of due attestation made outside ACT**

s 18 am 1993 No 62 sch

### **Capacity of attesting witnesses**

s 19 am 1993 No 62 sch

### **Proof that entry made in bankers' book**

s 22 am 1993 No 62 sch

### **Inspection of bankers' books**

s 24 am 1993 No 62 sch

### **Proof of bank account, amount of credit etc**

s 25 am 1993 No 62 sch

### **Costs**

s 26 am 1993 No 62 sch

### **References to Supreme Court**

s 27 am 1985 No 67 sch pt 1; 1993 No 62 sch



**Documentary evidence—maker of document called as witness**

s 28 am 1993 No 62 sch

**Documentary evidence—maker of document unable to be called as witness**

s 29 am 1989 No 38 sch 1; 1993 No 62 sch

**Documentary evidence of opinions**

s 30 am 1993 No 62 sch

**Weight of documentary evidence**

s 32 am 1993 No 62 sch

**Corroborative value of documentary evidence**s 33 am 1989 No 38 sch 1  
sub 1993 No 62 sch**Signatures etc—proof of statements in documents**

s 35 am 1993 No 62 sch

**Admissibility of documentary evidence—judicial discretion**

s 36 am 1993 No 62 sch

**Documentary evidence of wages**

s 38 am 1993 No 62 sch

**Computers**

s 39 am 1993 No 62 sch

**Information supplied to computers**

s 40 am 1993 No 62 sch

**Appropriate rules of court**

s 41 am 1985 No 67 sch pt 1; 1985 No 74 s 90; 1993 No 62 sch

**Admissibility of statements produced by computers**

s 42 am 1985 No 67 sch pt 1; 1989 No 38 sch 1; 1993 No 62 sch

**Certificates under s 47, s 49 or s 50**

s 51 am 1993 No 62 sch

**Examination without subpoena or other court process**

s 52 am 1993 No 62 sch

**Witness not disqualified by interest or crime**

s 53 am 1993 No 62 sch

**Parties as witnesses in civil proceedings**

s 54 om A2004-2 amdt 2.10

**Evidence of non-access**

s 55 om A2004-2 amdt 2.10

**Evidence about character**

s 56 am 1993 No 62 sch

## Endnotes

### 4 Amendment history

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#### **Incriminating questions**

s 57 am 1993 No 62 sch  
om A2004-2 amdt 2.10

#### **Disallowance of certain questions**

s 58 am 1993 No 62 sch

#### **Party's discrediting of own witness**

s 60 am 1993 No 62 sch

#### **Proof of prior inconsistent statement of witnesses**

s 61 am 1993 No 62 sch

#### **Cross-examination about previous statements**

s 62 am 1993 No 62 sch

#### **Evidence in writing**

s 63 sub 1993 No 2 s 5

#### **Interpreters**

s 63A ins 1993 No 2 s 5

#### **Unsworn evidence of young children**

s 64 am 1993 No 2 s 6; 1993 No 62 sch

#### **Dying declarations**

s 65 am 1993 No 62 s 3, sch

#### **Competency and compellability of witnesses in criminal proceedings**

s 66 am 1985 No 61; 1986 No 14 s 4; 1986 No 53 s 4; 1989 No 38  
sch 1; 1993 No 62 sch; 1999 No 64 sch 2  
om 2001 No 90 amdt 1.59

#### **Admission by accused person**

s 67 am 1993 No 62 sch; 1997 No 96 sch 1

#### **Admissibility of confessions or admissions**

s 68 am 1993 No 62 sch

#### **Abolition of right of accused to make unsworn statement**

s 68A ins 1994 No 98 s 4

#### **Incriminating questions**

s 69 am 1993 No 62 sch

#### **Questioning of accused about prior convictions and general reputation**

s 70 am 1993 No 62 sch; 1994 No 98 s 5; 1997 No 96 sch 1

#### **Evidence about character of accused**

s 71 am 1993 No 62 sch

#### **Depositions of persons dangerously ill**

s 72 am 1985 No 19 s 2; 1985 No 67 sch pt 1; 1993 No 62 sch;  
1997 No 96 sch 1

**Supreme Court trials—evidence of dead or absent persons**

s 73 am 1985 No 67 sch pt 1; ord 1990 No 10 s 3; 1993 No 62 sch;  
1997 No 96 sch 1  
om 1999 No 66 sch 3 (reloc to Supreme Court Act 1933 as  
s 58A)

**Comment on failure to give evidence**

s 74 am 1993 No 62 sch; 1997 No 96 sch 1  
om A2004-2 amdt 2.10

**Admissibility of certificates of scientific examination**

s 75 am 1985 No 67 sch pt 1; 1993 No 62 sch; 1997 No 58 sch 1

**Evidence in sexual offence proceedings**

pt 10A hdg ins 1985 No 61 s 4  
om [A2003-48 amdt 2.7](#)

**Application of pt 10A**

s 76A ins 1985 No 61 s 4  
am 1985 No 67 sch pt 1; 1993 No 62 sch; 1997 No 58 sch 1  
om [A2003-48 amdt 2.7](#)

**Definitions for pt 10A**

s 76B ins 1985 No 61 s 4  
def **accused person** ins 1985 No 61 s 4  
def **complaint** ins 1985 No 61 s 4  
def **Crimes Act** ins 1985 No 61 s 4  
om 1993 No 62 sch  
def **prescribed sexual offence** ins 1985 No 61 s 4  
am 1993 No 62 sch  
def **prescribed sexual offence proceeding** ins 1985 No 61  
s 4  
om [A2003-48 amdt 2.7](#)

**Evidence of complaint**

s 76C ins 1985 No 61 s 4  
om [A2003-48 amdt 2.7](#)

**Proceedings in camera**

s 76D ins 1985 No 61 s 4  
om [A2003-48 amdt 2.7](#)

**Prohibition of publication of identity of complainant**

s 76E ins 1985 No 61 s 4  
am 1994 No 81 sch  
om [A2003-48 amdt 2.7](#)

**Abolition of rules about corroboration**

s 76F ins 1985 No 61 s 4  
am ord 1990 No 10 s 4; 1993 No 2 s 7; 1993 No 62 sch  
om [A2003-48 amdt 2.7](#)

## Endnotes

### 4 Amendment history

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#### **Admissibility of evidence of sexual reputation**

s 76G ins 1985 No 61 s 4  
am 1993 No 62 sch  
om A2003-48 amdt 2.7

#### **Limitation on dock statements**

s 76H ins 1985 No 61 s 4  
am 1993 No 62 sch  
om 1994 No 98 s 6

#### **Proof of convictions**

s 77 am 1993 No 62 sch

#### **Evidence identifying facts on which conviction was based**

s 79 am 1993 No 62 sch

#### **Operation of other laws**

s 80 am 1993 No 62 sch

#### **References in pt 11 to *court or conviction***

s 81 am 1993 No 62 sch

#### **Application of pt 12**

s 82 am 1985 No 67 sch pt 1; 1993 No 62 sch; 1997 No 58 sch 1

#### **Prohibition of publication of evidence etc**

s 83 am 1993 No 62 sch

#### **Noncompliance with s 83 order**

s 84 am 1985 No 61 s 5; 1993 No 62 sch; 1994 No 81 sch

#### **Questions disallowed under s 58 or s 59**

s 85 am 1985 No 61 s 6; 1993 No 62 sch; 1994 No 81 sch

#### **Use of audiovisual links and audio links**

pt 12AA hdg ins 1999 No 21 s 4  
om 2000 No 17 sch 1

#### **Preliminary**

pt 12AA div 1 hdg ins 1999 No 21 s 4  
om 2000 No 17 sch 1

#### **Interpretation**

s 85AA ins 1999 No 21 s 4  
om 2000 No 17 sch 1

#### **Transitional**

s 85AB ins 1999 No 21 s 4  
om 2000 No 17 sch 1

#### **Application of part**

s 85AC ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Use of interstate audiovisual links or audio links in proceedings before Territory courts**

pt 12AA div 2 hdg ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Application of division**

s 85AD ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Territory courts may take evidence and submissions from outside the Territory**

s 85AE ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Legal practitioners entitled to practise**

s 85AF ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Use of interstate audiovisual links or audio links in proceedings in participating States**

pt 12AA div 3 hdg ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Application of division**

s 85AG ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Recognised courts may take evidence or receive submissions from persons in the Territory**

s 85AH ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Powers of recognised courts**

s 85AI ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Orders made by recognised court**

s 85AJ ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Enforcement of order**

s 85AK ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Privileges, protection and immunity of participants in proceedings in courts of participating States**

s 85AL ins 1999 No 21 s 4  
om 2000 No 17 sch 1

**Recognised court may administer oath in the Territory**

s 85AM ins 1999 No 21 s 4  
om 2000 No 17 sch 1

## Endnotes

4 Amendment history

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### **Assistance to recognised court**

s 85AN ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Contempt of recognised courts**

s 85AO ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Use of audiovisual links or audio links between Territory courts and places in the Territory**

pt 12AA div 4 hdg ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Application of this division**

s 85AP ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Use of link in proceedings**

s 85AQ ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Protection of certain communications and documents in criminal proceedings**

pt 12AA div 5 hdg ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Application**

s 85AR ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Protection of confidentiality**

s 85AS ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Application of Listening Devices Act**

s 85AT ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Costs and expenses**

pt 12AA div 6 hdg ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Power to order payment of costs**

s 85AU ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Regulations**

s 85AV ins 1999 No 21 s 4  
om 2000 No 17 sch 1

### **Examination of witnesses outside the ACT but within Australia**

pt 12A hdg ins ord 1990 No 4 s 4

**Application of pt 12A**

s 85A ins ord 1990 No 4 s 4  
am 1993 No 62 sch

**Definitions for pt 12A**

s 85B ins ord 1990 No 4 s 4  
def **examination** ins ord 1990 No 4 s 4  
def **inferior court** ins ord 1990 No 4 s 4  
def **judicial authority** ins ord 1990 No 4 s 4

**Supreme Court proceedings**

s 85C ins ord 1990 No 4 s 4  
am 1997 No 96 sch 1

**Inferior court proceedings**

s 85D ins ord 1990 No 4 s 4

**Other proceedings**

s 85E ins ord 1990 No 4 s 4

**Variation or revocation of orders**

s 85F ins ord 1990 No 4 s 4

**Exclusion of evidence in criminal proceeding**

s 85G ins ord 1990 No 4 s 4

**Operation of other laws**

s 85H ins ord 1990 No 4 s 4

**Rules of court for pt 12A**

s 85I ins ord 1990 No 4 s 4  
am 1993 No 62 sch  
sub 2001 No 44 amdt 1.1578

**Regulation-making power for pt 12A**

s 85IA (prev s 85J) ins 2001 No 44 amdt 1.1578  
renum as s 85IA R5 LA

**Taking of evidence for foreign and Australian courts**

pt 12B hdg ins ord 1990 No 4 s 4

**Definitions for pt 12B**

s 85J ins ord 1990 No 4 s 4  
def **property** ins ord 1990 No 4 s 4  
def **request** ins ord 1990 No 4 s 4  
def **requesting court** ins ord 1990 No 4 s 4

**Power of Supreme Court**

s 85K ins ord 1990 No 4 s 4

**Privilege of witnesses**

s 85L ins ord 1990 No 4 s 4

## Endnotes

4 Amendment history

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### **Operation of other laws**

s 85M ins ord 1990 No 4 s 4

### **Rules of court**

s 85N ins ord 1990 No 4 s 4  
am 1993 No 62 sch

### **Documents 20 years old**

s 86 am 1993 No 62 sch

### **Certified copies of transcript of Supreme Court proceedings**

s 91 am 1993 No 62 sch; 1999 No 66 sch 3  
om 1999 No 66 s 6 sch 3 (reloc to Supreme Court Act 1933 as  
s 74A)

### **Maps, charts etc**

s 92 am 1993 No 62 sch

### **Evidence when letter delivered in ordinary course of post**

s 93 am 1993 No 62 sch

### **Proof of convictions**

s 94 am 1993 No 62 sch

### **Abolition of certain privileges**

s 95 am 1993 No 62 sch

### **Witnesses failing to attend when required to do so by subpoena or recognisance**

s 97 am 1985 No 61 s 7; 1993 No 62 sch; 1994 No 81 sch  
om 1999 No 66 s 6 sch 3 (reloc to Supreme Court Act 1933 as  
s 70A)

### **Form of affidavit by police fingerprint expert**

sch 1 hdg sub 1993 No 62 sch  
sch 1 am 1993 No 62 sch  
renum R5 LA



## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1A	ord 1990 No 10	31 May 1991
1B	Act 1993 No 62	6 September 1993
2	Act 1994 No 98	31 January 1995
3	Act 1997 No 96	31 March 1999
4	Act 1999 No 21	1 September 1999
5	A2001-90	15 August 2002

## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Evidence (Miscellaneous Provisions) Amendment Act  
2003 A2003-48 sch 2 pt 2.6**

## Part 2.6 Evidence Act 1971

### [2.7] Part 10A

*omit*

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