

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Evidence (Consequential Amendments) Bill 2011

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(Attorney-General)

Evidence (Consequential Amendments) Bill 2011

A Bill for

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

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

1 **1 Name of Act**

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

3 **2 Commencement**

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

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

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

12 (2) Schedule 1, part 1.9 commences on a day fixed by the Minister by
13 written notice.

14 (3) If schedule 1, part 1.9 has not commenced within 1 year beginning
15 on this Act's notification day, it automatically commences on the
16 first day after that period.

17 (4) The Legislation Act, section 79 (Automatic commencement of
18 postponed law) does not apply to this Act.

19 **3 Legislation amended—sch 1**

20 This Act amends the legislation mentioned in schedule 1.

21 **4 Repeal of Evidence Act 1971**

22 The *Evidence Act 1971* (A1971-4) is repealed.

1 **Schedule 1** **Legislation amended**

2 (see s 3)

3 **Part 1.1** **Administration and Probate**
4 **Act 1929**

5 **[1.1] New section 9C**

6 *insert*

7 **9C Evidentiary effect of probate and letters of administration**

- 8 (1) The probate of a will or letters of administration with a will annexed
9 are evidence of the execution of the will.
- 10 (2) The copy of a will annexed to a probate or to letters of
11 administration is evidence of the contents of the will.
- 12 (3) The probate of a will is evidence of the death of the testator and, if
13 the probate states the date of death of the testator, of the date of
14 death.
- 15 (4) Letters of administration of the estate of a deceased person are
16 evidence of the death of the person and, if the letters of
17 administration state the date of death of the person, of the date of
18 death.

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

22 **Part 1.2** **Adoption Act 1993**

23 **[1.2] Section 117**

24 *omit*

1 **Part 1.3** **Animal Welfare Act 1992**

2 **[1.3] Section 98 (1), note**

3 *omit*

4 **Part 1.4** **Associations Incorporation**
5 **Act 1991**

6 **[1.4] Section 115 (3)**

7 *omit*

8 **[1.5] Section 115 (4) (a)**

9 *omit*

10 , or an extract from,

11 **Part 1.5** **Australian-American Educational**
12 **Foundation Act 1966**

13 **[1.6] Section 5 (3)**

14 *omit*

15 **Part 1.6** **Building Act 2004**

16 **[1.7] Section 148, note**

17 *omit*

18 **Part 1.7** **Casino Control Act 2006**

19 **[1.8] Section 142 (3)**

20 *omit*

1 **Part 1.8** **Children and Young People**
2 **Act 2008**

3 **[1.9] Section 875 (2), example**

4 *omit*

- 5 • *Evidence Act 1995 (Cwlth)*

6 *substitute*

- 7 • *Evidence Act 2011*

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

9 **[1.10] Chapter 6**

10 *omit*

11 **[1.11] Dictionary, definitions of *agreed expert* and *appointed***
12 ***expert***

13 *omit*

14 **[1.12] Dictionary, definition of *claim*, paragraph (b)**

15 *omit*

16 **[1.13] Dictionary**

17 *omit the definitions of*

18 *evidence*

19 *expert*

20 *expert medical evidence*

21 *medical issue*

1 **Part 1.10** **Confiscation of Criminal Assets**
2 **Act 2003**

3 **[1.14] Division 13.4 heading, note**

4 *omit*

5 *Evidence Act 1995 (Cwlth)*

6 *substitute*

7 *Evidence Act 2011*

8 **[1.15] Section 248, note 1**

9 *omit*

10 *Evidence Act 1995 (Cwlth)*

11 *substitute*

12 *Evidence Act 2011*

13 **Part 1.11** **Court Procedures Act 2004**

14 **[1.16] Section 41 (2) (c)**

15 *omit*

16 section 9 (Consequential orders)

17 *substitute*

18 section 11 (Consequential orders—pt 2)

1 **[1.17] New part 6A**

2 *insert*

3 **Part 6A Procedural provisions—criminal**
4 **proceedings**

5 **55 Provision of interpreters**

6 (1) This section applies if—

7 (a) evidence is to be given by a witness in a criminal proceeding
8 through an interpreter; and

9 (b) either—

10 (i) the witness does not wish to provide the interpreter; or

11 (ii) the court considers that the person provided, or proposed
12 to be provided, by the witness as an interpreter is not
13 competent to interpret for the witness in the proceeding.

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

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

21 **Part 1.12 Crimes Act 1900**

22 **[1.18] Section 439 (6)**

23 *omit*

1 **Part 1.16** **Domestic Violence and**
2 **Protection Orders Act 2008**

3 **[1.22] Section 110**

4 *omit*

5 **Part 1.17** **Domestic Violence and**
6 **Protection Orders**
7 **Regulation 2009**

8 **[1.23] Part 5 heading, note**

9 *substitute*

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

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

16 **[1.24] Section 53 (3), note**

17 *omit*

18 *Evidence Act 1995* (Cwlth)

19 *substitute*

20 *Evidence Act 2011*

1 **[1.29] New division 7.3**

2 *insert*

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

5 **105 Extended application of Evidence Act—interpreters**

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

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

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

14 **[1.30] Dictionary, definition of ACT court, new note**

15 *insert*

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

19 **[1.31] Dictionary, definition of evidence receiving entity, new**
20 **examples**

21 *insert*

22 **Examples**

- 23 1 ACAT
24 2 judicial commission
25 3 remuneration tribunal
26 4 sentence administration board

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

1 **[1.36] Section 250 (2) and note**

2 *substitute*

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

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

9 **[1.37] Dictionary, part 1, definition of *oath*, note**

10 *substitute*

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

13 **Part 1.23 Magistrates Court Act 1930**

14 **[1.38] Section 141 (5)**

15 *omit*

16 **[1.39] Section 317 (3) and (4)**

17 *omit*

18 section 315 (6)

19 *substitute*

20 section 315 (5)

1 **Part 1.26 Nature Conservation Act 1980**

2 **[1.42] Section 138 (2)**

3 *omit*

4 **Part 1.27 Oaths and Affirmations Act 1984**

5 **[1.43] Section 2, notes 1 and 2**

6 *substitute*

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

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

13 **[1.44] Dictionary, definitions of *court* and *proceeding***

14 *substitute*

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

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

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

1 **Part 1.31** **Public Health Act 1997**

2 **[1.48] Section 135**

3 *omit everything before subsection (2), substitute*

4 **135 Evidence—costs and expenses**

5 **Part 1.32** **Public Trustee Act 1985**

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

7 *omit*

8 *Evidence Act 1995 (Cwlth)*

9 *substitute*

10 *Evidence Act 2011*

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

12 **[1.50] Section 88 (2)**

13 *omit*

14 **Part 1.34** **Salvation Army Property Trust**
15 **Act 1934**

16 **[1.51] Section 10**

17 *omit*

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

1 **Part 1.35 Spent Convictions Act 2000**

2 **[1.52] Section 19 (9) (b)**

3 *substitute*

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

6 **Part 1.36 Supreme Court Act 1933**

7 **[1.53] Section 68C (4)**

8 *omit*

9 **Part 1.37 Uniting Church in Australia**
10 **Act 1977**

11 **[1.54] Section 9 (5)**

12 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2011.

2 Notification

Notified under the Legislation Act on 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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