

1992

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

EVIDENCE (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

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EVIDENCE (AMENDMENT) BILL 1992

OUTLINE

The *Evidence Act 1971* (the Principal Act) provides for 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 parties to receive evidence.

The Evidence (Amendment) Bill 1992 amends the Principal Act to provide an entitlement to the assistance of an interpreter in a defendant, party or witness in a hearing to which the Principal Act applies, to remove the requirement that the unsworn evidence of young children is to be disregarded unless corroborated and to provide for the validation of the Principal Act. The Evidence (Amendment) Bill 1992 also amends the *Evidence (Closed-Circuit Television) Act 1991* to remove the "sunset clause".

FINANCIAL CONSIDERATIONS

The Bill is expected to have a minimal financial impact given that the Director of Public Prosecutions and the Police currently provide interpreters in criminal matters, and, in civil matters, the party requiring an interpreter will continue to provide for the presence of an interpreter where required. There may be some impact in that matters currently discontinued because of the lack of corroboration of the unsworn evidence of a child may now proceed.

DETAILS

Clause 2 provides that commencement will be on the day on which the Act is notified in the *Gazette*.

(I) VALIDATION OF THE PRINCIPAL ACT

Clause 10 repeals the *Australian Capital Territory (Temporary Provisions) Act 1971* which provided for the validation of the Principal Act consequent to the disallowance by the Senate of the *Evidence Ordinance 1971* as it was then. Clause 4 repeals section 2 of the Principal Act which is redundant and substitutes a new section 2 which provides for the validation of the Principal Act consequent to the repeal of the *Australian Capital Territory (Temporary Provisions) Act 1971*.

(II) PROVISION FOR INTERPRETERS

Clause 5 repeals section 63 of the Principal Act which provides for the giving of evidence by a person unable to speak or hear. A new section 63 is substituted which provides for the giving of evidence in writing by a witness who is unable to speak or hear where the court is satisfied that the witness is unable to communicate effectively otherwise than in writing.

Clause 5 also inserts new section 63A into the Principal Act to give a right to the assistance of a competent interpreter for a party or witness to proceedings in any court or body which can hear and receive evidence in the Territory subject to a discretion to refuse the assistance of an interpreter where it is in the interests of justice to do so. In criminal proceedings an interpreter is to be provided by the prosecutor and by the relevant party in civil proceedings.

Clause 9 repeals section 54AA of the *Magistrates Court Act 1930* which provided for the provision of an interpreter in the Magistrates Court. Section 54AA is made superfluous by clause 5 of the Bill.

(III) THE UNSWORN EVIDENCE OF YOUNG CHILDREN

Clause 6 amends section 64 of the Principal Act by omitting subsection (3). The effect of this amendment will be to remove the requirement that the unsworn evidence of children under 14 years of age is to be disregarded unless it is corroborated by other evidence.

Clause 7 amends section 76F of the Principal Act to omit subsection (4). This is necessary as a consequence of repealing subsection 64(3).

(IV) CONTINUATION IN FORCE OF THE EVIDENCE (CLOSED-CIRCUIT TELEVISION)
ACT 1991

Clause 8 repeals the "sunset clause" section 11 of the *Evidence (Closed-Circuit Television) Act 1991*. Section 11 provided that the Act was to cease to have force after 31 December 1992.