



Australian Capital Territory

# Evidence (Consequential Amendments) Act 2011

A2011-48

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Australian Capital Territory

# **Evidence (Consequential Amendments) Act 2011**

**A2011-48**

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An Act to amend legislation because of the enactment of the *Evidence Act 2011*, and for other purposes

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

**1 Name of Act**

This Act is the *Evidence (Consequential Amendments) Act 2011*.

**2 Commencement**

- (1) This Act (other than schedule 1, part 1.9) commences on the commencement of the *Evidence Act 2011*, section 3.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* The *Evidence (Miscellaneous Provisions) Amendment Act 2011* makes amendments to the *Evidence (Miscellaneous Provisions) Act 1991*, pt 5 and pt 7 that will commence immediately before the commencement of this Act, sch 1, pt 1.19.

- (2) Schedule 1, part 1.9 commences on a day fixed by the Minister by written notice.
- (3) If schedule 1, part 1.9 has not commenced within 1 year beginning on this Act's notification day, it automatically commences on the first day after that period.
- (4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

**3 Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

**4 Repeal of Evidence Act 1971**

The *Evidence Act 1971* (A1971-4) is repealed.

## **Schedule 1      Legislation amended**

(see s 3)

### **Part 1.1                      Administration and Probate Act 1929**

#### **[1.1]      New section 9C**

*insert*

#### **9C              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 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.

*Note*      The *Evidence Act 2011*, s 92 (1) deals with the admission or use of the grant of probate or letters of administration to prove the death, or date of death, of a person or the execution of a testamentary document.

### **Part 1.2                      Adoption Act 1993**

#### **[1.2]      Section 117**

*omit*

## **Part 1.3                      Animal Welfare Act 1992**

**[1.3]           Section 98 (1), note**

*omit*

## **Part 1.4                      Associations Incorporation Act 1991**

**[1.4]           Section 115 (3)**

*omit*

**[1.5]           Section 115 (4) (a)**

*omit*

, or an extract from,

## **Part 1.5                      Australian-American Educational Foundation Act 1966**

**[1.6]           Section 5 (3)**

*omit*

## **Part 1.6                      Building Act 2004**

**[1.7]           Section 148, note**

*omit*

## **Part 1.7                      Casino Control Act 2006**

**[1.8]           Section 142 (3)**

*omit*



## **Part 1.8**                      **Children and Young People Act 2008**

### **[1.9]            Section 875 (2), example**

*omit*

- *Evidence Act 1995 (Cwlth)*

*substitute*

- *Evidence Act 2011*

## **Part 1.9**                      **Civil Law (Wrongs) Act 2002**

### **[1.10]          Chapter 6**

*omit*

### **[1.11]          Dictionary, definitions of *agreed expert* and *appointed expert***

*omit*

### **[1.12]          Dictionary, definition of *claim*, paragraph (b)**

*omit*

### **[1.13]          Dictionary**

*omit the definitions of*

*evidence*

*expert*

*expert medical evidence*

*medical issue*

## Part 1.10            Confiscation of Criminal Assets Act 2003

### [1.14]            Division 13.4 heading, note

*omit*

*Evidence Act 1995 (Cwlth)*

*substitute*

*Evidence Act 2011*

### [1.15]            Section 248, note 1

*omit*

*Evidence Act 1995 (Cwlth)*

*substitute*

*Evidence Act 2011*

## Part 1.11            Court Procedures Act 2004

### [1.16]            Section 41 (2) (c)

*omit*

section 9 (Consequential orders)

*substitute*

section 11 (Consequential orders—pt 2)

**[1.17] New part 6A**

*insert*

## **Part 6A                      Procedural provisions—criminal proceedings**

### **55                      Provision of interpreters**

- (1) This section applies if—
- (a) evidence is to be given by a witness in a criminal proceeding through an interpreter; and
  - (b) either—
    - (i) the witness does not wish to provide the interpreter; or
    - (ii) the court considers that the person provided, or proposed to be provided, by the witness as an interpreter is not competent to interpret for the witness in the proceeding.

*Note*      The *Evidence Act 2011*, s 30 provides that a witness in a proceeding in an ACT court may give evidence through an interpreter unless the witness can understand and speak the English language sufficiently to enable the witness to understand, and to make an adequate reply to, a question put to the witness.

- (2) The prosecutor must provide a person who is competent to interpret for the witness in the proceeding.

## **Part 1.12                      Crimes Act 1900**

**[1.18] Section 439 (6)**

*omit*

## Part 1.13            Crimes (Forensic Procedures) Act 2000

### [1.19]            Section 42 (4), note 2

*omit*

outside ACT

*substitute*

participating States

## Part 1.14            Crimes (Sentence Administration) Act 2005

### [1.20]            Section 211 (3), note

*substitute*

*Note*            For the admissibility of a record of a proceeding, see the *Evidence Act 2011*, s 157.

## Part 1.15            Criminal Code 2002

### [1.21]            Section 704 (2)

*omit*

*Evidence Act 1995* (Cwlth), section 13 (Competence: lack of capacity)

*substitute*

*Evidence Act 2011*, section 13 (Competence—lack of capacity)

## **Part 1.16                      Domestic Violence and Protection Orders Act 2008**

### **[1.22]      Section 110**

*omit*

## **Part 1.17                      Domestic Violence and Protection Orders Regulation 2009**

### **[1.23]      Part 5 heading, note**

*substitute*

*Note*      The *Evidence Act 2011* deals with the following areas:

- examination on oath (see s 21)
- court control over conduct of hearing (see div 2.1.3)
- privileges (see pt 3.10)
- proof of court documents (see s 157)
- requests to produce documents or call witnesses (see div 4.6.1).

### **[1.24]      Section 53 (3), note**

*omit*

*Evidence Act 1995* (Cwlth)

*substitute*

*Evidence Act 2011*

## Part 1.18                      Evidence Act 2011

### [1.25]      Section 8, new examples

*before the note, insert*

**Examples**

- 1    *Bail Act 1992, s 19 (2)*
- 2    *Evidence (Miscellaneous Provisions) Act 1991, pt 5*

### [1.26]      Section 8, new note 2

*insert*

*Note 2*    An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### [1.27]      Dictionary, note 2

*insert*

- office

## Part 1.19                      Evidence (Miscellaneous Provisions) Act 1991

### [1.28]      Part 5 heading

*substitute*

## Part 5                              Certain evidence under court rules not admissible

**[1.29] New division 7.3**

*insert*

**Division 7.3 Evidence in any proceedings—  
extended application of Evidence Act**

**105 Extended application of Evidence Act—interpreters**

The *Evidence Act 2011*, section 30 applies to a proceeding in an evidence receiving entity.

*Note 1* **Proceeding**—see the Legislation Act, dictionary, pt 1.

*Note 2* The *Evidence Act 2011*, s 30 provides that a witness in a proceeding in an ACT court may give evidence through an interpreter unless the witness can understand and speak the English language sufficiently to enable the witness to understand, and to make an adequate reply to, a question put to the witness.

**[1.30] Dictionary, definition of *ACT court*, new note**

*insert*

*Note* **ACT court** means the Supreme Court or Magistrates Court, and includes an entity that, in exercising a function under a territory law, is required to apply the laws of evidence.

**[1.31] Dictionary, definition of *evidence receiving entity*, new examples**

*insert*

**Examples**

- 1 ACAT
- 2 judicial commission
- 3 remuneration tribunal
- 4 sentence administration board

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## Part 1.20      Housing Assistance Act 2007

### [1.32]      Section 9 (2), note

*omit*

## Part 1.21      Human Rights Commission Act 2005

### [1.33]      Section 66 (2)

*omit*

*Evidence Act 1995* (Cwlth)

*substitute*

*Evidence Act 2011*

## Part 1.22      Legislation Act 2001

### [1.34]      Section 170 (2) and note

*substitute*

- (2) However, this section does not affect the operation of the *Evidence Act 2011*.

*Note*      The *Evidence Act 2011*, s 128 contains provisions that apply if a witness raises these privileges in a proceeding. The privileges have been abolished for bodies corporate (see *Evidence Act 2011*, s 187).

### [1.35]      Section 171 (2) and note

*substitute*

- (2) However, this section does not affect the operation of the *Evidence Act 2011*.

*Note*      The *Evidence Act 2011*, div 3.10.1 contains provisions about client legal privilege.



**[1.36] Section 250 (2) and note**

*substitute*

- (2) However, subsection (1) does not affect the operation of the *Evidence Act 2011*, section 160 (Postal articles).

*Note* The *Evidence Act 2011*, s 160 provides a rebuttable presumption that a postal article sent by prepaid post addressed to a person at an address in Australia or an external territory was received on the 4th working day after posting.

**[1.37] Dictionary, part 1, definition of *oath*, note**

*substitute*

*Note* The *Evidence Act 2011*, div 2.1.2 and the *Oaths and Affirmations Act 1984* deal with oaths and affirmations.

## **Part 1.23 Magistrates Court Act 1930**

**[1.38] Section 141 (5)**

*omit*

**[1.39] Section 317 (3) and (4)**

*omit*

section 315 (6)

*substitute*

section 315 (5)

## Part 1.24                      Mediation Act 1997

### [1.40]      Section 9

*substitute*

#### 9                      Admissibility of evidence

- (1) Evidence of mediation material is not admissible in a proceeding except in accordance with the *Evidence Act 2011*, section 131 (Exclusion of evidence of settlement negotiations).
- (2) In this section:

*mediation material* means—

- (a) a communication made in a mediation session; or
- (b) a document, whether delivered or not, prepared—
  - (i) for or during a mediation session; or
  - (ii) following a decision made or undertaking given in a mediation session.

## Part 1.25                      National Environment Protection Council Act 1994

### [1.41]      Section 34 (4)

*omit*

## Part 1.26 Nature Conservation Act 1980

### [1.42] Section 138 (2)

*omit*

## Part 1.27 Oaths and Affirmations Act 1984

### [1.43] Section 2, notes 1 and 2

*substitute*

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### [1.44] Dictionary, definitions of *court* and *proceeding*

*substitute*

***court*** includes a tribunal or person having authority to receive evidence—

- (a) under a law in force in the ACT; or
- (b) by consent of parties.

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

## Part 1.28            Parentage Act 2004

### [1.45]    Section 48

*substitute*

#### 48            Proof of orders etc about parentage

In any proceeding in a Territory court, a document purporting to be any of the following is evidence of the facts stated in it and the matters appearing from it:

- (a) an order or declaration made under this Act;
- (b) an official certificate, entry or record of the making of the order or declaration.

*Note*        A certified copy or extract from an order, declaration or certificate is admissible in a proceeding in a Territory court (see *Evidence Act 2011*, s 155 and s 156).

## Part 1.29            Partnership Act 1963

### [1.46]    Section 85 (1), note

*omit*

## Part 1.30            Planning and Development Act 2007

### [1.47]    Section 47 (2), note

*omit*

## **Part 1.31                    Public Health Act 1997**

### **[1.48]    Section 135**

*omit everything before subsection (2), substitute*

**135       Evidence—costs and expenses**

## **Part 1.32                    Public Trustee Act 1985**

### **[1.49]    Section 23A (6), definition of *legal record*, note**

*omit*

*Evidence Act 1995 (Cwlth)*

*substitute*

*Evidence Act 2011*

## **Part 1.33                    Sale of Motor Vehicles Act 1977**

### **[1.50]    Section 88 (2)**

*omit*

## **Part 1.34                    Salvation Army Property Trust Act 1934**

### **[1.51]    Section 10**

*omit*

, as the case may be, and judicial notice shall be taken of the signature of the secretary for the time being on every such certificate

## **Part 1.35                      Spent Convictions Act 2000**

### **[1.52]      Section 19 (9) (b)**

*substitute*

- (b) the *Evidence Act 2011*, part 3.5 (Evidence of judgments and convictions) and part 3.8 (Character).

## **Part 1.36                      Supreme Court Act 1933**

### **[1.53]      Section 68C (4)**

*omit*

## **Part 1.37                      Uniting Church in Australia Act 1977**

### **[1.54]      Section 9 (5)**

*omit*

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 20 October 2011.

**2 Notification**

Notified under the Legislation Act on 22 November 2011.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Evidence (Consequential Amendments) Bill 2011, which was passed by the Legislative Assembly on 15 November 2011.

Clerk of the Legislative Assembly

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