



Australian Capital Territory

# **Evidence by Commission Act 1885 48 and 49 Vic c 74**

**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 1885* 48 and 49 Vic c 74 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](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 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.



Australian Capital Territory

# Evidence by Commission Act 1885 48 and 49 Vic c 74

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Australian Capital Territory

## **Evidence by Commission Act 1885 48 and 49 Vic c 74**

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An Act to amend the law relating to taking evidence by commission in India and the Colonies, and elsewhere in Her Majesty's Dominions

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**1 Name of Act**

This Act is the *Evidence by Commission Act 1885*.

**2 Power to courts to nominate examiner in civil proceedings**

If in any civil proceeding in any court of competent jurisdiction an order for the examination of any witness or person has been made, and a commission, mandamus, order, or request for the examination of the witness or person is addressed to any court, or to any judge of a court, in India or the Colonies, or elsewhere in Her Majesty's dominions, beyond the jurisdiction of the court ordering the examination, it shall be lawful for the court, or the chief judge of the court, or the judge, to nominate some fit person to take the examination, and any deposition or examination taken before an examiner so nominated shall be admissible in evidence to the same extent as if it had been taken by or before the court or judge.

**3 Power in criminal proceedings to nominate judge or magistrate to take depositions**

If in any criminal proceeding a mandamus or order for the examination of any witness or person is addressed to any court, or to any judge of a court, in India or the Colonies, or elsewhere in Her Majesty's dominions, beyond the jurisdiction of the court ordering the examination, it shall be lawful for the court, or the chief judge of the court, or the judge, to nominate any judge of the court, or any judge of an inferior court, or magistrate within the jurisdiction of the firstmentioned court, to take the examination of the witness or person, and any deposition or examination so taken shall be admissible in evidence to the same extent as if it had been taken by or before the court or judge to whom the mandamus or order was addressed.

**4 Conduct money etc**

The provisions of the *Evidence by Commission Act 1859*, as amended by this Act, shall apply to proceedings under this Act.

**5 Amendment of Evidence by Commission Act 1859 about costs**

The power to make rules given by the *Evidence by Commission Act 1859*, section 6 shall be deemed to include a power to make rules with regard to all costs of or incidental to the examination of any witness or person, including the remuneration of the examiner (if any) whether the examination be ordered under that Act or under this or any other Act for the time being in force relating to the examination of witnesses beyond the jurisdiction of the court ordering the examination.

**6 Oath or affirmation of witness**

When under any commission, mandamus, order or request under this Act any witness or person is to be examined in any place beyond the jurisdiction of the court ordering the examination, the witness or person may be examined on oath, affirmation or otherwise, according to the law in force in the place where the examination is taken, and any deposition or examination so taken is effective for all purposes as if the witness or person had been examined on oath before a person duly authorised to administer an oath in the court ordering the examination.

## 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, 1885 48 and 49 Vic c 74 (UK). The Act was renamed as the *Evidence by Commission Act 1885* 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.

#### **Evidence by Commission Act 1885 48 and 49 Vic c 74**

as amended by

#### **Imperial Acts Application Act 1986 No 93 s 5 and sch 3 pt 26**

notified 12 January 1987 (Cwlth Gaz 1986 No S1)

s 5 and sch 3 pt 26 commenced 12 January 1987 (s 2 (1))

### 4 Amendment history

The *Imperial Acts Application Act 1986* (the **1986 Act**), sch 3, pt 26 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 has not been amended since the enactment of the 1986 Act, except under the *Legislation Act 2001*.

#### **Name of Act**

s 1 hdg am R1 LA

s 1 am R1 LA

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[www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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