



Australian Capital Territory

Evidence by Commission Act 1859 22 Vic c 20

Republication No 1

Republication date: 5 July 2002

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Evidence by Commission Act 1859* 22 Vic c 20 as in force on 5 July 2002. It includes any commencement, repeal or expiry affecting the republished law and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

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):

- 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 includes 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.



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Australian Capital Territory

Evidence by Commission Act 1859 22 Vic c 20

An Act to provide for taking evidence in suits and proceedings pending before tribunals in Her Majesty's Dominions in places out of the jurisdiction of the tribunals

1 Examination of witnesses out of jurisdiction of any tribunal in Her Majesty's possessions in relation to any suit pending before the tribunal

- (1) If on an application for this purpose it is made to appear to any court or judge having authority under this Act that any court or tribunal of competent jurisdiction in Her Majesty's dominions has duly authorised, by commission, order, or other process, the obtaining the testimony in or in relation to any action, suit, or proceeding pending in or before the court or tribunal of any witness out of the jurisdiction of the court or tribunal, and within the jurisdiction of the firstmentioned court, or of the court to which the judge belongs, or of the judge, it shall be lawful for the court or judge to order the examination before the person appointed, and in way and form directed by the commission, order, or other process, of the witness accordingly.
- (2) It shall be lawful for the court or judge by the same order, or for the court or judge, or any other judge having authority under this Act, by any subsequent order, to command the attendance of any person to be named in the order for the purpose of being examined, or the production of any writings or other documents to be mentioned in the order, and to give all the directions about the time, place and manner of the examination, and all other matters connected with it, as may appear reasonable and just.
- (3) Any such order may be enforced, and any disobedience of it punished, in like way as in the case of an order made by the court or judge in a cause pending in the court or before the judge.

3 Payment of expenses

However, every person whose attendance shall be so ordered shall be entitled to the like conduct money, and payment for expenses and loss of time, as on attendance at a trial.

4 Power to persons to refuse to answer questions or to produce documents

- (1) Also, that every person examined under any commission, order, or other process authorised under this Act, shall have the like right to refuse to answer questions tending to incriminate himself or herself, and other questions that a witness in any cause pending in the court by which, or by a judge of the court, or before the judge by whom the order for examination was made, would be entitled to.
- (2) In addition, no person shall be compelled to produce under any order authorised under this Act any writing or other document that the person would not be compellable to produce at a trial of such a cause.

5 What courts and judges to have authority under this Act

Her Majesty's Superior Courts of Common Law at Westminster and in Dublin respectively, the Court of Session in Scotland, and any Supreme Court in any of Her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who, by any order of Her Majesty in Council, may be appointed for this purpose, shall respectively be courts and judges having authority under this Act.

6 Power to frame rules etc for giving effect to provisions of this Act

It shall be lawful for the Lord Chancellor of Great Britain, with the assistance of 2 of the judges of the Courts of Common Law at Westminster, so far as relates to England, and for 2 of the judges of the Court of Session, so far as relates to Scotland, and for the chief or only judge of the Supreme Court in any of Her Majesty's colonies or possessions abroad, so far as relates to such colony or possession, to frame the rules and orders necessary or proper for giving effect to the provisions of this Act, and regulating the procedure under the provisions of this Act.

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.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

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

3 Legislation history

This Act was originally a UK Act—The Evidence by Commission Act, 1859 22 Vic c 20 (UK). The Act was renamed as the *Evidence by Commission Act 1859* when it was first republished under the *Legislation Act 2001*.

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4 the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former UK laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

Under the *Interpretation Act 1967* (repealed), s 65 all former UK Acts in force in the ACT immediately before 10 November 1999 (including this Act) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former UK Acts fully into ACT laws.

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as amended by

Imperial Acts Application Act 1986 No 93 s 5 and sch 3 pt 21

notified 12 January 1987 (Cwlth Gaz 1986 No S1)

s 5 and sch 3 pt 21 commenced 12 January 1987 (s 2 (1))

4 Amendment history

The *Imperial Acts Application Act 1986* (the **1986 Act**), sch 3, pt 21 set out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT (see 1986 Act, s 5 (1), (4) and (5)).

This Act was amended before 3 September 1939 in the UK by the *Perjury Act 1911* (UK). Those amendments were incorporated into the text of the Act by the 1986 Act.

Section 2 was omitted by the 1986 Act. It was omitted in the UK by the *Perjury Act 1911* (UK).

The parts of section 6 about the making of rules and orders for Ireland were omitted by the 1986 Act. It was omitted in the UK by the *Northern Ireland Act 1962* (UK).

This Act has not been amended since the enactment of the 1986 Act, except under the *Legislation Act 2001*.

Name of Act

am R1 LA

Authorised by the ACT Parliamentary Counsel—also accessible at
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