

**2011**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**EVIDENCE (CONSEQUENTIAL AMENDMENTS) BILL 2011**

**EXPLANATORY STATEMENT**

Presented by  
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## EVIDENCE (CONSEQUENTIAL AMENDMENTS) BILL 2011

### Overview of Bill

This Bill is part of a series of bills to reform the law of evidence in the ACT. The *Evidence Act 2011* implements model uniform evidence law into the Territory. The explanatory statement accompanying the Evidence Bill 2011 provides an extensive account of the development of uniform evidence law and can be accessed at:

[http://www.legislation.act.gov.au/b/db\\_41024/RelatedMaterials/explanatory\\_statements.asp](http://www.legislation.act.gov.au/b/db_41024/RelatedMaterials/explanatory_statements.asp).

The purpose of this Bill is to make consequential amendments as a result of the establishment of the ACT's *Evidence Act 2011*, including amendments to update, consolidate and reorganise the existing evidence laws in the ACT.

### Human Rights Implications

The amendments in this Bill are largely consequential on the earlier series of bills to reform the law of evidence in the ACT. For example, references to the Commonwealth *Evidence Act 1995* are replaced by references to the new ACT *Evidence Act 2011*. As a consequence, the majority of these technical amendments do not engage rights under the *Human Rights Act 2004*.

An exception is new section 55 (discussed below), which, while not changing the existing law, moves a provision in relation to interpreters into the *Court Procedures Act 2004*.

### *Rights in criminal proceedings*

Section 22(2) of the *Human Rights Act 2004* sets out a series of minimum guarantees for all accused people in criminal proceedings. One of these guarantees is to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court (section 22(2)(h)). The right to an interpreter is of basic importance if difficulty in understanding is likely to be a major obstacle to the right to an effective defence.

New part 6A inserts new section 55 into the Act. New section 55 replicates part of existing section 63A of the *Evidence Act 1971*, which is being repealed by clause 4 of this Bill. New section 55 provides that where evidence is to be given by a witness in a criminal proceeding through an interpreter, the prosecutor must provide a competent interpreter for the witness if the witness does not provide their own.

New section 55 is human rights compliant. The obligation to provide interpretation free of charge in criminal proceedings is enshrined in article 14(3)(f) of the *International Covenant on Civil and Political Rights*, article 6(3)(e) of the *European Convention on Human Rights* and confirmed statutorily in the Territory by section 22(2)(h) of the *Human Rights Act 2004*. By expressly requiring an interpreter to be provided by the prosecution in criminal proceedings, new section 55 is consistent with this fair trial guarantee.

### Clause Notes

**Clause 1 Name of Act** – states the title of the Act as the *Evidence (Consequential Amendments) Act 2011*.

**Clause 2 Commencement** – provides that the Act (other than part 1.9, schedule 1) will commence on the date that the *Evidence Act 2011* commences.

The *Evidence Act 2011* will commence on the date decided by the Minister and notified on the Legislation Register. If the Minister has not fixed a date within twelve months after the day of notification of the Act, the Act will commence on the first day after this period. The *Evidence Act 2011* was notified on 13 April 2011, and therefore the default commencement date is 13 April 2012.

Allowing the Minister to determine the commencement date of the *Evidence Act 2011* provides sufficient flexibility in the timing of the commencement of the Act to ensure a smooth transition from the application of the Commonwealth evidence law in the Territory. The application of section 79 of the *Legislation Act 2001* (6 month default commencement) was removed in relation to the *Evidence Act 2011* to ensure that the package of evidence bills which will reform the law of evidence in the ACT can commence on the same date. The 12 month default commencement date provides sufficient time for all of the evidence bills to complete passage through the Legislative Assembly.

Note 2 to clause 2(1) notes the order in which amendments to the *Evidence (Miscellaneous Provisions) Act 1991* (to be made by the *Evidence (Miscellaneous Provisions) Amendment Act 2011* and the *Evidence (Consequential Amendments) Act 2011*) will apply on commencement.

The amendments to be made by the *Evidence (Miscellaneous Provisions) Amendment Act 2011* will take effect prior to the amendments in this Bill. The amendments in this Bill to the *Evidence (Miscellaneous Provisions) Act 1991* have been made on the basis that the earlier amendments have already taken effect.

The clause provides that part 1.9 of schedule 1 will commence on a day fixed by the Minister by written notice, or automatically 1 year from notification. Part 1.9 of schedule 1 is concerned with the removal of chapter 6 from the *Civil Law (Wrongs) Act 2002*.

The operation of section 79 of the *Legislation Act 2001* (6 month default commencement) has been removed in relation to the Act to ensure that the sub-committee of the rules-making committee has sufficient time to develop replacement rules dealing with expert medical evidence before the repeal takes effect.

**Clause 3 Legislation amended – sch 1** – provides that the Act amends the legislation mentioned in schedule 1.

**Clause 4 Repeal of Evidence Act 1971** – repeals the *Evidence Act 1971*. The *Evidence Act 1971* was formerly the *Evidence Ordinance 1971* and enacted a comprehensive code of the law of evidence, replacing various New South Wales statutes and other law previously in force in the ACT.

A large proportion of the provisions in the Act have become redundant on the establishment of the Territory's new *Evidence Act 2011* justifying its repeal in this Bill. As part of the ACT evidence reforms, the small number of the provisions in the Act which were required to be preserved will be, or have been, transferred to the *Evidence (Miscellaneous Provisions) Act 1991* and other legislation in the ACT statute where appropriate.

For example, on commencement, the *Evidence (Miscellaneous Provisions) Amendment Act 2011* will insert new part 6 (new sections 90-94) into the *Evidence (Miscellaneous Provisions) Act 1991*. New part 6 will provide for the taking and admission, into evidence in a court proceeding, of the evidence of a person who is dangerously ill and is not likely to recover from the illness. New part 6 replicates existing section 72 of the *Evidence Act 1971* and updates it in accordance with current ACT drafting practice.

The *Evidence (Miscellaneous Provisions) Amendment Act 2011* also inserted new section 104 (replicating existing sections 50 and 51 of the *Evidence Act 1971*) into the *Evidence (Miscellaneous Provisions) Act 1991*. An explanation of this amendment can be accessed at [http://www.legislation.act.gov.au/es/db\\_42031/default.asp](http://www.legislation.act.gov.au/es/db_42031/default.asp) (explanatory statement for the Evidence (Miscellaneous Provisions) Amendment Bill 2011).

This Bill also includes amendments to insert existing provisions of the *Evidence Act 1971* into legislation in the ACT statute book which need to be preserved on its repeal. These are detailed below at clauses 1.1, 1.17 and 1.29.

## **Schedule 1 Legislation amended**

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

**Clause 1.1 New section 9C** – inserts new section 9C into the *Administration and Probate Act 1929*.

New section 9C sets out how grants of probate or administration can be used in evidence, in particular, as evidence of the execution and the death, or date of death, of a person.

New section 9C replicates existing section 14 of the *Evidence Act 1971*, which is being repealed by clause 4 of this Bill. The substance of existing section 14

has not been changed with the transfer to the *Administration and Probate Act 1929*.

## **Part 1.2 Adoption Act 1993**

**Clause 1.2 Section 117** – removes section 117 from the *Adoption Act 1993*.

Section 117 of the *Adoption Act 1993* provides for judicial notice of signatures. In particular, this means that proof is not required of the signature and status of office-holders under the Act (namely a person who is or was the ACT director-general or delegate, or their equivalent in another Australian jurisdiction).

Section 117 is now redundant because of section 150(3) of the *Evidence Act 2011*. Section 150(3) establishes a presumption as to the signature and status of an office holder under an Australian law. The broad operation of section 150(3) means that it is no longer necessary to have individual provisions, like section 117 of the *Adoption Act 1993*, in the statute book.

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

**Clause 1.3 Section 98(1), note** – removes the note in section 98(1) of the *Animal Welfare Act 1992*.

The note in section 98(1) of the *Animal Welfare Act 1992* refers to the operation of section 150 of the Commonwealth *Evidence Act 1995*, which establishes a presumption as to the seal of a body corporate established under an Australian law and a presumption as to the signature and status of an office holder under an Australian law.

The note was included to raise awareness of the operation of the Commonwealth *Evidence Act 1995* in the Territory. The establishment of the Territory's own Evidence Act (containing its own section 150) means that it is no longer necessary to include such notes.

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

**Clause 1.4 Section 115(3)** – removes section 115(3) from the *Associations Incorporation Act 1991*.

Section 115(3) of the *Associations Incorporation Act 1991* provides that a certified copy of a document, or extract of a document, is admissible as if it were the original document.

Section 115(3) is now redundant because of the operation of sections 155 and 156 of the *Evidence Act 2011*. These sections deal with evidence of official records and public documents and provide for certified copies of an original produced from proper custody to be adduced in place of the original.

**Clause 1.5 Section 115(4)(a)** – removes the phrase ‘, or an extract from,’ from section 115(4)(a) of the *Associations Incorporation Act 1991*.

This amendment is consequential to the amendment made above at clause 1.4.

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

**Clause 1.6 Section 5(3)** – removes section 5(3) from the *Australian-American Educational Foundation Act 1966*.

Section 5(3) of the *Australian-American Educational Foundation Act 1966* provides for judicial notice of the common seal of the Australian-American Educational Foundation.

Section 5(3) is now redundant because of section 150(1) of the *Evidence Act 2011*. Section 150(1) establishes a presumption as to the seal of a body corporate established under an Australian law. In this case, the Australian-American Educational Foundation is a body corporate established under the *Australian-American Educational Foundation Act 1966* (section 5(1)).

The broad operation of section 150(1) means that it is no longer necessary to have individual provisions, like section 5(3) of the *Australian-American Educational Foundation Act 1966*, in the statute book.

### **Part 1.6 Building Act 2004**

**Clause 1.7 Section 148, note** – removes the note from section 148 of the *Building Act 2004*.

The note in section 148 of the *Building Act 2004* refers to the operation of section 150 of the Commonwealth *Evidence Act 1995*, which establishes a presumption as to the seal of a body corporate established under an Australian law and a presumption as to the signature and status of an office holder under an Australian law.

The note was included to raise awareness of the operation of the Commonwealth *Evidence Act 1995* in the Territory. The establishment of the Territory’s own Evidence Act (containing its own section 150) means that it is no longer necessary to include such notes.

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

**Clause 1.8 Section 142(3)** – removes section 142(3) from the *Casino Control Act 2006*.

Section 142(3) of the *Casino Control Act 2006* establishes a presumption that a document that purports to have been signed by a person authorised under the Act is to be taken to have been so signed.

Section 142(3) is now redundant because of section 150(3) of the *Evidence Act 2011*. Section 150(3) establishes a presumption as to the signature and status of an office holder under an Australian law. The broad operation of section 150(3) means that it is no longer necessary to have individual provisions, like section 142(3) of the *Casino Control Act 2006*, in the statute book.

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

**Clause 1.9 Section 875(2), example** – updates a reference in the examples listed in section 875 of the *Children and Young People Act 2008* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the example as the Commonwealth and ACT Evidence Acts are similar.

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

**Clause 1.10 Chapter 6** – removes chapter 6 from the *Civil Law (Wrongs) Act 2002*.

Chapter 6 contains a large number of provisions which concern the way in which expert medical evidence is received and treated in court. The types of rules contained in the chapter are concerned with the way in which the court controls the receipt of expert medical evidence, the assessment of its admissibility, and the treatment of evidence given by experts.

This body of law is more appropriately made at the court rules level where the remainder of rules concerning expert witnesses are found. The removal of this body of law and the introduction of rules governing this area of the law will enable better integration of court processes and will also enable the court to be dynamic in responding to the trends in this area.

A sub-committee of the court rules-making committee is currently developing rules to govern this area of the law (to be included in the *Court Procedures Rules 2006*). Chapter 6 will not be omitted until these rules have been made to ensure a smooth transition (see clause 2 above).

**Clause 1.11 Dictionary, definitions of *agreed expert* and *appointed expert*** – removes the definitions of *agreed expert* and *appointed expert* from the dictionary of the *Civil Law (Wrongs) Act 2002*.

The amendment has been made as a consequence of clause 1.10 above. The terms will be redundant on the removal of chapter 6 of the Act.

**Clause 1.12 Dictionary, definition of *claim*, paragraph (b)** – removes the definition of *claim* from the dictionary of the *Civil Law (Wrongs) Act 2002*.

The amendment has been made as a consequence of clause 1.10 above. The term will be redundant on the removal of chapter 6 of the Act.

**Clause 1.13 Dictionary** – removes the definitions of *evidence*, *expert*, *expert medical evidence*, and *medical issue* from the dictionary of the *Civil Law (Wrongs) Act 2002*.

The amendment has been made as a consequence of clause 1.10 above. The terms will be redundant on the removal of chapter 6 of the Act.

### **Part 1.10 Confiscation of Criminal Assets Act 2003**

**Clause 1.14 Division 13.4 heading, note** – updates a reference in the note in the heading to division 13.4 of the *Confiscation of Criminal Assets Act 2003* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the note as the Commonwealth and ACT Evidence Acts are similar.

**Clause 1.15 Section 248, note 1** – updates a reference in note 1 in section 248 of the *Confiscation of Criminal Assets Act 2003* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the note as the Commonwealth and ACT Evidence Acts are similar.

### **Part 1.11 Court Procedures Act 2004**

**Clause 1.16 Section 41(2)(c)** – updates a reference to the *Evidence (Miscellaneous Provisions) Act 1991* consequential on amendments made to that Act by the Evidence (Miscellaneous Provisions) Amendment Bill 2011.

**Clause 1.17 New part 6A** – inserts new part 6A into the *Court Procedures Act 2004*.

New part 6A inserts new section 55 into the Act. New section 55 provides that where evidence is to be given by a witness in a criminal proceeding through an interpreter, the prosecutor must provide a competent interpreter for the witness if the witness does not provide their own. New section 55 replicates part of existing section 63A of the *Evidence Act 1971*, which is being repealed

by clause 4 of this Bill. The *Court Procedures Act 2004* is the most appropriate location for the new provision, given its procedural nature.

The remainder of section 63A is redundant and has not been replicated. Subsections (1) and (2) are redundant on the establishment of the ACT *Evidence Act 2011* (in particular section 30 in relation to the inherent powers of the court) and the extension of the operation of section 30 to evidence receiving entities (see clause 1.29 below). Subsection (3)(b) represents actual practice in civil proceedings and does not need to be specified in legislation.

### **Part 1.12 Crimes Act 1900**

**Clause 1.18 Section 439(6)** – removes section 439(6) from the *Crimes Act 1900*.

Section 439(6) of the *Crimes Act 1900* establishes a presumption that a document that purports to have been signed by the director of public prosecutions is to be taken to have been so signed.

Section 439(6) is now redundant because of section 150(3) of the *Evidence Act 2011*. Section 150(3) establishes a presumption as to the signature and status of an office holder under an Australian law. The broad operation of section 150(3) means that it is no longer necessary to have individual provisions, like section 439(6) of the *Crimes Act 1900*, in the statute book.

### **Part 1.13 Crimes (Forensic Procedures) Act 2000**

**Clause 1.19 Section 42(4), note 2** – replaces the phrase ‘outside ACT’ with the phrase ‘participating States’ in note 2 in section 42(4) of the *Crimes (Forensic Procedures) Act 2000*. The substituted phrase more accurately refers to the heading of section 20 of the *Evidence (Miscellaneous Provisions) Act 1991* (which was changed by the *Justice and Community Safety Legislation Amendment Act 2010* (No 3)).

### **Part 1.14 Crimes (Sentence Administration) Act 2005**

**Clause 1.20 Section 211(3), note** – updates a reference in the note in section 211(3) of the *Crimes (Sentence Administration) Act 2005* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the example as the Commonwealth and ACT Evidence Acts are similar.

### **Part 1.15 Criminal Code 2002**

**Clause 1.21 Section 704(2)** – updates a reference in section 704(2) of the *Criminal Code 2002* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the operation of section 704 as the rules on competency are similar in the Commonwealth and ACT Evidence Acts.

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

**Clause 1.22 Section 110** – removes section 110 from the *Domestic Violence and Protection Orders Act 2008*.

Section 110 provides that a protection order issued in another jurisdiction which has been registered under the Act is admissible in evidence by the production of a copy of the registered order certified as a true copy by the registrar.

Section 110 is now redundant because of section 157 of the *Evidence Act 2011* which provides for evidence of a public document relating to court processes. Under section 110, the registered protection order is admissible in evidence by producing a copy of the document which has been signed by the registrar.

Section 157 means that it is no longer necessary to have section 110 of the *Domestic Violence and Protection Orders Act 2008*.

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

**Clause 1.23 Part 5 heading, note** – updates references in the note after the heading of part 5 of the *Domestic Violence and Protection Orders Regulation 2009* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the references to the Commonwealth *Evidence Act 1995* with references to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated references will not affect the operation of the Regulation as the Commonwealth and ACT Evidence Acts are similar.

**Clause 1.24 Section 53(3), note** – updates a reference in the note to section 53(3) of the *Domestic Violence and Protection Orders Regulation 2009* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the note as the Commonwealth and ACT Evidence Acts are similar.

### **Part 1.18 Evidence Act 2011**

**Clause 1.25 Section 8, new examples** – inserts new examples into section 8 of the *Evidence Act 2011*.

Section 8 of the *Evidence Act 2011* provides that the Act does not affect the operation of provisions of other ACT legislation. To remove any doubt about the intended operation of this section, two examples have been inserted which refer to parts of existing ACT legislation which are not impliedly repealed by the establishment of the Evidence Act.

It is important to note that the examples do not limit the operation of the section in ensuring that provisions of other ACT legislation, not listed in the examples, are also not impliedly repealed by the establishment of the Evidence Act.

**Clause 1.26 Section 8, new note 2** – inserts new note 2 into section 8 of the *Evidence Act 2011*.

The amendment is consequential on the amendment made by clause 1.25 above. The new note explains the status of examples when they are used in legislation.

**Clause 1.27 Dictionary, note 2** – inserts ‘office’ into the list of definitions in note 2 in the dictionary of the *Evidence Act 2011*.

Note 2 contains a number of terms, relevant to the Act, which are defined in the *Legislation Act 2001* and therefore do not need to be separately defined in the Act.

### **Part 1.19 Evidence (Miscellaneous Provisions) Act 1991**

**Clause 1.28 Part 5 heading** – updates the heading of part 5 of the *Evidence (Miscellaneous Provisions) Act 1991* in accordance with current ACT drafting practice to more appropriately reflect the content of the part.

**Clause 1.29 New division 7.3** – inserts new division 7.3 into the *Evidence (Miscellaneous Provisions) Act 1991*.

New division 7.3 inserts new section 105 into the Act. New section 105 extends the operation of section 30 of the *Evidence Act 2011*, which provides for courts to use interpreters, to allow entities other than ACT courts which are authorised to receive evidence to use interpreters. Currently, section 30 of

the *Evidence Act 2011* is limited in application to ACT courts. This ensures the preservation of the effect of section 63A(1) of the *Evidence Act 1971*.

**Clause 1.30 Dictionary, definition of ACT court, new note** – inserts a new note into the definition of **ACT court** in the dictionary of the *Evidence (Miscellaneous Provisions) Act 1991* consequential on the amendment in clause 1.29 above.

**Clause 1.31 Dictionary, definition of evidence receiving entity, new examples** – inserts four examples of the type of entities which fall under the definition of **evidence receiving entity** into the dictionary of the *Evidence (Miscellaneous Provisions) Act 1991*.

#### **Part 1.20 Housing Assistance Act 2007**

**Clause 1.32 Section 9(2), note** – removes the note in section 9(2) of the *Housing Assistance Act 2007*.

The note in section 9(2) of the *Housing Assistance Act 2007* refers to the operation of sections 150 and 151 of the Commonwealth *Evidence Act 1995* which establish a presumption as to the seal of a body corporate established under an Australian law.

The note was included to raise awareness of the operation of the Commonwealth *Evidence Act 1995* in the Territory. The establishment of the Territory's own Evidence Act (containing its own section 150 and a note referring to the operation of section 151 of the Commonwealth Act) means that it is no longer necessary to include such notes.

#### **Part 1.21 Human Rights Commission Act 2005**

**Clause 1.33 Section 66(2)** – updates a reference in section 66(2) of the *Human Rights Commission Act 2005* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the operation of section 66(2) as the Commonwealth and ACT Evidence Acts are similar.

#### **Part 1.22 Legislation Act 2001**

**Clause 1.34 Section 170(2) and note** – updates a reference in section 170(2) of the *Legislation Act 2001* and its note consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the

*Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the section as official records are treated similarly under the Commonwealth and ACT Evidence Acts.

**Clause 1.35 Section 171(2) and note** – updates a reference in section 171(2) of the *Legislation Act 2001* and its note consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the section as client legal privilege is treated similarly under the Commonwealth and ACT Evidence Acts.

**Clause 1.36 Section 250(2) and note** – updates a reference in section 250(2) of the *Legislation Act 2001* and its note consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the section as postal articles are treated similarly under the Commonwealth and ACT Evidence Acts.

**Clause 1.37 Dictionary, part 1, definition of *oath*, note** – updates a reference in the note to the definition of *oath* in the dictionary of the *Legislation Act 2001* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the note as oaths and affirmations are treated similarly under the Commonwealth and ACT Evidence Acts.

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

**Clause 1.38 Section 141(5)** – removes section 141(5) from the *Magistrates Court Act 1930*.

Section 141(5) provides that a document purporting to be a copy of a minute or memorandum of a conviction or order signed by the registrar is prima facie evidence of the making of the conviction or order.

Section 141(5) is now redundant because of section 157 of the *Evidence Act 2011*. In particular, section 157 provides that a public document that is a

judgment, act or other process of a court may be adduced by producing a copy of the document that is signed by a registrar. This section means that it is no longer necessary to have section 141(5) of the *Magistrates Court Act 1930*.

**Clause 1.39 Section 317(3) and (4)** – replaces the references to section 315(6) with references to section 315(5) in section 317(3) and (4) of the *Magistrates Court Act 1930*.

The references to section 315(6) in the section were incorrect.

#### **Part 1.24 Mediation Act 1997**

**Clause 1.40 Section 9** – removes existing section 9 of the *Mediation Act 1997* and replaces it with new section 9.

Section 9 is critical for the effective operation of mediation in resolving disputes. Its objective is to encourage parties to be open and frank in negotiations, in the safe knowledge that what they say or do cannot be used against them later in evidence, if the matter in dispute goes before a court or tribunal for resolution. However, the confidentiality provided is not absolute; the exceptions to the general provision are the same as those provided for in section 131(2) of the Commonwealth *Evidence Act 1995*, and equivalent section 131(2) of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the operation of section 9 as the Commonwealth and ACT Evidence Acts are similar.

Section 9 has also been updated in accordance with current ACT drafting practice.

#### **Part 1.25 National Environment Protection Council Act 1994**

**Clause 1.41 Section 34(4)** – removes section 34(4) from the *National Environment Protection Council Act 1994*.

Section 34(4) of the *National Environment Protection Council Act 1994* provides for judicial notice of the imprint of the seal of the NEPC service corporation. In this case, the NEPC service corporation is constituted under the Commonwealth *National Environment Protection Council Act 1994*.

Section 34(4) is now redundant because of section 150(1) of the *Evidence Act 2011*. Section 150(1) establishes a presumption as to the seal of a body corporate established under an Australian law.

The broad operation of section 150(1) means that it is no longer necessary to have individual provisions, like section 34(4) of the *National Environment Protection Council Act 1994*, in the statute book.

### **Part 1.26 Nature Conservation Act 1980**

**Clause 1.42 Section 138(2)** – removes section 138(2) from the *Nature Conservation Act 1980*.

Section 138(2) of the *Nature Conservation Act 1980* establishes a presumption that a document that purports to have been signed by the conservator is to be taken to have been so signed.

Section 138(2) is now redundant because of section 150(3) of the *Evidence Act 2011*. Section 150(3) establishes a presumption as to the signature and status of an office holder under an Australian law. The broad operation of section 150(3) means that it is no longer necessary to have individual provisions, like section 138(2) of the *Nature Conservation Act 1980*, in the statute book.

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

**Clause 1.43 Section 2, notes 1 and 2** – replaces existing notes 1 and 2 in section 2 of the *Oaths and Affirmations Act 1984* with new notes 1 and 2.

Existing notes 1 and 2 refer to the use of signpost definitions in the dictionary, giving the example of the definition of ***court***, which is defined by reference to the *Evidence Act 1971*. The definitions of ***court*** and ***proceeding*** are the only signpost definitions used in the Act. In conjunction with the amendment in clause 1.44 below notes 1 and 2 have been amended to remove the references to signpost definitions which will no longer be used in the Act.

**Clause 1.44 Dictionary, definitions of *court* and *proceeding*** – replaces the existing definitions of ***court*** and ***proceeding*** in the dictionary of the *Oaths and Affirmations Act 1984* with new definitions.

The existing definitions of ***court*** and ***proceeding*** refer to definitions in the dictionary of the *Evidence Act 1971*. The *Evidence Act 1971* is being repealed by clause 4 of this Bill. Accordingly, the definitions have been amended to directly contain the meanings as they existed in the *Evidence Act 1971*.

### **Part 1.28 Parentage Act 2004**

**Clause 1.45 Section 48** – replaces existing section 48 of the *Parentage Act 2004* with new section 48.

Section 48 provides that a certified copy of a document, or extract of a document, is admissible as if it were the original document. The section also deals with proof of orders or records about parentage.

The part of section 48 which deals with certified copies or extracts of documents is now redundant because of the operation of sections 155 and 156 of the *Evidence Act 2011*. These sections deal with evidence of official records and public documents and provide for certified copies of an original produced from proper custody to be adduced in place of the original.

### **Part 1.29 Partnership Act 1963**

**Clause 1.46 Section 85(1), note** – removes the note in section 85(1) of the *Partnership Act 1963*.

The note in section 85(1) of the *Partnership Act 1963* refers to the operation of section 150 of the Commonwealth *Evidence Act 1995*, which establishes a presumption as to the seal of a body corporate established under an Australian law and a presumption as to the signature and status of an office holder under an Australian law.

The note was included to raise awareness of the operation of the Commonwealth *Evidence Act 1995* in the Territory. The establishment of the Territory's own Evidence Act (containing its own section 150) means that it is no longer necessary to include such notes.

### **Part 1.30 Planning and Development Act 2007**

**Clause 1.47 Section 47(2), note** – removes the note from section 47(2) of the *Planning and Development Act 2007*.

The existing note includes reference to sections 11 and 12 of the *Evidence Act 1971* which are redundant on the establishment of the *Evidence Act 2011*. The *Evidence Act 1971* is being repealed by clause 4 of this Bill.

The note is not being retained with references to the equivalent sections of the *Evidence Act 2011* as this is no longer consistent with drafting practice.

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

**Clause 1.48 Section 135** – removes everything before section 135(2) of the *Public Health Act 1997* and substitutes a new heading for the section.

Section 135(1) provides that a certified copy of a document, or part of a document, is admissible as if it were the original document.

Section 135(1) is now redundant because of the operation of sections 155 and 156 of the *Evidence Act 2011*. These sections deal with evidence of official records and public documents and provide for certified copies of an original produced from proper custody to be adduced in place of the original.

### Part 1.32 Public Trustee Act 1985

**Clause 1.49 Section 23A(6), definition of *legal record*, note** – updates a reference in the note to the definition of *legal record* in section 23A(6) of the *Public Trustee Act 1985* consequential on the establishment of the *Evidence Act 2011*.

The amendment replaces the reference to the Commonwealth *Evidence Act 1995* with a reference to the ACT *Evidence Act 2011*. On the day the *Evidence Act 2011* commences, the Commonwealth *Evidence Act 1995* will cease to apply in the ACT. The updated reference will not affect the note as official records are treated similarly under the Commonwealth and ACT Evidence Acts.

### Part 1.33 Sale of Motor Vehicles Act 1977

**Clause 1.50 Section 88(2)** – removes section 88(2) from the *Sale of Motor Vehicles Act 1977*.

Section 88(2) establishes a presumption that a document that purports to have been signed by the registrar is to be taken to have been so signed.

Section 88(2) is now redundant because of section 150(3) of the *Evidence Act 2011*. Section 150(3) establishes a presumption as to the signature and status of an office holder under an Australian law.

The broad operation of section 150(3) means that it is no longer necessary to have individual provisions, like section 88(2) of the *Sale of Motor Vehicles Act 1977*, in the statute book.

### Part 1.34 Salvation Army Property Trust Act 1934

**Clause 1.51 Section 10** – removes the phrase ‘, 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’ from section 10 of the *Salvation Army Property Trust Act 1934*.

This phrase in section 10 is now redundant because of section 150(3) of the *Evidence Act 2011*. Section 150(3) establishes a presumption as to the signature and status of an office holder under an Australian law.

The broad operation of section 150(3) means that it is no longer necessary to have individual provisions, like this part of section 10 of the *Salvation Army Property Trust Act 1934*, in the statute book.

### Part 1.35 Spent Convictions Act 2000

**Clause 1.52 Section 19(9)(b)** – replaces existing section 19(9)(b) with new section 19(9)(b) of the *Spent Convictions Act 2000*.

Existing section 19(9)(b) of the *Spent Convictions Act 2000* provides that sections 56 and 71 (character evidence) and part 11 (evidence of convictions) of the *Evidence Act 1971* are not affected by the *Spent Convictions Act 2000*.

New section 19(9)(b) of the *Spent Convictions Act 2000* refers to the equivalent relevant provisions of the *Evidence Act 2011* (part 3.5 – evidence of convictions and part 3.8 – character evidence). The *Evidence Act 1971* is being repealed by clause 4 of this Bill.

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

**Clause 1.53 Section 68C(4)** – removes section 68C(4) from the *Supreme Court Act 1933*.

Section 68C of the *Supreme Court Act 1933* specifies the procedures to be followed for a trial by judge-alone, including that the judge must take into account any warnings that would, under a Territory law, have had to be given to a jury in the case.

Section 68C(4) was inserted into the Act in 2010 in response to doubt expressed by Justice Penfold about the applicability of some provisions of the Commonwealth *Evidence Act 1995* to judge-alone trials conducted under sections 68B and 68C of the *Supreme Court Act 1933* (*The Queen v DF* [2010] ACTSC 31 (15 April 2010)).

The Commonwealth *Evidence Act 1995* was not captured within the definition of ‘Territory law’ in the *Legislation Act 2001*. Accordingly, the definition was amended to expand its scope to the Commonwealth Evidence Act to ensure that a judge, in a trial by judge alone, was required to take into account any warnings that would, under the Act, have had to be given to a jury in the case.

On commencement of the *Evidence Act 2011*, there will no longer be a need to refer to the Commonwealth Evidence Act as it will no longer apply in the Territory. The relevant provisions of the *Evidence Act 2011* regarding warnings are captured within the definition of ‘Territory law’.

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

**Clause 1.54 Section 9(5)** – removes section 9(5) from the *Uniting Church in Australia Act 1977*.

Section 9(5) of the *Uniting Church in Australia Act 1977* provides for judicial notice of the common seal of The Uniting Church in Australia (Australian Capital Territory) Property Trust.

Section 9(5) is now redundant because of section 150(1) of the *Evidence Act 2011*. Section 150(1) establishes a presumption as to the seal of a body, or a body corporate, established under an Australian law. In this case, The Uniting Church in Australia (Australian Capital Territory) Property Trust is a body corporate established by the NSW *Uniting Church in Australia Act 1977*.

The broad operation of section 150(1) of the *Evidence Act 2011* means that it is no longer necessary to have individual provisions, like section 9(5) of the *Uniting Church in Australia Act 1977*, in the statute book.