



AUSTRALIAN CAPITAL TERRITORY

Evidence (Amendment) Act 1999

No. 21 of 1999

An Act to amend the *Evidence Act 1971*

[Notified in ACT Gazette S16: 14 April 1999]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1. Short title

This Act may be cited as the *Evidence (Amendment) Act 1999*.

2. Commencement

(1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

3. Principal Act

In this Act, “Principal Act” means the *Evidence Act 1971*.¹

4. Insertion

After Part XII of the Principal Act the following Part is inserted:

“PART XIIAA—USE OF AUDIO VISUAL LINKS AND AUDIO LINKS

“Division 1—Preliminary

“85AA. Interpretation

In this Part, unless the contrary intention appears—

‘audio link’ means a system of 2-way communication linking different places so that a person speaking at any 1 of them can be heard at the other;

‘audio visual link’ means a system of 2-way communication linking different places so that a person at any 1 of them can be seen and heard at the other;

‘participating State’ means another State in which provisions of an Act in terms substantially corresponding to this Part are in force;

‘recognised court’ means a court or tribunal of a participating State that is authorised by the provisions of an Act of that State in terms substantially corresponding to this Part to direct that evidence be taken or a submission made by audio link or audio visual link from the Territory;

‘State’ includes Territory;

‘Territory court’ means—

- (a) a court constituted under a law of the Territory;
- (b) a Royal Commission appointed under the *Royal Commissions Act 1994*;
- (c) a Judicial Commission appointed under the *Judicial Commissions Act 1994*;
- (d) a tribunal of the Territory; or
- (e) an arbitrator or an umpire conducting proceedings in accordance with the *Commercial Arbitration Act 1986*;

‘tribunal’, in relation to a State, means a person or body authorised by or under a law of the State to take evidence on oath or affirmation.

“85AB. Transitional

This Part applies in relation to all proceedings, including—

- (a) proceedings pending at the commencement of this Part; and
- (b) proceedings commenced after the commencement of this Part that arise from circumstances, matters or events that occurred before that commencement.

“85AC. Application of Part

This Part is not intended to exclude or limit the operation of any law of the Territory that makes provision for the taking of evidence or making of a submission outside the Territory for the purposes of a proceeding in the Territory.

“Division 2—Use of interstate audio visual links or audio links in proceedings before Territory courts

“85AD. Application of Division

This Division applies to any proceeding before a Territory court.

“85AE. Territory courts may take evidence and submissions from outside the Territory

“(1) A Territory court may, on the application of a party to a proceeding before the court or on its own motion, direct that evidence be taken or a submission made by audio visual link or audio link, from a participating State.

“(2) The court shall not make such a direction unless satisfied that—

- (a) the necessary facilities are available or can reasonably be made available;
- (b) the evidence or submission can more conveniently be given or made from the participating State; and
- (c) the making of the direction is not unfair to any party opposing the making of the direction.

“(3) The court may exercise in the participating State, in connection with taking evidence or receiving a submission by audio visual link or audio link, any of its powers that the court is permitted, under the law of the participating State, to exercise in the participating State.

“(4) The court may at any time vary or revoke a direction made under this Division, either on its own motion or on the application of a party to the proceeding.

“85AF. Legal practitioners entitled to practise

A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a legal practitioner—

- (a) in relation to the examination-in-chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given by audio visual link or audio link in a proceeding before a Territory court; and
- (b) in relation to the making of a submission by audio visual link or audio link from the participating State in a proceeding before a Territory court.

“Division 3—Use of interstate audio visual links or audio links in proceedings in participating States

“85AG. Application of Division

This Division applies to any proceeding before a recognised court.

“85AH. Recognised courts may take evidence or receive submissions from persons in the Territory

A recognised court may, for the purposes of a proceeding before it, take evidence or receive a submission by audio visual link or audio link from a person in the Territory.

“85AI. Powers of recognised courts

“(1) The recognised court may, for the purposes of the proceeding, exercise in the Territory, in connection with taking evidence or receiving a submission by audio visual link or audio link, any of its powers except its powers—

- (a) to punish for contempt; and
- (b) to enforce or execute its judgments or process.

“(2) The laws of the participating State (including rules of court) that apply to the proceeding in that State also apply, by force of this subsection, to the practice and procedure of the recognised court in taking evidence or receiving a submission by audio visual link or audio link from a person in the Territory.

“(3) For the purposes of the recognised court exercising its powers, the place in the Territory where evidence is given or a submission is made is taken to be part of the court.

“85AJ. Orders made by recognised court

Without limiting section 85AI, the recognised court may, by order—

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private;
- (b) require a person to leave a place in the Territory where the giving of evidence or the making of a submission is taking place or is going to take place; or
- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

“85AK. Enforcement of order

“(1) Subject to rules of court, an order under section 85AJ may be enforced by the Supreme Court as if the order were an order of that court.

“(2) Without limiting subsection (1), a person who contravenes the order—

- (a) is taken to be in contempt of the Supreme Court; and
- (b) is punishable accordingly;

unless the person establishes that the contravention should be excused.

“85AL. Privileges, protection and immunity of participants in proceedings in courts of participating States

“(1) A judge or other person presiding at or otherwise taking part in a proceeding before a recognised court has, in connection with evidence being taken or a submission being received by audio visual link or audio link from a person in the Territory, the same privileges, protection and immunity as a judge of the Supreme Court.

“(2) A person appearing as a legal practitioner in a proceeding before a recognised court has, in connection with evidence being taken or a submission being received by audio visual link or audio link from a person in the Territory, the same protection and immunity as a barrister has in appearing for a party in a proceeding before the Supreme Court.

“(3) A person appearing as a witness in a proceeding before a recognised court by audio visual link or audio link from the Territory has the same protection as a witness in a proceeding before the Supreme Court.

“85AM. Recognised court may administer oath in the Territory

“(1) A recognised court may, for the purpose of obtaining in the proceeding, by audio visual link or audio link, the testimony of a person in the Territory, administer an oath or affirmation in accordance with the practice and procedure of the recognised court.

“(2) Evidence given by a person on oath or affirmation so administered is, for the purposes of the law of the Territory, testimony given in a judicial proceeding.

“85AN. Assistance to recognised court

An officer of a Territory court may, at the request of a recognised court—

- (a) attend at the place in the Territory where evidence is to be or is being taken, or a submission is to be or is being made, in the proceeding;
- (b) take such action as the recognised court directs to facilitate the proceeding; and
- (c) assist with the administering by the recognised court of an oath or affirmation.

“85AO. Contempt of recognised courts

A person shall not, while evidence is being given, or a submission is being made, in the Territory by audio visual link or audio link, in a proceeding in a recognised court—

- (a) assault—
 - (i) a person appearing in the proceeding as a legal practitioner;
 - (ii) a witness appearing in the proceeding; or
 - (iii) an officer of a Territory court giving assistance under section 85AN;
- (b) threaten, intimidate or wilfully insult—
 - (i) a judge or other person presiding at or otherwise taking part in the proceeding;
 - (ii) a Master, Registrar, Deputy Registrar or other officer of the court who is taking part in or assisting in the proceeding;
 - (iii) a person appearing in the proceeding as a legal practitioner;
 - (iv) a witness in the proceeding; or
 - (v) a juror in the proceeding;

- (c) wilfully interrupt or obstruct the proceeding; or
- (d) wilfully and without lawful excuse disobey an order or direction of the court.

Penalty: Imprisonment for 3 months.

“Division 4—Use of audio visual links or audio links between Territory courts and places in the Territory

“85AP. Application of this Division

This Division applies to any proceeding before a Territory court.

“85AQ. Use of link in proceedings

“(1) Subject to any Act or rules of court, a Territory court may, on the application of a party to a proceeding before it or on its own motion, direct that a person, whether or not a party to the proceeding, appear before, or give evidence or make a submission to, the court by audio visual link or audio link from a place in the Territory that is outside the courtroom or other place where the court is sitting.

“(2) The court shall not make such a direction unless satisfied that—

- (a) the necessary facilities are available or can reasonably be made available;
- (b) the evidence or submission can more conveniently be given or made from the place that is outside the courtroom or other place where the court is sitting; and
- (c) the making of the direction is not unfair to any party opposing the making of the direction.

“(3) The court may at any time vary or revoke a direction made under this Division, either on its own motion or on the application of a party to the proceeding.

“Division 5—Protection of certain communications and documents in criminal proceedings

“85AR. Application

This Division applies to a communication made, and a document transmitted, by audio visual or audio link between an accused person and his or her legal representative during the course of proceedings in relation to which, or to a part of which, an audio visual or audio link has been used under—

- (a) subsection 85AE (1) or 85AQ (1); or

- (b) a provision of another Act.

“85AS. Protection of confidentiality

Without limiting any other protection that applies to it, a communication or document to which this Division applies is as confidential and inadmissible in any proceedings as it would be if it had been made or produced (as the case requires) while the accused person and his or her legal representative were in each other’s presence.

“85AT. Application of Listening Devices Act

The *Listening Devices Act 1992* applies to a communication and a document to which this Division applies as if—

- (a) in the case of a communication—the communication were a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and
- (b) in the case of a document—
 - (i) any data, text or visual images in the transmitted document were words spoken to or by a person in a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and
 - (ii) a reference in that Act to the use of a listening device to overhear, record, monitor or listen to a private conversation included a reference to reading the document.

“Division 6—Costs and expenses

“85AU. Power to order payment of costs

A Territory court that directs evidence to be taken, or a submission to be made, by audio visual link or audio link under section 85AE or 85AQ may make such orders as it considers just for the payment of the costs and expenses incurred in connection with taking the evidence or making the submission, including any amounts prescribed under section 85AV.

“85AV. Regulations

The Executive may make regulations prescribing the amounts, or the manner of calculating amounts, payable to a Territory court in respect of the cost of, or incidental to, the provision of an audio visual or audio link and ancillary equipment for the purposes of this Part.”.

NOTE

Principal Act

1. Reprinted as at 31 January 1995. See also Acts Nos. 58 and 96, 1997.

[Presentation speech made in Assembly on 18 February 1999]

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