I certify that this is a copy of the authorised version of this Act as at 20 November 2026, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 20 November 2026.

K Woodward
Chief Parliamentary Counsel
Dated 26 November 2026

TASMANIA

EVIDENCE ACT 2001

No. 76 of 2001

CONTENTS

CHAPTER 1 – PRELIMINARY

PART 1 – FORMAL MATTERS

1. Short title
2. Commencement
2A. Numbering of Act
3. Interpretation
3A. References to business
3B. Unavailability of persons
3C. Unavailability of documents and things
3D. Representations in documents

PART 2 – APPLICATION OF ACT

4. Courts and proceedings to which Act applies

5. Extended application of certain provisions
6. Territories
7. Act binds Crown
8. Operation of other Acts
9. Application of common law and equity
10. Parliamentary privilege preserved
11. General powers of court

CHAPTER 2 – ADDUCING EVIDENCE

PART 1 – WITNESSES

Division 1 – Competence and compellability of witnesses

12. Competence and compellability
13. Competence: lack of capacity
14. Compellability: reduced capacity
15. Compellability: Sovereign and others
16. Competence and compellability: judges and jurors
17. Competence and compellability: defendants in criminal proceedings
18. Compellability of spouses and others in criminal proceedings generally
19. Compellability of spouses and others in certain proceedings
20. Comment on failure to give evidence

Division 2 – Oaths and affirmations

21. Sworn evidence by oath or affirmation
22. Interpreters to act on oath or affirmation
23. Choice of oath or affirmation
24. Requirements for oaths
25. Rights to make unsworn statements unaffected

Division 3 – General rules about giving evidence

26. Court's control over questioning of witness
27. Parties may question witnesses

28. Order of examination in chief, cross-examination and re-examination
29. Manner and form of questioning and responses of witness
30. Interpreters
30A. Unsworn statements
31. Deaf and mute witnesses
32. Attempts to revive memory in court
33. Evidence by police officers
34. Attempts to revive memory out of court
35. Effect of calling for production of documents
36. Examination without subpoena or other process

Division 4 – Examination in chief and re-examination

37. Leading questions
38. Unfavourable witness
39. Limits on re-examination

Division 5 – Cross-examination

40. Witness called in error
41. Improper questions
42. Leading questions
43. Prior inconsistent statement of witness
44. Previous representation of other person
45. Production of document
46. Leave to recall witnesses

PART 2 – DOCUMENTS

47. Interpretation of Part
48. Proof of contents of document
49. Documents in foreign countries
50. Proof of voluminous or complex documents
51. Original document rule abolished

PART 3 – OTHER EVIDENCE

52. Adducing of other evidence not affected

53. Views

54. Views to be evidence

CHAPTER 3 – ADMISSIBILITY OF EVIDENCE

PART 1 – RELEVANCE

55. Relevant evidence

56. Relevant evidence admissible

57. Provisional relevance

58. Inference as to relevance

PART 2 – HEARSAY

Division 1 – Hearsay rule

59. Hearsay rule – exclusion of hearsay evidence

60. Exception: evidence relevant for non-hearsay purpose

61. Exception to hearsay rule dependent on competency

Division 2 – First-hand hearsay

62. Restriction to first-hand hearsay

63. Exception: civil proceedings if maker not available

64. Exception: civil proceedings if maker available

65. Exception: criminal proceedings if maker not available

66. Exception: criminal proceedings if maker available

66A. Exception: contemporaneous statements about a person's health, &c.

67. Notices to be given

68. Objection to tender of hearsay evidence in civil proceedings if maker available

Division 3 – Other exceptions to hearsay rule

69. Exception: business records

70. Exception: contents of tags, labels and writing

71. Exception: electronic communications

72. Exception: Aboriginal and Torres Strait Islander traditional laws and customs

73. Exception: reputation as to relationships and age

74. Exception: reputation of public or general rights

75. Exception: interlocutory proceedings

PART 3 – OPINION

76. Opinion rule

77. Exception: evidence relevant otherwise than as opinion evidence

78. Exception: lay opinion

78A. Exception: Aboriginal and Torres Strait Islander traditional laws and customs

79. Exception: opinion based on specialised knowledge

[79A. *Repealed*]

80. Ultimate issue and common knowledge rules abolished

PART 4 – ADMISSIONS

81. Hearsay and opinion rules: exception for admissions and related representations

82. Exclusion of evidence of admissions that is not first-hand

83. Exclusion of evidence of admissions as against third parties

84. Exclusion of admission influenced by violence and certain other conduct

85. Criminal proceedings: reliability of admissions by defendants

85A. Admission in serious offence

86. Exclusion of records of oral questioning

87. Admission made with authority

88. Proof of admission

89. Evidence of silence

90. Discretion to exclude admission

PART 5 – EVIDENCE OF JUDGMENTS AND CONVICTIONS

91. Exclusion of evidence of judgments and convictions

92. Exceptions

93. Savings

PART 6 – TENDENCY AND COINCIDENCE

94. Application of Part

95. Use of evidence for other purposes

96. Failure to act

97. Tendency rule

97A. Admissibility of tendency evidence in proceedings involving child sexual offences

98. Coincidence rule

99. Requirements for notices

100. Court may dispense with notice requirements

101. Further restrictions on tendency evidence and coincidence evidence adduced by the prosecution

PART 7 – CREDIBILITY

Division 1 – Credibility evidence

101A. Credibility evidence

Division 2 – Credibility of witnesses

102. Credibility rule

103. Exception: cross-examination as to credibility

104. Further protection: cross-examination of defendant

105. ……

106. Exception: rebutting denials by other evidence

107. (Repealed)

108. Exception: re-establishing credibility

Division 3 – Credibility of persons who are not witnesses

108A. Admissibility of evidence of credibility of person who has made a previous representation

108B. Further protections: previous representations of an accused who is not a witness

Division 4 – Persons with specialised knowledge

108C. Exception: evidence of persons with specialised knowledge

PART 8 – CHARACTER

109. Application

110. Evidence about character of accused

111. Evidence about character of co-accused

112. Leave required for cross-examination on character of accused or co-accused

PART 9 – IDENTIFICATION EVIDENCE

113. Application of Part

114. Exclusion of visual identification evidence

115. Exclusion of evidence of identification by pictures

116. Directions to jury

PART 10 – PRIVILEGES

Division 1 – Client legal privilege

117. Interpretation of Division

118. Legal advice

119. Litigation

120. Unrepresented parties

121. Loss of client legal privilege: generally

122. Loss of client legal privilege: consent and related matters

123. Loss of client legal privilege: defendants

124. Loss of client legal privilege: joint clients

125. Loss of client legal privilege: misconduct

126. Loss of client legal privilege: related communications and documents

Division 1A – Professional confidential relationship privilege

126A. Definitions

126B. Exclusion of evidence of protected confidence

126C. Loss of professional confidential relationship privilege: consent

126D. Loss of professional confidential relationship privilege: misconduct

126E. Ancillary orders

126F. Application of Division

Division 2 – Other privileges

127. Religious confession

127A. Medical communications

127B. Communication to counsellor

128. Privilege in respect of self-incrimination in other proceedings

128A. Privilege in respect of self-incrimination – exception for certain orders, &c.

Division 3 – Evidence excluded in the public interest

129. Exclusion of evidence of reasons for judicial decisions

130. Exclusion of evidence of matters of state

131. Exclusion of evidence of settlement negotiations

Division 4 – General

131A. Application of Division to preliminary proceedings of courts

132. Court to inform of rights to make applications and objections

133. Court may inspect, &c., documents

134. Inadmissibility of evidence that must not be adduced or given

PART 11 – DISCRETIONARY AND MANDATORY EXCLUSIONS

135. General discretion to exclude evidence

136. General discretion to limit use of evidence

137. Exclusion of prejudicial evidence in criminal proceedings

138. Discretion to exclude evidence improperly or illegally obtained

139. Cautioning person

CHAPTER 4 – PROOF

PART 1 – STANDARD OF PROOF

140. Civil proceedings: standard of proof

141. Criminal proceedings: standard of proof

142. Admissibility of evidence: standard of proof

142A. Proof of exemption

PART 2 – JUDICIAL NOTICE

143. Matters of law

144. Matters of common knowledge

145. Certain Crown certificates

PART 3 – FACILITATION OF PROOF

Division 1 – General

146. Evidence produced by processes, machines and other devices

147. Documents produced by processes, machines and other devices in the course of business

148. Evidence of certain acts of justices, lawyers and notaries public

149. Attestation of documents

150. Seals and signatures

151. Seals of bodies established under State law

152. Documents produced from proper custody

Division 2 – Matters of official record

153. Gazettes and other official documents

154. Documents published by authority of Parliaments

155. Evidence of official records

156. Public documents

157. Public documents relating to court processes

158. Evidence of certain public documents

159. Official statistics

Division 3 – Matters relating to post and communications

160. Postal articles

161. Electronic communications

162. Lettergrams and telegrams

163. Proof of letters having been sent by Commonwealth agencies

PART 4 – CORROBORATION

164. Corroboration requirements abolished

PART 5 – WARNINGS AND INFORMATION

165. Unreliable evidence

165A. Warnings in relation to children's evidence

165B. Delay in prosecution

PART 6 – ANCILLARY PROVISIONS

Division 1 – Request to produce documents or call witnesses

166. Definition of request

167. Requests may be made about certain matters

168. Time limits for making certain requests

169. Failure or refusal to comply with request

Division 2 – Proof of certain matters by affidavits or written statements

170. Evidence relating to certain matters

171. Persons who may give such evidence

172. Evidence based on knowledge, belief or information

173. Notification of other parties

Division 3 – Foreign law

174. Evidence of foreign law

175. Evidence of law reports of foreign countries

176. Questions of foreign law decided by judge

Division 4 – Procedures for proving other matters

177. Certificates of expert evidence

177A. Certificate of analyst

177B. Proof of proceedings of councils and committees

177C. Probate and letters of administration

177D. Certificate of Surveyor-General

177E. Certificate of Chief Parliamentary Counsel

178. Convictions, acquittals and other judicial proceedings

179. Proof of identity of convicted persons by affidavits by members of State or Territory police forces

180. Proof of identity of convicted persons by affidavits by members of the Australian Federal Police

181. Proof of service of statutory notifications, notices, orders and directions

181A. Depositions on one charge admissible on trial of another

CHAPTER 5 – MISCELLANEOUS

PART 1 – MISCELLANEOUS PROVISIONS

182. Application of certain sections in relation to Commonwealth records

183. Inferences

184. Accused may admit matters and give consent

185. Full faith and credit to be given to documents properly authenticated

186. Swearing of affidavits before justices of the peace, notaries public and lawyers

187. No privilege against self-incrimination for bodies corporate

188. Impounding documents

189. The voir dire

190. Waiver of rules of evidence

191. Agreements as to facts

192. Leave, permission or direction may be given on terms

192A. Advance rulings and findings

193. Additional powers

194. Witnesses failing to attend proceedings

194A. Depositions under *Justices Act 1959*

194B. Depositions of persons dangerously ill

194C. Power of court or judge to order examination of witnesses on interrogatories or otherwise

194D. Parties

194E. Compelling attendance of witnesses or production of documents

194F. Examinations of witnesses to be taken on oath

194G. Persons appointed for taking examinations to report on conduct or absence of witnesses if necessary

194H. Costs of examination may be made costs in the cause

194I. Provisions relating to reading of examinations
194J. Printing and publication of certain evidence prohibited
194K. Publication of certain identifying particulars prohibited
194L. Publication of evidence in certain civil cases prohibited
194M. Evidence relating to sexual experience
195. Prohibited question not to be published
196. Proceedings for offences
196A. Medical examination of injured person
196B. Certain errors not avoid conviction
196C. Inspection of realty or personalty

PART 2 – ADMINISTRATIVE PROVISIONS

197. Regulations
198. Administration of Act
199. Repeals
200. Savings, transitional and other provisions

SCHEDULE 1 – OATHS AND AFFIRMATIONS

SCHEDULE 2 – SAVINGS, TRANSITIONAL AND OTHER PROVISIONS



EVIDENCE ACT 2001

No. 76 of 2001

An Act to provide for matters relating to evidence

[Royal Assent 17 December 2001]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

CHAPTER 1 – PRELIMINARY

PART 1 – FORMAL MATTERS

1. Short title

This Act may be cited as the *Evidence Act 2001*.

2. Commencement

This Act commences on a day to be proclaimed.

2A. Numbering of Act

(1) In order to maintain consistent numbering between this Act and the *Evidence Act 1995* of the Commonwealth –

(a) if the Commonwealth Act contains a section that is not in this Act, that section number and heading are included in this Act despite the omission of the body of the section; and

(b) if this Act contains a section that is not in the Commonwealth Act, that section is numbered so as to maintain consistency in numbering between sections common to both Acts.

(2) A section number and heading referred to in subsection (1)(a) form part of this Act.

Note 1: A note appears under each heading of a kind referred to in subsection (1)(a) describing the omitted section of the Commonwealth Act.

Note 2: A note appears under each section of a kind referred to in subsection (1)(b) highlighting the non-appearance of an equivalent section in the Commonwealth Act.

Note 3: This section does not appear in the Commonwealth Act.

3. Interpretation

(1) In this Act –

admission means a previous representation that is –

(a) made by a person who is or becomes a party to a proceeding, including a defendant in a criminal proceeding; and

(b) adverse to the person's interest in the outcome of the proceeding;

analysis includes examination, testing, handling and storage done by, or under the supervision or direction of, an analyst;

analyst means –

(a) the Government Analyst; or

(b) an analyst appointed for the purposes of any Act of the Commonwealth, of a State or Territory of the Commonwealth or of any other jurisdiction; or

(c) a person appointed, authorised or otherwise determined for the purposes of such Act to perform an analysis; or

(d) any other person who has the appropriate qualifications or experience to perform an analysis;

associated defendant, in relation to a defendant in a criminal proceeding, means a person against whom a prosecution has been instituted, but not yet completed or terminated, for –

(a) an offence that arose in relation to the same events as those in relation to which the offence for which the defendant is being prosecuted arose; or

(b) an offence that relates to, or is connected with, the offence for which the defendant is being prosecuted;

Australia includes the external Territories;

Australian court means –

(a) the High Court; or

(b) a court exercising federal jurisdiction; or

(c) a court of a State or Territory; or

(d) a judge, justice or arbitrator under an Australian law; or

(e) a person or body authorised by an Australian law, or by consent of parties, to hear, receive and examine evidence; or

(f) a person or body that, in exercising a function under an

Australian law, is required to apply the laws of evidence;

Australian law means a law of the Commonwealth or a State or Territory of the Commonwealth;

Australian lawyer has the meaning it has in the *Legal Profession Act 2007*;

Australian legal practitioner has the meaning it has in the *Legal Profession Act 2007*;

Australian or overseas proceedings means a proceeding (however described) in an Australian court or a foreign court;

Australian Parliament means Parliament of the Commonwealth or another State or the Legislative Assembly of a Territory;

Australian practising certificate has the meaning it has in the *Legal Profession Act 2007*;

Australian-registered foreign lawyer has the meaning it has in the *Legal Profession Act 2007*;

Australian Statistician means the Australian Statistician referred to in section 5(2) of the *Australian Bureau of Statistics Act 1975* of the Commonwealth and includes any person to whom the powers of the Australian Statistician under section 12 of the *Census and Statistics Act 1905* of the Commonwealth have been delegated;

business means a business referred to in section 3A;

case of a party means the facts in issue in respect of which the party bears the legal burden of proof;

child means a child of any age and includes the meaning given in subsection (13);

civil penalty means civil penalty referred to in subsection (6);

civil proceeding means a proceeding other than a criminal proceeding;

coincidence evidence means evidence of a kind referred to in section 98(1) that a party seeks to have adduced for the purpose referred to in that subsection;

coincidence rule means the rule referred to in section 98;

Commonwealth-owned body corporate means a body corporate that, were the Commonwealth a body corporate, would, for the purposes of the Corporations Law, be –

(a) a wholly-owned subsidiary of the Commonwealth; or

(b) a wholly-owned subsidiary of another body corporate that is under this definition a Commonwealth-owned body

corporate because of the application of paragraph (a), including the application of that paragraph together with another application or other applications of this paragraph;

Commonwealth record means a record made by –

(a) a Department within the meaning of the *Public Service Act 1999* of the Commonwealth; or

(b) the Parliament, a House of the Parliament, a committee of a House of the Parliament or a committee of the Parliament; or

(c) a person or body, other than a Legislative Assembly, holding office or exercising power under or because of the Commonwealth Constitution or a law of the Commonwealth for the purpose of exercising that power; or

(d) a body or organisation, other than a Legislative Assembly, whether incorporated or unincorporated, established for a public purpose –

(i) by or under a law of the Commonwealth or of a Territory (other than the Australian Capital Territory, the Northern

Territory or Norfolk Island); or

(ii) by the Governor-General; or

(iii) by a Minister of the Commonwealth; or

(e) any other body or organisation that is a Commonwealth-owned body corporate –

and kept or maintained by a person, body or organisation of a kind referred to in paragraph (a), (b), (c), (d) or (e) but does not include a record made by a person or body holding office, or exercising power, under or because of the Commonwealth Constitution or a law of the Commonwealth if the record was not made in connection with holding the office concerned, or exercising the power concerned;

counselling communication means a counselling communication referred to in section 127B(1);

court means a Tasmanian court;

credibility of a person who has made a representation that has been admitted in evidence means the credibility of the representation, and includes the person's ability to observe or remember facts and

events about which the person made the representation;

credibility of a witness means the credibility of any part or all of the evidence of the witness, and includes the witness's ability to observe or remember facts and events about which the witness has given, is giving or is to give, evidence;

credibility evidence is defined in section 101A;

credibility rule means the rule referred to in section 102;

criminal proceeding means a prosecution for an offence and includes –

(a) a proceeding for the committal of a person for trial or sentence for an offence; and

(b) a proceeding relating to bail –

but does not include a prosecution that is a prescribed taxation offence within the meaning of Part III of the *Taxation Administration Act 1953* of the Commonwealth;

cross-examination means cross-examination referred to in subsection (3);

cross-examiner means a party who is cross-examining a witness;

document means any record of information and includes –

(a) anything on which there is writing; or

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or

(d) any map, plan, drawing or photograph;

electronic communication has the meaning it has in the *Electronic Transactions Act 2000*;

examination in chief means examination in chief referred to in subsection (2);

exercise of a function includes performance of a duty;

fax, in relation to a document, means a copy of the document that has been reproduced by facsimile telegraphy;

foreign court means any court, including any person or body authorised to take or receive evidence, whether on behalf of a

court or otherwise and whether or not the person or body is empowered to require the answering of questions or the production of documents, of a foreign country or a part of such a country;

function includes power, authority or duty;

Governor of a State includes any person for the time being administering the Government of the State;

Governor-General means the Governor-General of the Commonwealth and includes any person for the time being administering the Government of the Commonwealth;

hearsay rule means the rule referred to in section 59;

identification evidence means evidence that is –

(a) an assertion by a person to the effect that a defendant was, or resembles, visually, aurally or otherwise, a person who was, present at or near a place where –

(i) the offence for which the defendant is being prosecuted was committed; or

(ii) an act connected to that offence was done –

at or about the time at which the offence was committed or the act was done, being an assertion that is based wholly or partly on what the person making the assertion saw, heard or otherwise perceived at that place and time; or

(b) a report, whether oral or in writing, of such an assertion;

investigating official means –

(a) a police officer, other than a police officer who is engaged in covert investigations under the orders of a superior; or

(b) a person appointed by or under an Australian law, other than a person who is engaged in covert investigations under the orders of a superior and whose functions include the prevention or investigation of offences;

joint sitting means –

(a) in relation to the Parliament of the Commonwealth, a joint sitting of the members of the Senate and of the House of Representatives convened by the Governor-General under section 57 of the Commonwealth Constitution or under any other Act of the Commonwealth; or

(b) in relation to a bicameral legislature of a State, a joint sitting of both Houses of the legislature convened under a law of the State;

judge, in relation to a proceeding, means the judge, magistrate or other person before whom the proceeding is being held;

law means a law referred to in subsection (11);

leading question means a question asked of a witness that –

(a) directly or indirectly suggests a particular answer to the question; or

(b) assumes the existence of a fact the existence of which is in dispute in the proceeding and as to the existence of which the witness has not given evidence before the question is asked;

legal counsel means an Australian lawyer employed in or by a government agency or other body who by law is exempted from holding an Australian practising certificate, or who does not require an Australian practising certificate, to engage in legal practice in the course of that employment;

Legislative Assembly means –

(a) any present or former Legislative Assembly of a Territory; and

(b) the Australian Capital Territory House of Assembly;

member of the Australian Federal Police includes a special member or a staff member of the Australian Federal Police;

offence means an offence against or arising under an Australian law;

official questioning means questioning by an investigating official in connection with the investigation of the commission or possible commission of an offence;

opinion rule means the rule referred to in section 76;

overseas-registered foreign lawyer has the meaning it has in Part 2.6 of Chapter 2 of the *Legal Profession Act 2007*;

parent includes a parent referred to in subsection (14);

police officer means –

(a) a member of the Australian Federal Police; or

(b) a member of the police force of a State or Territory of the Commonwealth;

postal article means a postal article as defined in the *Australian Postal Corporation Act 1989* of the Commonwealth;

previous representation means a representation made otherwise than in the course of giving evidence in the proceeding in which evidence of the representation is sought to be adduced;

prior consistent statement of a witness means a previous representation that is consistent with evidence given by the witness;

prior inconsistent statement of a witness means a previous representation of the witness that is inconsistent with evidence given by the witness;

probative value means the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue;

prosecutor means a person who institutes or is responsible for the conduct of a prosecution;

public document means a document that –

(a) forms part of the records of the Crown in any of its capacities; or

(b) forms part of the records of the government of a foreign country; or

(c) forms part of the records of a person or body holding office or exercising a function under or because of the Commonwealth Constitution, an Australian law or a law of a foreign country; or

(d) is being kept by or on behalf of the Crown, such a government or such a person or body –

and includes the records of the proceedings of, and papers presented to –

(e) an Australian Parliament, a House of an Australian Parliament, a committee of such a House or a committee of an Australian Parliament; and

(f) a legislature of a foreign country, including a House or committee, however described, of such a legislature;

re-examination means re-examination referred to in subsection (4);

representation includes –

(a) an express or implied representation, whether oral or in writing; and

(b) a representation to be inferred from conduct; and

(c) a representation not intended by its maker to be communicated to or seen by another person; and

(d) a representation that for any reason is not communicated;

seal includes a stamp;

serious offence means –

(a) in the case of a defendant of or over the age of 18 years, an indictable offence that cannot be dealt with summarily without the consent of the defendant; and

(b) in the case of a defendant under the age of 18 years, any indictable offence for which the defendant has been detained;

sexual offence means –

(a) a crime under section 122, 124, 124A, 124B, 124C, 125, 125A, 125B, 126, 127, 127A, 128, 129, 133 or 185 of the *Criminal Code*; or

(b) a crime under section 298, 299 or 300 of the *Criminal Code* in relation to a crime specified in a section referred to in paragraph (a); or

(c) an offence under section 35(3) of the *Police Offences Act 1935*;

spouse, in relation to a person, includes the person who is in a significant relationship, within the meaning of the *Relationships Act 2003*, with that person;

surrogate child, in relation to another person, means a person –

(a) who is a child of the other person by virtue of the operation of section 26(1) of the *Surrogacy Act 2012* or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and

(b) who has not ceased to be a child of the other person under that Act or law;

surrogate parent, in relation to another person, means a person –

(a) who is a parent of the other person by virtue of the operation of section 26(1) of the *Surrogacy Act 2012* or a law, of another State or a Territory or a foreign country, that corresponds to that Act; and

(b) who has not ceased to be a parent of the other person under that Act or law;

Tasmanian court means –

(a) the Supreme Court; or

(b) any other court created by Parliament –

(including such a court exercising federal jurisdiction) and includes any person or body (other than a court) that, in exercising a function under the law of the State, is required to apply the laws of evidence;

tendency evidence means evidence of a kind referred to in section 97(1) that a party seeks to have adduced for the purpose referred to in that subsection;

tendency rule means the rule referred to in section 97(1);

traditional laws and customs of an Aboriginal or Torres Strait Islander group (including a kinship group) includes any of the traditions, customary laws, customs, observances, practices, knowledge and beliefs of the group;

witness includes a witness referred to in subsections (7) and (8).

(2) A reference in this Act to examination in chief of a witness is a reference to the questioning of a witness by the party who called the witness to give evidence, not being questioning that is re-examination.

(3) A reference in this Act to cross-examination of a witness is a reference to the questioning of a witness by a party other than the party who called the witness to give evidence.

(4) A reference in this Act to re-examination of a witness is a reference to the questioning of a witness by the party who called the witness to give evidence, being questioning (other than further examination in chief with the leave of the court) conducted after the cross-examination of the witness by another party.

(5) If a party has recalled a witness who has already given evidence, a reference in this Act to re-examination of a witness does not include a reference to the questioning of the witness by that party before the witness is questioned by another party.

(6) For the purposes of this Act, a person is taken to be liable to a civil penalty if, in an Australian or overseas proceeding (other than a criminal proceeding), the person would be liable to a penalty arising under an Australian law or a law of a foreign country.

(7) A reference in this Act to a witness includes a reference to a party giving evidence.

(8) A reference in this Act to a witness who has been called by a party to give evidence includes a reference to the party giving evidence.

(9) A reference in subsections (7) and (8) to a party includes a defendant in a criminal proceeding.

(10) A reference in this Act to a document includes a reference to –

(a) any part of the document; or

(b) any copy, reproduction or duplicate of the document or of any part of the document; or

(c) any part of such a copy, reproduction or duplicate.

(11) A reference in this Act to a law of the Commonwealth, a State, a Territory or a foreign country is a reference to a law (whether written or unwritten) of or in force in that place.

(12) A reference in this Act to an Australian law is a reference to an Australian law (whether written or unwritten) of or in force in Australia.

(13) A reference in this Act to a child of a person includes a reference to –

(a) an adopted child, surrogate child or ex-nuptial child of the person; or

(b) a child living with a person as if the child were a member of the person's family.

(14) A reference in this Act to a parent of a person includes a reference to –

(a) an adoptive parent, or surrogate parent, of the person; or

(b) if the person is an ex-nuptial child, the person's natural father; or

(c) the person with whom a child is living as if the child were a member of the person's family.

Note: The provisions in subsections (2) to (14) are contained in the Dictionary in the Evidence Act 1995 of the Commonwealth.

3A. References to business

(1) A reference in this Act to a business includes a reference to the following:

(a) a profession, calling, occupation, trade or undertaking;

(b) an activity engaged in or carried on by the Crown in any of its capacities;

(c) an activity engaged in or carried on by the government of a foreign country;

(d) an activity engaged in or carried on by a person or body holding office or exercising power under or because of the Commonwealth Constitution, an Australian law or a law of a foreign country, being an activity engaged in or carried on in the performance of the functions of the office or in the exercise of the power (otherwise than in a private capacity);

(e) the proceedings of an Australian Parliament, a House of an Australian Parliament, a committee of such a House

or a committee of an Australian Parliament;

(f) the proceedings of a legislature of a foreign country, including a House or committee (however described) of such a legislature.

(2) A reference in this Act to a business also includes a reference to –

(a) a business that is not engaged in or carried on for profit; or

(b) a business engaged in or carried on outside Australia.

Note: The provisions in this section are contained in the Dictionary in the Evidence Act 1995 of the Commonwealth.

3B. Unavailability of persons

(1) For the purposes of this Act, a person is taken not to be available to give evidence about a fact if –

(a) the person is dead; or

(b) the person is, for any reason other than the application of section 16, not competent to give the evidence; or

(c) the person is mentally or physically unable to give the evidence and it is not reasonably practicable to overcome that inability; or

(d) it would be unlawful for the person to give the evidence; or

(e) a provision of this Act prohibits the evidence being given; or

(f) all reasonable steps have been taken, by the party seeking to prove the person is not available, to find the person or secure his or her attendance, but without success; or

(g) all reasonable steps have been taken, by the party seeking to prove the person is not available, to compel the person to give the evidence, but without success.

(2) In all other cases the person is taken to be available to give evidence about the fact.

Note: The provisions in this section are contained in the Dictionary in the Evidence Act 1995 of the Commonwealth.

3C. Unavailability of documents and things

For the purposes of this Act, a document or thing is taken not to be available to a party if and only if –

(a) it cannot be found after reasonable inquiry and search by the party; or

(b) it was destroyed by the party, or by a person on behalf of the party, otherwise than in bad faith, or was destroyed by another person; or

(c) it would be impractical to produce the document or thing during the course of the proceeding; or

(d) production of the document or thing during the course of the proceeding could render a person liable to conviction for an offence; or

(e) it is not in the possession or under the control of the party and –

(i) it cannot be obtained by any judicial procedure of the court; or

(ii) it is in the possession or under the control of another party to the proceeding concerned who knows or might reasonably be expected to know that evidence of the contents of the document, or evidence of the thing, is likely to be relevant in the proceeding; or

(iii) it was in the possession or under the control of such a party at a time when that party knew or might reasonably be expected to have known that such evidence was likely to be relevant in the proceeding.

Note: The provisions in this section are contained in the Dictionary in the Evidence Act 1995 of the Commonwealth.

3D. Representations in documents

For the purposes of this Act, a representation contained in a document is taken to have been made by a person if –

(a) the document was written, made or otherwise produced by the person; or

(b) the representation was recognised by the person as his or her representation by signing, initialling or otherwise marking the document.

Note: The provisions in this section are contained in the Dictionary in the Evidence Act 1995 of the Commonwealth.

PART 2 – APPLICATION OF ACT

4. Courts and proceedings to which Act applies

(1) This Act applies to all proceedings in a Tasmanian court including proceedings that –

(a) relate to bail; or

(b) are interlocutory proceedings or proceedings of a similar kind; or

(c) are heard in chambers; or

(d) subject to subsection (2), relate to sentencing.

(2) If a proceeding relates to sentencing –

(a) this Act applies only if the court directs that the law of evidence applies in the proceeding; and

(b) if the court specifies in the direction that the law of evidence applies only in relation to specified matters, the direction has effect accordingly.

(3) The court must make a direction referred to in subsection (2) if –

(a) a party to the proceeding applies for a direction in relation to the proof of a fact; and

(b) in the court's opinion, the proceeding involves proof of that fact and the fact is

or will be significant in determining a sentence to be imposed in the proceeding.

(4) The court must make a direction if it considers it appropriate in the interest of justice.

5. Extended application of certain provisions

Note: The Evidence Act 1995 of the Commonwealth includes a provision that extends the application of specified provisions of the Commonwealth Act to proceedings in all Australian courts.

6. Territories

Note: The Evidence Act 1995 of the Commonwealth includes a provision extending that Act to each external Territory.

7. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

8. Operation of other Acts

This Act does not affect the operation of the provisions of any other Act.

9. Application of common law and equity

(1) This Act does not affect the operation of a principle or rule of common law or equity in relation to evidence in a proceeding to which this Act applies, except so far as this Act provides otherwise expressly or by necessary intendment.

(2) Without limiting subsection (1), this Act does not affect the operation of such a principle or rule so far as it relates to any of the following:

(a) the admission or use of evidence of reasons for a decision of a member of a jury, or of the deliberations of a member of a jury in relation to such a decision, in a proceeding by way of appeal from a judgment, decree, order or sentence of a court;

(b) the operation of a legal or evidential presumption that is consistent with this Act;

(c) a court's power to dispense with the operation of a rule of evidence or procedure in an interlocutory proceeding.

10. Parliamentary privilege preserved

(1) This Act does not affect the law relating to the privileges of any Australian Parliament or any House of any Australian Parliament.

(2) In particular, section 15(2) does not affect, and is in addition to, the law relating to such privileges.

11. General powers of court

(1) The power of a court to control the conduct of a proceeding is not affected by this Act, except where this Act provides otherwise expressly or by necessary intendment.

(2) The powers of a court with respect to abuse of process in a proceeding are not affected.

CHAPTER 2 – ADDUCING EVIDENCE

PART 1 – WITNESSES

Division 1 – Competence and compellability of witnesses

12. Competence and compellability

Except as otherwise provided by this Act –

(a) every person is competent to give evidence; and

(b) a person who is competent to give evidence about a fact is compellable to give that evidence.

13. Competence: lack of capacity

(1) A person is not competent to give evidence about a fact if, for any reason (including a mental, intellectual or physical disability) –

(a) the person does not have the capacity to understand a question about the fact; or

(b) the person does not have the capacity to give an answer that can be understood to a question about the fact –

and that incapacity cannot be overcome.

(2) A person who, because of subsection (1), is not competent to give evidence about a fact may be competent to give evidence about other facts.

(3) A person who is competent to give evidence about a fact is not competent to give sworn evidence about the fact if the person does not have the capacity to understand that, in giving evidence, he or she is under an obligation to give truthful evidence.

(4) A person who is not competent to give sworn evidence about a fact may, subject to subsection (5), be competent to give unsworn evidence about the fact.

(5) A person who, because of subsection (3), is not competent to give sworn evidence is competent to give unsworn evidence if the court has told the person –

(a) that it is important to tell the truth; and

(b) that he or she may be asked questions that he or she does not know, or cannot remember, the answer to, and that he or she should tell the court if this occurs; and

(c) that he or she may be asked questions that suggest certain statements are true or untrue and that he or she should agree with the statements that he or she believes are true and should feel no pressure to agree with statements that he or she believes are untrue.

(6) It is presumed, unless the contrary is proved, that a person is not incompetent because of this section.

(7) Evidence that has been given by a witness does not become inadmissible merely because, before the witness finishes giving evidence, he or she dies or ceases to be competent to give evidence.

(8) For the purpose of determining a question arising under this section, the court may inform itself as it thinks fit, including by obtaining information from a person who has relevant specialised knowledge based on the person's training, study or experience.

14. Compellability: reduced capacity

A person is not compellable to give evidence on a matter if the court is satisfied that –

(a) substantial cost or delay would be incurred in ensuring that the person would have the capacity to understand a question about the matter or to give an answer that can be understood to a question about the matter; and

(b) adequate evidence on that matter has been given, or will be able to be given, from another person or source.

15. Compellability: Sovereign and others

(1) None of the following is compellable to give evidence:

(a) the Sovereign;

(b) the Governor-General;

(c) the Governor of a State;

(d) the Administrator of a Territory;

(e) a foreign sovereign or the Head of State of a foreign country.

(2) A member of a House of an Australian Parliament is not compellable to give evidence if the member, if compelled to give evidence, would be prevented from attending –

(a) a sitting of that House, or a joint sitting of that Parliament; or

(b) a meeting of a committee of that House or that Parliament of which he or she is a member.

16. Competence and compellability: judges and jurors

(1) Subject to subsection (2), a person who is a judge or juror in a proceeding is not competent to give evidence in that proceeding.

(2) A juror in a proceeding is competent to give evidence in the proceeding about matters affecting the conduct of the proceeding.

(3) A person who is or was a judge in an Australian or overseas proceeding is not compellable to give evidence about that proceeding unless the court gives leave.

17. Competence and compellability: defendants in criminal proceedings

(1) This section applies only in a criminal proceeding.

(2) A defendant is not competent to give evidence as a witness for the prosecution.

(3) An associated defendant is not compellable to give evidence for or against a defendant unless the associated defendant is being tried separately from the defendant.

(4) If a witness is an associated defendant who is being tried jointly with the defendant in the proceeding, the court is to satisfy itself (if there is a jury, in the jury's absence) that the witness is aware of the effect of subsection (3).

18. Compellability of spouses and others in criminal proceedings generally

(1) This section applies only in a criminal proceeding.

(2) A person who, when required to give evidence, is the spouse, parent or child of a defendant may object to being required –

(a) to give evidence; or

(b) to give evidence of a communication between the person and the defendant –

as a witness for the prosecution.

(3) The objection is to be made before the person gives the evidence or as soon as practicable after the person becomes aware of the right so to object, whichever is the later.

(4) If it appears to the court that a person may have a right to object, the court is to satisfy itself that the person is aware of the effect of this section as it may apply to the person.

(5) The court is to hear and determine any objection in the absence of a jury.

(6) A person who makes an objection under this section to giving evidence or giving evidence of a communication must not be required to give the evidence if the court finds that –

(a) there is a likelihood that harm would or might be caused, directly or indirectly, to the person, or to the relationship between the person and the defendant, if the person gives the evidence; and

(b) the nature and extent of that harm outweighs the desirability of having the evidence given.

(7) Without limiting the matters that may be taken into account by the court for the purpose of subsection (6), it must take into account the following:

(a) the nature and gravity of the offence for which the defendant is being prosecuted;

(b) the substance and importance of any evidence that the person might give and the weight that is likely to be attached to it;

(c) whether any other evidence concerning the matters to which the evidence of the person would relate is reasonably available to the prosecutor;

(d) the nature of the relationship between the defendant and the person;

(e) whether, in giving the evidence, the person would have to disclose matter that was received by the person in confidence from the defendant.

(8) If an objection under this section has been determined, the prosecutor may not comment on –

(a) the objection; or

(b) the decision of the court in relation to the objection; or

(c) the failure of the person to give evidence.

19. Compellability of spouses and others in certain proceedings

Section 18 does not apply in proceedings if –

(a) the defendant is charged with incest; or

(b) the defendant is charged with a crime under section 124, 124A, 124B, 124C, 125, 125A, 125B, 126, 127, 127A, 128 or 129 of the *Criminal Code* against a person who, at the time the alleged crime was committed, had not attained the age of 16 years; or

(c) the defendant is charged with a crime under section 298, 299 or 300 of the *Criminal Code* in relation to a crime referred to in paragraph (b) or (d); or

(d) the defendant is charged under any provision of Chapter XIX or XX of the *Criminal Code* with a crime against a person who, at the time of the alleged crime, had not attained the age of 16 years; or

(e) the defendant is charged with an offence under the *Police Offences Act 1935* involving an assault on, or the threat of violence to, a person who, at the time of the alleged offence, had not attained the age of 16 years; or

(f) the defendant is charged with assault against, or any other offence involving violence or the threat of violence to, his or her spouse or a parent or child of the defendant; or

(fa) the defendant is charged with family violence, within the meaning of the *Family Violence Act 2004*; or

(g) the proceedings were instituted as the result of a complaint by the spouse for an offence alleged to have been committed by the defendant against or in relation to the property of his or her spouse.

Note: This section differs from section 19 of the Evidence Act 1995 of the Commonwealth.

20. Comment on failure to give evidence

(1) This section only applies in a criminal proceeding for an indictable offence.

(2) The judge or any party, other than the prosecutor, may comment on the failure of a defendant to give evidence.

(3) Unless the comment under subsection (2) is made by another defendant in the proceeding, the comment must not suggest that the defendant failed to give evidence because the defendant was, or believed that he or she was, guilty of the offence concerned.

(4) The judge or any party, other than the prosecutor, may comment on the failure to give evidence by a person who, at the time of the failure, was –

(a) the defendant's spouse; or

(b) a parent or child of the defendant.

(5) Unless the comment under subsection (4) is made by another defendant in the proceeding,

the comment must not suggest that the spouse, parent or child failed to give evidence because –

(a) the defendant was guilty of the offence concerned; or

(b) the spouse, parent or child believed that the defendant was guilty of the offence concerned.

(6) If –

(a) 2 or more persons are being tried together for an indictable offence; and

(b) comment is made by any of those persons on the failure of any of those persons or of the spouse, or a parent or child, of any of those persons to give evidence –

the judge, in addition to commenting on the failure to give evidence, may comment on any comment of a kind referred to in paragraph (b).

Division 2 – Oaths and affirmations

21. Sworn evidence by oath or affirmation

(1) A witness in a proceeding must take an oath or make an affirmation before giving evidence.

(2) Subsection (1) does not apply to a person who gives unsworn evidence under section 13.

(3) A person who is called merely to produce a document or thing to the court need not take an oath or make an affirmation before doing so.

(4) A witness is to take an oath by answering "I swear" or make an affirmation by answering "I affirm" in reply to the oath or affirmation being tendered in accordance with form 1 or form 3 in Schedule 1.

(5) An affirmation has the same effect for all purposes as an oath.

Note: This section differs from section 21 of the Evidence Act 1995 of the Commonwealth.

22. Interpreters to act on oath or affirmation

(1) A person must take an oath, or make an affirmation, before acting as an interpreter in a proceeding.

(2) The person is to take an oath by answering "I swear" or make an affirmation by answering "I affirm" in reply to the oath or affirmation being tendered in accordance with form 2 or form 4 in Schedule 1.

(3) An affirmation has the same effect for all purposes as an oath.

Note: This section differs from section 22 of the Evidence Act 1995 of the Commonwealth.

23. Choice of oath or affirmation

(1) A person who is to be a witness or act as an interpreter in a proceeding may choose to take an oath or make an affirmation.

(2) The court is to inform the person that he or she has this choice.

(3) The court may direct a person who is to be a witness to make an affirmation if –

(a) the person refuses to choose whether to take an oath or make an affirmation; or

(b) it is not reasonably practicable for the person to take an appropriate oath.

24. Requirements for oaths

(1) It is not necessary that a religious text be used in taking an oath.

(2) An oath is effective for the purpose of this Division even if the person who took it –

(a) did not have a religious belief or did not have a religious belief of a particular kind; or

(b) did not understand the nature and consequences of the oath.

25. Rights to make unsworn statements unaffected

Note: The Evidence Act 1995 of the Commonwealth includes a provision preserving

any right of a defendant under the law of a State or Territory to make an unsworn statement. The right to make an unsworn statement remains in Norfolk Island.

Division 3 – General rules about giving evidence

26. Court's control over questioning of witness

The court may make any orders it considers just in relation to –

(a) the way in which witnesses are to be questioned; and

(b) the production and use of documents and things in connection with the questioning of witnesses; and

(c) the order in which parties may question a witness; and

(d) the presence and behaviour of any person in connection with the questioning of witnesses.

27. Parties may question witnesses

A party may question any witness, except as provided by this Act.

28. Order of examination in chief, cross-examination and re-examination

Unless the court otherwise directs –

(a) cross-examination of a witness is not to take place before the examination in chief of the witness; and

(b) re-examination of a witness is not to take place before all other parties who wish to do so have cross-examined the witness.

29. Manner and form of questioning and responses of witness

(1) A party may question a witness in any way the party thinks fit, except as provided by this Chapter or as directed by the court.

(2) A court may, on its own motion or on the application of the party that called the witness, direct that the witness give evidence wholly or partly in narrative form.

(3) Such a direction may include directions about the way in which evidence is to be given in that form.

(4) Evidence may be given in the form of charts, summaries or other explanatory material if it appears to the court that the material would be likely to aid its comprehension of other evidence that has been given or is to be given.

30. Interpreters

A witness may give evidence about a fact 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, questions that may be put about the fact.

30A. Unsworn statements

In criminal proceedings, a defendant is not entitled to give evidence by means of an unsworn statement.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

31. Deaf and mute witnesses

(1) A witness who cannot hear adequately may be questioned in any appropriate way.

(2) A witness who cannot speak adequately may give evidence by any appropriate means.

(3) The court may give directions concerning either or both of the following:

(a) the way in which a witness may be questioned under subsection (1);

(b) the means by which a witness may give evidence under subsection (2).

(4) This section does not affect the right of a witness to whom this section applies to give evidence about a fact through an interpreter under section 30.

32. Attempts to revive memory in court

(1) A witness, in the course of giving evidence, must not use a document to try to revive his or her memory about a fact or opinion unless the court gives leave.

(2) Without limiting the matters that the court may take into account in deciding whether to give leave, it is to take into account –

(a) whether the witness will be able to recall the fact or opinion adequately without using the document; and

(b) whether so much of the document as the witness proposes to use is, or is a copy of, a document that –

(i) was written or made by the witness when the events recorded in it were fresh in his or her memory; or

(ii) was, at such a time, found by the witness to be accurate.

(3) If a witness, while giving evidence, has used a document to try to revive his or her memory about a fact or opinion, the witness, with the leave of the court, may read aloud as part of his or her evidence so much of the document as relates to that fact or opinion.

(4) The court, on the request of a party, is to give any directions it thinks fit to ensure that so much

of the document as relates to the proceeding is produced to that party.

33. Evidence by police officers

(1) Despite section 32, in any criminal proceeding, a police officer may give evidence in chief for the prosecution by reading or being led through a written statement previously made by the police officer.

(2) Evidence may not be so given unless –

(a) the statement was made by the police officer at the time of, or soon after, the occurrence of the events to which it refers; and

(b) the police officer signed the statement when it was made; and

(c) a copy of the statement had been given to the person charged or to his or her Australian legal practitioner or legal counsel a reasonable time before the hearing of the evidence for the prosecution.

(3) A reference in this section to a police officer includes a reference to a person who, at the time the statement concerned was made, was a police officer.

34. Attempts to revive memory out of court

(1) The court, on the request of a party, may give any directions as are appropriate to ensure that specified documents and things used by a witness, otherwise than while giving evidence to try to revive his or her memory, are produced to the party for the purposes of the proceeding.

(2) The court may refuse to admit the evidence given by the witness so far as it concerns a fact as to which the witness so tried to revive his or her memory if, without reasonable excuse, the directions have not been complied with.

35. Effect of calling for production of documents

(1) A party is not to be required to tender a document only because the party, whether under this Act or otherwise –

(a) called for the document to be produced to the party; or

(b) inspected it when it was so produced.

(2) The party who produces a document so called for is not entitled to tender it only because the party to whom it was produced, or who inspected it, fails to tender it.

36. Examination without subpoena or other process

(1) The court may order a person who –

(a) is present at the hearing of a proceeding; and

(b) is compellable to give evidence in the proceeding –

to give evidence and to produce documents or things even if a subpoena or other process requiring the person to attend for that purpose has not been duly served on the person.

(2) A person so ordered to give evidence or to produce documents or things is subject to the same penalties and liabilities as if the person had been duly served with a subpoena or other process.

(3) A party who inspects a document or thing produced to the court because of subsection (1) need not use the document in evidence.

Division 4 – Examination in chief and re-examination

37. Leading questions

(1) A leading question must not be put to a witness in examination in chief or in re-examination unless –

(a) the court gives leave; or

(b) the question relates to a matter introductory to the witness's evidence; or

(c) no objection is made to the question and (leaving aside the party conducting the examination in chief or re-examination)

each other party to the proceeding is represented by an Australian legal practitioner, legal counsel or prosecutor; or

(d) the question relates to a matter that is not in dispute; or

(e) if the witness has specialised knowledge based on the witness's training, study or experience, the question is asked for the purpose of obtaining the witness's opinion about a hypothetical statement of facts in respect of which evidence has been, or is intended to be, given.

(2) Unless the court otherwise directs, subsection (1) does not apply in civil proceedings to a question that relates to an investigation, inspection or report that the witness made in the course of carrying out public or official duties.

(3) Subsection (1) does not prevent a court from exercising power under rules of court to allow a written statement or report to be tendered or treated as evidence in chief of its maker.

38. Unfavourable witness

(1) A party who called a witness, with the leave of the court, may question the witness as though the party were cross-examining the witness about –

(a) evidence given by the witness that is unfavourable to the party; or

(b) a matter of which the witness may reasonably be supposed to have knowledge and about which it appears to the court the witness is not, in examination in chief, making a genuine attempt to give evidence; or

(c) whether the witness has, at any time, made a prior inconsistent statement.

(2) Questioning a witness under this section is taken to be cross-examination for the purposes of this Act, other than section 39.

(3) The party questioning the witness under this section, with the leave of the court, may question the witness about matters relevant only to the witness's credibility.

(4) Questioning under this section is to take place before the other parties cross-examine the witness, unless the court otherwise directs.

(5) If the court so directs, the order in which the parties question the witness is to be as the court directs.

(6) Without limiting the matters that the court may take into account in determining whether to give leave or a direction, it is to take into account –

(a) whether the party gave notice at the earliest opportunity of his or her intention to seek leave; and

(b) the matters on which, and the extent to which, the witness has been, or is likely to be, questioned by another party.

(7) A party is subject to the same liability to be cross-examined under this section as any other witness if –

(a) a proceeding is being conducted in the name of the party by or on behalf of an insurer or other person; and

(b) the party is a witness in the proceeding.

39. Limits on re-examination

On re-examination –

(a) a witness may be questioned about matters arising out of evidence given by the witness in cross-examination; and

(b) other questions may not be put to the witness, unless the court gives leave.

Division 5 – Cross-examination

40. Witness called in error

A party is not to cross-examine a witness who has been called in error by another party and has not been questioned by that other party about a matter relevant to a question to be determined in the proceeding.

41. Improper questions

(1) The court must disallow a question put to a witness in cross-examination, or inform the witness that it need not be answered, if the court is of the opinion that the question (referred to as a "**disallowable question**") –

(a) is misleading or confusing; or

(b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; or

(c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate; or

(d) has no basis other than a stereotype (for example, a stereotype based on the witness's sex, race, culture, ethnicity, age or mental, intellectual or physical disability).

(2) Without limiting the matters the court may take into account for the purposes of subsection (1), it is to take into account –

(a) any relevant condition or characteristic of the witness of which the court is, or is made, aware, including age, education, ethnic and cultural background, gender, language background and skills, level of maturity and understanding and personality; and

(b) any mental, intellectual or physical disability of which the court is, or is made, aware and to which the witness is, or appears to be, subject; and

(c) the context in which the question is put, including –

(i) the nature of the proceeding; and

(ii) in a criminal proceeding, the nature of the offence to which the proceeding relates; and

(iii) the relationship (if any) between the witness and any other party to the proceeding.

(3) A question is not a disallowable question merely because –

(a) the question challenges the truthfulness of the witness or the consistency or accuracy of any statement made by the witness; or

(b) the question requires the witness to discuss a subject that could be considered distasteful to, or private by, the witness.

(4) A party may object to a question put to a witness on the ground that it is a disallowable question.

(5) However, the duty imposed on the court by this section applies whether or not an objection is raised to a particular question.

(6) A failure by the court to disallow a question under this section, or to inform the witness that it need not be answered, does not affect the admissibility in evidence of any answer given by the witness in response to the question.

42. Leading questions

(1) A party may put a leading question to a witness in cross-examination unless the court disallows the question or directs the witness not to answer it.

(2) Without limiting the matters that the court may take into account in deciding whether to disallow the question or give such a direction, it is to take into account the extent to which –

(a) evidence that has been given by the witness in examination in chief is unfavourable to the party calling the witness; and

(b) the witness has an interest consistent with an interest of the cross-examiner; and

(c) the witness is sympathetic to the party conducting the cross-examination, either generally or about a particular matter; and

(d) the witness's age, or any mental, intellectual or physical disability to which the witness is subject, may affect the witness's answers.

(3) The court is to disallow the question, or direct the witness not to answer it, if satisfied that the facts concerned would be better ascertained if leading questions were not used.

(4) This section does not limit the court's power to control leading questions.

43. Prior inconsistent statement of witness

(1) A witness may be cross-examined about a prior inconsistent statement alleged to have been made by the witness whether or not –

(a) complete particulars of the statement have been given to the witness; or

(b) a document containing a record of the statement has been shown to the witness.

(2) If, in cross-examination, a witness does not admit that he or she made a prior inconsistent statement, the cross-examiner is not to adduce evidence of the statement otherwise than from the witness unless, in the cross-examination, the cross-examiner –

(a) informed the witness of enough of the circumstances of the making of the statement to enable the witness to identify the statement; and

(b) drew the witness's attention to so much of the statement as is inconsistent with the witness's evidence.

(3) For the purpose of adducing evidence of the statement, a party may re-open the party's case.

44. Previous representation of other person

(1) Except as provided by this section, a cross-examiner must not question a witness about a previous representation alleged to have been made by a person other than the witness.

(2) A cross-examiner may question a witness about the representation and its contents if –

(a) evidence of the representation has been admitted; or

(b) the court is satisfied that it will be admitted.

(3) If subsection (2) does not apply and the representation is contained in a document, the document may only be used to question a witness as follows:

(a) the document must be produced to the witness;

(b) if the document is a tape recording, or any other kind of document from which sounds are reproduced, the witness must be provided with the means to listen to the contents of the document without other persons present at the cross-examination hearing those contents;

(c) the witness must be asked whether, having examined or heard the contents of

the document, the witness stands by the evidence that he or she has given;

(d) neither the cross-examiner nor the witness is to identify the document or disclose any of its contents.

(4) A document that is so used may be marked for identification.

45. Production of document

(1) This section applies if a party is cross-examining or has cross-examined a witness about –

(a) a prior inconsistent statement alleged to have been made by the witness that is recorded in a document; or

(b) a previous representation alleged to have been made by another person that is recorded in a document.

(2) If the court so orders or if another party so requires, the party must produce –

(a) the document; or

(b) such evidence of the contents of the document as is available to the party –

to the court or to that other party.

(3) The court may –

(a) examine a document or evidence that has been produced under subsection (2); and

(b) give directions as to its use; and

(c) admit it even if it has not been tendered by a party.

(4) Subsection (3) does not permit the court to admit a document or evidence that is not admissible because of Chapter 3.

(5) The mere production of a document to a witness being cross-examined does not give rise to a requirement that the cross-examiner tender the document.

46. Leave to recall witnesses

(1) The court may give leave to a party to recall a witness to give evidence about a matter raised by evidence adduced by another party being a matter on which the witness was not cross-examined, if the evidence concerned has been admitted and –

(a) it contradicts evidence about the matter given by the witness in examination in chief; or

(b) the witness could have given evidence about the matter in examination in chief.

(2) A reference in this section to a matter raised by evidence adduced by another party includes a reference to an inference drawn from, or that the party intends to draw from, that evidence.

PART 2 – DOCUMENTS

47. Interpretation of Part

In this Part –

(a) a reference to a document in question is a reference to a document as to the contents of which it is sought to adduce evidence; and

(b) a reference to a copy of a document in question includes a reference to a document that is not an exact copy of the document in question but that is identical to the document in question in all relevant respects.

48. Proof of contents of document

(1) A party may adduce evidence of the contents of a document in question by tendering it or by any one or more of the following methods:

(a) adducing evidence of an admission made by another party to the proceeding as to the contents of the document in question;

(b) tendering a document that –

(i) is, or purports to be, a copy of the document in question; and

(ii) has been produced, or purports to have been produced, by a device

that reproduces the contents of documents;

(c) if the document in question is an article or thing by which words are recorded in such a way as to be capable of being reproduced as sound, or in which words are recorded in a code, including shorthand writing, tendering a document that is, or purports to be, a transcript of the words;

(d) if the document in question is an article or thing on or in which information is stored in such a way that it cannot be used by the court unless a device is used to retrieve, produce or collate it, tendering a document that was, or purports to have been, produced by use of the device;

(e) tendering a document that –

(i) forms part of the records of or kept by a business, whether or not the business is still in existence; and

(ii) is, or purports to be a copy of, or an extract from or a summary of, the document in question, or is, or purports to be, a copy of such an extract or summary;

(f) if the document in question is a public document, tendering a document that is, or purports to be, a copy of the document

in question and that is, or purports to have been, printed –

(i) by a person authorised by or on behalf of the government to print the document or by the Government Printer of the Commonwealth or by the government or official printer of another State or a Territory; or

(ii) by the authority of the Government or administration of the State, the Commonwealth, another State, a Territory or a foreign country; or

(iii) by authority of an Australian Parliament, a House of an Australian Parliament, a committee of such a House or a committee of an Australian Parliament.

(2) Subsection (1) applies to a document in question whether it is available to the party or not.

(3) If the party adduces evidence of the contents of a document under subsection (1)(a), the evidence may only be used –

(a) in respect of the party's case against the other party who made the admission concerned; or

(b) in respect of the other party's case against the party who adduced the evidence in that way.

(4) A party may adduce evidence of the contents of a document in question that is not available to the party, or the existence and contents of which are not in issue in the proceeding, by –

(a) tendering a document that is a copy of, or an extract from or a summary of, the document in question; or

(b) adducing oral evidence of the contents of the document in question.

49. Documents in foreign countries

No paragraph of section 48(1), other than paragraph (a), applies to a document that is in a foreign country unless –

(a) the party who adduces evidence of the contents of the document in question, not less than 28 days or such other period as may be prescribed in the regulations or rules of court before the day on which the evidence is adduced, has served on each other party a copy of the document proposed to be tendered; or

(b) the court directs that it is to apply.

50. Proof of voluminous or complex documents

(1) The court may, on the application of a party, direct that the party may adduce evidence of the contents of 2 or more documents in question in the form of a summary if the court is satisfied that it would not otherwise be possible conveniently to examine the evidence because of the volume or complexity of the documents in question.

(2) The court may only make a direction if the party seeking to adduce the evidence in the form of a summary –

(a) has served on each other party a copy of the summary that discloses the name and address of the person who prepared the summary; and

(b) has given each other party a reasonable opportunity to examine or copy the documents in question.

(3) The opinion rule does not apply to evidence adduced in accordance with a direction under this section.

51. Original document rule abolished

The principles and rules of the common law that relate to the means of proving the contents of documents are abolished.

PART 3 – OTHER EVIDENCE

52. Adducing of other evidence not affected

This Act, other than this Part, does not affect the operation of any Australian law or rule of practice so far as it permits evidence to be adduced in a way other than by witnesses giving evidence or documents being tendered in evidence.

53. Views

(1) A judge, on application, may order that a demonstration, experiment or inspection be held.

(2) A judge is not to make an order unless satisfied that –

(a) the parties will be given a reasonable opportunity to be present; and

(b) if there is a jury, the jury will be present.

(3) Without limiting the matters that a judge may take into account in deciding whether to make an order, the judge is to take into account the following:

(a) whether the parties will be present;

(b) whether the demonstration, experiment or inspection, in the court's opinion, will assist the court in resolving issues of fact or understanding the evidence;

(c) the danger that the demonstration, experiment or inspection might be unfairly prejudicial, misleading or confusing or might cause or result in undue waste of time;

(d) in the case of a demonstration, the extent to which the demonstration will properly reproduce the conduct or event to be demonstrated;

(e) in the case of an inspection, the extent to which the place or thing to be inspected has materially altered.

(4) The court, including the jury if there is a jury, is not to conduct an experiment in the course of its deliberations.

(5) This section does not apply in relation to the inspection of an exhibit by the court or, if there is a jury, by the jury.

Note: Subsection (2) differs from section 53(2) of the Evidence Act 1995 of the Commonwealth.

54. Views to be evidence

The court, including the jury if there is a jury, may draw any reasonable inference from what it sees, hears or otherwise notices during a demonstration, experiment or inspection.

CHAPTER 3 – ADMISSIBILITY OF EVIDENCE

PART 1 – RELEVANCE

55. Relevant evidence

(1) The evidence that is relevant in a proceeding is evidence that, if it were accepted, could rationally affect, directly or indirectly, the assessment of the probability of the existence of a fact in issue in the proceeding.

(2) Evidence is not taken to be irrelevant only because it relates only to –

(a) the credibility of a witness; or

(b) the admissibility of other evidence; or

(c) a failure to adduce evidence.

56. Relevant evidence admissible

(1) Except as otherwise provided by this Act, evidence that is relevant in a proceeding is admissible in the proceeding.

(2) Evidence that is not relevant in the proceeding is not admissible.

57. Provisional relevance

(1) If the determination of the question whether evidence adduced by a party is relevant depends

on the court making another finding, including a finding that the evidence is what the party claims it to be, the court may find that the evidence is relevant –

(a) if it is reasonably open to make that finding; or

(b) subject to further evidence being admitted at a later stage of the proceeding that will make it reasonably open to make that finding.

(2) Without limiting subsection (1), if the relevance of evidence of an act done by a person depends on the court making a finding that the person and one or more other persons had, or were acting in furtherance of, a common purpose, whether to effect an unlawful conspiracy or otherwise, the court may use the evidence itself in determining whether the common purpose existed.

58. Inference as to relevance

(1) If a question arises as to the relevance of a document or thing, the court may examine it and may draw any reasonable inference from it, including an inference as to its authenticity or identity.

(2) Subsection (1) does not limit the matters from which inferences may properly be drawn.

PART 2 – HEARSAY

Division 1 – Hearsay rule

59. Hearsay rule – exclusion of hearsay evidence

(1) Evidence of a previous representation made by a person is not admissible to prove the existence of a fact that it can reasonably be supposed that the person intended to assert by the representation.

(2) Such a fact is referred to in this Part as an asserted fact.

(2A) For the purposes of determining under subsection (1) whether it can reasonably be supposed that the person intended to assert a particular fact by the representation, the court may have regard to the circumstances in which the representation was made.

(3) Subsection (1) does not apply to evidence of a representation contained in a certificate or other document given or made under regulations made under an Act other than this Act to the extent to which the regulations provide that the certificate or other document has evidentiary effect.

60. Exception: evidence relevant for non-hearsay purpose

(1) The hearsay rule does not apply to evidence of a previous representation that is admitted because it is relevant for a purpose other than proof of an asserted fact.

(2) This section applies whether or not the person who made the representation had personal knowledge of the asserted fact (within the meaning of section 62(2)).

(3) However, this section does not apply in a criminal proceeding to evidence of an admission.

61. Exception to hearsay rule dependent on competency

(1) This Part does not enable use of a previous representation to prove the existence of an asserted fact if, when the representation was made, the person who made it was not competent to give evidence about the fact because of section 13(1).

(2) This section does not apply to a contemporaneous representation made by a person about his or her health, feelings, sensations, intention, knowledge or state of mind.

(3) For the purpose of this section, it is presumed, unless the contrary is proved, that when the representation was made the person who made it was competent to give evidence about the asserted fact.

Division 2 – First-hand hearsay

62. Restriction to first-hand hearsay

(1) A reference in this Division, other than in subsection (2), to a previous representation is a reference to a previous representation that was

made by a person who had personal knowledge of an asserted fact.

(2) A person has personal knowledge of the asserted fact if his or her knowledge of the fact was, or might reasonably be supposed to have been, based on something that the person saw, heard or otherwise perceived, other than a previous representation made by another person about the fact.

(3) For the purposes of section 66A, a person has personal knowledge of the asserted fact if it is a fact about the person's health, feelings, sensations, intention, knowledge or state of mind at the time the representation referred to in that section was made.

63. Exception: civil proceedings if maker not available

(1) This section applies in a civil proceeding if a person who made a previous representation is not available to give evidence about an asserted fact.

(2) The hearsay rule does not apply to –

(a) evidence of the representation given by a person who saw, heard or otherwise perceived the representation being made; or

(b) a document so far as it contains the representation, or another representation to which it is reasonably necessary to

refer in order to understand the representation.

64. Exception: civil proceedings if maker available

(1) This section applies in a civil proceeding if a person who made a previous representation is available to give evidence about an asserted fact.

(2) The hearsay rule does not apply to –

(a) evidence of the representation given by a person who saw, heard or otherwise perceived the representation being made; or

(b) a document so far as it contains the representation, or another representation to which it is reasonably necessary to refer in order to understand the representation –

if it would cause undue expense or undue delay, or would not be reasonably practicable, to call the person who made the representation to give evidence.

(3) If the person who made the representation has been or is to be called to give evidence, the hearsay rule does not apply to evidence of the representation given by –

(a) that person; or

(b) a person who saw, heard or otherwise perceived the representation being made.

(4) A document containing a representation to which subsection (3) applies must not be tendered before the conclusion of the examination in chief of the person who made the representation, unless the court gives leave.

65. Exception: criminal proceedings if maker not available

(1) This section applies in a criminal proceeding if a person who made a previous representation is not available to give evidence about an asserted fact.

(2) The hearsay rule does not apply to evidence of a previous representation given by a person who saw, heard or otherwise perceived the representation being made, if the representation –

(a) was made under a duty to make that representation or to make representations of that kind; or

(b) was made when or shortly after the asserted fact occurred and in circumstances that make it unlikely that the representation is a fabrication; or

(c) was made in circumstances that make it highly probable that the representation is reliable; or

(d) was –

(i) against the interests of the person who made it at the time it was made; and

(ii) made in circumstances that make it likely that the representation is reliable.

(3) The hearsay rule does not apply to evidence of a previous representation made in the course of giving evidence in an Australian or overseas proceeding if, in that proceeding, the defendant in the proceeding to which this section is being applied –

(a) cross-examined the person who made the representation about it; or

(b) had a reasonable opportunity to cross-examine the person who made the representation about it.

(4) If there is more than one defendant in the criminal proceeding, evidence of a previous representation that –

(a) is given in an Australian or overseas proceeding; and

(b) is admitted into evidence in the criminal proceeding because of subsection (3) –

cannot be used against a defendant who did not cross-examine, and did not have a reasonable opportunity to cross-examine, the person about the representation.

(5) For the purposes of subsections (3) and (4), a defendant is taken to have had a reasonable opportunity to cross-examine a person if the defendant was not present at a time when the cross-examination of a person might have been conducted but –

(a) could reasonably have been present at that time; and

(b) if present could have cross-examined the person.

(6) Evidence of the making of a representation to which subsection (3) applies may be adduced by producing a transcript, or a recording, of the representation that is authenticated by –

(a) the person to whom, or the court or other body to which, the representation was made; or

(b) if applicable, the registrar or other proper officer of the court or other body to which the representation was made; or

(c) the person or body responsible for producing the transcript or recording.

(7) Without limiting subsection (2)(d), a representation is taken, for the purpose of that subsection, to be against the interests of the person who made it if it tends –

(a) to damage the person's reputation; or

(b) to show that the person committed an offence for which the person has not been convicted; or

(c) to show that the person is liable in an action for damages.

(8) The hearsay rule does not apply to –

(a) evidence of a previous representation adduced by a defendant if the evidence is given by a person who saw, heard or otherwise perceived the representation being made; or

(b) a document tendered as evidence by a defendant so far as it contains a previous representation, or another representation to which it is reasonably necessary to refer in order to understand the representation.

(9) If evidence of a previous representation about a matter has been adduced by a defendant and has been admitted, the hearsay rule does not apply to evidence of another representation about the matter that –

(a) is adduced by another party; and

(b) is given by a person who saw, heard or otherwise perceived the other representation being made.

66. Exception: criminal proceedings if maker available

(1) This section applies in a criminal proceeding if a person who made a previous representation is available to give evidence about an asserted fact.

(2) If that person has been or is to be called to give evidence, the hearsay rule does not apply to evidence of the previous representation that is given by –

(a) that person; or

(b) a person who saw, heard or otherwise perceived the representation being made –

if, when the representation was made, the occurrence of the asserted fact was fresh in the memory of the person who made the representation.

(2A) In determining whether the occurrence of the asserted fact was fresh in the memory of a person, the court may take into account all matters that it considers are relevant to the question, including –

(a) the nature of the event concerned; and

(b) the age and health of the person; and

(c) the period of time between the occurrence of the asserted fact and the making of the representation.

(3) If a representation was made for the purpose of indicating the evidence that the person who

made it would be able to give in an Australian or overseas proceeding, subsection (2) does not apply to evidence adduced by the prosecutor of the representation unless the representation concerns the identity of a person, place or thing.

(4) A document containing a representation to which subsection (2) applies must not be tendered before the conclusion of the examination in chief of the person who made the representation, unless the court gives leave.

66A. Exception: contemporaneous statements about a person's health, &c.

The hearsay rule does not apply to evidence of a previous representation made by a person if the representation was a contemporaneous representation about the person's health, feelings, sensations, intention, knowledge or state of mind.

67. Notices to be given

(1) Section 63(2), section 64(2) and section 65(2), (3) and (8) do not apply to evidence adduced by a party unless that party has given reasonable notice in writing to each other party of the party's intention to adduce the evidence.

(2) Notice given under subsection (1) is to be given in accordance with any regulations or rules of court made for the purpose of this section.

(3) The notice must state –

(a) the provisions of this Division on which the party intends to rely in arguing that the hearsay rule does not apply to the evidence; and

(b) if section 64(2) is such a provision, the grounds specified in that provision on which the party intends to rely.

(4) Despite subsection (1), if notice has not been given, the court, on the application of a party, may direct that one or more of the provisions specified in subsection (1) apply.

(5) The direction –

(a) is subject to any conditions the court thinks fit; and

(b) may provide that, in relation to specified evidence, the provisions concerned apply with any modifications the court specifies.

68. Objection to tender of hearsay evidence in civil proceedings if maker available

(1) In a civil proceeding, if the notice discloses that it is not intended to call the person who made the previous representation concerned because it –

(a) would cause undue expense or undue delay; or

(b) would not be reasonably practicable –

a party, not later than 21 days after notice is given, may object to the tender of the evidence, or of a specified part of the evidence.

(2) The objection is to be made by giving to each other party a written notice setting out the grounds on which the objection is made.

(3) The court, on the application of a party, may determine the objection at or before the hearing.

(4) If the objection is unreasonable, the court may order that the party objecting is to bear the costs incurred by another party –

(a) in relation to the objection; and

(b) in calling the person who made the representation to give evidence.

Division 3 – Other exceptions to hearsay rule

69. Exception: business records

(1) This section applies to a document that –

(a) either –

(i) is or forms part of the records belonging to or kept by a person, body or organisation in the course of, or for the purposes of, a business; or

(ii) at any time was or formed part of such a record; and

(b) contains a previous representation made or recorded in the document in the course of, or for the purposes of, the business.

(2) The hearsay rule does not apply to the document, so far as it contains the representation, if the representation was made –

(a) by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact; or

(b) on the basis of information directly or indirectly supplied by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact.

(3) Subsection (2) does not apply if the representation –

(a) was prepared or obtained for the purpose of conducting, or for or in contemplation of or in connection with, an Australian or overseas proceeding; or

(b) was made in connection with an investigation relating or leading to a criminal proceeding.

(4) If –

(a) the occurrence of an event of a particular kind is in question; and

(b) in the course of a business, a system has been followed of making and keeping a

record of the occurrence of all events of that kind –

the hearsay rule does not apply to evidence that tends to prove that there is no record kept, in accordance with that system, of the occurrence of the event.

(5) For the purpose of this section, a person is taken to have had personal knowledge of a fact if the person's knowledge of the fact was or might reasonably be supposed to have been based on what the person saw, heard or otherwise perceived, other than a previous representation made by a person about the fact.

70. Exception: contents of tags, labels and writing

The hearsay rule does not apply to a tag or label attached to, or writing placed on, an object, including a document, if the tag or label or writing may reasonably be supposed to have been attached or placed –

(a) in the course of a business; and

(b) for the purpose of describing or stating the identity, nature, ownership, destination, origin or weight of the object, or of any of the contents of the object.

71. Exception: electronic communications

The hearsay rule does not apply to a representation contained in a document

recording an electronic communication so far as the representation is a representation as to –

(a) the identity of the person from whom or on whose behalf the communication was sent; or

(b) the date on which or the time at which the communication was sent; or

(c) the destination of the communication or the identity of the person to whom the communication was addressed.

72. Exception: Aboriginal and Torres Strait Islander traditional laws and customs

The hearsay rule does not apply to evidence of a representation about the existence or non-existence, or the content, of the traditional laws and customs of an Aboriginal or Torres Strait Islander group.

73. Exception: reputation as to relationships and age

(1) The hearsay rule does not apply to evidence of reputation concerning –

(a) whether a person was, at a particular time or at any time, a married person; or

(b) whether a man and a woman cohabiting at a particular time were married to each other at that time; or

(c) a person's age; or

(d) family history or a family relationship.

(2) In a criminal proceeding, subsection (1) does not apply to evidence adduced by a defendant unless –

(a) it tends to contradict evidence of a kind referred to in subsection (1) that has been admitted; or

(b) the defendant has given reasonable notice in writing to each other party of the defendant's intention to adduce the evidence.

(3) In a criminal proceeding, subsection (1) does not apply to evidence adduced by the prosecutor unless it tends to contradict evidence of a kind referred to in subsection (1) that has been admitted.

74. Exception: reputation of public or general rights

(1) The hearsay rule does not apply to evidence of reputation concerning the existence, nature or extent of a public or general right.

(2) In a criminal proceeding, subsection (1) does not apply to evidence adduced by the prosecutor unless it tends to contradict evidence of a kind referred to in subsection (1) that has been admitted.

75. Exception: interlocutory proceedings

In an interlocutory proceeding, the hearsay rule does not apply to evidence if the party who adduces it also adduces evidence of its source.

PART 3 – OPINION

76. Opinion rule

(1) Evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed.

(2) Subsection (1) does not apply to evidence of an opinion contained in a certificate or other document given or made under regulations made under an Act other than this Act to the extent to which the regulations provide that the certificate or other document has evidentiary effect.

77. Exception: evidence relevant otherwise than as opinion evidence

The opinion rule does not apply to evidence of an opinion that is admitted because it is relevant for a purpose other than proof of the existence of a fact about the existence of which the opinion was expressed.

78. Exception: lay opinion

The opinion rule does not apply to evidence of an opinion expressed by a person if –

(a) the opinion is based on what the person saw, heard or otherwise perceived about a matter or event; and

(b) evidence of the opinion is necessary to obtain an adequate account or

understanding of the person's perception of the matter or event.

78A. Exception: Aboriginal and Torres Strait Islander traditional laws and customs

The opinion rule does not apply to evidence of an opinion expressed by a member of an Aboriginal or Torres Strait Islander group about the existence or non-existence, or the content, of the traditional laws and customs of the group.

79. Exception: opinion based on specialised knowledge

(1) If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

(2) To avoid doubt, and without limiting subsection (1) –

(a) a reference in that subsection to specialised knowledge includes a reference to specialised knowledge of child development and child behaviour (including specialised knowledge of the impact of sexual abuse on children and their development and behaviour during and following the abuse); and

(b) a reference in that subsection to an opinion of a person includes, if the person has specialised knowledge of the

kind referred to in paragraph (a), a reference to an opinion relating to either or both of the following:

(i) the development and behaviour of children generally;

(ii) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.

79A. . . . . .

80. Ultimate issue and common knowledge rules abolished

Evidence of an opinion is not inadmissible only because it is about –

(a) a fact in issue or an ultimate issue; or

(b) a matter of common knowledge.

PART 4 – ADMISSIONS

81. Hearsay and opinion rules: exception for admissions and related representations

(1) The hearsay rule and the opinion rule do not apply to evidence of an admission.

(2) The hearsay rule and the opinion rule do not apply to evidence of a previous representation –

(a) made in relation to an admission at the time the admission was made, or shortly before or after that time; and

(b) to which it is reasonably necessary to refer in order to understand the admission.

82. Exclusion of evidence of admissions that is not first-hand

Section 81 does not prevent the application of the hearsay rule to evidence of an admission unless –

(a) it is given by a person who saw, heard or otherwise perceived the admission being made; or

(b) it is a document in which the admission is made.

83. Exclusion of evidence of admissions as against third parties

(1) Section 81 does not prevent the application of the hearsay rule or the opinion rule to evidence of an admission in respect of the case of a third party.

(2) The evidence may be used in respect of the case of a third party if that party consents.

(3) Consent cannot be given in respect of only part of the evidence.

(4) In this section,

third party means a party to the proceeding concerned, other than a party who –

(a) made the admission; or

(b) adduced the evidence.

84. Exclusion of admission influenced by violence and certain other conduct

(1) Evidence of an admission is not admissible unless the court is satisfied that the admission and the making of the admission were not influenced by –

(a) violent, oppressive, inhuman or degrading conduct towards the person who made the admission or towards another person; or

(b) a threat of conduct of that kind.

(2) Subsection (1) applies only if the party against whom evidence of the admission is adduced has raised in the proceeding an issue about whether the admission or its making were so influenced.

85. Criminal proceedings: reliability of admissions by defendants

(1) This section applies only in a criminal proceeding and only to evidence of an admission made by a defendant –

(a) to, or in the presence of, an investigating official who at that time was performing functions in connection with the investigation of the commission, or possible commission, of an offence; or

(b) as a result of an act of another person who was, and who the defendant knew or reasonably believed to be, capable of influencing the decision whether a prosecution of the defendant should be brought or should be continued.

(2) Evidence of the admission is not admissible unless the circumstances in which the admission was made make it unlikely that the truth of the admission was adversely affected.

(3) Without limiting the matters that the court may take into account for the purpose of subsection (2), it is to take into account –

(a) any relevant condition or characteristic of the person who made the admission,

including age, personality and education and any mental, intellectual or physical disability to which the person is or appears to be subject; and

(b) if the admission was made in response to questioning –

(i) the nature of the questions and the manner in which they were put; and

(ii) the nature of any threat, promise or other inducement made to the person questioned.

85A. Admission in serious offence

(1) Evidence of an admission in a proceeding for a serious offence made by a defendant during official questioning is not admissible unless –

(a) there is available to the court an audio visual record of an interview with the defendant in the course of which the admission was made; or

(b) if the prosecution proves on the balance of probabilities that there was a reasonable explanation as to why an audio visual record referred to in paragraph (a) could not be made, there is available to the court an audio visual record of an interview with the defendant about the making and terms of the admission or the substance of the

admission in the course of which the defendant states that he or she made an admission in those terms or confirms the substance of the admission; or

(c) the prosecution proves on the balance of probabilities that there was a reasonable explanation as to why an audio visual record referred to in paragraph (a) or (b) could not be made; or

(d) the court is satisfied that there are exceptional circumstances which, in the interests of justice, justify the admission of the evidence.

(2) A reasonable explanation includes but is not limited to any of the following:

(a) the admission was made when it was not practicable to make an audio visual record of it;

(b) equipment to make an audio visual record of the interview could not be obtained while it was reasonable to detain the defendant;

(c) the defendant did not consent to an audio visual record being made of the interview;

(d) the equipment used to make an audio visual record of the interview malfunctioned.

(3) This section applies only to an admission in the course of official questioning by a defendant who, at the time of making the admission was, or ought reasonably to have been, suspected by an investigating official of having committed the offence.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

86. Exclusion of records of oral questioning

(1) This section applies only in a criminal proceeding if an oral admission was made by a defendant to an investigating official in response to a question put or a representation made by the official.

(2) A document prepared by or on behalf of the investigating official is not admissible to prove the contents of the question, representation or response unless the defendant has acknowledged that the document is a true record of the question, representation or response.

(3) The acknowledgment must be made by signing, initialling or otherwise marking the document.

(4) In this section, a document does not include –

(a) a sound recording, or a transcript of a sound recording; or

(b) a recording of visual images and sounds, or a transcript of the sounds so recorded.

87. Admission made with authority

(1) For the purpose of determining whether a previous representation made by a person is also taken to be an admission by a party, the court is to admit the representation if it is reasonably open to find that –

(a) when the representation was made, the person had authority to make statements on behalf of the party in relation to the matter with respect to which the representation was made; or

(b) when the representation was made, the person was an employee of the party, or had authority otherwise to act for the party, and the representation related to a matter within the scope of the person's employment or authority; or

(c) the representation was made by the person in furtherance of a common purpose, whether lawful or not, that the person had with the party or one or more persons including the party.

(2) For the purpose of this section, the hearsay rule does not apply to a previous representation made by a person that tends to prove –

(a) that the person had authority to make statements on behalf of another person in relation to a matter; or

(b) that the person was an employee of another person or had authority otherwise to act for another person; or

(c) the scope of the person's employment or authority.

88. Proof of admission

For the purpose of determining whether evidence of an admission is admissible, the court is to find that a particular person made the admission if it is reasonably open to find that the person made the admission.

89. Evidence of silence

(1) In a criminal proceeding, an inference unfavourable to a party must not be drawn from evidence that the party or another person failed or refused –

(a) to answer one or more questions; or

(b) to respond to a representation –

put or made to the party or other person by an investigating official who at that time was performing functions in connection with the investigation of the commission, or possible commission, of an offence.

(2) Evidence of that kind is not admissible if it can only be used to draw such an inference.

(3) Subsection (1) does not prevent use of the evidence to prove that the party or other person failed or refused to answer the question or to respond to the representation if the failure or refusal is a fact in issue in the proceeding.

(4) In this section,

inference includes –

(a) an inference of consciousness of guilt; or

(b) an inference relevant to a party's credibility.

90. Discretion to exclude admission

In a criminal proceeding, the court may refuse to admit evidence of an admission, or refuse to admit the evidence to prove a particular fact, if –

(a) the evidence is adduced by the prosecution; and

(b) having regard to the circumstances in which the admission was made, it would be unfair to a defendant to use the evidence.

PART 5 – EVIDENCE OF JUDGMENTS AND CONVICTIONS

91. Exclusion of evidence of judgments and convictions

(1) Evidence of the decision, or of a finding of fact, in an Australian or overseas proceeding is not admissible to prove the existence of a fact that was in issue in that proceeding.

(2) Evidence that, under this Part, is not admissible to prove the existence of a fact may not be used to prove that fact even if it is relevant for another purpose.

92. Exceptions

(1) Section 91(1) does not prevent the admission or use of evidence of the grant of probate, letters of administration or a similar order of a court to prove –

(a) the death, or date of death, of a person; or

(b) the due execution of a testamentary document.

(2) In a civil proceeding, section 91(1) does not prevent the admission or use of evidence that a party, or a person through or under whom a party claims, has been convicted of an offence, not being a conviction –

(a) in respect of which a review or appeal, however described, has been instituted but not finally determined; or

(b) that has been quashed or set aside; or

(c) in respect of which a pardon has been given.

(3) The hearsay rule and the opinion rule do not apply to evidence of a kind referred to in this section.

93. Savings

This Part does not affect the operation of –

(a) a law that relates to the admissibility or effect of evidence of a conviction tendered in a proceeding, including a criminal proceeding, for defamation; or

(b) a judgment *in rem*; or

(c) the law relating to *res judicata* or issue estoppel.

PART 6 – TENDENCY AND COINCIDENCE

94. Application of Part

(1) This Part does not apply to evidence that relates only to the credibility of a witness.

(2) This Part does not apply so far as a proceeding relates to bail or sentencing.

(3) This Part does not apply to evidence of –

(a) the character, reputation or conduct of a person; or

(b) a tendency that a person has or had –

if that character, reputation, conduct or tendency is a fact in issue.

(4) To avoid doubt, any principle or rule of the common law or equity that prevents or restricts the admissibility of evidence about propensity or similar fact evidence in a proceeding is not relevant when applying this Part to tendency evidence or coincidence evidence about a defendant.

(5) In determining the probative value of tendency evidence or coincidence evidence for the purposes of section 97(1)(b), 97A(4), 98(1)(b) or 101(2), it is not open to the court to have regard to the possibility that the evidence may be the result of collusion, concoction or contamination.

95. Use of evidence for other purposes

(1) Evidence that under this Part is not admissible to prove a particular matter must not be used to prove that matter even if it is relevant for another purpose.

(2) Evidence that under this Part cannot be used against a party to prove a particular matter must not be used against the party to prove that matter even if it is relevant for another purpose.

96. Failure to act

A reference in this Part to doing an act includes a reference to failing to do that act.

97. Tendency rule

(1) Evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, is not admissible to prove that a person has or had a tendency (whether because of the person's character or otherwise) to act in a particular way, or to have a particular state of mind unless –

(a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence; and

(b) the court thinks that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by

the party seeking to adduce the evidence, have significant probative value.

(2) Subsection (1)(a) does not apply if –

(a) the evidence is adduced in accordance with any directions made by the court under section 100; or

(b) the evidence is adduced to explain or contradict tendency evidence adduced by another party.

97A. Admissibility of tendency evidence in proceedings involving child sexual offences

(1) This section applies in a criminal proceeding in which the commission by the defendant of an act that constitutes, or may constitute, a child sexual offence is a fact in issue.

(2) It is presumed that the following tendency evidence about the defendant will have significant probative value for the purposes of sections 97(1)(b) and 101(2):

(a) tendency evidence about the sexual interest that the defendant has or had in children (even if the defendant has not acted on the interest);

(b) tendency evidence about the defendant acting on a sexual interest that the defendant has or had in children.

(3) Subsection (2) applies whether or not the sexual interest or act to which the tendency evidence

relates was directed at a complainant in the proceeding, or any other child or children generally.

(4) Despite subsection (2), the court may determine that the tendency evidence does not have significant probative value if it is satisfied that there are sufficient grounds to do so.

(5) The following matters (whether considered individually or in combination) are not to be taken into account when determining whether there are sufficient grounds for the purposes of subsection (4) unless the court considers there are exceptional circumstances in relation to those matters (whether considered individually or in combination) to warrant taking them into account:

(a) the sexual interest or act to which the tendency evidence relates (the ***tendency sexual interest or act***) is different from the sexual interest or act alleged in the proceeding (the ***alleged sexual interest or act***);

(b) the circumstances in which the tendency sexual interest or act occurred are different from circumstances in which the alleged sexual interest or act occurred;

(c) the personal characteristics of the subject of the tendency sexual interest or act (for example, the subject's age, sex or gender) are different to those of the

subject of the alleged sexual interest or act;

(d) the relationship between the defendant and the subject of the tendency sexual interest or act is different from the relationship between the defendant and the subject of the alleged sexual interest or act;

(e) the period of time between the occurrence of the tendency sexual interest or act and the occurrence of the alleged sexual interest or act;

(f) the tendency sexual interest or act and alleged sexual interest or act do not share distinctive or unusual features;

(g) the level of generality of the tendency to which the tendency evidence relates.

(6) In this section –

child means a person under 18 years of age;

child sexual offence means each of the following offences (however described and regardless of when it occurred):

(a) an offence against, or arising under, a law of this State involving sexual intercourse with, or any other sexual offence against, a person who was a child at the time of the offence;

(b) an offence against, or arising under, a law of this State involving an unlawful sexual act with, or directed towards, a person who was a child at the time of the offence;

(c) an offence against, or arising under, a law of the Commonwealth, another State, a Territory or a foreign country that, if committed in this State, would have been an offence of a kind referred to in paragraph (a) or (b) –

but does not include conduct of a person that has ceased to be an offence since the time when the person engaged in the conduct.

98. Coincidence rule

(1) Evidence that 2 or more events occurred is not admissible to prove that a person did a particular act or had a particular state of mind on the basis that, having regard to any similarities in the events or the circumstances in which they occurred, or any similarities in both the events and the circumstances in which they occurred, it is improbable that the events occurred coincidentally unless –

(a) the party seeking to adduce the evidence gave reasonable notice in writing to each

other party of the party's intention to adduce the evidence; and

(b) the court thinks that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

(1A) To avoid doubt, subsection (1) includes the use of evidence from 2 or more witnesses claiming they are victims of offences committed by a person who is a defendant in a criminal proceeding to prove, on the basis of similarities in the claimed acts or the circumstances in which they occurred, that the defendant did an act in issue in the proceeding.

(2) Subsection (1)(a) does not apply if –

(a) the evidence is adduced in accordance with any directions made by the court under section 100; or

(b) the evidence is adduced to explain or contradict coincidence evidence adduced by another party.

99. Requirements for notices

Any notice under section 97 or 98 is to be given in accordance with any regulations or rules of court made for the purposes of this section.

100. Court may dispense with notice requirements

(1) The court, on the application of a party, may direct that the tendency rule is not to apply to particular tendency evidence despite the party's failure to give notice under section 97.

(2) The court, on the application of a party, may direct that the coincidence rule is not to apply to particular coincidence evidence despite the party's failure to give notice under section 98.

(3) The application may be made either before or after the time by which the party would, apart from this section, be required to give, or to have given, the notice.

(4) In a civil proceeding, the party's application may be made without notice of it having been given to one or more of the other parties.

(5) The direction –

(a) is subject to such conditions, if any, the court thinks fit; and

(b) may be given either at or before the hearing.

(6) Without limiting the court's power to impose conditions under this section, those conditions may include one or more of the following:

(a) a condition that the party give notice of its intention to adduce the evidence to a specified party or to each other party, other than a specified party;

(b) a condition that the party give such notice only in respect of specified tendency evidence or all tendency evidence that the party intends to adduce, other than specified tendency evidence;

(c) a condition that the party give such notice only in respect of specified coincidence evidence or all coincidence evidence that the party intends to adduce, other than specified coincidence evidence.

101. Further restrictions on tendency evidence and coincidence evidence adduced by the prosecution

(1) This section only applies in a criminal proceeding and so applies in addition to sections 97 and 98.

(2) Tendency evidence about a defendant, or coincidence evidence about a defendant, adduced by the prosecution cannot be used against the defendant unless the probative value of the evidence outweighs the danger of unfair prejudice to the defendant.

(3) This section does not apply to tendency evidence that the prosecution adduces to explain or contradict tendency evidence adduced by the defendant.

(4) This section does not apply to coincidence evidence that the prosecution adduces to explain or contradict coincidence evidence adduced by the defendant.

(5) . . . . . .

PART 7 – CREDIBILITY

Division 1 – Credibility evidence

101A. Credibility evidence

Credibility evidence, in relation to a witness or other person, is evidence relevant to the credibility of the witness or person that –

(a) is relevant only because it affects the assessment of the credibility of the witness or person; or

(b) is relevant –

(i) because it affects the assessment of the credibility of the witness or person; and

(ii) for some other purpose for which it is not admissible, or cannot be used, because of a provision of Parts 2 to 6 of Chapter 3.

Division 2 – Credibility of witnesses

102. Credibility rule

Credibility evidence about a witness is not admissible.

103. Exception: cross-examination as to credibility

(1) The credibility rule does not apply to evidence adduced in cross-examination of a witness if the

evidence could substantially affect the assessment of the credibility of the witness.

(2) Without limiting the matters that the court may have regard to for the purposes of subsection (1), it is to have regard to –

(a) whether the evidence tends to prove that the witness knowingly or recklessly made a false representation when the witness was under an obligation to tell the truth; and

(b) the period that has elapsed since the acts or events to which the evidence relates were done or occurred.

104. Further protection: cross-examination of defendant

(1) This section applies only to credibility evidence in a criminal proceeding and so applies in addition to section 103.

(2) A defendant must not be cross-examined about a matter that is relevant to the assessment of the defendant's credibility, unless the court gives leave.

(3) Despite subsection (2), leave is not required for cross-examination by the prosecutor about whether the defendant –

(a) is biased or has a motive to be untruthful; or

(b) is, or was, unable to be aware of or recall matters to which his or her evidence relates; or

(c) made a prior inconsistent statement.

(4) Leave must not be given for cross-examination by the prosecutor under subsection (2) unless –

(a) the defendant or the person representing the defendant has questioned the witnesses for the prosecution to prove that the defendant is, either generally or in a particular respect, a person of good character; or

(b) the nature or conduct of the defence involves imputations on the character of the prosecutor or any witness for the prosecution.

(5) Leave is not to be given for cross-examination by another defendant unless –

(a) the evidence that the defendant to be cross-examined has given includes evidence adverse to the defendant seeking leave to cross-examine; and

(b) that evidence has been admitted.

Note: This section differs from section 104 of the Evidence Act 1995 of the Commonwealth.

105. ……

106. Exception: rebutting denials by other evidence

(1) The credibility rule does not apply to evidence that is relevant to a witness's credibility and that is adduced otherwise than from the witness if –

(a) in cross-examination of the witness –

(i) the substance of the evidence was put to the witness; and

(ii) the witness denied, or did not admit or agree to, the substance of the evidence; and

(b) the court gives leave to adduce the evidence.

(2) Leave under subsection (1)(b) is not required if the evidence tends to prove that the witness –

(a) is biased or has a motive for being untruthful; or

(b) has been convicted of an offence, including an offence against the law of a foreign country; or

(c) has made a prior inconsistent statement; or

(d) is, or was, unable to be aware of matters to which his or her evidence relates; or

(e) has knowingly or recklessly made a false representation while under an obligation, imposed by or under an Australian law or a law of a foreign country, to tell the truth.

107. (Repealed)

……

108. Exception: re-establishing credibility

(1) The credibility rule does not apply to evidence adduced in re-examination of a witness.

(2) The credibility rule does not apply to evidence of a prior consistent statement of a witness if –

(a) evidence of a prior inconsistent statement of the witness has been admitted; or

(b) it is or will be suggested, either expressly or by implication, that evidence given by the witness has been fabricated or reconstructed, whether deliberately or otherwise, or is the result of a suggestion –

and the court gives leave to adduce the evidence of the prior consistent statement.

Division 3 – Credibility of persons who are not witnesses

108A. Admissibility of evidence of credibility of person who has made a previous representation

(1) If –

(a) evidence of a previous representation has been admitted in a proceeding; and

(b) the person who made the representation has not been called, and will not be called, to give evidence in the proceeding –

credibility evidence about the person who made the representation is not admissible unless the evidence could substantially affect the assessment of the person's credibility.

(2) Without limiting the matters which the court may have regard to for the purposes of subsection (1), it is to have regard to –

(a) whether the evidence tends to prove that the person who made the representation knowingly or recklessly made a false representation when the person was under an obligation to tell the truth; and

(b) the period that elapsed between the doing of the acts or the occurrence of the events to which the representation related and the making of the representation.

108B. Further protections: previous representations of an accused who is not a witness

(1) This section applies only in a criminal proceeding and so applies in addition to section 108A.

(2) If the person referred to in that section is a defendant, the credibility evidence is not admissible unless the court gives leave.

(3) Despite subsection (2), leave is not required if the evidence is about whether the defendant –

(a) is biased or has a motive to be untruthful; or

(b) is, or was, unable to be aware of or recall matters to which his or her previous representation relates; or

(c) has made a prior inconsistent statement.

(4) The prosecution must not be given leave under subsection (2) unless –

(a) the defendant or the person representing the defendant has questioned the witnesses for the prosecution to prove that the defendant is, either generally or in a particular respect, a person of good character; or

(b) the nature or conduct of the defence involves imputations on the character of the prosecutor or any witness for the prosecution.

(5) Another defendant must not be given leave under subsection (2) unless the previous representation of the defendant that has been admitted includes evidence adverse to the defendant seeking leave.

Division 4 – Persons with specialised knowledge

108C. Exception: evidence of persons with specialised knowledge

(1) The credibility rule does not apply to evidence given by a person concerning the credibility of another witness if –

(a) the person has specialised knowledge based on the person's training, study or experience; and

(b) the evidence is evidence of an opinion of the person that –

(i) is wholly or substantially based on that knowledge; and

(ii) could substantially affect the assessment of the credibility of the witness; and

(c) the court gives leave to adduce the evidence.

(2) To avoid doubt, and without limiting subsection (1) –

(a) a reference in that subsection to specialised knowledge includes a

reference to specialised knowledge of child development and child behaviour (including specialised knowledge of the impact of sexual abuse on children and their behaviour during and following the abuse); and

(b) a reference in that subsection to an opinion of a person includes, if the person has specialised knowledge of that kind, a reference to an opinion relating to either or both of the following:

(i) the development and behaviour of children generally;

(ii) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.

PART 8 – CHARACTER

109. Application

This Part applies only in a criminal proceeding.

110. Evidence about character of accused

(1) The hearsay rule, the opinion rule, the tendency rule and the credibility rule do not apply to evidence adduced by a defendant to prove, directly or by implication, that the defendant is, either generally or in a particular respect, a person of good character.

(2) If evidence adduced to prove, directly or by implication, that a defendant is generally a person of good character has been admitted, the hearsay rule, the opinion rule, the tendency rule and the credibility rule do not apply to evidence adduced to prove, directly or by implication, that the defendant is not generally a person of good character.

(3) If evidence adduced to prove, directly or by implication, that a defendant is a person of good character in a particular respect has been admitted, the hearsay rule, the opinion rule, the tendency rule and the credibility rule do not apply to evidence adduced to prove, directly or by implication, that the defendant is not a person of good character in that respect.

111. Evidence about character of co-accused

(1) The hearsay rule and the tendency rule do not apply to evidence of a defendant's character if –

(a) the evidence is evidence of an opinion about the defendant adduced by another defendant; and

(b) the person whose opinion it is has specialised knowledge based on the person's training, study or experience; and

(c) the opinion is wholly or substantially based on that knowledge.

(2) If such evidence has been admitted, the hearsay rule, the opinion rule and the tendency rule do not apply to evidence adduced to prove that that evidence should not be accepted.

112. Leave required for cross-examination on character of accused or co-accused

A defendant must not be cross-examined about matters arising out of evidence of a kind referred to in this Part unless the court gives leave.

PART 9 – IDENTIFICATION EVIDENCE

113. Application of Part

Note: The Evidence Act 1995 of the Commonwealth includes a provision that this Part applies only in criminal proceedings.

114. Exclusion of visual identification evidence

Note: The Evidence Act 1995 of the Commonwealth includes a provision that excludes visual identification evidence unless an identification parade has been held or where it would not have been reasonable to hold such a parade.

115. Exclusion of evidence of identification by pictures

Note: The Evidence Act 1995 of the Commonwealth includes a provision that excludes picture identification evidence of persons in custody unless certain requirements are met.

116. Directions to jury

(1) If identification evidence has been admitted, the judge is to inform the jury –

(a) that there is a special need for caution before accepting identification evidence; and

(b) of the reasons for that need for caution, both generally and in the circumstances of the case.

(2) It is not necessary that a particular form of words be used in informing the jury.

PART 10 – PRIVILEGES

Division 1 – Client legal privilege

117. Interpretation of Division

(1) In this Division –

client includes the following:

(a) a person or body who engages a lawyer to provide legal services or who employs a lawyer (including under a contract of service);

(b) an employee or agent of a client;

(c) an employer of a lawyer if the employer is –

(i) the Commonwealth or a State or Territory; or

(ii) a body established by a law of the Commonwealth or a State or Territory;

(d) if, under a law of a State or Territory relating to persons of unsound mind, a manager, committee or person, however described, is for the time being acting in respect of the person, estate or property of a client, a

manager, committee or person so acting;

(e) if a client has died, a personal representative of the client;

(f) a successor to the rights and obligations of a client, being rights and obligations in respect of which a confidential communication was made;

confidential communication means a communication made in such circumstances that, when it was made –

(a) the person who made it; or

(b) the person to whom it was made –

was under an express or implied obligation not to disclose its contents, whether or not the obligation arises under law;

confidential document means a document prepared in such circumstances that, when it was prepared –

(a) the person who prepared it; or

(b) the person for whom it was prepared –

was under an express or implied obligation not to disclose its contents,

whether or not the obligation arises under law;

lawyer means –

(a) an Australian lawyer; and

(b) an Australian-registered foreign lawyer; and

(c) an overseas-registered foreign lawyer or a natural person who, under the law of a foreign country, is permitted to engage in legal practice in that country; and

(d) an employee or agent of a lawyer referred to in paragraph (a), (b) or (c);

party includes the following:

(a) an employee or agent of a party;

(b) if, under a law of a State or Territory relating to persons of unsound mind, a manager, committee or person, however described, is for the time being acting in respect of the person, estate or property of a party, a manager, committee or person so acting;

(c) if a party has died, a personal representative of the party;

(d) a successor to the rights and obligations of a party, being rights and obligations in respect of which a confidential communication was made.

(2) A reference in this Division to the commission of an act includes a reference to a failure to act.

118. Legal advice

Evidence is not to be adduced if, on objection by a client, the court finds that adducing the evidence would result in disclosure of –

(a) a confidential communication made between the client and a lawyer; or

(b) a confidential communication made between 2 or more lawyers acting for the client; or

(c) the contents of a confidential document, whether delivered or not, prepared by the client, lawyer or another person –

for the dominant purpose of the lawyer, or one or more of the lawyers, providing legal advice to the client.

119. Litigation

Evidence is not to be adduced if, on objection by a client, the court finds that adducing the evidence would result in disclosure of –

(a) a confidential communication between the client and another person, or between a lawyer acting for the client and another person, that was made; or

(b) the contents of a confidential document, whether delivered or not, that was prepared –

for the dominant purpose of the client being provided with professional legal services relating to an Australian or overseas proceeding, including the proceeding before the court, or an anticipated or pending Australian or overseas proceeding, in which the client is, or may be, or was or might have been, a party.

120. Unrepresented parties

Evidence is not to be adduced if, on objection by a party who is not represented in the proceeding by a lawyer, the court finds that adducing the evidence would result in disclosure of –

(a) a confidential communication between the party and another person; or

(b) the contents of a confidential document, whether delivered or not, that was prepared by or at the direction or request of the party –

for the dominant purpose of preparing for or conducting the proceeding.

121. Loss of client legal privilege: generally

(1) This Division does not prevent the adducing of evidence relevant to a question concerning the intentions or competence in law of a client or party who has died.

(2) This Division does not prevent the adducing of evidence if, were the evidence not adduced, the court would be prevented, or it could reasonably be expected that the court would be prevented, from enforcing an order of an Australian court.

(3) This Division does not prevent the adducing of evidence of a communication or document that affects a right of a person.

122. Loss of client legal privilege: consent and related matters

(1) This Division does not prevent the adducing of evidence given with the consent of the client or party concerned.

(2) Subject to subsection (5), this Division does not prevent the adducing of evidence if the client or party concerned has acted in a way that is inconsistent with the client or party objecting to the adducing of the evidence because it would result in a disclosure of a kind referred to in section 118, 119 or 120.

(3) Without limiting subsection (2), a client or party is taken to have so acted if –

(a) the client or party knowingly and voluntarily disclosed the substance of the evidence to another person; or

(b) the substance of the evidence has been disclosed with the express or implied consent of the client or party.

(4) The reference in subsection (3)(a) to a knowing and voluntary disclosure does not include a reference to a disclosure by a person who was, at the time of the disclosure, an employee or agent of the client or party or of a lawyer of the client or party unless the employee or agent was authorised by the client, party or lawyer to make the disclosure.

(5) A client or party is not taken to have acted in a manner inconsistent with the client or party objecting to the adducing of the evidence merely because –

(a) the substance of the evidence has been disclosed –

(i) in the course of making a confidential communication or preparing a confidential document; or

(ii) as a result of duress or deception; or

(iii) under compulsion of law; or

(iv) if the client or party is a body established by, or a person

holding an office under, an Australian law, to the Minister, or the Minister of the Commonwealth, the State or Territory, administering the law, or part of the law, under which the body is established or the office is held; or

(b) of a disclosure by a client to another person if the disclosure concerns a matter in relation to which the same lawyer is providing, or is to provide, professional legal services to both the client and the other person; or

(c) of a disclosure to a person with whom the client or party had, at the time of the disclosure, a common interest relating to the proceeding or an anticipated or pending proceeding in an Australian court or a foreign court.

(6) This Division does not prevent the adducing of evidence of a document that a witness has used to try to revive the witness's memory about a fact or opinion or has used as mentioned in section 32 (Attempts to revive memory in court) or section 33 (Evidence by police officers).

123. Loss of client legal privilege: defendants

This Division does not prevent a defendant in a criminal proceeding from adducing evidence unless it is evidence of –

(a) a confidential communication made between an associated defendant and a lawyer acting for that person in connection with the prosecution of that person; or

(b) the contents of a confidential document prepared by an associated defendant or by a lawyer acting for that person in connection with the prosecution of that person.

124. Loss of client legal privilege: joint clients

(1) This section only applies to a civil proceeding in connection with which 2 or more parties, before the commencement of the proceeding, have jointly retained a lawyer in relation to the same matter.

(2) This Division does not prevent one of those parties from adducing evidence of –

(a) a communication made by any one of them to the lawyer; or

(b) the contents of a confidential document prepared by or at the direction or request of any one of them –

in connection with that matter.

125. Loss of client legal privilege: misconduct

(1) This Division does not prevent the adducing of evidence of –

(a) a communication made or the contents of a document prepared by a client or lawyer, or both, or a party who is not represented in the proceeding by a lawyer, in furtherance of the commission of a fraud or an offence or the commission of an act that renders a person liable to a civil penalty; or

(b) a communication or the contents of a document that the client or lawyer, or both, or the party, knew or ought reasonably to have known was made or prepared in furtherance of a deliberate abuse of a power.

(2) For the purpose of this section, if the commission of the fraud, offence or act, or the abuse of power, is a fact in issue and there are reasonable grounds for finding that –

(a) the fraud, offence or act, or the abuse of power, was committed; and

(b) a communication was made or document prepared in furtherance of the commission of the fraud, offence or act or the abuse of power –

the court may find that the communication was so made or the document so prepared.

(3) In this section,

power means a power conferred by or under an Australian law.

126. Loss of client legal privilege: related communications and documents

If, because of the application of section 121, 122, 123, 124 or 125, this Division does not prevent the adducing of evidence of a communication or the contents of a document, those sections do not prevent the adducing of evidence of another communication or document if it is reasonably necessary to enable a proper understanding of the communication or document.

Division 1A – Professional confidential relationship privilege

126A. Definitions

(1) In this Division –

harm includes actual physical bodily harm, financial loss, stress or shock, damage to reputation or emotional or psychological harm (such as shame, humiliation and fear);

protected confidence means a communication made by a person in confidence to another person (in this Division called the "**confidant**") –

(a) in the course of a relationship in which the confidant was acting in a professional capacity; and

(b) when the confidant was under an express or implied obligation not

to disclose its contents, whether or not the obligation arises under law or can be inferred from the nature of the relationship between the person and the confidant;

protected confider means a person who made a protected confidence;

protected identity information means information about, or enabling a person to ascertain, the identity of the person who made a protected confidence.

(2) For the purposes of this Division, a communication may be made in confidence even if it is made in the presence of a third party if the third party's presence is necessary to facilitate communication.

126B. Exclusion of evidence of protected confidence

(1) The court may direct that evidence not be adduced in a proceeding if the court finds that adducing it would disclose –

(a) a protected confidence; or

(b) the contents of a document recording a protected confidence; or

(c) protected identity information.

(2) The court may give such a direction –

(a) on its own initiative; or

(b) on the application of the protected confider or confidant concerned (whether or not either is a party).

(3) The court must give such a direction if it is satisfied that –

(a) it is likely that harm would or might be caused (whether directly or indirectly) to a protected confider if the evidence is adduced; and

(b) the nature and extent of the harm outweighs the desirability of the evidence being given.

(4) Without limiting the matters that the court may take into account for the purposes of this section, it is to take into account the following matters:

(a) the probative value of the evidence in the proceeding;

(b) the importance of the evidence in the proceeding;

(c) the nature and gravity of the relevant offence, cause of action or defence and the nature of the subject matter of the proceeding;

(d) the availability of any other evidence concerning the matters to which the protected confidence or protected identity information relates;

(e) the likely effect of adducing evidence of the protected confidence or protected identity information, including the likelihood of harm, and the nature and extent of harm that would be caused to the protected confider;

(f) the means (including any ancillary orders that may be made under section 126E) available to the court to limit the harm or extent of the harm that is likely to be caused if evidence of the protected confidence or the protected identity information is disclosed;

(g) if the proceeding is a criminal proceeding, whether the party seeking to adduce evidence of the protected confidence or protected identity information is a defendant or the prosecutor;

(h) whether the substance of the protected confidence or the protected identity information has already been disclosed by the protected confider or any other person;

(i) the public interest in preserving the confidentiality of protected confidences;

(j) the public interest in preserving the confidentiality of protected identity information.

(5) The court must state its reasons for giving or refusing to give a direction under this section.

126C. Loss of professional confidential relationship privilege: consent

This Division does not prevent the adducing of evidence given with the consent of the protected confider concerned.

126D. Loss of professional confidential relationship privilege: misconduct

(1) This Division does not prevent the adducing of evidence of a communication made or the contents of a document prepared in the furtherance of the commission of a fraud or an offence or the commission of an act that renders a person liable to a civil penalty.

(2) For the purposes of this section, if the commission of the fraud, offence or act is a fact in issue and there are reasonable grounds for finding that –

(a) the fraud, offence or act was committed; and

(b) a communication was made or document prepared in furtherance of the commission of the fraud, offence or act –

the court may find that the communication was so made or document so prepared.

126E. Ancillary orders

Without limiting any action the court may take to limit the possible harm, or extent of the harm,

likely to be caused by the disclosure of evidence of a protected confidence or protected identity information, the court may –

(a) order that all or part of the evidence be heard in camera; and

(b) make such orders relating to the suppression of publication of all or part of the evidence given before the court as, in its opinion, are necessary to protect the safety and welfare of the protected confider.

126F. Application of Division

(1) This Division does not apply in relation to a proceeding the hearing of which began before the commencement of this Division.

(2) This Division applies in relation to a protected confidence within the meaning of this Division whether made before or after the commencement of this Division.

(3) This Division does not apply to section 127B.

(4) The court may give a direction under this Division in respect of a protected confidence or protected identity information whether or not the protected confidence or protected identity information is privileged under another section of this Part or would be so privileged except for a limitation or restriction imposed by that section.

Division 2 – Other privileges

127. Religious confession

(1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.

(2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose.

(3) This section applies even if an Act provides –

(a) that the rules of evidence do not apply or that a person or body is not bound by the rules of evidence; or

(b) that a person is not excused from answering any question or producing any document or other thing on the ground of privilege or any other ground.

(4) In this section,

religious confession means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the church or religious denomination concerned.

127A. Medical communications

(1) A medical practitioner, without the consent of his or her patient, must not divulge in any civil proceeding any communication made to him or her in a professional capacity by the patient that was necessary to prescribe or act for the patient unless the sanity of the patient is the matter in dispute.

(2) A person who has possession, custody or control of any communication referred to in subsection (1) or of any record of such a communication made to a medical practitioner by a patient, without the consent of the patient, must not divulge that communication or record in any civil proceeding unless the sanity of the patient is the matter in dispute.

(3) This section does not –

(a) protect any communication made for any criminal purpose; or

(b) prejudice the right to give in evidence any statement or representation made at any time to or by a medical practitioner in or about the effecting by any person of an insurance on the life of that person or any other person.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

127B. Communication to counsellor

(1) In this section –

counselling communication means a communication made before, on or after the commencement of this Act in circumstances that give rise to a reasonable expectation of confidentiality or a duty of confidentiality if the communication is made –

(a) by a victim of a sexual offence to a counsellor in the course of counselling or treatment of the victim by the counsellor for any emotional or psychological harm suffered in connection with the offence; or

(b) to, or in relation to, that victim for the purposes of that counselling or treatment;

counsellor means a person –

(a) whose profession or work consists of or includes the provision of psychiatric or psychological therapy to victims of sexual offences; or

(b) who provides, for fee or other reward or on a voluntary basis, psychiatric or psychological therapy to victims of sexual offences for or at the direction of

a body or organisation that provides such therapy to such victims;

victim includes alleged victim.

(2) For the purposes of the definition of "counselling communication", in determining whether a communication was made in circumstances that gave rise to a reasonable expectation of confidentiality or a duty of confidentiality it does not matter that the communication was made in the presence of a third party if the third party's presence was necessary to facilitate communication or further the counselling process.

(3) A counselling communication must not be disclosed in any criminal proceedings unless the victim has consented to the disclosure.

(4) A person must not be required, in or in connection with any criminal proceedings, to produce a document that records a counselling communication unless the victim has consented to the production of the document.

(5) Evidence of a counselling communication must not be adduced or admitted in any criminal proceedings unless the victim has consented to the adducing or admission of the evidence.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

128. Privilege in respect of self-incrimination in other proceedings

(1) This section applies if a witness objects to giving particular evidence, or evidence on a particular matter, on the ground that the evidence may tend to prove that the witness –

(a) has committed an offence against or arising under an Australian law or a law of a foreign country; or

(b) is liable to a civil penalty.

(2) The court must determine whether or not there are reasonable grounds for the objection.

(3) Subject to subsection (4), if the court determines that there are reasonable grounds for the objection, the court is not to require the witness to give that particular evidence or evidence on a particular matter, and the court is to inform the witness –

(a) that the witness need not give the evidence unless required by the court to do so under subsection (4); and

(b) that the court will give a certificate under this section if –

(i) the witness willingly gives the evidence without being required to do so under subsection (4); or

(ii) the witness gives the evidence after being required to do so under subsection (4); and

(c) of the effect of such a certificate.

(4) The court may require the witness to give the evidence if the court is satisfied that –

(a) the evidence does not tend to prove that the witness has committed an offence against or arising under, or is liable to a civil penalty under, a law of a foreign country; and

(b) the interests of justice require that the witness give the evidence.

(5) If the witness either willingly gives the evidence without being required to do so under subsection (4), or gives it after being required to do so under that subsection, the court must cause the witness to be given a certificate under this section in respect of the evidence.

(6) The court is also to cause a witness to be given a certificate under this section if –

(a) the objection has been overruled; and

(b) after the evidence has been given, the court finds that there were reasonable grounds for the objection.

(7) In any proceeding in a Tasmanian court or before any person or body authorised by a law of

this State, or by consent of parties, to hear, receive and examine evidence –

(a) evidence given by a person in respect of which a certificate under this section has been given; and

(b) evidence of any information, document or thing obtained as a direct or indirect consequence of the person having given evidence –

cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence.

(8) Subsection (7) has effect despite any challenge, review, quashing or calling into question on any ground of the decision to give, or the validity of, the certificate concerned.

(9) If a defendant in a criminal proceeding for an offence is given a certificate under this section, subsection (7) does not apply in a proceeding that is a retrial of the defendant for the same offence or a trial of the defendant for an offence arising out of the same facts that gave rise to that offence.

(10) In a criminal proceeding, this section does not apply in relation to the giving of evidence by a defendant, being evidence that the defendant –

(a) did an act the doing of which is a fact in issue; or

(b) had a state of mind the existence of which is a fact in issue.

(11) A reference in this section to doing an act includes a reference to failing to act.

(12) If a person has been given a certificate under a prescribed State or Territory provision in respect of evidence given by a person in a proceeding in a State or Territory court, the certificate has the same effect, in a proceeding to which this subsection applies, as if it had been given under this section.

(13) For the purposes of subsection (12), a prescribed State or Territory provision is a provision of a law of a State or Territory declared by the regulations to be a prescribed State or Territory provision for the purposes of that subsection.

(14) Subsection (12) applies to a proceeding in relation to which this Act applies because of section 4, other than a proceeding for an offence against a law of the Commonwealth or for the recovery of a civil penalty under a law of the Commonwealth.

128A. Privilege in respect of self-incrimination – exception for certain orders, &c.

(1) In this section –

disclosure order means an order made by a Tasmanian court in a civil proceeding requiring a person to disclose information as part of, or in connection

with, a freezing or search order under the *Supreme Court Rules 2000* but does not include an order made by a court under the *Proceeds of Crime Act 2002* of the Commonwealth or *Crime (Confiscation of Profits) Act 1993*;

relevant person means a person to whom a disclosure order is directed.

(2) If a relevant person objects to complying with a disclosure order on the grounds that some or all of the information required to be disclosed may tend to prove that the person –

(a) has committed an offence against or arising under an Australian law or a law of a foreign country; or

(b) is liable to a civil penalty –

the person must –

(c) disclose so much of the information required to be disclosed to which no objection is taken; and

(d) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken (the "**privilege affidavit**") and deliver it to the court in a sealed envelope; and

(e) file and serve on each other party a separate affidavit setting out the basis of the objection.

(3) The sealed envelope containing the privilege affidavit must not be opened except as directed by the court.

(4) The court must determine whether or not there are reasonable grounds for the objection.

(5) Subject to subsection (6), if the court finds that there are reasonable grounds for the objection, the court must not require the information contained in the privilege affidavit to be disclosed and must return it to the relevant person.

(6) If the court is satisfied that –

(a) any information disclosed in the privilege affidavit may tend to prove that the relevant person has committed an offence against or arising under, or is liable to a civil penalty under, an Australian law; and

(b) the information does not tend to prove that the relevant person has committed an offence against or arising under, or is liable to a civil penalty under, a law of a foreign country; and

(c) the interests of justice require the information to be disclosed –

the court may make an order requiring the whole or any part of the privilege affidavit containing information of the kind referred to in paragraph (a) to be filed and served on the parties.

(7) If the whole or any part of the privilege affidavit is disclosed (including by order under subsection (6)), the court must cause the relevant person to be given a certificate in respect of the information referred to in subsection (6)(a).

(8) In any proceeding in a Tasmanian court or before any person or body authorised by a law of this State, or by consent of parties to hear, receive and examine evidence –

(a) evidence of information disclosed by a relevant person in respect of which a certificate has been given under this section; and

(b) evidence of any information, document or thing obtained as a direct result or indirect consequence of the relevant person having disclosed that information –

cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence concerned.

(9) Subsection (8) does not prevent the use against the relevant person of any information disclosed by a document –

(a) that is an annexure or exhibit to a privilege affidavit prepared by the person in response to a disclosure order; and

(b) that was in existence before the order was made.

(10) Subsection (8) has effect despite any challenge, review, quashing or calling into question on any ground of the decision to give, or the validity of, the certificate concerned.

(11) If a person has been given a certificate under a prescribed State or Territory provision in respect of information of a kind referred to in subsection (6)(a), the certificate has the same effect, in a proceeding to which this subsection applies, as if it had been given under this section.

(12) For the purposes of subsection (11), a prescribed State or Territory provision is a provision of a law of a State or Territory declared by the regulations to be a prescribed State or Territory provision for the purposes of that subsection.

(13) Subsection (11) applies to a proceeding in relation to which this Act applies because of section 4, other than a proceeding for an offence against a law of the Commonwealth or for the recovery of a civil penalty under a law of the Commonwealth.

Division 3 – Evidence excluded in the public interest

129. Exclusion of evidence of reasons for judicial decisions

(1) Evidence of the reasons for a decision made by a person who is –

(a) a judge in an Australian or overseas proceeding; or

(b) an arbitrator in respect of a dispute submitted to the person, or to the person and one or more other persons, for arbitration –

or the deliberation of a person so acting in relation to such a decision, must not be given by the person or a person who, in relation to the proceeding or arbitration, was under the direction or control of that person.

(2) Such evidence must not be given by tendering as evidence a document prepared by such a person.

(3) This section does not prevent the admission or use, in a proceeding, of published reasons for a decision.

(4) In a proceeding, evidence of the reasons for a decision made by a member of a jury in another Australian or overseas proceeding, or of the deliberations of a member of a jury in relation to such a decision, must not be given by any of the members of that jury.

(5) This section does not apply in a proceeding that is –

(a) a prosecution for any of the following offences:

(i) an offence against or arising under sections 93, 98, 100 and 105 of the *Criminal Code*;

(ii) an offence against or arising under section 289 of the *Criminal Code*;

(iii) an offence connected with an offence mentioned in subparagraph (i) or (ii);

(iv) an offence of conspiring to commit an offence mentioned in subparagraph (i) or (ii); or

(b) in respect of a contempt of a court; or

(c) by way of appeal from, or judicial review of, a judgment, decree, order or sentence of a court; or

(d) by way of review of an arbitral award; or

(e) a civil proceeding in respect of an act of a judicial officer or arbitrator that was, and that was known at the time by the judicial officer or arbitrator to be, outside the scope of the matters in relation to which the judicial officer or arbitrator had authority to act.

130. Exclusion of evidence of matters of state

(1) If the public interest in admitting into evidence information or a document that relates to matters of state is outweighed by the public interest in preserving secrecy or confidentiality in relation to the information or document, the court may

direct that the information or document not be adduced as evidence.

(2) The court may give such a direction on its own initiative or on the application of any person, whether or not the person is a party.

(3) In deciding whether to give such a direction, the court may inform itself in any way it thinks fit.

(4) Without limiting the circumstances in which information or a document may be taken for the purposes of subsection (1) to relate to matters of state, the information or document is taken for the purpose of that subsection to relate to matters of state if adducing it as evidence would –

(a) prejudice the security, defence or international relations of Australia; or

(b) damage relations between the Commonwealth and a State or between 2 or more States; or

(c) prejudice the prevention, investigation or prosecution of an offence; or

(d) prejudice the prevention or investigation of, or the conduct of proceedings for recovery of civil penalties brought with respect to, other contraventions of the law; or

(e) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information relating to the

enforcement or administration of a law of the Commonwealth or a State; or

(f) prejudice the proper functioning of the government of the Commonwealth or a State.

(5) Without limiting the matters that the court may take into account for the purpose of subsection (1), it is to take into account the following matters:

(a) the importance of the information or the document in the proceeding;

(b) if the proceeding is a criminal proceeding, whether the party seeking to adduce evidence of the information or document is a defendant or the prosecutor;

(c) the nature of the offence, cause of action or defence to which the information or document relates, and the nature of the subject matter of the proceeding;

(d) the likely effect of adducing evidence of the information or document, and the means available to limit its publication;

(e) whether the substance of the information or document has already been published;

(f) if the proceeding is a criminal proceeding and the party seeking to adduce evidence of the information or document is a defendant, whether the direction is to be

made subject to the condition that the prosecution be stayed.

(6) A reference in this section to a State includes a reference to a Territory.

131. Exclusion of evidence of settlement negotiations

(1) Evidence is not to be adduced of –

(a) a communication made between persons in dispute, or between one or more persons in dispute and a third party, in connection with an attempt to negotiate a settlement of the dispute; or

(b) a document, whether delivered or not, prepared in connection with an attempt to negotiate a settlement of a dispute.

(2) Subsection (1) does not apply if –

(a) the persons in dispute consent to the evidence being adduced in the proceeding concerned or, if any of those persons has tendered the communication or document in evidence in another Australian or overseas proceeding, all the other persons so consent; or

(b) the substance of the evidence has been disclosed with the express or implied consent of all the persons in dispute; or

(c) the substance of the evidence has been partly disclosed with the express or implied consent of the persons in dispute,

and full disclosure of the evidence is reasonably necessary to enable a proper understanding of the other evidence already adduced; or

(d) the communication or document included a statement to the effect that it was not to be treated as confidential; or

(e) the evidence tends to contradict or to qualify evidence already admitted about the course of an attempt to settle the dispute; or

(f) the proceeding in which it is sought to adduce the evidence is a proceeding to enforce an agreement between the persons in dispute to settle the dispute, or a proceeding in which the making of such an agreement is in issue; or

(g) evidence that has been adduced in the proceeding, or an inference from evidence that has been adduced in the proceeding, is likely to mislead the court unless evidence of the communication or document is adduced to contradict or to qualify that evidence; or

(h) the communication or document is relevant to determining liability for costs; or

(i) making the communication, or preparing the document, affects a right of a person; or

(j) the communication was made, or the document was prepared, in furtherance of the commission of a fraud or an offence or the commission of an act that renders a person liable to a civil penalty; or

(k) one of the persons in dispute, or an employee or agent of such a person, knew or ought reasonably to have known that the communication was made, or the document was prepared, in furtherance of a deliberate abuse of a power.

(3) For the purpose of subsection (2)(j), if commission of the fraud, offence or act is a fact in issue and there are reasonable grounds for finding that –

(a) the fraud, offence or act was committed; and

(b) a communication was made or document prepared in furtherance of the commission of the fraud, offence or act –

the court may find that the communication was so made or the document so prepared.

(4) For the purpose of subsection (2)(k), if –

(a) the abuse of power is a fact in issue; and

(b) there are reasonable grounds for finding that a communication was made or document prepared in furtherance of the abuse of power –

the court may find that the communication was so made or the document so prepared.

(5) In this section –

(a) a reference to a dispute is a reference to a dispute of a kind in respect of which relief may be given in an Australian or overseas proceeding; and

(b) a reference to an attempt to negotiate the settlement of a dispute does not include a reference to an attempt to negotiate the settlement of a criminal proceeding or an anticipated criminal proceeding; and

(c) a reference to a communication made by a person in dispute includes a reference to a communication made by an employee or agent of such a person; and

(d) a reference to the consent of a person in dispute includes a reference to the consent of an employee or agent of such a person who is authorised so to consent; and

(e) a reference to commission of an act includes a reference to a failure to act.

(6) In this section,

power means a power conferred by or under an Australian law.

Division 4 – General

131A. Application of Division to preliminary proceedings of courts

(1) If –

(a) a person is required by a disclosure requirement to give information, or to produce a document, which would result in the disclosure of a communication, a document or its contents or other information of a kind referred to in Division 1, 1A or 3 or section 127A or 127B; and

(b) the person objects to giving that information or providing that document –

the court must determine the objection by applying the provisions of this part (other than sections 123 and 128) with any necessary modifications as if the objection to giving information or producing the document were an objection to the giving or adducing of evidence.

(2) In this section –

disclosure requirement means a process or order of a court that requires the disclosure of information or a document and includes the following:

(a) a summons or subpoena to produce documents or give evidence;

(b) pre-trial discovery;

(c) non-party discovery;

(d) interrogatories;

(e) a notice to produce;

(f) a request to produce a document under Division 1 of Part 6 of Chapter 4.

132. Court to inform of rights to make applications and objections

If it appears to the court that a witness or a party may have grounds for making an application or objection under a provision of this Part, the court must satisfy itself, in the absence of a jury if there is a jury, that the witness or party is aware of the effect of that provision.

133. Court may inspect, &c., documents

If a question arises under this Part relating to a document, the court may order that the document be produced to it and may inspect the document for the purpose of determining the question.

134. Inadmissibility of evidence that must not be adduced or given

Evidence that, because of this Part, must not be adduced or given in a proceeding is not admissible in the proceeding.

PART 11 – DISCRETIONARY AND MANDATORY EXCLUSIONS

135. General discretion to exclude evidence

The court may refuse to admit evidence if its probative value is substantially outweighed by the danger that the evidence might –

(a) be unfairly prejudicial to a party; or

(b) be misleading or confusing; or

(c) cause or result in undue waste of time.

136. General discretion to limit use of evidence

The court may limit the use to be made of evidence if there is a danger that a particular use of the evidence might –

(a) be unfairly prejudicial to a party; or

(b) be misleading or confusing.

137. Exclusion of prejudicial evidence in criminal proceedings

In a criminal proceeding, the court must refuse to admit evidence adduced by the prosecutor if its probative value is outweighed by the danger of unfair prejudice to the defendant.

138. Discretion to exclude evidence improperly or illegally obtained

(1) Evidence that was obtained –

(a) improperly or in contravention of an Australian law; or

(b) in consequence of an impropriety or of a contravention of an Australian law –

is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained.

(2) Without limiting subsection (1), evidence of an admission that was made during or in consequence of questioning, and evidence obtained in consequence of the admission, is taken to have been obtained improperly if the person conducting the questioning –

(a) did, or omitted to do, an act in the course of the questioning even though he or she knew or ought reasonably to have known that the act or omission was likely to impair substantially the ability of the person being questioned to respond rationally to the questioning; or

(b) made a false statement in the course of the questioning even though he or she knew or ought reasonably to have known that the statement was false and that making the false statement was likely to

cause the person who was being questioned to make an admission.

(3) Without limiting the matters that the court may take into account under subsection (1), it is to take into account –

(a) the probative value of the evidence; and

(b) the importance of the evidence in the proceeding; and

(c) the nature of the relevant offence, cause of action or defence and the nature of the subject matter of the proceeding; and

(d) the gravity of the impropriety or contravention; and

(e) whether the impropriety or contravention was deliberate or reckless; and

(f) whether the impropriety or contravention was contrary to or inconsistent with a right of a person recognised by the International Covenant on Civil and Political Rights; and

(g) whether any other proceeding, whether or not in a court, has been or is likely to be taken in relation to the impropriety or contravention; and

(h) the difficulty, if any, of obtaining the evidence without impropriety or contravention of an Australian law.

139. Cautioning person

(1) For the purpose of section 138(1)(a), evidence of a statement made or an act done by a person during questioning is taken to have been obtained improperly if –

(a) the person was under arrest for an offence at the time; and

(b) the questioning was conducted by an investigating official who was at the time empowered, because of the office that he or she held, to arrest the person; and

(c) before starting the questioning the investigating official did not caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence.

(2) For the purpose of section 138(1)(a), evidence of a statement made or an act done by a person during questioning is taken to be obtained improperly if –

(a) the questioning was conducted by an investigating official who did not have the power to arrest the person; and

(b) the statement was made, or the act was done, after the investigating official formed a belief that there was sufficient evidence to establish that the person committed an offence; and

(c) the investigating official did not, before the statement was made or the act was done, caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence.

(3) The caution must be given in, or translated into, a language in which the person is able to communicate with reasonable fluency, but need not be given in writing unless the person cannot hear adequately.

(4) Subsections (1), (2) and (3) do not apply so far as any Australian law requires the person to answer questions put by, or do things required by, the investigating official.

(5) A reference in subsection (1) to a person who is under arrest includes a reference to a person who is in the company of an investigating official for the purpose of being questioned, if –

(a) the official believes that there is sufficient evidence to establish that the person committed an offence that is to be the subject of the questioning; or

(b) the official would not allow the person to leave if the person wished to do so; or

(c) the official has given the person reasonable grounds for believing that the person would not be allowed to leave if he or she wished to do so.

(6) A person is not treated as being under arrest only because of subsection (5) if –

(a) the official is performing functions in relation to persons or goods entering or leaving Australia and the official does not believe the person committed an offence against a law of the Commonwealth; or

(b) the official is exercising a power under an Australian law to detain and search the person or to require the person to provide information or to answer questions.

CHAPTER 4 – PROOF

PART 1 – STANDARD OF PROOF

140. Civil proceedings: standard of proof

(1) In a civil proceeding, the court must find the case of a party proved if satisfied that it has been proved on the balance of probabilities.

(2) Without limiting the matters that the court may take into account in deciding whether it is so satisfied, it is to take into account –

(a) the nature of the cause of action or defence; and

(b) the nature of the subject matter of the proceeding; and

(c) the gravity of the matters alleged.

141. Criminal proceedings: standard of proof

(1) In a criminal proceeding, the court is not to find the case of the prosecution proved unless satisfied that it has been proved beyond reasonable doubt.

(2) In a criminal proceeding, the court is to find the case of a defendant proved if satisfied that it has been proved on the balance of probabilities.

142. Admissibility of evidence: standard of proof

(1) Except as otherwise provided by this Act, in any proceeding the court is to find that the facts necessary for deciding –

(a) a question whether evidence should be admitted or not admitted, whether in the exercise of a discretion or not; or

(b) any other question arising under this Act –

have been proved if satisfied that they have been proved on the balance of probabilities.

(2) In determining whether it is so satisfied, the matters that the court must take into account include –

(a) the importance of the evidence in the proceeding; and

(b) the gravity of the matters alleged in relation to the question.

142A. Proof of exemption

(1) It is not necessary in any complaint or indictment to specify, negative or prove any exemption, exception, proviso, condition, excuse or qualification.

(2) If a defendant or an accused relies on any exemption, exception, proviso, condition, excuse or qualification, the proof lies on the defendant or the accused.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

PART 2 – JUDICIAL NOTICE

143. Matters of law

(1) Proof is not required about the provisions and coming into operation, in whole or in part, of any of the following:

(a) an Act, an Imperial Act in force in Australia, a Commonwealth Act, an Act of another State or an Act or Ordinance of a Territory;

(b) a regulation, rule or by-law made, or purporting to be made, under such an Act or Ordinance;

(c) a proclamation or order of the Governor-General, the Governor of a State or the Administrator or Executive of a Territory made, or purporting to be made, under such an Act or Ordinance;

(d) an instrument of a legislative character made, or purporting to be made, under such an Act or Ordinance, that is required by or under a law to be published, or the making of which is required by or under a law to be notified, in any government or official gazette, by whatever name called.

(2) A judge may inform himself or herself about any matter referred to in subsection (1) in any way that the judge thinks fit.

(3) A reference in this section to an Act that is an Act of an Australian Parliament includes a reference to a private Act passed by that Parliament.

144. Matters of common knowledge

(1) Proof is not required about knowledge that is not reasonably open to question and is –

(a) common knowledge in the locality in which the proceeding is being held or generally; or

(b) capable of verification by reference to a document the authority of which cannot reasonably be questioned.

(2) The judge may acquire knowledge referred to in subsection (1) in any way the judge thinks fit.

(3) The court, including the jury if there is a jury, is to take knowledge referred to in subsection (1) into account.

(4) The judge is to give a party any opportunity to make submissions, and to refer to relevant information, relating to the acquiring or taking into account of knowledge of that kind as is necessary to ensure that the party is not unfairly prejudiced.

145. Certain Crown certificates

This Part does not exclude the application of the principles and rules of the common law and of

equity relating to the effect of a certificate given by or on behalf of the Crown with respect to a matter of international affairs.

PART 3 – FACILITATION OF PROOF

Division 1 – General

146. Evidence produced by processes, machines and other devices

(1) This section applies to a document or thing –

(a) that is produced wholly or partly by a device or process; and

(b) that is tendered by a party who asserts that, in producing the document or thing, the device or process has produced a particular outcome.

(2) If it is reasonably open to find that the device or process is one, or is of a kind, that if properly used ordinarily produces that outcome, it is presumed, unless evidence sufficient to raise doubt about the presumption is adduced, that, in producing the document or thing on the occasion in question, the device or process produced that outcome.

147. Documents produced by processes, machines and other devices in the course of business

(1) This section applies to a document –

(a) that is produced wholly or partly by a device or process; and

(b) that is tendered by a party who asserts that, in producing the document, the

device or process has produced a particular outcome.

(2) If –

(a) the document is, or was at the time it was produced, part of the records of, or kept for the purposes of, a business, whether or not the business is still in existence; and

(b) the device or process is, or was at that time, used for the purposes of the business –

it is presumed, unless evidence sufficient to raise doubt about the presumption is adduced, that, in producing the document on the occasion in question, the device or process produced that outcome.

(3) Subsection (2) does not apply to the contents of a document that was produced –

(a) for the purpose of conducting, or for or in contemplation of or in connection with, an Australian or overseas proceeding; or

(b) in connection with an investigation relating or leading to a criminal proceeding.

148. Evidence of certain acts of justices, lawyers and notaries public

It is presumed, unless the contrary is proved, that a document was attested or verified by, or signed or acknowledged before, a justice of the peace, Australian lawyer or notary public, if –

(a) an Australian law requires, authorises or permits it to be attested, verified, signed or acknowledged by a justice of the peace, an Australian lawyer or a notary public; and

(b) it purports to have been so attested, verified, signed or acknowledged.

149. Attestation of documents

It is not necessary to adduce the evidence of an attesting witness to a document, not being a testamentary document, to prove that the document was signed or attested as it purports to have been signed or attested.

150. Seals and signatures

(1) If the imprint of a seal appears on a document and purports to be the imprint of –

(a) the Public Seal of the State; or

(b) a Royal Great Seal; or

(c) the Great Seal of Australia; or

(d) another seal of the Commonwealth; or

(e) a seal of another State, a Territory or a foreign country; or

(f) the seal of a body, court, tribunal or body corporate, established by or under Royal Charter or by an Australian law or the law of a foreign country –

it is presumed, unless the contrary is proved, that the imprint is the imprint of that seal, and the document was duly sealed as it purports to have been sealed.

(2) If the imprint of a seal appears on a document and purports to be the imprint of the seal of an office holder, it is presumed, unless the contrary is proved, that –

(a) the imprint is the imprint of that seal; and

(b) the document was duly sealed by the office holder acting in an official capacity; and

(c) the office holder held the relevant office when the document was sealed.

(3) If a document purports to have been signed by an office holder in an official capacity, it is presumed, unless the contrary is proved, that –

(a) the document was signed by the office holder acting in that capacity; and

(b) the office holder held the relevant office when the document was signed.

(4) In this section,

office holder means –

(a) the Sovereign; or

(b) the Governor-General; or

(c) the Governor of a State; or

(d) the Administrator of a Territory; or

(e) a person holding any other office under an Australian law or a law of a foreign country.

(5) This section applies to documents sealed and documents signed before the commencement of this Act.

151. Seals of bodies established under State law

Note: The Evidence Act 1995 of the Commonwealth includes a provision dealing with certain seals of bodies established by Royal Charter or a law of a State.

152. Documents produced from proper custody

If a document that is or purports to be more than 20 years old is produced from proper custody, it is presumed, unless the contrary is proved, that –

(a) the document is the document that it purports to be; and

(b) if it purports to have been executed or attested by a person, it was duly executed or attested by that person.

Division 2 – Matters of official record

153. Gazettes and other official documents

(1) It is presumed, unless the contrary is proved, that a document purporting –

(a) to be any government or official gazette, by whatever name called, of this State, the Commonwealth, another State, a Territory or a foreign country; or

(b) to be printed by the Government Printer of the Commonwealth or by the government or official printer of a State or Territory; or

(c) to be printed by authority of the government or administration of this State, the Commonwealth, another State, a Territory or a foreign country –

is what it purports to be and was published on the day on which it purports to have been published.

(2) If –

(a) there is produced to a court –

(i) a copy of any government or official gazette, by whatever name called, of this State, the

Commonwealth, another State, a Territory or a foreign country; or

(ii) a document that purports to be printed by the Government Printer of the Commonwealth or by the government or official printer of a State or Territory; or

(iii) a document that purports to be printed by authority of the government or administration of this State, the Commonwealth, another State, a Territory or a foreign country; and

(b) there is notified or published in the copy or document the doing of an act –

(i) by the Governor-General or by the Governor of a State or the Administrator of a Territory; or

(ii) by a person authorised or empowered to do the act by an Australian law or a law of a foreign country –

it is presumed, unless the contrary is proved, that the act was duly done and, if the day on which the act was done appears in the copy or document, it was done on that day.

154. Documents published by authority of Parliaments

It is presumed, unless the contrary is proved, that a document purporting to be printed by authority of an Australian Parliament, a House of an Australian Parliament, a committee of such a House or a committee of an Australian Parliament –

(a) is what it purports to be; and

(b) was published on the day on which it purports to have been published.

155. Evidence of official records

(1) Evidence of a Commonwealth record or of a public document of this State, another State or a Territory may be adduced by producing a document that –

(a) purports to be such a record or document signed or sealed by –

(i) a Minister of the Commonwealth, or a Minister of this State or another State or a Territory; or

(ii) a person who might reasonably be supposed to have custody of the record or document; or

(b) purports to be a copy of or extract from the record or document that is certified to be a true copy or extract by –

(i) a Minister of the Commonwealth, or a Minister of this State or another State or a Territory; or

(ii) a person who might reasonably be supposed to have custody of the record or document.

(2) If such a document is produced, it is presumed, unless evidence that is sufficient to raise doubt about the presumption is adduced, that –

(a) the document is the record, public document, copy or extract that it purports to be; and

(b) the Minister of the Commonwealth, Minister of this State or that other State or the Territory or person –

(i) signed or sealed the record; or

(ii) certified the copy or extract as a true copy or extract.

156. Public documents

(1) A document that purports to be a copy of, or an extract from or summary of, a public document and to have been –

(a) sealed with the seal of a person who, or a body that, might reasonably be supposed to have the custody of the public document; or

(b) certified as such a copy, extract or summary by a person who might reasonably be supposed to have custody of the public document –

is presumed, unless the contrary is proved, to be a copy of the public document or an extract from or summary of the public document.

(2) If an officer entrusted with the custody of a public document is required by a court to produce the public document, it is sufficient compliance with the requirement for the officer to produce a copy of, or extract from, the public document if it purports to be signed and certified by the officer as a true copy or extract.

(3) It is sufficient production of a copy or extract for the purpose of subsection (2) if the officer sends it by prepaid post, or causes it to be delivered, to –

(a) the proper officer of the court in which it is to be produced; or

(b) the person before whom it is to be produced.

(4) The court before which a copy or extract is produced under subsection (2) may direct the officer to produce the original public document.

157. Public documents relating to court processes

Evidence of a public document that is a judgment, act or other process of an Australian

court or a foreign court, or that is a document lodged with an Australian court or a foreign court, may be adduced by producing a document that purports to be a copy of the public document and that –

(a) is proved to be an examined copy; or

(b) purports to be sealed with the seal of that court; or

(c) purports to be signed by a judge, magistrate, registrar or other proper officer of that court.

158. Evidence of certain public documents

(1) If –

(a) a public document, or a certified copy of a public document, of another State or a Territory is admissible for a purpose in that State or Territory under the law of that State or Territory; and

(b) it purports to be sealed, or signed and sealed, or signed alone, as directed by the law of that State or Territory –

it is admissible in evidence to the same extent and for that purpose in all Tasmanian courts –

(c) without proof of –

(i) the seal or signature; or

(ii) the official character of the person appearing to have signed it; and

(d) without further proof in every case in which the original document could have been received in evidence.

(2) A public document of another State or a Territory that is admissible in evidence for any purpose in that State or Territory under the law of that State or Territory without proof of –

(a) the seal or signature authenticating the document; or

(b) the judicial or official character of the person appearing to have signed the document –

is admissible in evidence to the same extent and for any purpose in all Tasmanian courts without such proof.

(3) This section only applies to documents that are public records of another State or a Territory.

159. Official statistics

A document that purports –

(a) to be published by the Australian Statistician; and

(b) to contain statistics or abstracts compiled and analysed by the Australian Statistician under the *Census and*

Statistics Act 1905 of the Commonwealth –

is evidence that those statistics or abstracts were compiled and analysed by the Australian Statistician under that Act.

Division 3 – Matters relating to post and communications

160. Postal articles

(1) It is presumed, unless evidence sufficient to raise doubt about the presumption is adduced, that a postal article sent by prepaid post addressed to a person at a specified address in Australia or in an external Territory was received at that address on the seventh working day after having been posted.

(2) This section does not apply if –

(a) the proceeding relates to a contract; and

(b) all the parties to the proceeding are parties to the contract; and

(c) subsection (1) is inconsistent with a term of the contract.

(3) In this section,

working day means a day that is not –

(a) a Saturday or a Sunday; or

(b) a public holiday, bank holiday or statutory holiday in the place to which the article was addressed.

161. Electronic communications

(1) If a document purports to contain a record of an electronic communication other than one referred to in section 162, it is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that the communication –

(a) was sent or made in the form of electronic communication that appears from the document to have been the form by which it was sent or made; and

(b) was sent or made by or on behalf of the person by or on whose behalf it appears from the document to have been sent or made; and

(c) was sent or made on the day on which, at the time at which and from the place from which it appears from the document to have been sent or made; and

(d) was received at the destination to which it appears from the document to have been sent; and

(e) if it appears from the document that the sending of the communication concluded at a particular time, was received at that destination at that time.

(2) A provision of subsection (1) does not apply if –

(a) the proceeding relates to a contract; and

(b) all the parties to the proceeding are parties to the contract; and

(c) the provision is inconsistent with a term of the contract.

162. Lettergrams and telegrams

(1) If a document purports to contain a record of a message transmitted by means of a lettergram or telegram, it is presumed, unless evidence sufficient to raise doubt about the presumption is adduced, that the message was received by the person to whom it was addressed 24 hours after the message was delivered to a post office for transmission as a lettergram or telegram.

(2) This section does not apply if –

(a) the proceeding relates to a contract; and

(b) all the parties to the proceeding are parties to the contract; and

(c) subsection (1) is inconsistent with a term of the contract.

163. Proof of letters having been sent by Commonwealth agencies

Note: Section 5 of the Evidence Act 1995 of the Commonwealth extends the operation of section

163 of that Act to proceedings in all Australian courts.

PART 4 – CORROBORATION

164. Corroboration requirements abolished

(1) It is not necessary that evidence on which a party relies be corroborated.

(2) Subsection (1) does not affect the operation of a rule of law that requires corroboration with respect to the offence of perjury or a similar or related offence.

(3) Despite any rule, whether of law or practice, to the contrary, but subject to the other provisions of this Act, if there is a jury, it is not necessary that the judge –

(a) warn the jury that it is dangerous to act on uncorroborated evidence or give a warning to the same or similar effect; or

(b) give a direction relating to the absence of corroboration.

(4) . . . . . .

PART 5 – WARNINGS AND INFORMATION

165. Unreliable evidence

(1) This section applies to evidence of a kind that may be unreliable, including the following kinds of evidence:

(a) evidence in relation to which Part 2 of Chapter 3 or Part 4 of Chapter 3 applies;

(b) identification evidence;

(c) evidence the reliability of which may be affected by age, ill health, whether physical or mental, injury or the like;

(d) evidence given in a criminal proceeding by a witness who may reasonably be supposed to be criminally concerned in the events giving rise to the proceeding;

(e) evidence given in a criminal proceeding by a witness who is a prison informer;

(f) oral evidence of questioning by an investigating official of a defendant that is questioning recorded in writing that has not been signed or otherwise acknowledged by the defendant;

(g) in a proceeding against the estate of a deceased person, evidence adduced by or on behalf of a person seeking relief in the proceeding that is evidence about a matter about which the deceased person

could have given evidence if he or she were alive.

Note: Paragraph (f) differs from section 165(1)(f) of the Evidence Act 1995 of the Commonwealth.

(2) If there is a jury and a party so requests, the judge is to –

(a) warn the jury that the evidence may be unreliable; and

(b) inform the jury of matters that may cause it to be unreliable; and

(c) warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it.

(3) The judge need not comply with subsection (2) if there are good reasons for not doing so.

(4) It is not necessary that a particular form of words be used in giving the warning or information.

(5) This section does not affect any other power of the judge to give a warning to, or to inform, the jury.

(6) Subsection (2) does not permit a judge to warn or inform a jury in proceedings before it in which a child gives evidence that the reliability of the child's evidence may be affected by the age of the child. Any such warning or information may be given only in accordance with section 165A(2) and (3).

165A. Warnings in relation to children's evidence

(1) A judge in any proceeding in which evidence is given by a child before a jury must not do any of the following:

(a) warn the jury, or suggest to the jury, that children as a class are unreliable witnesses;

(b) warn the jury, or suggest to the jury, that the evidence of children as a class is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults;

(c) give a warning, or suggestion to the jury, about the unreliability of the particular child's evidence solely on account of the age of the child;

(d) in the case of a criminal proceeding, give a general warning to the jury of the danger of convicting on the uncorroborated evidence of a witness who is a child.

(2) Subsection (1) does not prevent the judge, at the request of a party, from –

(a) informing the jury that the evidence of the particular child may be unreliable and the reasons why it may be unreliable; and

(b) warning or informing the jury of the need for caution in determining whether to

accept the evidence of the particular child and the weight to be given to it –

if the party has satisfied the court that there are circumstances (other than solely the age of the child) particular to the child that affect the reliability of the child's evidence and that warrant the giving of a warning or the information.

(3) This section does not affect any other power of a judge to give a warning to, or to inform, the jury.

165B. Delay in prosecution

(1) This section applies in a criminal proceeding in which there is a jury.

(2) If the court, on application by the defendant, is satisfied that the defendant has suffered a significant forensic disadvantage because of the consequences of delay, the court must inform the jury of the nature of that disadvantage and the need to take that disadvantage into account when considering the evidence.

(3) The judge need not comply with subsection (2) if there are good reasons for not doing so.

(4) It is not necessary that a particular form of words be used in informing the jury of the nature of the significant forensic disadvantage suffered and the need to take that disadvantage into account, but the judge must not in any way suggest to the jury that it would be dangerous or unsafe to convict the defendant solely because of the delay

or the forensic disadvantage suffered because of the consequences of the delay.

(5) The judge must not warn or inform the jury about any forensic disadvantage the defendant may have suffered because of delay except in accordance with this section, but this section does not affect any other power of the judge to give any warning to, or to inform, the jury.

(6) For the purposes of this section –

(a) delay includes delay between the alleged offence and its being reported; and

(b) significant forensic disadvantage is not to be regarded as being established by the mere existence of a delay.

PART 6 – ANCILLARY PROVISIONS

Division 1 – Request to produce documents or call witnesses

166. Definition of request

In this Division,

request means a request that a party (the requesting party) makes to another party to do one or more of the following:

(a) to produce to the requesting party the whole or a part of a specified document or thing;

(b) to permit the requesting party, adequately and in an appropriate way, to examine, test or copy the whole or a part of a specified document or thing;

(c) to call as a witness a specified person believed to be concerned in the production or maintenance of a specified document or thing;

(d) to call as a witness a specified person in whose possession or under whose control a specified document or thing is believed to be or to have been at any time;

(e) in relation to a document of the kind referred to in paragraph (a) or (b) of the definition of *document*, to permit

the requesting party, adequately and in an appropriate way, to examine and test the document and the way in which it was produced and has been kept;

(f) in relation to evidence of a previous representation, to call as a witness the person who made the previous representation;

(g) in relation to evidence that a person has been convicted of an offence, being evidence to which section 92(2) applies, to call as a witness a person who gave evidence in the proceeding in which the person was so convicted.

167. Requests may be made about certain matters

A party may make a reasonable request to another party for the purpose of determining a question that relates to –

(a) a previous representation; or

(b) evidence of a conviction of a person for an offence; or

(c) the authenticity, identity or admissibility of a document or thing.

168. Time limits for making certain requests

(1) If a party has given to another party written notice of its intention to adduce evidence of a previous representation, the other party may only make a request to the party relating to the representation if the request is made within 21 days after the notice was given.

(2) Despite subsection (1), the court may give the other party leave to make a request relating to the representation after the end of the 21-day period if satisfied that there is good reason to do so.

(3) If a party has given to another party written notice of its intention to adduce evidence of a person's conviction of an offence in order to prove a fact in issue, the other party may only make a request relating to evidence of the conviction if the request is made within 21 days after the notice was given.

(4) Despite subsection (3), the court may give the other party leave to make a request relating to evidence of the conviction after the end of the 21-day period if satisfied that there is good reason to do so.

(5) If a party has served on another party a copy of a document that it intends to tender in evidence, the other party may only make a request relating to the document if the request is made within 21 days after service of the copy.

(6) If the copy of the document served under subsection (5) is accompanied by, or has

endorsed on it, a notice stating that the document is to be tendered to prove the contents of another document, the other party may only make a request relating to the other document if the request is made within 21 days after service of the copy.

(7) Despite subsections (5) and (6), the court may give the other party leave to make the request relating to a document, or other document, after the end of the 21-day period if satisfied that there is good reason to do so.

169. Failure or refusal to comply with request

(1) If a party, without reasonable cause, failed or refused to comply with a request, the court, on application, may make one or more of the following orders:

(a) an order directing the party to comply with the request;

(b) an order that the party produce a specified document or thing, or call as a witness a specified person, as mentioned in section 166;

(c) an order that the evidence in relation to which the request was made is not to be admitted in evidence;

(d) any order with respect to adjournment or costs as is just.

(2) If the party, within a reasonable time after receiving the request, had informed the other party that it refuses to comply with the request, an application under subsection (1) by the other party must be made within a reasonable time after being so informed.

(3) The court, on application, may direct that evidence in relation to which a request was made is not to be admitted in evidence if an order made by it under subsection (1)(a) or (b) is not complied with.

(4) Without limiting the circumstances that may constitute reasonable cause for a party to fail to comply with a request, it is reasonable cause to fail to comply with a request if –

(a) the document or thing to be produced is not available to the party; or

(b) the existence and contents of the document are not in issue in the proceeding in which evidence of the document is proposed to be adduced; or

(c) the person to be called as a witness is not available.

(5) Without limiting the matters that the court may take into account in relation to the exercise of a power under subsection (1), it is to take into account –

(a) the importance in the proceeding of the evidence in relation to which the request was made; and

(b) whether there is likely to be a dispute about the matter to which the evidence relates; and

(c) whether there is a reasonable doubt as to the authenticity or accuracy of the evidence that is, or the document the contents of which are, sought to be proved; and

(d) whether there is a reasonable doubt as to the authenticity of the document or thing that is sought to be tendered; and

(e) if the request relates to evidence of a previous representation, whether there is a reasonable doubt as to the accuracy of the representation or of the evidence on which it was based; and

(f) in the case of a request referred to in section 166(g), whether another person is available to give evidence about the conviction or the facts that were in issue in the proceeding in which the conviction was obtained; and

(g) whether compliance with the request would involve undue expense or delay or would not be reasonably practicable; and

(h) the nature of the proceeding.

Division 2 – Proof of certain matters by affidavits or written statements

170. Evidence relating to certain matters

(1) Evidence of a fact that, because of sections 48, 63, 64, 65, 69, 70 and 71 and Part 3 of Chapter 4, is to be proved in relation to a document or thing may be given by a person permitted under section 171 to give such evidence.

(2) Evidence may be given by affidavit or, if the evidence relates to a public document, by a written statement.

171. Persons who may give such evidence

(1) Such evidence may be given by –

(a) a person who, at the relevant time or afterwards, had a position of responsibility in relation to making or keeping the document or thing; or

(b) except in the case of evidence of a fact that is to be proved in relation to a document or thing because of section 63, 64 or 65, an authorised person.

(2) Despite subsection (1)(b), evidence must not be given under this section by an authorised person who, at the relevant time or afterwards, did not have a position of responsibility in relation to making or keeping the document or thing unless it appears to the court that –

(a) it is not reasonably practicable for the evidence to be given by a person who, at the relevant time or afterwards, had a position of responsibility in relation to making or keeping the document or thing; or

(b) having regard to all the circumstances of the case, undue expense would be caused by calling such a person as a witness.

(3) In this section,

authorised person means a person –

(a) before whom an oath, declaration or affidavit may be taken or made in a country or place outside this State under section 5 or 6 of the *Oaths Act 2001*; or

(b) who is a police officer of or above the rank of sergeant; or

(c) authorised by the Minister for the purpose of this section.

172. Evidence based on knowledge, belief or information

(1) Despite Chapter 3, the evidence may include evidence based on the knowledge and belief of the person who gives it, or on information that the person has.

(2) An affidavit or statement that includes evidence based on knowledge, information or belief must

set out the source of the knowledge or information or the basis of the belief.

173. Notification of other parties

(1) A copy of the affidavit or statement must be served on each party a reasonable time before the hearing of the proceeding.

(2) The party who tenders the affidavit or statement, if another party so requests, must call the deponent or person who made the statement to give evidence but need not otherwise do so.

Division 3 – Foreign law

174. Evidence of foreign law

(1) Evidence of a statute, proclamation, treaty or act of state of a foreign country may be adduced in a proceeding by producing –

(a) a book or pamphlet, containing the statute, proclamation, treaty or act of state, that purports to be printed by the government or official printer of the country or by the authority of the government or administration of the country; or

(b) a book or other publication, containing the statute, proclamation, treaty or act of state, that appears to the court to be a reliable source of information; or

(c) a book or pamphlet that is or would be used in the courts of the country to inform the courts about, or prove, the statute, proclamation, treaty or act of state; or

(d) a copy of the statute, proclamation, treaty or act of state that is proved to be an examined copy.

(2) A reference in this section to a statute of a foreign country includes a reference to a regulation or by-law of the country.

175. Evidence of law reports of foreign countries

(1) Evidence of the unwritten or common law of a foreign country may be adduced by producing a book containing reports of judgments of courts of the country if the book is or would be used in the courts of the country to inform the courts about the unwritten or common law of the country.

(2) Evidence of the interpretation of a statute of a foreign country may be adduced by producing a book containing reports of judgments of courts of the country if the book is or would be used in the courts of the country to inform the courts about the interpretation of the statute.

176. Questions of foreign law decided by judge

If, in a proceeding in which there is a jury, it is necessary to ascertain the law of another country

which is applicable to the facts of the case, any question as to the effect of the evidence adduced with respect to that law is to be decided by the judge alone.

Division 4 – Procedures for proving other matters

177. Certificates of expert evidence

(1) Evidence of a person's opinion may be adduced by tendering an expert certificate signed by the person that –

(a) states the person's name and address; and

(b) states that the person has specialised knowledge based on training, study or experience as specified in the certificate; and

(c) sets out an opinion that the person holds and that is expressed to be wholly or substantially based on that knowledge.

(2) Subsection (1) does not apply unless the party seeking to tender the expert certificate has served on each other party –

(a) a copy of the certificate; and

(b) a written notice stating that the party proposes to tender the certificate as evidence of the opinion.

(3) Service must be effected not later than –

(a) 21 days before the hearing; or

(b) if, on application by the party before or after service, the court substitutes a different period, the beginning of that period.

(4) Service for the purpose of subsection (2) may be proved by affidavit.

(5) A party on whom the documents referred to in subsection (2) are served, by written notice served on the party proposing to tender the expert certificate, may require the party to call the person who signed the certificate to give evidence.

(6) The expert certificate is not admissible as evidence if such a requirement is made.

(7) The court may make any order with respect to costs it considers just against a party who, without reasonable cause, required a party to call a person to give evidence under this section.

177A. Certificate of analyst

In any proceedings in a court, a document purporting to be a certificate signed by an analyst and relating to any analysis is evidence of the facts stated in that document –

(a) if the party to the proceedings who tenders the document serves on the other party to the proceedings a copy of that document not less than 14 days before the hearing; and

(b) unless a party who is served with a copy of that document gives notice in writing not less than 7 days before the hearing to the party who tendered that document that the analyst or a person who, under the supervision or direction of the analyst, was involved with the analysis is required to be called as a witness.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

177B. Proof of proceedings of councils and committees

(1) Any minute of proceedings at meetings of any council or committee of a council, board of directors, managing or governing body, if signed by any person purporting to be the mayor or chairperson at the meeting at which the proceedings took place or at the next ensuing meeting, is receivable in evidence in all legal proceedings without further proof.

(2) Until the contrary is proved, in relation to a meeting in respect of the proceedings of which minutes are made –

(a) the meeting is taken to be duly convened and held; and

(b) all the members are taken to be duly qualified; and

(c) any committee is taken to be duly and regularly constituted with power to deal

with the matters referred to in the proceedings.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

177C. Probate and letters of administration

(1) The probate of a will or codicil or letters of administration with the will or codicil annexed, obtained or having operation within Tasmania, is evidence of the original will or codicil upon all questions concerning real and personal estate, as if the original were produced and proved in due course of law.

(2) Any probate, letters of administration or letters of administration with the will or codicil annexed is evidence of the death and the date of the death of the testator or intestate.

(3) In this section, the expressions "**probate**", "**letters of administration**" and "**letters of administration with the will or codicil annexed**" include –

(a) an exemplification of probate, letters of administration or letters of administration with the will or codicil annexed sealed by the Supreme Court in its ecclesiastical jurisdiction or under Part IV of the *Administration and Probate Act 1935*; and

(b) any document accepted as sufficient in place of such exemplification by the Supreme Court and sealed as referred to in paragraph (a).

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

177D. Certificate of Surveyor-General

(1) In any proceedings, a certificate purporting to be signed by the Surveyor-General relating to one or more of the following matters is evidence of those matters:

(a) that, at a time or during a period specified in the certificate, land described in the certificate was or was not Crown land within the meaning of the *Crown Lands Act 1976*;

(b) that, at a time or during a period specified in the certificate, land described in the certificate was or was not permanent timber production zone land within the meaning of the *Forest Management Act 2013*;

(c) that, at a time or during a period specified in the certificate, the Crown land described in the certificate was or was not dedicated or reserved for a particular purpose under any Act;

(d) that, at a time or during a period specified in the certificate, the Crown land described in the certificate was subject to a contract or a permit, lease, licence or other occupational right under the *Crown Lands Act 1976*.

(2) For the purpose of subsection (1), land may be described by means of a description or a plan, or both.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

177E. Certificate of Chief Parliamentary Counsel

A certificate of the Chief Parliamentary Counsel that an Act or statutory rule is not on the database, within the meaning of the *Legislation Publication Act 1996*, is evidence of that fact.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

178. Convictions, acquittals and other judicial proceedings

(1) This section applies to the following facts:

(a) the conviction or acquittal before or by an applicable court of a person charged with an offence;

(b) the sentencing of a person to any punishment or pecuniary penalty by an applicable court;

(c) an order by an applicable court;

(d) the pendency or existence at any time before an applicable court of a civil or criminal proceeding.

(2) Evidence of a fact to which this section applies may be given by a certificate signed by a judge, a magistrate or registrar or other proper officer of the applicable court –

(a) showing the fact, or purporting to contain particulars, of the record, indictment, conviction, acquittal, sentence, order or proceeding in question; and

(b) stating the time and place of the conviction, acquittal, sentence, order or proceeding; and

(c) stating the title of the applicable court.

(3) A certificate given under this section showing a conviction, acquittal, sentence or order is evidence of the particular offence or matter in respect of which the conviction, acquittal, sentence or order was had, passed or made, if stated in the certificate.

(4) A certificate given under this section showing the pendency or existence of a proceeding is evidence of the particular nature and occasion, or

ground and cause, of the proceeding, if stated in the certificate.

(5) A certificate given under this section purporting to contain particulars of a record, indictment, conviction, acquittal, sentence, order or proceeding is evidence of the matters stated in the certificate.

(6) The method of proving any fact authorised under this section is in addition to any other authorised method of proving the fact.

(7) A conviction is presumed not to have been appealed against, quashed or set aside until the contrary is shown.

(8) In this section –

acquittal includes the dismissal of the charge in question by an applicable court;

applicable court means an Australian court or a foreign court.

Note: Subsections (6) and (7) do not appear in the Evidence Act 1995 of the Commonwealth.

179. Proof of identity of convicted persons by affidavits by members of State or Territory police forces

(1) This section applies if a member of a police force of a State or Territory –

(a) makes an affidavit in the prescribed form; and

(b) states in the affidavit that he or she is a fingerprint expert for that police force.

(2) For the purpose of proving before a court the identity of a person alleged to have been convicted in that State or Territory of an offence, the affidavit is evidence in a proceeding that the person whose fingerprints are shown on a fingerprint card referred to in the affidavit and marked for identification –

(a) is the person referred to in a certificate of conviction, or certified copy of conviction annexed to the affidavit, as having been convicted of an offence; and

(b) was convicted of that offence; and

(c) was convicted of any other offence of which he or she is stated in the affidavit to have been convicted.

(3) For the purpose of this section, if a Territory does not have its own police force, the police force performing the policing functions of the Territory is taken to be the police force of the Territory.

180. Proof of identity of convicted persons by affidavits by members of the Australian Federal Police

(1) This section applies if a member of the Australian Federal Police –

(a) makes an affidavit in the prescribed form; and

(b) states in the affidavit that he or she is a fingerprint expert for the Australian Federal Police.

(2) For the purpose of proving before a court the identity of a person alleged to have been convicted of an offence against a law of the Commonwealth, the affidavit is evidence in a proceeding that the person whose fingerprints are shown on a fingerprint card referred to in the affidavit and marked for identification –

(a) is the person referred to in a certificate of conviction, or certified copy of conviction annexed to the affidavit, as having been convicted of an offence; and

(b) was convicted of that offence; and

(c) was convicted of any other offence of which he or she is stated in the affidavit to have been convicted.

181. Proof of service of statutory notifications, notices, orders and directions

(1) The service, giving or sending under an Australian law of a written notification, notice, order or direction may be proved by affidavit of the person who served, gave or sent it.

(2) A person who, for the purpose of a proceeding, makes an affidavit under subsection (1) is not, because of making the affidavit, excused from attending for cross-examination if required to do so by a party to the proceeding.

181A. Depositions on one charge admissible on trial of another

Depositions taken on the preliminary or other investigation of any charge of crime may be –

(a) read as evidence on the trial of the defendant for any other offence, although of a higher or different nature, if they would be admissible on the trial for the offence in respect of which they were taken; and

(b) proved in the same manner as if the defendant were on trial for that offence.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

CHAPTER 5 – MISCELLANEOUS

PART 1 – MISCELLANEOUS PROVISIONS

182. Application of certain sections in relation to Commonwealth records

Note: The Evidence Act 1995 of the Commonwealth includes a provision that extends the operation of certain provisions of that Act to Commonwealth records.

183. Inferences

If a question arises about the application of a provision of this Act in relation to a document or thing, the court may –

(a) examine the document or thing; and

(b) draw any reasonable inferences from it as well as from other matters from which inferences may properly be drawn.

184. Accused may admit matters and give consent

(1) In or before a criminal proceeding, a defendant may –

(a) admit matters of fact; and

(b) give any consent –

that a party to a civil proceeding may make or give.

(2) A defendant's admission or consent is not effective for the purposes of subsection (1) unless –

(a) the defendant has been advised to do so by his or her Australian legal practitioner or legal counsel; or

(b) the court is satisfied that the defendant understands the consequences of making the admission or giving the consent.

185. Full faith and credit to be given to documents properly authenticated

Note: The Evidence Act 1995 of the Commonwealth includes a provision requiring full faith and credit to be given to the public acts, records and judicial proceedings of a State or Territory.

186. Swearing of affidavits before justices of the peace, notaries public and lawyers

Note: The Evidence Act 1995 of the Commonwealth includes a provision about swearing of affidavits before justices of the peace, notaries public and lawyers for use in court proceedings involving the exercise of federal jurisdiction and in courts of a Territory.

187. No privilege against self-incrimination for bodies corporate

(1) This section applies if, under a law of the State or in a proceeding, a body corporate is required to –

(a) answer a question or give information; or

(b) produce a document or any other thing; or

(c) do any other act.

(2) A body corporate is not entitled to refuse or fail to comply with the requirement on the ground that answering the question, giving the information, producing the document or other thing or doing any other act might incriminate the body or make the body liable to a penalty.

188. Impounding documents

The court may direct that a document tendered or produced before the court, whether or not it is admitted in evidence, is to be impounded and kept in the custody of an officer of the court or of another person for any period and subject to any conditions the court thinks fit.

189. The voir dire

(1) If the determination of a question whether –

(a) evidence should be admitted, whether in the exercise of a discretion or not; or

(b) evidence can be used against a person; or

(c) a witness is competent or compellable –

depends on the court finding that a particular fact exists for the purposes of this section, the question whether that fact exists is a preliminary question.

(2) If there is a jury, a preliminary question whether –

(a) particular evidence is evidence of an admission or evidence to which section 138 applies; or

(b) evidence of an admission, or evidence to which section 138 applies, should be admitted –

is to be heard and determined in the jury's absence.

(3) In the hearing of a preliminary question about whether a defendant's admission should be admitted into evidence, whether in the exercise of a discretion or not, in a criminal proceeding, the issue of the admission's truth or untruth is to be disregarded unless the issue is introduced by the defendant.

(4) If there is a jury, the jury is not to be present at a hearing to decide any other preliminary question unless the court so orders.

(5) Without limiting the matters that the court may take into account in deciding whether to make such an order, it is to take into account –

(a) whether the evidence to be adduced in the course of that hearing is likely to be prejudicial to the defendant; and

(b) whether the evidence concerned will be adduced in the course of the hearing to decide the preliminary question; and

(c) whether the evidence to be adduced in the course of that hearing would be admitted if adduced at another stage of the hearing, other than in another hearing to decide a preliminary question or, in a criminal proceeding, a hearing in relation to sentencing.

(6) Section 128(10) does not apply to a hearing to decide a preliminary question.

(7) In the application of Chapter 3 to a hearing to determine a preliminary question, the facts in issue are taken to include the fact to which the hearing relates.

(8) If a jury in a proceeding was not present at a hearing to determine a preliminary question, evidence is not to be adduced in the proceeding of evidence given by a witness at the hearing unless –

(a) it is inconsistent with other evidence given by the witness in the proceeding; or

(b) the witness has died.

190. Waiver of rules of evidence

(1) In relation to particular evidence or generally, the court, if the parties consent, may by order dispense with the application of any one or more of the following provisions:

(a) Division 3, 4 or 5 of Part 1 of Chapter 2;

(b) Part 2 or 3 of Chapter 2;

(c) Parts 2, 3, 4, 5, 6, 7 and 8 of Chapter 3.

(2) In a criminal proceeding, a defendant's consent is not effective for the purpose of subsection (1) unless –

(a) the defendant has been advised to do so by his or her Australian legal practitioner or legal counsel; or

(b) the court is satisfied that the defendant understands the consequences of giving the consent.

(3) In a civil proceeding, the court may order that any one or more of the provisions specified in subsection (1) do not apply in relation to evidence if –

(a) the matter to which the evidence relates is not genuinely in dispute; or

(b) the application of those provisions would cause or involve unnecessary expense or delay.

(4) Without limiting the matters that the court may take into account in deciding whether to exercise the power conferred by subsection (3), it is to take into account –

(a) the importance of the evidence in the proceeding; and

(b) the nature of the cause of action or defence and the nature of the subject matter of the proceeding; and

(c) the probative value of the evidence; and

(d) the powers of the court, if any, to adjourn the hearing, to make another order or to give a direction in relation to the evidence.

191. Agreements as to facts

(1) In this section,

agreed fact means a fact that the parties to a proceeding have agreed is not, for the purpose of the proceeding, to be disputed.

(2) In a proceeding –

(a) evidence is not required to prove the existence of an agreed fact; and

(b) evidence may not be adduced to contradict or qualify an agreed fact –

unless the court gives leave.

(3) Subsection (2) does not apply unless the agreed fact –

(a) is stated in an agreement in writing signed by the parties or by Australian legal practitioners, legal counsel or prosecutors representing the parties and adduced in evidence in the proceeding; or

(b) with the leave of the court, is stated by a party before the court with the agreement of all other parties.

192. Leave, permission or direction may be given on terms

(1) If, because of this Act, a court may give any leave, permission or direction, the leave, permission or direction may be given on any terms the court thinks fit.

(2) Without limiting the matters that the court may take into account in deciding whether to give the leave, permission or direction, it is to take into account –

(a) the extent to which to do so would be likely to add unduly to, or to shorten, the length of the hearing; and

(b) the extent to which to do so would be unfair to a party or to a witness; and

(c) the importance of the evidence in relation to which the leave, permission or direction is sought; and

(d) the nature of the proceeding; and

(e) the power of the court, if any, to adjourn the hearing or to make another order or to give a direction in relation to the evidence.

192A. Advance rulings and findings

Where a question arises in any proceedings, being a question about –

(a) the admissibility or use of evidence proposed to be adduced; or

(b) the operation of a provision of this Act or another law in relation to evidence proposed to be adduced; or

(c) the giving of leave, permission or direction under section 192 –

the court may, if it considers it to be appropriate to do so, give a ruling or make a finding in relation to the question before the evidence is adduced in the proceedings.

193. Additional powers

(1) The powers of a court in relation to –

(a) the discovery or inspection of documents; and

(b) ordering disclosure and exchange of evidence, intended evidence, documents and reports –

extend to enabling the court to make any orders the court thinks fit, including orders about methods of inspection, adjournments and costs, to ensure that the parties to a proceeding can adequately, and in an appropriate manner, inspect documents of the kind referred to in paragraph (a) or (b) of the definition of *document*.

(2) The power of a person or body to make rules of court extends to making rules, not inconsistent with this Act or the regulations, prescribing matters –

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(3) Without limiting subsection (2), rules made under that subsection may provide for the discovery, exchange, inspection or disclosure of intended evidence, documents and reports of

persons intended to be called by a party to give evidence in a proceeding.

(4) Without limiting subsection (2), rules made under that subsection may provide for the exclusion of evidence, or for its admission on specified terms, if the rules are not complied with.

194. Witnesses failing to attend proceedings

(1) If a witness fails to appear when called in any civil proceedings or criminal proceedings and it is proved that he or she has been duly bound by recognisance, served with a summons or subpoena or issued with a final notice under the *Criminal Procedure (Attendance of Witnesses) Act 1996*, the court may –

(a) order the witness to show cause at those or later proceedings why execution of the recognisance or an attachment for disobedience to the summons, subpoena or final notice should not be issued against the witness; or

(b) if it is proved that the non-appearance is without just cause or reasonable excuse and that the witness will probably be able to give relevant evidence in the proceeding, issue a warrant to bring the witness before the court to give the evidence.

(2) Matters may be proved under this section orally or by affidavit.

(3) On return of an order to show cause under this section, the court may deal with the case in the same way as the Supreme Court would deal with an order to similar effect made by that Court.

Note: The Evidence Act 1995 of the Commonwealth does not include an equivalent provision to this section. There are provisions to the same effect in federal court rules and ACT legislation applying to proceedings before federal courts and ACT courts.

194A. Depositions under *Justices Act 1959*

(1) A deposition taken in any proceeding under Part VII of the *Justices Act 1959* may be produced and given in evidence at the trial of the person for or against whom it was taken if –

(a) the witness –

(i) is proved, to the satisfaction of the Supreme Court, to be dead, out of this State, insane, or so ill as not to be able to travel although there may be a prospect of recovery; or

(ii) is kept out of the way by the person accused; and

(b) the court is satisfied that the deposition was given before justices or received as evidence by justices.

(2) If there is a prospect of the recovery of a witness proved to be too ill to travel, the court is not

obliged to receive the deposition, but may postpone the trial and discharge the jury.

(3) The deposition of a witness taken before a coroner may be produced and given in evidence at the trial of any person who was present during the examination of the witness.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194B. Depositions of persons dangerously ill

(1) If a justice is satisfied that a person dangerously ill, unlikely to recover and unable to travel is able to give material and important information relating to any crime punishable on indictment, or to a person accused of such a crime, that may be lost unless given immediately the evidence of that person may be taken as provided under this section.

(2) A justice may take in writing the statement on oath of a person referred to in subsection (1) and add an endorsement specifying –

(a) the reason for taking the statement; and

(b) the day and place when and where the statement was taken; and

(c) the name of any person present at the taking of the statement.

(3) If any person likely to be affected by the statement is charged with a crime punishable on

indictment in relation to which the statement is to be taken, the justice, before taking the statement, is to –

(a) give to the person, if practicable, reasonable notice in writing of the time and place appointed for taking the statement; and

(b) allow the person or his attorney, if either is present at the time and place, full opportunity for cross-examining the deponent; and

(c) if it is not practicable to give the notice, give the person an opportunity to cross-examine the deponent upon the statement at a later date before the committal or trial of the person.

(4) If the justice who took the deposition is not available for the purpose referred to in subsection (3)(c), any justice authorised by the Attorney-General may act instead.

(5) If the statement is to be taken at the instance of any person charged or likely to be charged with a crime punishable by indictment to which the statement relates, notice of the intention to take the statement and the opportunity for cross-examination are to be given to the Attorney-General or Solicitor-General.

(6) The deposition is to be forwarded with the endorsement required by subsection (2) to the Attorney-General.

(7) A copy of the deposition is to be given to any person affected criminally by it as soon as practicable.

(8) The deposition may be produced and read as evidence, either for or against the accused, on the trial of any offender or offence to which it relates if –

(a) it is proved that the deponent is dead or that there is no reasonable probability that the deponent is ever able to travel or to give evidence; and

(b) the deposition purports to be signed by the justice by or before whom it purports to be taken; and

(c) it is shown to the satisfaction of the court by the contents of the deposition or an attached statement of the justice before whom it is taken or otherwise –

(i) that the person against whom it is proposed to read the deposition, or his or her attorney, had or might have had, if the person had chosen to be present, full opportunity of cross-examining the deponent; or

(ii) if that person is not shown to have been present or represented by attorney at the taking of the deposition, that reasonable notice in writing of the intention to take the deposition was given to that

person, having regard to the urgency of the circumstances, to have enabled that person to be present; or

(iii) that it was not practicable to give that person an opportunity to cross-examine the deponent.

(9) The fact that the person against whom the deposition is to be read did not receive the notice referred to in subsection (8)(c)(ii) does not prevent the admissibility of the deposition if the court is satisfied that the person had an opportunity for cross-examining the deponent.

(10) This section does not render inadmissible in evidence any admissible dying declaration.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194C. Power of court or judge to order examination of witnesses on interrogatories or otherwise

(1) In any action or other proceeding in a court, other than a criminal proceeding, the court or judge, on application of any party to the proceeding, may by rule or order direct –

(a) that any witness within the jurisdiction of the court be examined on oath or on affirmation, either *viva voce* or upon interrogatories or otherwise, before an

officer of the court or other person to be named in the rule or order; or

(b) that a commission do issue for the examination of witnesses on oath or on affirmation, either *viva voce* or upon interrogatories or otherwise, at any place within or outside the jurisdiction of the court.

(2) The court or judge, by the same or any subsequent rule or order, may give any directions relating to the time, place and manner of the examination within or outside the jurisdiction, and any other matters and circumstances connected with the examination as appears reasonable and just.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194D. Parties

A rule or order under section 194C is not to be made with respect to a witness who is a party to the action or proceeding, on the ground of his or her intended departure from Tasmania, unless it –

(a) is shown to the satisfaction of the court or judge that the departure is urgently required by unavoidable circumstances or some unexpected emergency; and

(b) the examination is not sought in order to avoid cross-examination before the court or a jury.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194E. Compelling attendance of witnesses or production of documents

(1) If any rule or order is made under section 194C –

(a) for the examination of any witness; or

(b) for the issue of a commission for an examination of witnesses within the jurisdiction of the court –

the court or judge, by that rule or order or any subsequent rule or order, may order the attendance of any person named in the rule or order for the purpose of being examined, or the production of any document specified in the order or rule, and may direct the attendance of the person to be at his or her own place of abode, or elsewhere, if necessary or convenient so to do.

(2) If any person served with a copy of the rule or order (whether the copy is served personally or by being left at his or her usual place of abode), without reasonable excuse, disobeys the rule or order, the person is liable as for contempt of court, and –

(a) in the case of the Supreme Court or a judge of the Supreme Court, proceedings may be had by attachment; and

(b) in any other case, it is lawful for the court or a judge, if it or he or she thinks fit, by a warrant under the hand of a registrar, to commit the offender to any gaol for 3 months, or to impose a fine not exceeding 5 penalty units and, in default of payment, to commit the offender to any gaol for 3 months unless the fine is paid.

(3) A person is not compelled to produce under the rule or order any document that he or she would not be compellable to produce at the trial.

(4) Any person whose attendance is required is entitled to the same conduct money and payment for expenses and loss of time as upon attendance at a trial.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194F. Examinations of witnesses to be taken on oath

(1) Any person authorised by any rule, order or commission under section 194C to take the examination of any witness is to take the examination of the witness on oath or on affirmation to be administered by the person so authorised or by a judge.

(2) Any witness who, on oath or affirmation, wilfully gives any false evidence is guilty of perjury and is liable to the punishment as by law may be inflicted for that offence.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194G. Persons appointed for taking examinations to report on conduct or absence of witnesses if necessary

(1) Any person authorised by any rule, order or commission under section 194C to take an examination within the jurisdiction may, and if necessary must, make a special report to the court in respect of the examination and the conduct or absence of any witness or other person.

(2) The court may institute any proceedings and make any order upon the report as justice requires and as may be instituted and made in any case of contempt of court.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194H. Costs of examination may be made costs in the cause

The costs of every rule, order or commission under section 194C and of the proceedings following are costs in the cause, unless otherwise

directed by the judge making the rule or order, or by the judge before whom the cause may be had, or by the court in which the action or proceeding is depending.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194I. Provisions relating to reading of examinations

(1) The examination of any witness under a rule, order or commission under section 194C may be read in evidence at the hearing, except just exceptions, unless it appears to the satisfaction of the court or judge at the hearing that the witness is within the jurisdiction and is able to attend the hearing.

(2) If the examination appears to be certified under the hand of the person authorised to take it, proof is not necessary of the signature of the person.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194J. Printing and publication of certain evidence prohibited

(1) If a court is of the opinion that the printing or publication of any evidence or argument or particulars of any evidence or argument in a case before it may prejudice, or is likely to prejudice, the fair trial of the case, the court may forbid the

printing or publication of the evidence, argument or particulars.

(2) A person who prints or publishes or causes to be printed or published anything in contravention of subsection (1) commits a contempt of court and is liable to punishment for that contempt as if it had been committed in the face of the court against which the contempt is committed.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194K. Publication of certain identifying particulars prohibited

(1) A person, in relation to any proceedings in any court, must not publish identifying information, or cause identifying information to be published, in respect of –

(a) if a crime is alleged to have been committed under section 133 of the *Criminal Code* –

(i) any person in respect of whom the crime is alleged to have been committed; or

(ii) any defendant in respect of those proceedings; or

(iii) any witness or intended witness in those proceedings; or

(b) if a crime is alleged to have been committed under section 124, 124A, 124B, 124C, 125, 125A, 125B, 126, 127, 129, 185 or 186 of the *Criminal Code* –

(i) any person in respect of whom the crime is alleged to have been committed; or

(ii) any witness or intended witness, other than the defendant, in those proceedings; or

(ba) if a crime is alleged to have been committed under section 170A of the *Criminal Code* and the accused person is alleged, in the commission of that crime, to have committed a sexual offence in relation to his or her spouse or partner –

(i) any person in respect of whom the crime is alleged to have been committed; or

(ii) any witness or intended witness, other than the defendant, in those proceedings; or

(c) if an offence is alleged to have been committed under section 35(3) of the *Police Offences Act 1935* –

(i) any person in respect of whom the offence is alleged to have been committed; or

(ii) any witness or intended witness, other than the defendant, in those proceedings.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 400 penalty units; or

(b) an individual, a fine not exceeding 60 penalty units or imprisonment for a term not exceeding 12 months, or both.

(2) Subsection (1) applies to the publication of identifying information in respect of a person referred to in that subsection, whether or not criminal proceedings in respect of the relevant crime or offence are, or have been, finally determined or otherwise disposed of.

(3) It is a defence in proceedings for an offence against subsection (1) if the defendant establishes –

(a) that the publication of the information is in accordance with a court order made for the purposes of this section; or

(b) that –

(i) the identifying information that is published relates to a person referred to in subsection (1)(a)(i), (b)(i) or (c)(i); and

(ii) the person has consented, in accordance with subsection (4), to the publication of identifying information in respect of the person; and

(iii) the identifying information is published in accordance with that consent; and

(iv) the publication of the information does not identify, or is not likely to lead to the identification of, another person referred to in subsection (1)(a), (b) or (c), other than the defendant to the relevant crime or offence, unless the other person –

(A) is also a person referred to in subsection (1)(a)(i), (b)(i) or (c)(i) in respect of the relevant crime or offence; and

(B) has also consented, in accordance with subsection (4), to the publication of the identifying information; and

(v) the information was published only after the criminal proceedings in court, in respect of the relevant alleged crime or

offence, were finally determined or otherwise disposed of.

(4) For the purposes of subsection (3)(b), a person has consented to the publication of identifying information in respect of the person if the person –

(a) had attained the age of 18 years at the time –

(i) the person gave the consent; and

(ii) the identifying information was so published; and

(b) had consented, in writing, to the publication of the identifying information before the information was published; and

(c) understood, at the time the consent was given, that he or she may be identified, or identifiable, as a result of the publication of the identifying information; and

(d) was not coerced into consenting, in accordance with this subsection, to the publication of the identifying information.

(5) A court may make an order, for the purposes of this section, providing for the publication of identifying information in respect of a person referred to in subsection (1), if the court is satisfied that –

(a) each living person referred to in subsection (1)(a)(i), (b)(i) or (c)(i), who is likely to be identified, or identifiable, as a result of information being published in accordance with the order –

(i) has been consulted in respect of the order; and

(ii) understands that he or she may be identified if the order is made and information is published in accordance with the order; and

(b) if a person referred to in subsection (1)(a)(i), (b)(i) or (c)(i) is deceased and is likely to be identified, or identifiable, as a result of information being published in accordance with the order, the next of kin, or legal representative, of the deceased person –

(i) has been consulted in respect of the order; and

(ii) has been given a reasonable opportunity to inform the court of the wishes of the deceased person, if known, in respect of being identified, or identifiable, if the order is made and information is published in accordance with the order; and

(c) it is in the public interest to do so.

(6) A court may make an order, for the purposes of this section, subject to any specified conditions, including the means by which identifying information may be published under the order.

(7) If a person referred to in subsection (1)(a)(i), (b)(i) or (c)(i) in respect of a crime, or offence, applies for a court order for the purposes of this section in respect of the crime or offence, the person is not required to pay the relevant application fee in respect of the application.

(8) A person who publishes, or causes to be published, any identifying information in contravention of this section –

(a) commits a contempt of court; and

(b) if not prosecuted for the contravention under subsection (1) in respect of the publication, is liable to punishment for that contempt as if it had been committed in the face of the court against which the contempt is committed.

(9) In this section –

identifying information, in relation to a person, includes –

(a) the name, address, school, place of employment and any other reference or allusion that identifies, or is likely to lead to the identification of, the person; and

(b) a picture or image of the person;

publish means to make available to the public, or a section of the public, by any means, including but not limited to –

(a) publication in a newspaper, journal, periodical, book or other document; and

(b) broadcast by radio, television, wireless or other telegraphy; and

(c) publication or broadcast, by means of the internet, in any format; and

(d) in print, or electronic, communication meant for one or more persons; and

(e) public exhibition, spectacle or event; and

(f) such other prescribed means of making information available to the public.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194L. Publication of evidence in certain civil cases prohibited

The court may forbid the publication of any evidence or argument, or any particulars of any

evidence or argument, in any civil case before it that involves an allegation of any kind of sexual assault if it is of the opinion that the printing or publication of the evidence, argument or particulars may cause a witness to be degraded, distressed or humiliated.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

194M. Evidence relating to sexual experience

(1) In any proceedings before a magistrate or court relating to a crime charged under section 170A, Chapter XIV, Chapter XIVA or Chapter XX of the *Criminal Code* or any offence under section 35(3) of the *Police Offences Act 1935*, including proceedings for the sentencing of the defendant, any evidence that discloses or implies –

(a) the sexual reputation of the person against whom the crime or offence is alleged to have been committed must not be adduced or elicited; and

(b) the sexual experience of that person, other than sexual experience which forms part of the events or circumstances out of which the charge arises, must not be adduced or elicited unless leave of the magistrate or judge is first obtained on application made in the absence of any jury.

(2) A magistrate or judge must not grant leave unless satisfied that –

(a) the evidence sought to be adduced or elicited has direct and substantial relevance to a fact or matter in issue; and

(b) the probative value of that evidence outweighs any distress, humiliation or embarrassment which the person against whom the crime or offence is alleged to have been committed might suffer as a result of the admission of that evidence.

(3) For the purpose of subsection (2)(a), evidence does not have direct and substantial relevance to a fact or matter in issue if it is relevant only to the credibility of the person against whom the crime or offence is alleged to have been committed.

(4) For the purpose of subsection (2)(b), the magistrate or judge must take into account the following matters in assessing the amount of the distress, humiliation or embarrassment which the person against whom the crime or offence is alleged to have been committed might suffer as a result of the admission of the evidence:

(a) the age of that person;

(b) the number and the nature of the questions likely to be put to that person.

(5) If the magistrate or judge admits evidence of sexual experience, he or she must give reasons

addressing each of the requirements for admissibility specified in that subsection.

(6) In this section, a reference to sexual experience includes a reference to –

(a) any sexual activity or sexual behaviour of that person; and

(b) the disposition of that person in sexual matters; and

(c) the lack of sexual experience of that person.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

195. Prohibited question not to be published

A person, without the permission of a court, must not print or publish –

(a) any question that the court disallowed under section 41; or

(b) any question that the court disallowed because any answer that is likely to be given to the question would contravene the credibility rule; or

(c) any question in respect of which the court refused to give leave under Part 7 of Chapter 3.

Penalty: Fine not exceeding 60 penalty units.

196. Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily.

196A. Medical examination of injured person

(1) If proceedings are taken against a defendant in respect of any injury sustained by another person –

(a) a medical practitioner appointed by the defendant is entitled, on demand of the defendant, to examine the injured person; and

(b) the injured person and any other party to the proceedings is to give the medical practitioner any facilities and information necessary to enable the medical practitioner to ascertain fully the nature and extent of the injury.

(2) If the injured person fails –

(a) to submit to an examination by a medical practitioner appointed by the defendant; or

(b) to give to the medical practitioner any facilities and information required under this section –

the court in which the proceedings are taken, whether commenced before or after the making of a demand under subsection (1), may, on the application of the defendant, order that the

proceedings be stayed until the injured person submits to the examination, or gives the facilities and information, subject to such other conditions as the court may order.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

196B. Certain errors not avoid conviction

A conviction, whether upon indictment or summary, is not to be set aside on the ground of the improper admission of evidence –

(a) if it appears to the court that the evidence was not material; or

(b) upon the ground of the improper admission of evidence adduced for the defence.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

196C. Inspection of realty or personalty

(1) Any party to any proceeding may apply to a court, judge or person acting judicially for a rule or order for the inspection of any real or personal property if the inspection may be material to the proper determination of the question in dispute or the making of any inquiry.

(2) A court, judge or person acting judicially may make any rule or order on any terms as to costs and otherwise as the court, judge or person directs.

(3) This section does not affect the provisions of any Act relating to obtaining a view by jury.

Note: This section does not appear in the Evidence Act 1995 of the Commonwealth.

PART 2 – ADMINISTRATIVE PROVISIONS

197. Regulations

(1) The Governor may make regulations for the purpose of this Act.

(2) The regulations may –

(a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(3 - 4) . . . . . .

198. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and

(b) the department responsible to that Minister in relation to the administration

of this Act is the Department of Justice and Industrial Relations.

199. Repeals

(1) The *Evidence Act 1910* is repealed.

(2) The *Evidence Amendment Act 1997* is repealed.

200. Savings, transitional and other provisions

Schedule 2 has effect.

SCHEDULE 1 – OATHS AND AFFIRMATIONS

Sections 21(4) and 22(2)

Form 1 – Oath for witnesses

Do you swear by Almighty God *(or by a god recognised by your religion)* that the evidence you shall give will be the truth, the whole truth and nothing but the truth ?

Form 2 – Oath for interpreters

Do you swear by Almighty God *(or by a god recognised by your religion)* that you will well and truly interpret the evidence that will be given and do all other matters and things that are required of you in this case to the best of your ability ?

Form 3 – Affirmation for witnesses

Do you solemnly and sincerely declare and affirm that the evidence you shall give will be the truth, the whole truth and nothing but the truth ?

Form 4 – Affirmation for interpreters

Do you solemnly and sincerely declare and affirm that you will well and truly interpret the evidence that will be given and do all other matters and things that are required of you in this case to the best of your ability ?

SCHEDULE 2 – SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Section 200

PART 1 – PRELIMINARY

1. Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may take effect on and from the day on which this Act commences or a later day.

PART 2 – PROVISIONS CONSEQUENT ON THE ENACTMENT OF THE *EVIDENCE AMENDMENT ACT 2010*

1. Interpretation

In this Part –

the amending Act means the *Evidence Amendment Act 2010*.

2. Proceedings already begun

(1) Subject to this Part, an amendment made to this Act by the amending Act does not apply in relation to proceedings the hearing of which began before the commencement of the amendment.

(2) This Act, as in force immediately before the commencement of the amendment, continues to apply in relation to proceedings the hearing of which began before that commencement.

3. Admissions

(1) The amendment made by the amending Act to section 85 does not apply in relation to admissions made before the commencement of the amendment.

(2) Section 85, as in force immediately before the commencement of the amendment, continues to apply in relation to admissions made before that commencement.

4. Failure or refusal to answer questions &c.

(1) The amendment made by the amending Act to section 89 does not apply in relation to any failure or refusal, before the commencement of the amendment –

(a) to answer one or more questions; or

(b) to respond to a representation.

(2) Section 89, as in force immediately before the commencement of the amendment, continues to apply in relation to any such refusal or failure before that commencement.

5. Prior operation of notice provisions

If, before the commencement of an amendment made to section 97 or 98 by the amending Act, a notice of the kind referred to in section 97 or 98 is given –

(a) in the circumstances provided for in the section concerned; and

(b) in accordance with such requirements (if any) as would apply to the giving of the notice under that section after that commencement –

the notice is taken to have been given under that section as in force after that commencement.

6. Disclosure orders

Section 128A, as inserted by the amending Act, does not apply in relation to any disclosure order made before the commencement of that section.

7. Disclosure requirements

Section 131A, as inserted by the amending Act, does not apply in relation to any disclosure requirement made before the commencement of that section.

NOTES

The foregoing text of the *Evidence Act 2001* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 20 November 2026 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
Evidence Act 2001	No. 76 of 2001	1.7.2002
Evidence Amendment Act 2002	No. 40 of 2002	27.11.2002
Justice (Miscellaneous Amendments) Act 2003	No. 69 of 2003	15.12.2003
Relationships (Consequential Amendments) Act 2003	No. 45 of 2003	1.1.2004
Family Violence Act 2004	No. 67 of 2004	30.3.2005
Legal Profession (Miscellaneous and Consequential Amendments) Act 2007	No. 66 of 2007	31.12.2008
Evidence Amendment Act 2010	No. 46 of 2010	1.1.2011
Surrogacy (Consequential Amendments) Act 2012	No. 31 of 2012	1.5.2013
Forest Management (Consequential Amendments) Act 2013	No. 50 of 2013	11.12.2013
Justice and Related Legislation (Miscellaneous Amendments) Act 2017	No. 29 of 2017	5.9.2017
Evidence and Related Legislation Amendment Act 2017	No. 49 of 2017	12.12.2017
Justice and Related Legislation (Miscellaneous Amendments) Act 2018	No. 29 of 2018	10.12.2018
Evidence Amendment Act 2020	No. 7 of 2020	6.4.2020
Criminal Code Amendment (Sexual Abuse Terminology) Act 2020	No. 8 of 2020	6.4.2020
Family Violence Reforms Act 2022	No. 21 of 2022	22.12.2022
Justice Miscellaneous (Royal Commission Amendments) Act 2023	No. 2 of 2023	20.4.2023
Justice Miscellaneous (Commission of Inquiry) Act 2024	No. 17 of 2024	1.11.2024
Justice and Related Legislation	No. 25 of 2026	20.11.2026

Act	Number and year	Date of commencement
(Miscellaneous Amendments) Act 2026		

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 69 of 2003, Sched. 1, No. 45 of 2003, Sched. 1, No. 66 of 2007, Sched. 1, No. 46 of 2010, s. 4, No. 31 of 2012, s. 12, No. 2 of 2023, s. 19 and No. 17 of 2024, s. 22
Section 3B	Amended by No. 46 of 2010, s. 5
Section 13	Substituted by No. 46 of 2010, s. 6
Section 14	Amended by No. 46 of 2010, s. 7
Section 18	Amended by No. 45 of 2003, Sched. 1
Section 19	Amended by No. 69 of 2003, Sched. 1, No. 45 of 2003, Sched. 1, No. 67 of 2004, Sched. 1, No. 2 of 2023, s. 20 and No. 17 of 2024, s. 23
Section 20	Amended by No. 45 of 2003, Sched. 1
Section 21	Amended by No. 46 of 2010, s. 8
Section 29	Amended by No. 46 of 2010, s. 9
Section 33	Amended by No. 46 of 2010, s. 10
Section 37	Amended by No. 46 of 2010, s. 11
Section 41	Substituted by No. 46 of 2010, s. 12
Section 50	Amended by No. 46 of 2010, s. 13
Section 59	Amended by No. 46 of 2010, s. 14
Section 60	Substituted by No. 46 of 2010, s. 15
Section 61	Amended by No. 46 of 2010, s. 16
Section 62	Amended by No. 46 of 2010, s. 17
Section 64	Amended by No. 46 of 2010, s. 18
Section 65	Amended by No. 46 of 2010, s. 19
Section 66	Amended by No. 46 of 2010, s. 20
Section 66A	Inserted by No. 46 of 2010, s. 21
Section 71	Substituted by No. 46 of 2010, s. 22
Section 72	Substituted by No. 46 of 2010, s. 22
Section 78A	Inserted by No. 46 of 2010, s. 23
Section 79	Substituted by No. 46 of 2010, s. 24
Section 79A	Repealed by No. 46 of 2010, s. 25
Section 85	Amended by No. 46 of 2010, s. 26
Section 85A	Amended by No. 69 of 2003, Sched. 1
Section 89	Amended by No. 46 of 2010, s. 27
Section 94	Amended by No. 2 of 2023, s. 21
Section 97	Amended by No. 46 of 2010, s. 28
Section 97A	Inserted by No. 2 of 2023, s. 22
Section 98	Substituted by No. 46 of 2010, s. 29 Amended by No. 2 of 2023, s. 23
Section 101	Amended by No. 49 of 2017, s. 6 and No. 2 of 2023, s. 24
Part 7 of Chapter	Substituted by No. 46 of 2010, s. 30

Provision affected	How affected
3	
Division 1 of Part 7 of Chapter 3	Inserted by No. 46 of 2010, s. 30
Section 101A	Inserted by No. 46 of 2010, s. 30
Division 2 of Part 7 of Chapter 3	Inserted by No. 46 of 2010, s. 30
Section 102	Substituted by No. 46 of 2010, s. 30
Section 103	Substituted by No. 46 of 2010, s. 30
Section 104	Substituted by No. 46 of 2010, s. 30
Section 105	Substituted by No. 46 of 2010, s. 30
Section 106	Substituted by No. 46 of 2010, s. 30
Section 107	Substituted by No. 46 of 2010, s. 30
Section 108	Substituted by No. 46 of 2010, s. 30
Division 3 of Part 7 of Chapter 3	Inserted by No. 46 of 2010, s. 30
Section 108A	Inserted by No. 46 of 2010, s. 30
Section 108B	Inserted by No. 46 of 2010, s. 30
Division 4 of Part 7 of Chapter 3	Inserted by No. 46 of 2010, s. 30
Section 108C	Inserted by No. 46 of 2010, s. 30
Section 112	Amended by No. 46 of 2010, s. 31
Section 117	Amended by No. 46 of 2010, s. 32
Section 118	Amended by No. 46 of 2010, s. 33
Section 122	Substituted by No. 46 of 2010, s. 34
Division 1A of Part 10 of Chapter 3	Inserted by No. 46 of 2010, s. 35
Section 126A of Part 10 of Chapter 3	Inserted by No. 46 of 2010, s. 35
Section 126B of Part 10 of Chapter 3	Inserted by No. 46 of 2010, s. 35
Section 126C of Part 10 of Chapter 3	Inserted by No. 46 of 2010, s. 35
Section 126D of Part 10 of Chapter 3	Inserted by No. 46 of 2010, s. 35
Section 126E of Part 10 of Chapter 3	Inserted by No. 46 of 2010, s. 35
Section 126F of Part 10 of Chapter 3	Inserted by No. 46 of 2010, s. 35
Section 128	Substituted by No. 46 of 2010, s. 36
Section 128A	Inserted by No. 46 of 2010, s. 37
Section 131A	Inserted by No. 46 of 2010, s. 38

Provision affected	How affected
Part 11 of Chapter 3	Heading amended by No. 46 of 2010, s. 39
Section 139	Amended by No. 46 of 2010, s. 40
Section 148	Amended by No. 46 of 2010, s. 41
Section 160	Amended by No. 29 of 2017, Sched. 1 and No. 29 of 2018, s. 32
Section 161	Substituted by No. 46 of 2010, s. 42
Section 164	Amended by No. 46 of 2010, s. 43
Part 5 of Chapter 4	Heading amended by No. 46 of 2010, s. 44
Section 165	Amended by No. 46 of 2010, s. 45
Section 165A	Inserted by No. 46 of 2010, s. 46
Section 165B	Inserted by No. 46 of 2010, s. 46
Section 177D	Amended by No. 50 of 2013, Sched. 1
Section 184	Substituted by No. 46 of 2010, s. 47
Section 189	Amended by No. 46 of 2010, s. 48
Section 190	Amended by No. 46 of 2010, s. 49
Section 191	Amended by No. 46 of 2010, s. 50
Section 192A	Inserted by No. 46 of 2010, s. 51
Section 194K	Amended by No. 40 of 2002, s. 4 and No. 69 of 2003, Sched. 1 Substituted by No. 7 of 2020, s. 4 Amended by No. 21 of 2022, s. 24, No. 2 of 2023, s. 25 and No. 17 of 2024, s. 24
Section 194M	Amended by No. 8 of 2020, s. 11 and No. 25 of 2026, s. 11
Section 197	Amended by No. 46 of 2010, s. 52
Section 200	Inserted by No. 46 of 2010, s. 53
Schedule 2	Inserted by No. 46 of 2010, s. 54