



Australian Capital Territory

Evidence Regulation 2012

Subordinate Law SL2012-6

The Australian Capital Territory Executive makes the following regulation under the *Evidence Act 2011*.

Dated 24 February 2012.

SIMON CORBELL
Minister

ANDREW BARR
Minister



Australian Capital Territory

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Evidence Act 2011

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1 Name of regulation

This regulation is the *Evidence Regulation 2012*.

2 Commencement

This regulation commences on the commencement of the *Evidence Act 2011*, section 3.

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

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

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

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

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Notice of previous representation—Act, s 67 (2)

- (1) A notice of previous representation must state—
 - (a) subject to section 6 (2), the substance of evidence of a previous representation that the notifying party intends to present; and
 - (b) the substance of all other relevant representations made by the person who made the previous representation, so far as they are known to the notifying party; and

- (c) so far as they are known to the notifying party, details of—
 - (i) the date, time, place and circumstances at or in which each of the representations mentioned in paragraph (a) or (b) was made; and
 - (ii) the names of the people by whom, and the people to whom, each of the representations was made; and
 - (iii) in a civil proceeding—the address of each person mentioned in subparagraph (ii).
- (2) Subsection (3) applies if a notifying party intends to rely on any of the following provisions of the Act:
 - (a) section 63 (2) (a) or (b);
 - (b) section 65 (2) (a), (b), (c) or (d);
 - (c) section 65 (3) (a) or (b);
 - (d) section 65 (8) (a) or (b).
- (3) The notifying party's notice of previous representation must state details of the facts on the basis of which it is alleged that the person who made a representation mentioned in the notice is not available to testify about the fact to be proved by presenting evidence of the representation.
- (4) Subsection (5) applies if a notifying party intends to rely on the Act, section 64 (2) (a) or (b).
- (5) The notifying party's notice of previous representation must state details of the facts that the party will rely on to establish the grounds stated in the Act, section 64 (2).

6 Notice of previous representation—written previous representation—Act, s 67 (2)

- (1) If a notice of previous representation mentions a previous representation that is in writing—
 - (a) a copy of the document, or of the relevant part of the document, containing the representation must be attached to the notice; and
 - (b) the notice must identify the document unless—
 - (i) a copy of the document is attached to the notice; and
 - (ii) the identity of the document is apparent on the face of the copy.
- (2) If a copy of a document, or of a part of a document, is attached to a notice it is a sufficient compliance for section 5 (1) (a) to state in the notice, or in the copy of a document or part of a document attached to the notice, the representation evidence of which the notifying party intends to present.

7 Notice of previous representation—criminal proceeding—Act, s 67 (2)

- (1) On application by a party in a criminal proceeding, the court may make an order directing the notifying party to disclose the address of a person named in a notice of previous representation.
- (2) The direction may be given on the terms the court considers appropriate.

8 Notice of tendency evidence—Act, s 99

A notice of tendency evidence must state—

- (a) the substance of the tendency evidence that the notifying party intends to present; and
- (b) if the tendency evidence consists of, or includes, evidence of the conduct of a person—so far as is known to the notifying party, details of—
 - (i) the date, time, place and circumstances at or in which the conduct occurred; and
 - (ii) the names of each person who saw, heard or otherwise perceived the conduct; and
 - (iii) in a civil proceeding—the address of each person mentioned in subparagraph (ii).

9 Notice of coincidence evidence—Act, s 99

A notice of coincidence evidence must state—

- (a) the substance of the coincidence evidence that the notifying party intends to present; and
- (b) so far as is known to the notifying party, details of—
 - (i) the date, time, place and circumstances at or in which each of the events the subject of the evidence occurred; and
 - (ii) the names of each person who saw, heard or otherwise perceived each of the events; and
 - (iii) in a civil proceeding—the address of each person mentioned in subparagraph (ii).

10 Notice of tendency or coincidence evidence—criminal proceeding—Act, s 99

- (1) On application by a party in a criminal proceeding, the court may make an order directing the notifying party to disclose the address of any person named in a notice of tendency or coincidence evidence.
- (2) The direction may be given on the terms the court considers appropriate.

11 Selfincrimination certificates—State and Territory provisions—Act, s 128 (14)

The following provisions are prescribed:

- (a) the *Evidence Act 2004* (Norfolk Island), section 128;
- (b) the *Coroners Act 2009* (NSW), section 61;
- (c) the *Evidence Act 1995* (NSW), section 128;
- (d) the *Evidence Act 2001* (Tas), section 128.
- (e) the *Coroners Act 2008* (Vic), section 57;
- (f) the *Evidence Act 2008* (Vic), section 128;
- (g) the *Coroners Act 1996* (WA), section 47;
- (h) the *Evidence Act 1906* (WA), section 11.

12 Selfincrimination certificates—State and Territory provisions—Act, s 128A (13)

The following provisions are prescribed:

- (a) the *Evidence Act 1995* (NSW), section 128A;
- (b) the *Evidence Act 2001* (Tas), section 128A;
- (c) the *Evidence Act 2008* (Vic), section 128A.

13 Fingerprint evidence of identity—affidavits by State or Territory police officers—Act, s 179 (1) (a)

A form approved under section 15 for this section is prescribed.

14 Fingerprint evidence of identity—affidavits by Australian Federal Police officers—Act, s 180 (1) (a)

A form approved under section 15 for this section is prescribed.

15 Approved forms

- (1) The Minister may approve forms for this regulation.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- document
- writing.

Note 3 Terms used in this regulation have the same meaning that they have in the *Evidence Act 2011* (see Legislation Act, s 148). For example, the following terms are defined in the *Evidence Act 2011*, dict:

- civil proceeding
- coincidence evidence
- criminal proceeding
- document
- previous representation
- tendency evidence.

address includes a private, business or official address.

notice of coincidence evidence means a notice under the Act, section 98 (1).

notice of previous representation means a notice under the Act, section 67.

notice of tendency evidence means a notice under the Act, section 97 (1).

notifying party, in relation to a notice, means the party giving the notice.

Endnotes

1 Notification

Notified under the Legislation Act on 27 February 2012.

2 Republications of amended laws

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

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