

# TASMANIA

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## **EVIDENCE REGULATIONS 2022**

### **STATUTORY RULES 2022, No. 18**

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## **EVIDENCE REGULATIONS 2022**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Evidence Act 2001*.

Dated 2 May 2022.

B. BAKER  
Governor

By Her Excellency's Command,

ELISE ARCHER  
Minister for Justice

### **1. Short title**

These regulations may be cited as the *Evidence Regulations 2022*.

### **2. Commencement**

These regulations take effect on the day on which their making is notified in the *Gazette*.

### **3. Interpretation**

(1) In these regulations –

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*Act* means the *Evidence Act 2001*;

*address* includes a private, business and official address;

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

- (2) In these regulations, a reference to a Form is a reference to a form set out in Schedule 1.

**4. Exceptions to hearsay rule – notices of previous representations**

- (1) This regulation is made for the purposes of section 67 of the Act.
- (2) A notice of previous representation must state –
- (a) subject to subregulation (6), the substance of evidence of a previous representation that the notifying party intends to adduce; and
  - (b) the substance of all other relevant representations made by the person who made that previous representation, so far as they are known to the notifying party; and
  - (c) particulars of –
    - (i) the date, time, place and circumstances at or in which each of the representations mentioned in paragraph (a) or (b) was made; and

- (ii) the names of the persons by whom, and the persons to whom, each of those representations was made; and
  - (iii) in a civil proceeding, the address of each person so named, so far as they are known to the notifying party.
- (3) If a notifying party intends to rely on –
  - (a) section 63(2)(a) or (b) of the Act; or
  - (b) section 65(2)(a), (b), (c) or (d) of the Act; or
  - (c) section 65(3)(a) or (b) of the Act; or
  - (d) section 65(8)(a) or (b) of the Act –

the party's notice of previous representation must state particulars of the facts that the party will rely on to establish that a person who made a representation referred to in the notice is not available to testify.
- (4) If a notifying party intends to rely on section 64(2)(a) or (b) of the Act, the party's notice of previous representation must state particulars of the facts that the party will rely on to establish the grounds specified in section 64(2) of the Act.
- (5) If a notice of previous representation refers to a previous representation that is in writing –
  - (a) a copy of the document, or of the relevant portion of the document,

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containing the representation must be attached to the notice; and

(b) the notice must identify the document unless –

(i) a copy of the document is attached to the notice; and

(ii) the identity of the document is apparent on the face of the copy.

(6) If a copy of a document, or of a portion of a document, is attached to a notice of previous representation, it is a sufficient compliance for the purposes of subregulation (2)(a) to specify in the notice, or in the copy of a document or portion of a document attached to the notice, the representation evidence of which the notifying party intends to adduce.

(7) On the application of a party in a criminal proceeding, the court may make an order directing the notifying party to disclose the address of any person named in a notice given under this regulation by whom, or to whom, a representation referred to in the notice was made.

(8) The direction may be given on such terms as the court thinks fit.

(9) In this regulation –

***notice of previous representation*** means a notice given under section 67(1).

**5. The tendency rule and the coincidence rule – form of notices**

- (1) This regulation is made for the purposes of section 99 of the Act.
- (2) A notice given under section 97(1)(a) of the Act (relating to the tendency rule) must state –
  - (a) the substance of the evidence, of the kind referred to in section 97(1) of the Act, that the party giving the notice intends to adduce; and
  - (b) if that evidence consists of, or includes, evidence of the conduct of a person, particulars of –
    - (i) the date, time, place and circumstances at or in which the conduct occurred; and
    - (ii) the name of each person who saw, heard or otherwise perceived the conduct; and
    - (iii) in a civil proceeding, the address of each person so named, so far as they are known to the notifying party.
- (3) A notice given under section 98(1)(a) of the Act (relating to the coincidence rule) must state –
  - (a) the substance of the evidence of the occurrence of 2 or more related events

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that the party giving the notice intends to adduce; and

(b) particulars of –

(i) the date, time, place and circumstances at or in which each of those events occurred; and

(ii) the name of each person who saw, heard or otherwise perceived each of those events; and

(iii) in a civil proceeding, the address of each person so named, so far as they are known to the notifying party.

(4) On the application of a party in a criminal proceeding, the court may make an order directing the notifying party to disclose the address of any person named in a notice given under this regulation who saw, heard or otherwise perceived conduct or events referred to in the notice.

(5) The direction may be given on such terms as the court thinks fit.

**6. Privilege against self-incrimination – form of certificate**

(1) A certificate under section 128 or 128A of the Act may be in accordance with Form 1.

- (2) A certificate is not liable to be called into question by reason of its non-compliance with Form 1.

**7. Privilege against self-incrimination – prescribed State and Territory provisions**

- (1) The following provisions of State and Territory laws are declared to be prescribed State and Territory provisions for the purposes of section 128(12) of the Act:
- (a) section 128 of the *Evidence Act 2011* of the Australian Capital Territory;
  - (b) section 61 of the *Coroners Act 2009* of New South Wales;
  - (c) section 128 of the *Evidence Act 1995* of New South Wales;
  - (d) section 128 of the *Evidence Act 2004* of Norfolk Island;
  - (e) section 128 of the *Evidence (National Uniform Legislation) Act 2011* of the Northern Territory;
  - (f) section 23A of the *Coroners Act 2003* of South Australia;
  - (g) section 57 of the *Coroners Act 2008* of Victoria;
  - (h) section 128 of the *Evidence Act 2008* of Victoria;

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- (i) section 47 of the *Coroners Act 1996* of Western Australia;
  - (j) section 11 of the *Evidence Act 1906* of Western Australia.
- (2) The following provisions of State and Territory laws are declared to be prescribed State and Territory provisions for the purposes of section 128A(11) of the Act:
  - (a) section 128A of the *Evidence Act 2011* of the Australian Capital Territory;
  - (b) section 128A of the *Evidence Act 1995* of New South Wales;
  - (c) section 128A of the *Evidence (National Uniform Legislation) Act 2011* of the Northern Territory;
  - (d) section 128A of the *Evidence Act 2008* of Victoria.

**8. Fingerprint evidence of identity – affidavits by State or Territory police officers**

For the purposes of section 179(1)(a) of the Act, the prescribed form of affidavit is Form 2.

**9. Fingerprint evidence of identity – affidavits by Australian Federal Police officers**

For the purposes of section 180(1)(a) of the Act, the prescribed form of affidavit is Form 3.

**10. Legislation rescinded**

The legislation specified in Schedule 2 is rescinded.

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**SCHEDULE 1 – FORMS**

Regulation 3(2)

**Form 1**

Regulation 6

*Evidence Act 2001*

**CERTIFICATE UNDER SECTION 128 OR 128A**

*[Set out heading to action or matter]*

This Court certifies under section 128\*/128A\* of the *Evidence Act 2001* of Tasmania that evidence in these proceedings by *[state name of witness]* on *[state date or dates]*, a record of which is attached to this certificate, is evidence\*/information\* to which section 128(7)\*/128A(8)\* of that Act applies.

*A transcript, or other record, of the evidence is to be attached to this certificate, and duly authenticated by the Court or its proper officer.*

Dated:

L.S.  
(affix seal)

.....  
Judge or Magistrate of the Court

\*Delete as appropriate.

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**Form 2**

**Regulation 8**

*Evidence Act 2001*

**AFFIDAVIT OF MEMBER OF STATE OR TERRITORY  
POLICE FORCE CONCERNING FINGERPRINTS –  
SECTION 179**

*[Set out heading to action or matter]*

I, *[name of deponent]* of *[address of deponent]*, a member of the police force of *[State or Territory]*, make oath and say\*/affirm\*:

1. I am a fingerprint expert for the police force of *[State or Territory]*.
2. I have examined the fingerprint card marked for identification with the letter "A".
3. I have compared the fingerprints shown on that card with the fingerprints shown on the fingerprint card in the records held by the police force of *[State or Territory]* showing the fingerprints of *[name of person and alias, if any]*.
4. The fingerprints on those cards are identical.
5. According to the records of the police force of *[State or Territory]*, which I believe to be accurate, *[name of person]* was convicted in that State\*/Territory\* of the following offences:
6. Annexed to this affidavit and marked with the letters *[insert an alphabetical sequence of letters, commencing at "B", corresponding to the number of annexures]* are certified copies or certificates of conviction for each of those convictions.

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7. From an examination of the records referred to above, I believe that the person referred to in each annexed certified copy or certificate as having been convicted of the offence stated in it is identical with the person whose fingerprints are shown on the fingerprint cards referred to in item 3 of this affidavit.

SWORN\*/AFFIRMED\*

by the deponent at *[place]*

this                      day of *[month and year]*

Before me:

.....  
(signature)

A Justice of the Peace\*/notary  
public\*/lawyer\*/person authorised to  
take affidavits in Tasmania\*

.....  
(signature)

Deponent

\*Delete as appropriate.

**Form 3**

**Regulation 9**

*Evidence Act 2001*

**AFFIDAVIT OF MEMBER OF AUSTRALIAN  
FEDERAL POLICE CONCERNING FINGERPRINTS –  
SECTION 180**

*[Set out heading to action or matter]*

I, *[name of deponent]* of *[address of deponent]*, a member\*/special member\*/staff member\* of the Australian Federal Police, make oath and say\*/affirm\*:

1. I am a fingerprint expert for the Australian Federal Police.
2. I have examined the fingerprint card marked for identification with the letter "A".
3. I have compared the fingerprints shown on that card with the fingerprints shown on the fingerprint card in the records held by the Australian Federal Police showing the fingerprints of *[name of person and alias, if any]*.
4. The fingerprints on those cards are identical.
5. According to the records of the Australian Federal Police, which I believe to be accurate, *[name of person]* was convicted of the following offences against a law of the Commonwealth:
6. Annexed to this affidavit and marked with the letters *[insert an alphabetical sequence of letters, commencing at "B", corresponding to the number of annexures]* are certified copies or certificates of conviction for each of those convictions.

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7. From an examination of the records referred to above, I believe that the person referred to in each annexed certified copy or certificate as having been convicted of the offence stated in it is identical with the person whose fingerprints are shown on the fingerprint cards referred to in item 3 of this affidavit.

SWORN\*/AFFIRMED\*

by the deponent at *[place]*

this                      day of *[month and year]*

Before me:

.....  
(signature)

A Justice of the Peace\*/notary  
public\*/lawyer\*/person authorised to  
take affidavits in Tasmania\*

.....  
(signature)

Deponent

\*Delete as appropriate.

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**SCHEDULE 2 – LEGISLATION RESCINDED**

Regulation 10

*Evidence Regulations 2012* (No. 26 of 2012)

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 11 May 2022.

These regulations are administered in the Department of Justice.

**EXPLANATORY NOTE**

*(This note is not part of the regulations)*

These regulations –

- (a) prescribe notices, forms, certificates and affidavits for the purposes of the *Evidence Act 2001*; and
- (b) rescind the *Evidence Regulations 2012*.