

**1993**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**EVIDENCE (AMENDMENT) BILL (No. 2) 1993**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of**

**Mr Terry Connolly MLA**

**Attorney General**

## EVIDENCE (AMENDMENT) BILL (No. 2) 1993

### OUTLINE

The *Evidence Act 1971* (the Principal Act) relates to matters relating to the giving and receiving of evidence before any court, tribunal or person having authority under a law in force in the Territory or by consent of the parties to receive evidence.

The Evidence (Amendment) Bill (No. 2) 1993 is essentially a machinery measure. It will amend the Principal Act in consequence of its conversion from a Commonwealth Ordinance to a Territory enactment, make the language of the Act gender neutral, eliminate redundant provisions and apply modern drafting standards. The Bill will also repeal the *Evidence (Laws and Instruments) Act 1989* and incorporate its substance into the Principal Act.

### FINANCIAL CONSIDERATIONS

None.

### DETAILS OF INDIVIDUAL CLAUSES

#### Formal

Clause 1 sets out the short title.

Clause 2 provides that the Bill will commence on notification in the Gazette.

Clause 3 is an interpretative provision defining the term "Principal Act" to mean the *Evidence Act 1971*.

#### Judicial notice, etc., of Ordinances

Clause 6 repeals the existing Part II of the Principal Act which deals with the taking of judicial notice in relation to the making of Ordinances, Regulations and associated instruments and substitutes a new Part II. These provisions relate to the making of Territory laws prior to self-government.

## Reserved laws

Clause 5 amends section 6 to insert a new definition of "reserved law". The new definition is inserted for the purposes of Division 2 of the new Part II. This term is defined to mean the legislation specified in Schedule 5 to the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth, an Ordinance or subordinate legislation made under either a law specified in Schedule 5 or an Ordinance. These laws apply to the Territory, but are not Territory enactments and come within the administrative responsibility of the Department of Arts, Sport, the Environment and Territories and the Commonwealth Attorney-General's Department. There is presently no mechanism in the Territory's evidence laws to enable the taking of judicial notice of the making of these laws and proof of instruments made under them.

Clause 6 inserts Division 2 of the new Part II. New section 10D will enable judicial notice to be taken of reserved laws. New section 10E will require a court to take notice of a proclamation made by the Governor-General under a reserved law. New section 10F will provide for proof of the Commonwealth *Gazette*. New section 10G will relate to the proof of instruments made under reserved laws.

## Evidencing of enactments, instruments and the *Gazette*

Clause 4 repeals the *Evidence (Laws and Instruments) Act 1989* and the *Evidence (Laws and Instruments) (Amendment) Act 1990*.

Clause 6 inserts Division 1 of the new Part II which will re-enact the substance of sections 4 - 9 of the *Evidence (Laws and Instruments) Act 1989*. New sections 8 - 10 provide for judicial notice to be taken of Territory Acts, Territory enactments and subordinate laws. New sections 10A and 10B respectively will relate to evidencing the making of a subordinate law, proof of the A.C.T. *Gazette* and gazettal. New section 10C will set out the method of proving instruments made under Acts and subordinate laws and proving publication in the A.C.T. *Gazette* or in the Commonwealth *Gazette* before 11 May 1989 (Self-Government Day).

Paragraph 5(b) of the *Evidence (Laws and Instruments) Act 1989* is re-enacted as the new paragraph 9(b). Paragraph 5(b), as shown in the reprint dated 31 May 1991, erroneously refers to "a converted Act" rather than to "a converted Ordinance". This corresponding new provision (paragraph 9(b)) correctly refers to "a converted Ordinance".

## Judicial notice of office holders

Clause 6 inserts Division 3 of the new Part II which will re-enact the substance of section 10 of the *Evidence (Laws and Instruments) Act 1989*. It contains a list of persons holding specified offices of whose signature a Court is required to take judicial notice. This list will be slightly expanded to include the office of the Deputy Chief Minister. The reference to "the Presiding Officer of the Legislative Assembly", which reflects the terminology of subsection 11(1) of the *Australian Capital Territory (Self-Government) Act 1988* (Cth), will be altered so as to refer to "the Speaker", the title determined by the Assembly in accordance with subsection 11(2) of that Act. The 14 categories of office holders have been re-numbered in order to simplify identification.

## Statute law revision amendments

Clause 7 effects a number of amendments of a formal nature which are included in the Schedule. These amendments can be categorised as follows:

Expressing the Act in gender-neutral terms.

Bringing the language of the Principal Act into line with current legislative drafting principles, expressing concepts in a clearer style and omitting surplusage.

Amendments associated with the conversion of the Principal Act from a Commonwealth Ordinance to a Territory enactment, including the omission of matters already covered by the *Interpretation Act 1967*.

Updating the references to the *Crimes Act 1900* of New South Wales which was made a Territory Act by the *Crimes Legislation (Status and Citation) Act 1992*.

Updating references to the *Supreme Court Act 1933* which became a Territory Act on 1 July 1992. Its provisions were re-numbered and its short title altered from the *Australian Capital Territory Supreme Court Act 1933* (Cth) by the *A.C.T. Supreme Court (Transfer) Act 1992* (Cth).

The omission of a reference to the Curator of the Estates of Deceased Persons in relation to letters of administration (paragraph 14(5)(b) refers). The office was abolished by the *Public Trustee (Miscellaneous Amendments) Ordinance 1985*.

Updating references to the Australian Postal Corporation (subsection 93(2) refers) and the Australian Federal Police (section 94 refers).