

# NORTHERN TERRITORY OF AUSTRALIA

## EVIDENCE ACT

As in force at 26 September 2001

### Table of provisions

<b>Part I</b>	<b>Preliminary</b>	
1	Short title .....	1
2	Repeal .....	1
4	Definitions .....	1
5	Application of Act .....	2
<b>Part II</b>	<b>Witnesses</b>	
6	Witness not disqualified by interest or crime .....	3
7	Parties, their wives and husbands compellable as witnesses in civil proceedings .....	3
8	Evidence as to adultery .....	3
9	Competency and compellability to give evidence in criminal proceedings .....	3
9C	Particular form of corroboration warning not to be given .....	4
10	Incriminating questions .....	5
12	Communications to clergymen and medical men .....	5
13	Vexatious and irrelevant questions in cross-examination may be disallowed .....	5
14	Disallowance of certain questions in cross-examination .....	5
15	Relevancy in relation to the credibility of witnesses .....	6
16	Disallowance of scandalous and insulting questions .....	6
17	Disallowed, &c., questions not to be published .....	6
18	How far a party may discredit his own witness .....	6
19	Proof of contradictory statements of witness .....	7
20	Cross-examination as to previous statements in writing .....	7
21	Non-appearance of witnesses .....	7
<b>Part IIA</b>	<b>Vulnerable witnesses</b>	
21A	Evidence of vulnerable witnesses .....	8
21B	Child witnesses .....	10
21C	Use of closed circuit television .....	10
<b>Part III</b>	<b>Miscellaneous rules of evidence</b>	
22	Comparison of disputed writing or signature .....	11
23	Attesting witness need not be called in certain cases .....	11
25	Discovery in defamation actions .....	11
26A	Proof of commission of offence .....	12

---

26C	Evidence of rape, &c. ....	12
26D	Admissibility of documentary evidence as to facts in issue.....	13
26F	Weight to be attached to evidence .....	14
26G	Proof of instrument to validity of which attestation is necessary ....	14
26H	Presumptions as to documents 20 years old .....	15
26L	Determination of admissibility before jury empanelled.....	15

#### **Part IV                      Public Acts and documents**

27	Acts of State .....	15
27A	Proof of certain statutes.....	15
28	Judgments, &c., of British, colonial and foreign courts .....	16
28A	Proof of instruments and executive acts .....	16
28C	Proof of <i>Gazette</i> .....	17
28D	Proof of printing by Government Printer .....	17
29	Public documents .....	17
30	Non-Territory documents .....	18
32	Findings of guilt, acquittals and other criminal proceedings .....	18
33	Proof of identity in cases of previous findings of guilt in courts of summary jurisdiction .....	19
33A	Proof of identity of person found guilty in a State or in any other Territory .....	20
34	Ships' articles and registers of ship .....	20
35	Bills of lading .....	21
36	Judicial notice of certain signatures .....	21
39	Probate and letters of administration .....	22
42	Impounding of documents .....	22
42A	Statement of wages to be evidence.....	22
42B	Conditions under which print from photographic film admissible in evidence .....	22

#### **Part IVA                      Crown privilege**

42C	Definitions.....	24
42D	Certificate of Attorney-General .....	24
42E	Attorney-General to be given opportunity to give certificate .....	25
42F	Certain oral evidence not to be given .....	26
42G	This Part not to limit other laws.....	27

#### **Part V                        Bankers' books**

43	Evidential effects of entries in bankers' books and copies thereof .....	27
44	Proof that book is a banker's book.....	27
45	Verification of copy .....	27
45A	Proof that person has no banking account .....	28
45B	Application of last 4 preceding sections.....	28
46	Banker not compellable to produce his books unless under order .....	28

---

47	Inspection of banker's books .....	28
48	Costs .....	28

## **Part VA            Use of communication links**

### **Division 1        Preliminary**

49	Interpretation .....	29
49A	Transitional .....	30
49B	Application of Part .....	30
49C	Rules of court .....	30

### **Division 2        Use of communication links generally**

49D	Application of Division .....	31
49E	Territory courts may take evidence, &c., from outside courtroom or place where court is sitting .....	31
49F	Appearance, giving evidence or making submissions by audio visual link .....	32
49G	Appearance, giving evidence or making submissions by audio link .....	32
49H	Appearance, giving evidence or making submissions by visual link .....	33
49I	Premises to be considered part of court .....	33
49J	Expenses .....	34
49K	Administration of oaths and affirmations .....	34
49L	Putting documents to remote person .....	34
49M	Putting objects to remote person .....	35

### **Division 3        Use of interstate audio visual links or audio links in proceedings in or before Territory courts**

49N	Application of Division .....	35
49P	Territory courts may take evidence and submissions from outside Territory .....	36
49Q	Giving evidence or making submissions by audio visual link .....	36
49R	Giving evidence or making submissions by audio link .....	37
49S	Expenses .....	37
49T	Counsel entitled to practise .....	37

### **Division 4        Use of interstate audio visual links or audio links in proceedings in participating States**

49U	Application of Division .....	38
49V	Recognised courts may take evidence or receive submissions from persons in Territory .....	38
49W	Powers of recognised courts .....	38
49X	Orders made by recognised court .....	38

---

49Y	Enforcement of order .....	39
49Z	Privileges, protection and immunity of participants in proceedings in courts of participating States .....	39
49ZA	Recognised court may administer oath in Territory .....	40
49ZB	Assistance to recognised court.....	40
49ZC	Contempt of recognised courts.....	40

## **Part VI                    Evidence on commission**

### **Division 1                Taking outside Territory of evidence for Territory proceedings**

50	Order for taking of evidence .....	41
51	Admissibility of evidence .....	42

### **Division 2                Taking within Territory of evidence for proceedings elsewhere**

52	Application to Supreme Court for order to obtain evidence .....	43
53	Power of Supreme Court to give effect to application.....	44
54	Privilege of witnesses .....	45
55	Offence of giving false evidence.....	46

## **Part VIA                  Confidential communications**

56	Definitions.....	46
56A	Application of Part .....	47
56B	Protection of confidential communications.....	48
56C	Notice of intention to apply for leave to adduce or produce evidence of confidential communication .....	48
56D	Procedural matters relating to application for leave.....	48
56E	Giving leave to adduce or produce evidence of confidential communication .....	49
56F	Limitation on privilege under this Part.....	50
56G	Ancillary orders where evidence of confidential communication to be adduced or produced.....	50

## **Part VII                    Publication of evidence**

57	Prohibition of the publication of evidence and of names of parties and witnesses .....	51
58	Temporary prohibition of the publication of evidence where witnesses ordered out of Court.....	52
59	Penalty for breach of order under section 57 or 58.....	52

## **Part VIII                  General provisions**

62	Proof of <i>public place</i> in certain cases .....	52
62A	Proof of place being within municipality, &c.....	53

---

63	Foreign law .....	53
64	Reference by court to books, &c., or official certificates in certain matters relating to posts and telegraphs, locality and distance .....	54
65	Regulations.....	54

**The First Schedule      Repeal of State Acts or  
Ordinances**

**The Fourth Schedule**

**ENDNOTES**



# NORTHERN TERRITORY OF AUSTRALIA

---

As in force at 26 September 2001

---

## EVIDENCE ACT

An Act relating to Evidence

### Part I Preliminary

#### 1 Short title

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

#### 2 Repeal

The Acts and Ordinances of South Australia specified in the First Schedule shall, to the extent therein expressed, cease to apply to the Northern Territory.

#### 4 Definitions

In this Act, unless the contrary intention appears:

**bank** includes a building society within the meaning of the *Building Societies Act*, a credit union within the meaning of the *Credit Unions Act* and a society or a foreign society within the meaning of the *Financial Institutions (NT) Code*.

**banker's book** includes any ledger, day book, cash book, account book or other book used in the ordinary course of business of a bank, however the book is compiled, recorded or stored, whether in written form or on microfilm or by electronic process or otherwise.

**Court** includes any Court, Judge, Magistrate or Justice, and any arbitrator or person having authority by law or by consent of parties to hear, receive and examine evidence.

**document** means any record of information and includes, in addition to a document in writing:

- (a) any book, map, plan, graph or drawing;
- (b) any photograph;

- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other device) of being reproduced therefrom; and
- (d) any film, negative, disc, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other device) of being reproduced therefrom.

**examined copy** and **examined extract** mean, respectively, a copy or extract proved to have been examined with the original and to correspond therewith.

**Judge** includes the member or members of any Court.

**legal proceeding** or **proceeding** includes any action, trial, inquiry, cause or matter, whether civil or criminal, in which evidence is or may be given, and includes an arbitration.

**person acting judicially** includes any Court, and any officer in any public department having in the discharge of his duties authority to examine evidence.

**sexual offence** means a sexual offence within the meaning of the *Sexual Offences (Evidence and Procedure) Act*.

**statement** includes any representation of fact or opinion, whether made in words or otherwise.

## 5 Application of Act

The provisions of this Act shall, unless the contrary intention appears:

- (a) apply to every proceeding before any Court whatever; and
- (b) be in addition to, and not in derogation of, any rules of evidence, or any power, right or duty in relation to procedure or evidence, whether existing at common law or provided for by any law for the time being in force in the Territory.



## **Part II                      Witnesses**

### **6                      Witness not disqualified by interest or crime**

No person shall be excluded from giving evidence in any proceeding on the ground:

- (a) that he has or may have an interest in the matter in question or in the event of the proceeding; or
- (b) that he has previously been found guilty of any crime or offence.

### **7                      Parties, their wives and husbands compellable as witnesses in civil proceedings**

In any proceeding (not being a criminal proceeding), any party thereto and any person on whose behalf the proceeding is brought or defended, and the husband or wife of any such party or person respectively, shall, subject to the provisions of this Act, be competent and compellable to give evidence on behalf of either or any of the parties to the proceeding.

### **8                      Evidence as to adultery**

- (1) A witness in any proceedings who, being a party, voluntarily gives evidence on his own behalf or, whether he is a party or not, is called by a party may be asked, and is bound to answer a question the answer to which may show, or tend to show, adultery by or with the witness where proof of that adultery would be material to the decision of the case.
- (2) Except as provided by subsection (1), a witness in proceedings (whether a party to the proceedings or not) is not liable to be asked, or bound to answer, a question the answer to which may show, or tend to show, that the witness has committed adultery.

### **9                      Competency and compellability to give evidence in criminal proceedings**

- (1) Every accused person in a criminal proceeding shall be competent, but, subject to this section, not compellable, to give evidence in the proceeding in every Court.
- (2) Any person charged with an indictable offence shall not be liable:
  - (a) to be called as a witness on behalf of the prosecution; or

- (b) without the leave of the Judge, to be questioned on cross-examination as to his previous character or antecedents.
- (3) The failure of an accused person to give evidence, shall not be made the subject of any comment by the Judge or by counsel for the Crown.
- (4) Where 2 or more persons are being tried together before a Judge and jury, and comment is made, by or on behalf of any of them, upon the failure of any of them to give evidence, the Judge may make such observations to the jury in regard to the comment or failure to give evidence as he thinks fit.
- (5) The husband or wife of any accused person in a criminal proceeding shall be compellable to give evidence in the proceeding in every Court, either for the prosecution or for the defence, and without the consent of the accused.
- (6) A husband or wife shall be competent and compellable to disclose communications made, whether before or after the commencement of this Act, between the husband and the wife during the marriage.
- (7) An accused person who is called as a witness shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been found guilty of or been charged with any offence other than that with which he is then charged, or is of bad character, unless:
  - (a) the proof that he has committed or been found guilty of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or
  - (b) he has personally or by his counsel asked questions of the witnesses for the prosecution with a view to establishing his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
  - (c) he has given evidence against any other person charged with the same offence.

### **9C Particular form of corroboration warning not to be given**

On the trial of a person for an offence in which evidence is given by a child, the Judge is not to warn the jury, or suggest to the jury in any way, that it is unsafe to find the person guilty on the uncorroborated evidence of that child because children are classified by the law as unreliable witnesses.

**10 Incriminating questions**

Nothing in this Act shall render any witness compellable to answer any question tending to criminate himself.

**12 Communications to clergymen and medical men**

- (1) A clergyman of any church or religious denomination shall not, without the consent of the person who made the confession, divulge in any proceeding any confession made to him in his professional character.
- (2) A medical practitioner shall not, without the consent of his patient, divulge in any civil proceeding (unless the sanity of the patient is the matter in dispute) any communication made to him in his professional character by the patient, and necessary to enable him to prescribe or act for the patient.
- (3) Nothing in this section shall protect any communication made for any criminal purpose, or prejudice the right to give in evidence any statement or representation at any time made to or by a medical practitioner in or about the effecting by any person of an insurance on the life of himself or any other person.

**13 Vexatious and irrelevant questions in cross-examination may be disallowed**

In any proceeding, the Court may disallow any question put in cross-examination of any party or other witness which appears to it to be vexatious and not relevant to any matter proper to be inquired into in the proceeding.

**14 Disallowance of certain questions in cross-examination**

- (1) If any question put to a witness upon cross-examination relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and the Court may, if it thinks fit, inform the witness that he is not obliged to answer it.
- (2) In exercising this discretion the Court shall have regard to the considerations referred to in section 15.

**15 Relevancy in relation to the credibility of witnesses**

In deciding whether any question affecting the credibility of a witness is relevant, or ought to be allowed, the Court shall have regard to the following considerations:

- (a) The question is proper if it is of such a nature that the truth of the imputation conveyed by it would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;
- (b) The question is improper if the imputation which it conveys relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;
- (c) The question is improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

**16 Disallowance of scandalous and insulting questions**

The Court may disallow any question which it regards as:

- (a) indecent or scandalous, although the question may have some bearing on the case before the Court, unless the question relates to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed; or
- (b) being intended to insult or annoy, or, although the question may be proper in itself, needlessly offensive in form.

**17 Disallowed, &c., questions not to be published**

A person shall not, without the express permission of the Court, print or publish any question which the Court has disallowed under section 13 or 16 or, under section 14(1), informed a witness that he is not required to answer.

Penalty: \$5,000.

**18 How far a party may discredit his own witness**

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, if the Court is of opinion that the witness is adverse:

- (a) contradict the witness by other evidence; or

- (b) by leave of the Court, prove that the witness has made at some other time, a statement inconsistent with his present testimony:

Provided that, before such proof is given, the circumstances of the supposed statement sufficient to designate the particular occasion shall be mentioned to the witness, and he shall be asked whether or not he made the statement.

**19 Proof of contradictory statements of witness**

If any witness, upon cross-examination as to a former statement made by him, relative to the subject-matter of the case before the Court, and inconsistent with his present testimony, does not distinctly admit that he made the statement, proof may be given that he did in fact make it; but, before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he has made the statement.

**20 Cross-examination as to previous statements in writing**

A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, (whether directly or by means of transcription from a record of the statements made by means of sound-recording apparatus or shorthand) relative to the subject-matter of the case before the Court, without the writing being shown to him, but, if it is intended to contradict the witness by the writing, his attention shall, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him:

Provided that the Court may, at any time during the trial, require the writing to be produced for its inspection and the Court may thereupon make such use of it, for the purposes of the trial, as it thinks fit.

**21 Non-appearance of witnesses**

- (1) Where a person who has been served with a subpoena or summons to attend in any Court as a witness, or to produce documents, fails to appear when called at the trial or on the day appointed for the appearance or production, the Court may:
- (a) on proof that he has been duly served with the subpoena or summons, issue a summons calling on him to show cause why the Court should not punish him for the failure as being a contempt of the Court; or

- (b) on proof both that he has been duly served with the subpoena or summons and that his non-appearance is (so far as can be ascertained) without just cause or reasonable excuse, and, in the case of a person required to attend as a witness, on oath that he will probably be able to give material evidence, issue a warrant of arrest to bring him before the Court to give evidence or produce documents.
- (2) The proof referred to in subsection (1)(a) and (b) may be given orally or by affidavit.
- (3) A person present at any legal proceeding wherein he might have been compellable to give evidence and produce documents by virtue of a subpoena, summons or order duly issued and served for that purpose shall be compellable to give evidence and produce documents then in his possession and power in the same manner, and, in case of refusal, shall be subject to the same penalties and liabilities as if he had been duly subpoenaed or summoned for that purpose.

## **Part IIA                      Vulnerable witnesses**

### **21A                      Evidence of vulnerable witnesses**

- (1) In this Part:
  - vulnerable witness*** means:
    - (a) a witness who is under 16 years of age;
    - (b) a witness who suffers from an intellectual disability;
    - (c) a witness who is the alleged victim of a sexual offence to which the proceedings relate; or
    - (d) a witness who is, in the opinion of the Court, under a special disability because of the circumstances of the case or the circumstances of the witness.
- (2) Subject to subsection (2A), a vulnerable witness is entitled to give evidence using one or more of the following arrangements as chosen by the witness:
  - (a) that the evidence of the vulnerable witness be given at a place outside the courtroom and transmitted to the courtroom by means of closed circuit television where that facility is available;

- (b) that a screen, partition or one-way glass be placed to obscure the witness's view of a party to whom the evidence relates but not so as to obstruct the view of the witness by the Judge and the jury (if any);
  - (c) that the vulnerable witness be accompanied by:
    - (i) a relative;
    - (ii) a friend; or
    - (iii) any other person who the vulnerable witness requests to accompany him or her and who the Court considers is in the circumstances appropriate to accompany the vulnerable witness,for the purpose of providing the vulnerable witness with emotional support;
  - (d) that the Court be closed while evidence is being given by the vulnerable witness in the proceeding (including evidence given under cross-examination) and that no persons remain in or enter a room or place in which the Court is being held, or remain within the hearing of the Court, without its permission.
- (2A) The Court may make an order that the vulnerable witness is not to give evidence using an arrangement under subsection (2) if satisfied that:
- (a) it is not in the interests of justice for the witness's evidence to be given using that arrangement; or
  - (b) the urgency of the proceeding makes the use of that arrangement inappropriate.
- (2B) In determining whether or not it is in the interests of justice to use an arrangement under subsection (2), the Court must have regard to the following matters:
- (a) the need to minimise the harm that could be caused to the vulnerable witness by giving evidence;
  - (b) the interest in the vulnerable witness being able to give evidence effectively.
- (2C) The Court must state its reasons for making an order under subsection (2A).

- (3) Where a vulnerable witness is to give evidence using an arrangement under subsection (2)(a) or (b), the Judge must issue a warning to the jury (if any) to the effect that:
  - (a) the procedure is a routine practice of the Court;
  - (b) no adverse inference is to be drawn against the accused as a result of the use of the arrangement; and
  - (c) the evidence of the witness is not to be given any greater or lesser weight because of the use of the arrangement.
- (4) If an arrangement under subsection (2)(c) is used, the person who accompanies the vulnerable witness is to be placed so he or she is visible to the Judge and the jury (if any).
- (5) If an arrangement under subsection (2)(d) is used in a proceeding in which the defendant is or is apparently under 16 years of age, nothing in subsection (2)(d) is to be taken to require the exclusion from the Court or the place where the evidence is being given of a person who is required or permitted under the *Juvenile Justice Act* to be present.
- (6) If the Court is requested to determine whether a witness is a vulnerable witness, the witness is to be taken to be a vulnerable witness until the Court makes the determination.

## **21B Child witnesses**

- (1) Where a vulnerable witness in a proceeding is a child who is under 16 years of age, the Judge may disallow any question put to the witness in the proceeding that is confusing, misleading or phrased in inappropriate language.
- (2) In deciding whether to disallow a question in accordance with subsection (1) the Court shall have regard to the age, culture and level of understanding of the child.

## **21C Use of closed circuit television**

- (1) Where a vulnerable witness is to give evidence using an arrangement under section 21A(2)(a), the Court may make the orders necessary to give effect to that arrangement, including but not limited to orders about one or more of the following:
  - (a) who, in addition to the officer of the Court referred to in subsection (3), may be present at the place at which the vulnerable witness is giving the evidence;



- (b) who in the courtroom is able to, or not able to, be heard, or to be seen and heard by the vulnerable witness;
  - (c) who in the courtroom is able to see and hear the vulnerable witness.
- (2) The place at which a vulnerable witness gives evidence using an arrangement under section 21A(2)(a) is to be taken to be part of the Court in which the proceeding is being held.
- (3) An officer of the Court is to be present at the place at which a vulnerable witness is giving evidence using an arrangement under section 21A(2)(a).

## **Part III                      Miscellaneous rules of evidence**

### **22                      Comparison of disputed writing or signature**

Where any writing or signature is in dispute, the writing or signature may be compared with any other writing or signature proved to the satisfaction of the Court to be genuine; and such last-mentioned writing or signature, together with evidence of witnesses in relation thereto, shall be evidence of the genuineness or otherwise of the writing or signature in dispute.

### **23                      Attesting witness need not be called in certain cases**

It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and the instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

### **25                      Discovery in defamation actions**

In an action for damages arising out of the publication of matter alleged to be defamatory and upon any application for discovery as to any matter relating to the fact of publication as alleged, the defendant shall not be entitled to object to answer upon the ground of tendency to criminate, but shall be compellable to make discovery, unless it appears that there is a reasonable probability of criminal proceedings being instituted against him:

Provided that such discovery shall not be made use of as evidence or otherwise in any other action or proceedings against the defendant.

**26A Proof of commission of offence**

- (1) Subject to subsection (2) where a person has been found guilty of an offence, and the commission of that offence is in issue or relevant to any issue in a civil proceeding, the finding of guilt shall be evidence of the commission of that offence admissible against the person found guilty or those who claim through or under him but not otherwise.
- (2) A finding of guilt other than upon information in the Supreme Court shall not be admissible unless it appears to the Court that the admission is in the interests of justice.

**26C Evidence of rape, &c.**

- (1) In any proceedings:
  - (a) evidence that a person, being a party to a marriage, was, after the marriage, found guilty, whether in Australia or elsewhere, of the crime or offence of rape or any other crime or offence in which sexual intercourse with a person of the opposite sex is an element is evidence that the former person committed adultery with the person on whom the rape or other crime or offence was committed; and
  - (b) evidence that a person, being a party to a marriage, was, after the marriage, found guilty, whether in Australia or elsewhere, of the crime or offence of sodomy or bestiality is evidence that that person committed sodomy or bestiality.
- (2) In any proceedings, a certificate of the finding of guilt of a person for a crime or offence, on a date specified in the certificate, by a Court of a State or Territory or of any place outside Australia, being a certificate purporting to be signed by the registrar or other appropriate officer of the Court, is evidence of the fact and date of the finding of guilt and, if the certificate shows that a sentence of imprisonment was imposed, of the fact that that sentence was imposed.

**26D Admissibility of documentary evidence as to facts in issue**

(1) In any civil proceedings where direct oral evidence of a fact would be admissible, a statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of the fact if the following conditions are satisfied, that is to say:

- (a) if the maker of the statement either:
  - (i) had personal knowledge of the matters dealt with by the statement; or
  - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
- (b) if the maker of the statement is called as a witness in the proceedings,

but the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the Court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence:

- (a) notwithstanding that the maker of the statement is available but is not called as a witness; and
  - (b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the Court may approve, as the case may be.
- (3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

- (4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part of the document was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible.
- (5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the Court may draw any reasonable inference from the contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a legally qualified medical practitioner and where the proceedings are with a jury, the Court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect to the statement, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

**26F      Weight to be attached to evidence**

- (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.
- (2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.

**26G      Proof of instrument to validity of which attestation is necessary**

Subject to this Act, in any proceedings, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive; but nothing in this section shall apply to the proof of wills or other testamentary documents.

**26H Presumptions as to documents 20 years old**

In any proceedings, there shall, in the case of a document proved, or purporting to be not less than 20 years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than 30 years old.

**26L Determination of admissibility before jury empanelled**

A court dealing with a matter on indictment may, if it thinks fit, hear and determine, before the jury is empanelled, any question relating to the admissibility of evidence and any question of law affecting the conduct of the trial.

**Part IV Public Acts and documents****27 Acts of State**

Evidence of a proclamation, treaty or other act of State of any body politic may be given by the production of an examined copy, or of a document which purports to be sealed with the seal of the body politic.

**27A Proof of certain statutes**

(1) A document purporting to be:

- (a) a copy of an Act; and
- (b) printed by the Government Printer,

shall be taken to be a correct copy of the Act until the contrary is proved.

(2) In subsection (1), **Act** includes:

- (a) an Act passed by the Legislative Assembly, and a Northern Territory Ordinance;
- (b) an Act or Ordinance of a State of the Commonwealth, or of a Territory of the Commonwealth other than the Territory;
- (c) an Act of the Commonwealth; and
- (d) an Imperial Act,

and, in relation to an Act or Ordinance within paragraph (b), (c) or (d), **Government Printer** means, as the case may require, the person (however styled) authorized to print Acts or Ordinances of

the State or Territory in question, the Commonwealth Government Printer and the Queen's Printer or other person authorized to print Imperial Acts.

## **28 Judgments, &c., of British, colonial and foreign courts**

- (1) Evidence of any judgment, decree, rule, order or other judicial proceeding of any Court of Justice out of the Territory (including any affidavit, pleading or other legal document filed or deposited in the Court) may be given by the production of a document purporting to be a copy thereof and:
  - (a) proved to be an examined copy thereof; or
  - (b) purporting to be sealed with the seal of the Court; or
  - (c) purporting to be signed by a Judge of the Court, with a statement in writing attached by him to his signature that the Court has no seal, and without any proof of his judicial character or of the truth of the statement.
- (2) Any document referred to in subsection (1) which purports to be sealed or signed in accordance with the provisions of that subsection shall be admissible without proof of the seal or of the signature, as the case may be.

## **28A Proof of instruments and executive acts**

- (1) Evidence of an instrument of a legislative or administrative character, or of any of the terms of such an instrument, may be given by the production of:
  - (a) the *Gazette* purporting to set out the instrument;
  - (b) a document printed by the Government Printer and purporting to be a copy of the instrument; or
  - (c) a document purporting to be certified by a Minister, or by an officer having the custody of the instrument, as being a true copy of the instrument or any of its terms.
- (2) Where by any law in force in the Territory a person holding public office is authorized or empowered to do any act, production of the *Gazette* purporting to contain a notification of the act's having been done is evidence that the act has been duly done.
- (3) No proof shall be required of the handwriting or official position of a person certifying a document as mentioned in subsection (1)(c).

**28C      Proof of Gazette**

The mere production of a document purporting to be the Government *Gazette* of the Territory shall be evidence that the paper is the Government *Gazette* of the Territory and was published on the day on which it bears date.

**28D      Proof of printing by Government Printer**

The mere production of a document purporting to be printed by the Government Printer or by the authority of the Government of the Territory shall be evidence that the paper was printed by the Government Printer or by such authority.

**29          Public documents**

- (1) In this section, **public document** means a document that is admissible as evidence of the facts it states upon its mere production from proper custody, and includes letters patent, deeds of grant from the Crown and any document kept or registered under any law in force in the Territory.
- (2) A document proved to be a duplicate copy of a public document is admissible in evidence as if it were the original.
- (3) A document purporting to be a copy of, or an extract from, a public document is admissible in evidence as if it were the original or, as the case may be, part of the original if it is:
  - (a) an examined copy or examined extract; or
  - (b) certified as a true copy or extract by an officer having the custody of the original.
- (4) In any proceedings to which an officer having the custody of a public document is not a party, the officer shall not be compellable to produce the original document except by order of the Court made for special cause.
- (5) A document purporting to be certified as mentioned in subsection (3)(b) shall, if the person producing it has served a copy of it on the adverse party, together with a notice of his intention to produce it in evidence at the hearing, at such time as would in the opinion of the Court have enabled the adverse party to verify it, be admitted in evidence without proof of the signature or official position of the person certifying it.

- (6) Where a public document has been kept or registered for more than 30 years, a document which is proved to be a duplicate copy, or which is an examined copy or is certified to be a true copy as mentioned in subsection (3)(b), shall be prima facie evidence of its due execution.
- (7) An officer having the custody of a public document shall supply a document certified by the officer to be a true copy of or extract from the original on the application of any person, accompanied, where no other fee is provided for by any law in force in the Territory, by the prescribed fee.

### **30 Non-Territory documents**

- (1) Where any document in any place outside the Territory is provable under the law of that place by means of a copy, then a copy of or extract from that document is admissible in evidence in the Territory:
  - (a) if it is an examined copy or an examined extract; or
  - (b) if it purports to be signed and certified as a true copy or extract by a person who certifies that he is the officer having the custody of the original.
- (2) A document which is admissible in evidence for any purpose in any place outside the Territory without proof of the seal, stamp or signature authenticating it, or of the judicial or official character of the person appearing to have signed it, is similarly admissible in evidence in the Territory for the like purpose.

### **32 Findings of guilt, acquittals and other criminal proceedings**

- (1) Where it is necessary to prove any of the following facts:
  - (a) The finding of guilt or acquittal before or by any Court of any person charged with any offence; or
  - (b) That any person was sentenced to any punishment or pecuniary fine by any Court; or
  - (c) That any person was ordered by any Court to pay any sum of money; or
  - (d) The pendency or existence at any time before any Court of any criminal trial, proceeding, inquiry, charge or matter,

evidence of such fact may be given by the production of a certificate under the hand of a Judge or officer of the Court, showing the fact, or purporting to contain the substance, omitting



the formal parts, of the record, indictment, finding of guilt, acquittal, sentence, or order, or of the trial, proceeding, inquiry, charge or matter in question and stating the time and place of the finding of guilt, conviction, acquittal, sentence or order, or of the trial, proceeding, inquiry, charge or matter, with the title of the Court or the name of the Judge before or by whom it was had, or passed, or made, or pending or existing.

- (2) Any such certificate which states that the person signing it ordinarily has the custody of the records, or documents, or proceedings, or minutes referred to therein, shall be evidence of that fact.
- (3) Any such certificate showing the finding of guilt, conviction, acquittal, sentence or order shall be evidence of the offence or matter in respect of which the finding of guilt, conviction, acquittal, sentence or order was had, or passed, or made, if stated in the certificate.
- (4) Any such certificate showing the pendency or existence of any trial, proceeding, inquiry, charge, or matter shall also be evidence of the particular nature and occasion or ground and cause thereof, if stated in the certificate.
- (5) Any such certificate purporting to contain the substance, omitting the formal parts, of any record, indictment, finding of guilt, conviction, acquittal, sentence, or order, or of any proceeding, inquiry, charge or matter, shall also be evidence of the matters stated in the certificate.
- (6) Until the contrary is shown, every finding of guilt summarily made referred to in any such certificate shall be presumed not to have been appealed from.

### **33      Proof of identity in cases of previous findings of guilt in courts of summary jurisdiction**

- (1) Whenever in any case in the Court of Summary Jurisdiction it becomes proper to inquire as to any previous finding of guilt of the defendant, and the defendant does not appear in person the Court may:
  - (a) allow evidence to be given of the previous finding of guilt of any person alleged by the prosecution to be identical with the defendant; and
  - (b) if such evidence is given, adjourn the further consideration of the case to a time and place specified by the Court in order to enable the defendant to attend in person for the purpose of answering such allegation.

(2) If at the time and place so specified:

- (a) it is proved that the defendant has been personally served with notice in writing, requiring him to attend accordingly, and informing him of the purpose for which his personal attendance is required;
- (b) the defendant fails to appear in person; and
- (c) no sufficient reason to the contrary is shown to the satisfaction of the Court,

the Court may accept the evidence of the identity of the defendant with the person so found guilty as proof of such identity and may proceed accordingly:

Provided that service of the notice shall not be required if the defendant was represented at the original hearing by any counsel or solicitor who has waived such service.

(3) The further hearing or consideration of the case may be adjourned from time to time to enable the defendant:

- (a) to be served with the notice referred to in subsection (2); or
- (b) to attend in person if the Court is satisfied that he intends to do so.

**33A Proof of identity of person found guilty in a State or in any other Territory**

For the purposes of proving the identity of a person alleged to have been found guilty in a State or in any other Territory, an affidavit substantially in the form of the Fourth Schedule shall be admissible in evidence and shall be prima facie evidence that the person whose finger-prints are exhibited to that affidavit:

- (a) is the person who in any document exhibited to that affidavit and purporting to be a certificate of a finding of guilt, is referred to as having been found guilty; and
- (b) has been found guilty of the offences mentioned in that affidavit.

**34 Ships' articles and registers of ship**

In any legal proceedings, an examined copy of or extract from:

- (a) the ship's articles of a ship or vessel and the signatures thereto; or

- (b) the register of the ship or vessel,

shall be evidence of the contents of the articles and the signatures thereto, of the contents of the register, or of the contents of the articles or register contained in the extract, as the case may be.

### 35 Bills of lading

- (1) Any document which purports to be a bill of lading and to relate to any property which is or has been shipped and which appears to the Court to which it is tendered to be a genuine document, may be admitted in evidence on production without further proof, and when so admitted shall be prima facie evidence that the ownership of the property referred to in the document is in the consignee named therein or his assignee, and of any other relevant facts or particulars stated or referred to therein.

- (2) In this section:

**bill of lading** includes manifest, shipping receipt, consignment note, delivery order or invoice, and any specification, schedule or packing list annexed thereto or incorporated by reference therein.

**shipped** means shipped or carried, or received for shipment or carriage by water, rail, road or air, to or from any port, railway station or place in Australia.

### 36 Judicial notice of certain signatures

Every Court shall take judicial notice of the signature of:

- (a) the Administrator;
- (b) a Minister;
- (c) an Executive Member;
- (d) a Judge of the Supreme Court or any other Court;
- (e) a Magistrate;
- (f) a Master of the Supreme Court;
- (g) an officer of any Court; and
- (h) any person for the time being holding an office created by or under any Act.

**39 Probate and letters of administration**

- (1) The probate of any will or letters of administration with the will annexed shall be evidence of the due execution of the will upon all questions concerning either real or personal estate.
- (2) The copy attached or annexed to the probate or letters of administration, purporting to be a copy of the will, shall be evidence of the contents of the will.
- (3) The probate of any will or letters of administration shall be evidence of the death and the date of the death of the testator or intestate.
- (4) In this section, ***probate of any will or letters of administration*** includes an exemplification thereof.

**42 Impounding of documents**

When any document is received in evidence by virtue of this Act or otherwise, the Court admitting the document may, on the request of any party against whom it has been so received, direct that it shall be impounded and be kept in the custody of an officer of the Court or other proper person for such period and subject to such conditions as the Court thinks fit.

**42A Statement of wages to be evidence**

In any proceedings, a statement in writing purporting to be signed by or on behalf of the employer of a person specifying the amount of salary or wages paid to that person during a specified period is evidence of the facts stated.

**42B Conditions under which print from photographic film admissible in evidence**

- (1) A print, whether enlarged or not, from any photographic film of:
  - (a) an entry in a book or record kept by the Crown or a prescribed corporation and destroyed, lost, or delivered to a customer after the film was taken;
  - (b) a document held by the Crown or a prescribed corporation and destroyed, lost or delivered to a customer after the film was taken; or
  - (c) a document belonging to or deposited with the Crown or a prescribed corporation,

shall be admissible in evidence in all cases in which and for all purposes for which the object photographed would have been received upon proof that:

- (d) while the book, record or document was in the custody or control of the Crown or prescribed corporation, the photographic film of it was taken in order to keep a permanent record of it; and
  - (e) the object photographed was subsequently destroyed by or in the presence of one or more of the officers or employees of the Crown or prescribed corporation, or was lost or was delivered to a customer.
- (2) Proof of compliance with the conditions prescribed by this section may be given by any one or more of the officers or employees of the Crown or prescribed corporation, having knowledge of the taking of the photographic film, of the destruction, loss, or delivery to a customer of the object photographed, or of the making of the print, as the case may be, either orally on oath or by affidavit.
- (4) Subject to subsection (5), the provisions of this section apply only in respect of books, records, and documents which, if they were still in existence or in the possession or custody of the Crown or prescribed corporation, would be not less than 20 years old at the date when the print from the photographic film is tendered in evidence.
- (5) In respect of the ledger record maintained by a prescribed corporation, being a bank, of the transactions by a customer of the bank upon his account with the bank, the provisions of subsection (4) shall be read and construed as if the words "20 years" were omitted and the words "6 years" were inserted in their stead.
- (6) In this section:

**Crown** means the Crown in right of the Territory or the Commonwealth.

**photographic film** includes any photographic plate, micro-photographic film or photostatic negative.

**prescribed corporation** means:

- (a) any statutory body representing the Crown;
- (b) any bank; or

- (c) any public company carrying on insurance business or such other class of business as is specified by the Minister by notice published in the *Gazette*.

**public company** means a company carrying on business in the Territory by virtue of the provisions of the Corporations Act 2001 or a law relating to companies in force in the Territory and not being a proprietary company, private company or no liability company according to the law in force in the State, Territory or country in which it is registered or incorporated.

**statutory body representing the Crown** means any public body declared by the Minister by notice published in the *Gazette* to be a statutory body representing the Crown.

- (7) Nothing in this section limits or prevents the admission in evidence of a print of photographic film which would have been so admitted if it had been tendered as evidence before the commencement of this section.

## **Part IVA            Crown privilege**

### **42C            Definitions**

In this Part, unless the contrary intention appears, **disclosure** includes disclosure by:

- (a) the production or discovery of documents;
- (b) the giving of evidence;
- (c) the answering of interrogatories; and
- (d) the furnishing of particulars.

### **42D            Certificate of Attorney-General**

- (1) Where the Attorney-General certifies in writing that, in his opinion, the disclosure of the contents of a document or record in legal proceedings described in the certificate is not in the public interest:
  - (a) because it would involve the disclosure of communications between:
    - (i) the Executive Council, or a member thereof, and the Administrator;
    - (ii) a Minister and a Minister of the Commonwealth or of a State; or

- (iii) a Commonwealth Minister and a Minister of a State; or
- (b) because it would involve the disclosure of deliberations or decisions of, or matters presented to or considered by:
  - (i) the Executive Council or a committee of the Executive Council; or
  - (ii) the Territory Cabinet or a committee of the Territory Cabinet,

the document or record shall not be disclosed in or in relation to, or be admissible as evidence in, those legal proceedings.

- (2) A certificate under subsection (1) shall, without a Court having examined a document or heard a record to which it relates or having inquired into the power of the Attorney-General to give the certificate, be accepted in legal proceedings described in the certificate as conclusive that the document or record is of the kind referred to in subsection (1) and that its disclosure in the legal proceedings is not in the public interest.

#### **42E Attorney-General to be given opportunity to give certificate**

- (1) Subject to this section, a document or record shall not be disclosed in or in relation to, or be admissible as evidence in, legal proceedings if:
  - (a) it appears to the person presiding in the Court before which the legal proceedings are held or taken that it is of a kind in respect of which a certificate under section 42D(1) could be given if the Attorney-General were of the opinion that its disclosure in the legal proceedings is not in the public interest; and
  - (b) the Attorney-General has not had an opportunity to give a certificate under section 42D(1) in relation to it.
- (2) A statement by a person called upon to produce a document or record in or in relation to legal proceedings that:
  - (a) the document or record is of a kind referred to in subsection (1)(a); and
  - (b) in respect of that document or record the Attorney-General has not had an opportunity to give a certificate under section 42D(1),

shall be accepted by the person presiding in the Court before which the legal proceedings are held or taken as conclusive of that first-mentioned fact and prima facie evidence of the second-mentioned fact.

- (3) Subsection (1) does not apply to a document or record the publication of which has previously been duly authorized.
- (4) Subject to subsection (2), subsection (1) does not prevent a document or record from being disclosed in or in relation to legal proceedings so far only as the disclosure is made to the person presiding in the Court before which those legal proceedings are held or taken and is necessary to enable the person to decide whether the document or record is of a kind referred to in subsection (1)(a) and, if so, whether or not it is a document or record referred to in subsection (3).
- (5) The practice and procedure of a Court for or in respect of the giving to the Attorney-General of notice relating to the disclosure of a document or record in or in relation to legal proceedings shall be:
  - (a) where there is a power to make rules of court for or in respect of the practice and procedure of that Court and such rules are in force – in accordance with those rules of court; and
  - (b) where there is no such power or the power has not been exercised – in accordance with the Regulations.
- (6) The Administrator may make regulations for the purposes of subsection (5)(b).

#### **42F      Certain oral evidence not to be given**

- (1) Except with the approval in writing of the Attorney-General, a person called upon to give evidence in legal proceedings shall not give evidence or be a compellable witness in relation to the giving of evidence which, if it had been reduced to writing, would constitute a document in respect of which a certificate under section 42D(1)(b) could be given if the Attorney-General were of the opinion that its disclosure in the legal proceedings is not in the public interest.
- (2) Except with the approval in writing of the Attorney-General, evidence of a kind referred to in subsection (1) shall not be admissible in legal proceedings.
- (3) A statement by the person called upon to give evidence that the evidence if given would be of a kind to which this section applies shall, without the Court having heard the evidence if the statement is accompanied by a certificate of the Attorney-General, be



accepted by the person presiding in the Court before which the legal proceedings are held or taken as conclusive that the evidence is of that kind.

**42G This Part not to limit other laws**

Except in relation to documents or records in respect of which a certificate has been given under section 42D(1), or evidence of a kind to which section 42F applies, nothing in this Part affects the prerogatives of the Crown or the operation of any law requiring a Court to prohibit the disclosure of a written or oral communication on the grounds that it is in the public interest to do so.

**Part V Bankers' books**

**43 Evidential effects of entries in bankers' books and copies thereof**

Subject to this Part:

- (a) an entry in a banker's book is evidence of the matters, transactions and accounts therein recorded; and
- (b) a copy of an entry in a banker's book is evidence of the entry and of the matters, transactions and accounts therein recorded.

**44 Proof that book is a banker's book**

- (1) The copy of an entry in a banker's book shall not be received in evidence under this Act, unless it is first proved:
  - (a) that the book was, at the time of the making of the entry, one of the ordinary books of the bank;
  - (b) that the entry was made in the usual and ordinary course of business.
- (2) Proof of the matters referred to in subsection (1) may be given by an officer of the bank and may be given orally or by an affidavit.

**45 Verification of copy**

A copy of an entry in a banker's book shall not be received in evidence unless it is an examined copy or is certified to be a true copy of the entry in such manner as is approved by the Court.

**45A Proof that person has no banking account**

An affidavit made by a partner or officer of a bank stating that a person named in the affidavit has no account at the bank or, as the case may be, at any branch thereof named in the affidavit, shall in all legal proceedings be prima facie evidence of the fact so stated.

**45B Application of last 4 preceding sections**

Sections 43 to 45A, inclusive shall apply to bankers' books and banks and branches of banks in any State or Territory.

**46 Banker not compellable to produce his books unless under order**

In any legal proceedings to which the bank is not a party, an officer of a bank shall not, unless by order of a Court made for special cause, be compellable:

- (a) to produce any banker's book, the contents of which can be proved under this Part; or
- (b) to appear as a witness to prove the matters, transactions and accounts recorded therein.

**47 Inspection of banker's books**

- (1) On the application of any party to a legal proceeding, a Court may order that the party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of the proceeding.
- (2) The order may be made either with or without summoning the bank or any other party, and shall, unless the Court otherwise directs, be served on the bank 3 clear days before it is to be obeyed.
- (3) Any Sunday or public or bank holiday shall be excluded from the computation of time under this section.

**48 Costs**

- (1) The costs of:
  - (a) any application to a Court, under or for the purposes of this Part; or
  - (b) anything done or to be done under an order of a Court made under or for the purposes of this Part,

shall be in the discretion of the Court, who may order a bank to pay to any party to a legal proceeding such costs or any part thereof as have been occasioned by any default or delay on the part of the bank.

- (2) Any order against a bank under subsection (1) may be enforced as if the bank were a party to the proceeding.

## **Part VA            Use of communication links**

### **Division 1        Preliminary**

#### **49            Interpretation**

In this Part, unless the contrary intention appears:

**audio link** means facilities (including telephone) that enable audio communication between persons at different places.

**audio visual link** means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

**communication link** means an audio visual link, audio link or visual link.

**participating State** means a State in which provisions of an Act in terms substantially corresponding to Divisions 3 and 4 are in force.

**recognised court** means a court or tribunal of a participating State that is authorised by the provisions of an Act of that State in terms substantially corresponding to Divisions 3 and 4 to direct that evidence be taken or submissions be made by audio link or audio visual link from the Territory.

**State** includes Territory.

**Territory court** means:

- (a) the Supreme Court;
- (b) the Local Court;
- (c) the Court of Summary Jurisdiction;
- (d) the Family Matters Court;
- (e) the Juvenile Court;

- (f) a warden's court;
- (g) the Work Health Court;
- (h) a coroner; or
- (j) a tribunal,

and includes, in respect of this Division and Division 2, any person acting judicially.

***tribunal***, of a State, means a person or body authorised by or under a law of the State to take evidence on oath or affirmation.

***visual link*** means facilities that enable visual communication between persons at different places.

#### **49A      Transitional**

This Part extends to proceedings pending in a Territory court on the commencement of the Part.

#### **49B      Application of Part**

Nothing in this Part prevents a person who is within or outside the Territory or Australia from appearing before or giving evidence or making submissions to a Territory court for the purposes of a proceeding in the Territory in a manner provided for under:

- (a) another law of the Territory; or
- (b) a rule, regulation or matter of practice made under a law of the Territory.

#### **49C      Rules of court**

A Territory court may make rules of court or otherwise determine procedures for or with respect to:

- (a) appearance;
- (b) giving of evidence in a proceeding; or
- (c) making a submission in a proceeding,

by a communication link provided for in this Part, including rules or procedures in respect of failure of a link.

## **Division 2            Use of communication links generally**

### **49D            Application of Division**

- (1) This Division applies to any proceeding (including a criminal proceeding) in or before a Territory court.
- (2) Nothing in this Division limits the application of Division 3 or 4 to a proceeding.
- (3) Nothing in Division 3 or 4 limits the application of this Division to a proceeding.

### **49E            Territory courts may take evidence, &c., from outside courtroom or place where court is sitting**

- (1) A Territory court may, of its own motion or on the application of a party to a proceeding before the court, direct (conditionally or unconditionally) that a person (whether or not a party to the proceeding) appear before, or give evidence or make a submission to, the court by a communication link from any place within or outside the Territory (including outside Australia) that is outside the courtroom or other place where the court is sitting.
- (2) The court must not make the direction unless it is satisfied that:
  - (a) the necessary facilities are available or can reasonably be made available; and
  - (b) the evidence can more conveniently be given, or the appearance or submission can more conveniently be made, from the place that is outside the courtroom or other place where the court is sitting.
- (3) Without limiting the matters to which the court may have regard, the court must have regard to whether the making of the direction would be unfair to any person.
- (4) The court may at any time vary or revoke an order made under this Division, either of its own motion or on application of a party to the proceedings.
- (5) A requirement by or under an Act that a person is to be present, or is to attend or be brought, before a Territory court is to be taken to be satisfied if he or she is present, attends or is brought before the court by way of a communication link in accordance with this Division.

**49F      Appearance, giving evidence or making submissions by audio visual link**

A person must not appear, evidence must not be given and a submission must not be made, by audio visual link under this Division unless:

- (a) the courtroom or other place where a Territory court is sitting; and
- (b) the place where the person would appear, the evidence would be given or the submission would be made,

are equipped with audio visual link facilities that enable:

- (c) all appropriate persons who are at the courtroom or other place to see and hear all appropriate persons at the place where the person is appearing, giving the evidence or making the submission; and
- (d) all appropriate persons who are at the place where the person is appearing, evidence is to be given or submission is to be made to see and hear all appropriate persons at the courtroom or other place.

**49G      Appearance, giving evidence or making submissions by audio link**

A person must not appear, evidence must not be given and a submission must not be made, by audio link under this Division, unless:

- (a) the courtroom or other place where a Territory court is sitting; and
- (b) the place where the person would appear, evidence would be given or the submission would be made,

are equipped with audio link facilities that enable:

- (c) all appropriate persons who are at the courtroom or other place to hear all appropriate persons at the place where the person is appearing, giving the evidence or making the submission; and
- (d) all appropriate persons who are at the place where the person is appearing, evidence is to be given or submission is to be made to hear all appropriate persons at the courtroom or other place.

**49H            Appearance, giving evidence or making submissions by visual link**

A person must not appear, evidence must not be given and a submission must not be made, by visual link under this Division unless:

- (a) the courtroom or other place where a Territory court is sitting; and
- (b) the place where the person would appear, the evidence would be given or the submission would be made,

are equipped with visual link facilities that enable:

- (c) all appropriate persons who are at the courtroom or other place to see all appropriate persons at the place where the person is appearing, giving the evidence or making the submission; and
- (d) all appropriate persons who are at the place where the person is appearing, evidence is to be given or submission is to be made to see all appropriate persons at the courtroom or other place.

**49I            Premises to be considered part of court**

- (1) Despite any provision to the contrary, any place at which a communication link is being used in accordance with this Division for the purpose of a person appearing before, or giving evidence or making a submission to, a Territory court that is sitting at a courtroom or other place is taken to be part of the court for the purpose of conducting those proceedings.
- (2) Subsection (1) has effect, for example, for the purposes of the laws relating to evidence, procedure, contempt of court and perjury.
- (3) Subsection (1) also has the effect that any offence committed at the place where the person appearing before the court or giving the evidence or making the submission is located is to be taken to have been committed at the courtroom or other place where the court is sitting for the purposes of the laws in force in the Territory.
- (4) If a communication link fails in relation to proceedings, the court may:
  - (a) adjourn the proceedings; or

- (b) make other orders as are appropriate in the circumstances as if a person present at the place at which the communication link is located were in the presence of the court.

#### **49J            Expenses**

If a Territory court directs that a person appear, evidence be taken, or submissions be made, by a communication link from a person under this Division, the court may make the orders it considers just for payment of the expenses incurred.

#### **49K            Administration of oaths and affirmations**

An oath to be sworn or affirmation to be made by a person giving evidence by a communication link under this Division may be administered:

- (a) by means of a communication link, as nearly as practicable in the same way as if the person were to give evidence in the courtroom or other place where the Territory court is sitting; or
- (b) at the direction of, or on behalf of, the court at the place where the person is giving the evidence, by a person authorised by the court.

#### **49L            Putting documents to remote person**

- (1) If in the course of examination of a person by a communication link it is necessary to put a document to the person, a Territory court may permit the document to be put to the person:
  - (a) if the document is at the courtroom or other place where the court is sitting:
    - (i) by transmitting by any means (including by the communication link itself) a video, electronic or other image of it to the place where the person is giving evidence or making a submission; and
    - (ii) by the image transmitted being then put to the person; or
  - (b) if the document is at the place where the person is giving evidence or making a submission:
    - (i) by putting the document to the person; and
    - (ii) by then transmitting by any means (including by the communication link itself) a video, electronic or other image of the document to the courtroom or other place.



- (2) A document put to a person in accordance with subsection (1) is admissible as evidence without proof that the transmitted video, electronic or other image of the document is a true copy of the document.

#### **49M Putting objects to remote person**

If in the course of examination of a person by a communication link it is necessary to put an object, other than a document, to the person, a Territory court may permit the object to be put to the person:

- (a) if the object is at the courtroom or other place where the court is sitting:
    - (i) by transmitting by any means (including by the communication link itself) a video, electronic or other image of the object to the place where the person is giving evidence or making a submission; and
    - (ii) by the image transmitted being then put to the person; or
  - (b) if the object is at the place where the person is giving evidence or making a submission:
    - (i) by putting the object to the person; and
    - (ii) by then transmitting by any means (including by the communication link itself) a video, electronic or other image of the object to the courtroom or other place.
- (2) The court may permit the video, electronic or other image of the object transmitted to the courtroom or other place where the court is sitting, or any copy of that image, to be admissible as evidence of the object.

### **Division 3 Use of interstate audio visual links or audio links in proceedings in or before Territory courts**

#### **49N Application of Division**

This Division applies to any proceeding (including a criminal proceeding) in or before a Territory court.

**49P      Territory courts may take evidence and submissions from outside Territory**

- (1) A Territory court may, on the application of a party to a proceeding before the court, direct that evidence be taken or submissions be made, by audio visual link or audio link, from a participating State.
- (2) The court must not make the direction unless it is satisfied that:
  - (a) the necessary facilities are available or can reasonably be made available; and
  - (b) the evidence or submission can more conveniently be given or made from the participating State.
- (3) Without limiting the matters to which the court may have regard, the court must have regard to whether the making of the direction would be unfair to any person.
- (4) The court may exercise in the participating State, in connection with taking evidence or receiving submissions by audio visual link or audio link, any of its powers that the court is permitted under the law of the participating State to exercise in the participating State.

**49Q      Giving evidence or making submissions by audio visual link**

Evidence must not be given, and a submission must not be made, by audio visual link under this Division unless:

- (a) the courtroom or other place where a Territory court is sitting; and
- (b) the place where the evidence would be given or the submission would be made,

are equipped with audio visual link facilities that enable:

- (c) all appropriate persons who are at the courtroom or other place to see and hear all appropriate persons at the place where the person is giving the evidence or making the submission; and
- (d) all appropriate persons who are at the place where the evidence is given or the submission is made to see and hear all appropriate persons at the courtroom or other place.

#### **49R Giving evidence or making submissions by audio link**

Evidence must not be given, and a submission must not be made, by audio link under this Division, unless:

- (a) the courtroom or other place where a Territory court is sitting; and
- (b) the place where the evidence would be given or the submission would be made,

are equipped with audio link facilities that enable:

- (c) all appropriate persons who are at the courtroom or other place to hear all appropriate persons at the place where the person is giving the evidence or making the submission; and
- (d) all appropriate persons who are at the place where the evidence is given or the submission is made to hear all appropriate persons at the courtroom or other place.

#### **49S Expenses**

If a Territory court directs evidence to be taken, or submissions to be made, by audio visual link or audio link from a person in a participating State, the court may make the orders it considers just for payment of expenses incurred in connection with taking the evidence or making the submissions.

#### **49T Counsel entitled to practise**

A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a barrister, solicitor or both:

- (a) in relation to the examination-in-chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given by audio visual link or audio link in a proceeding before a Territory court; and
- (b) in relation to the making of submissions by audio visual link or audio link from the participating State in a proceeding before a Territory court.

**Division 4            Use of interstate audio visual links or audio links  
                         in proceedings in participating States**

**49U            Application of Division**

This Division applies to any proceeding (including a criminal proceeding) in or before a recognised court.

**49V            Recognised courts may take evidence or receive submissions  
                         from persons in Territory**

A recognised court may, for the purposes of a proceeding before it, take evidence or receive submissions, by audio visual link or audio link from a person in the Territory.

**49W            Powers of recognised courts**

- (1) The recognised court may, for the purposes of the proceeding, exercise in the Territory, in connection with taking evidence or receiving submissions by audio visual link or audio link, any of its powers, except its powers:
  - (a) to punish for contempt; and
  - (b) to enforce or execute its judgments or process.
- (2) The laws of the participating State (including rules of court) that apply to the proceeding in that State also apply, by force of this subsection, to the practice and procedure of the recognised court in taking evidence or receiving submissions, by audio visual link or audio link from a person in the Territory.
- (3) For the purposes of the recognised court exercising its powers, the place in the Territory where evidence is given or submissions are made is taken to be part of the court.

**49X            Orders made by recognised court**

Without limiting section 49W, the recognised court may, by order:

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private;
- (b) require a person to leave a place in the Territory where the giving of evidence or the making of submissions is taking place or is going to take place; or

- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

#### **49Y Enforcement of order**

- (1) An order of a recognised court under this Division must be complied with.
- (2) Subject to rules of court, the order may be enforced by the Supreme Court of the Northern Territory as if the order were an order of that court.
- (3) Without limiting subsection (2), a person who contravenes the order:
  - (a) is taken to be in contempt of the Supreme Court of the Northern Territory; and
  - (b) is punishable accordingly,

unless the person establishes that the contravention should be excused.

#### **49Z Privileges, protection and immunity of participants in proceedings in courts of participating States**

- (1) A judge or other person presiding at or otherwise taking part in the proceeding of a recognised court has, in connection with evidence being taken or submissions being received by audio visual link or audio link from a person in the Territory, the same privileges, protection and immunity as a judge of the Supreme Court of the Northern Territory.
- (2) A person appearing as a legal practitioner in the proceeding of a recognised court has, in connection with evidence being taken or submissions being received by audio visual link or audio link from a person in the Territory, the same protection and immunity as a barrister has in appearing for a party in a proceeding before the Supreme Court of the Northern Territory.
- (3) A person appearing as a witness in a proceeding of a recognised court by audio visual link or audio link from the Territory has the same protection as a witness in a proceeding in the Supreme Court of the Northern Territory.

#### **49ZA Recognised court may administer oath in Territory**

- (1) A recognised court may, for the purpose of obtaining in the proceeding, by audio visual link or audio link, the testimony of a person in the Territory, administer an oath or affirmation in accordance with the practice and procedure of the recognised court.
- (2) Evidence given by a person on oath or affirmation so administered is, for the purposes of the law of the Territory, testimony given in a judicial proceeding.

#### **49ZB Assistance to recognised court**

An officer of a Territory court may, at the request of a recognised court:

- (a) attend at the place in the Territory where evidence is to be or is being taken, or submissions are to be or are being made, in the proceeding;
- (b) take the action that the recognised court directs to facilitate the proceeding; and
- (c) assist with the administering by the recognised court of an oath or affirmation.

#### **49ZC Contempt of recognised courts**

A person must not, while evidence is being given or a submission is being made in the Territory, by audio visual link or audio link, in the proceeding in a recognised court:

- (a) threaten, intimidate or wilfully insult any of the following:
  - (i) a judge or other person presiding at or otherwise taking part in the proceeding;
  - (ii) a Master, Registrar, Deputy Registrar or other officer of that court who is taking part in or assisting in the proceeding;
  - (iii) a person appearing in the proceeding as a legal practitioner;
  - (iv) a witness in the proceeding;
  - (v) a juror in the proceeding;
- (b) wilfully interrupt or obstruct the proceeding; or

- (c) wilfully and without lawful excuse disobey an order or direction of the court.

Penalty:            imprisonment for 3 months.

## **Part VI                      Evidence on commission**

### **Division 1                Taking outside Territory of evidence for Territory proceedings**

#### **50                      Order for taking of evidence**

- (1) This section applies to any proceeding before the Supreme Court, the Local Court or the Court of Summary Jurisdiction, other than a proceeding in which the court in question is exercising jurisdiction conferred on or vested in it by an Act of the Commonwealth.
- (2) Where on the application of a party to any proceeding to which this section applies it appears to the court that it is in the interests of justice to do so, the court may in its discretion make in relation to a person outside the Territory an order:
  - (a) for the examination of the person on oath at any place outside the Territory before a judge or justice of the court, an officer of the court, or such other person as the court may appoint;
  - (b) for the issue of a commission for the examination of the person on oath at any place outside the Territory; or
  - (c) for the issue to an appropriate judicial authority of a place outside the Territory of a letter of request to take, or cause to be taken, the person's evidence.
- (3) In subsection (2)(c), ***appropriate judicial authority*** means:
  - (a) in relation to a place in Australia (including a place in any external Territory of the Commonwealth for the government of which as a Territory provision is made by any Act of the Commonwealth) – a court or authority prescribed as such for that place; and
  - (b) in relation to any other place – an authority appearing to the court to be appropriate having regard to the law of that place.

- (4) In determining whether it is in the interests of justice to make an order under subsection (2) in relation to the taking of evidence of a person, the matters to which the court shall have regard include:
  - (a) whether the person is willing or able to come to the Territory to give evidence in the proceeding;
  - (b) whether the person will be able to give evidence material to any issue to be tried in the proceeding; and
  - (c) whether, having regard to the interests of the parties to the proceeding, justice will be better served by granting the order or refusing it.
- (5) Where a court makes an order within subsection (2)(a) or (b), it may in its discretion (at the time of making the order or at a subsequent time) give such directions as it thinks just relating to the procedure to be followed in and in relation to the examination, including directions as to the time, place and manner of the examination and any other matter that the court thinks relevant.
- (6) Where a court makes an order within subsection (2)(c), it may in its discretion include in the order a request as to any matter relating to the taking of the person's evidence, including:
  - (a) the examination, cross-examination or re-examination of the person, whether his evidence is given orally, upon affidavit or otherwise;
  - (b) the attendance of the legal representative of each party to the proceeding in which the order is made, and the participation of those persons in the examination in appropriate circumstances; and
  - (c) any prescribed matter.

## **51 Admissibility of evidence**

- (1) Subject to subsection (2), the court by which an order is made under section 50(2) may on such terms as it thinks fit permit a party to the proceeding in which the order is made to tender as evidence in the proceeding:
  - (a) the evidence of a person taken in an examination held as a result of the order; or
  - (b) a record of that evidence.



- (2) Evidence of a person so tendered is not admissible if:
- (a) it appears to the satisfaction of the court at the hearing of the proceeding that the person is in the Territory and able to attend the hearing; or
  - (b) the evidence would not have been admissible had it been given or produced at the hearing of the proceeding.
- (3) Where it is in the interests of justice to do so, the court may in its discretion exclude from a proceeding evidence taken in an examination held as a result of an order under section 50(2), notwithstanding that the evidence is otherwise admissible.
- (4) This section does not affect the power of a court in a criminal proceeding to exclude evidence that has been obtained illegally or would, if admitted, operate unfairly against the defendant.
- (5) In this section, **examination** includes any proceeding for the taking of a person's evidence conducted in relation to a letter of request issued pursuant to an order within section 50(2)(c), and a reference to evidence taken in an examination includes a reference to:
- (a) a document produced at the examination; and
  - (b) answers made, whether in writing or orally and reduced to writing, to any written interrogatories presented at the examination.

## **Division 2      Taking within Territory of evidence for proceedings elsewhere**

### **52      Application to Supreme Court for order to obtain evidence**

- (1) Where an application is made to the Supreme Court for an order for evidence to be obtained in the Territory, and the Supreme Court is satisfied:
- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal exercising jurisdiction in a place outside the Territory, and relates to evidence to be obtained for the purposes of proceedings in a civil or commercial matter which have been instituted before that court or tribunal, or whose institution before that court or tribunal is contemplated; or
  - (b) that the application is made in pursuance of a request issued by or on behalf of a court of a place elsewhere in Australia (including a place in any external Territory of the

Commonwealth for the government of which as a Territory provision is made by any Act of the Commonwealth), or by or on behalf of a court in New Zealand, and relates to evidence to be obtained for the purposes of proceedings in relation to the commission of an offence or alleged offence which have been instituted in or before that court, or whose institution in or before that court is contemplated,

the Supreme Court may give effect to the application in accordance with section 53.

- (2) The references in subsection (1) to a request issued by or on behalf of a court or tribunal include references to any commission, order or other process so issued.

### **53 Power of Supreme Court to give effect to application**

- (1) The Supreme Court has power on any such application as is mentioned in section 52(1) to make by order such provision for obtaining evidence in the Territory as may appear to the Court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made.
- (2) An order under this section may require a specified person to take such steps as the Supreme Court may consider appropriate for that purpose.
- (3) Without limiting the generality of subsections (1) and (2), an order under this section may in particular make provision for:
  - (a) the examination of witnesses, either orally or in writing;
  - (b) the production of documents;
  - (c) the inspection, photographing, preservation, custody or detention of any property, the taking of samples of any property, and the carrying out of any experiments on or with any property (**property** including in this paragraph any land, chattel or other corporeal property of any description);
  - (d) the medical examination of any person; and
  - (e) without limiting paragraph (d), the taking and testing of samples of blood from any person.
- (4) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of proceedings in the Supreme Court (whether or not proceedings of the same description as those to which the application for the order relates).

- (5) Subsection (4) does not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath, where this is asked for by the court or tribunal pursuant to whose request the application for the order was made.
- (6) An order under this section shall not require a person:
  - (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or
  - (b) to produce any documents other than particular documents specified in the order and appearing to the Supreme Court to be, or to be likely to be, in his possession, custody or power.
- (7) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time on attendance as a witness in proceedings before the Supreme Court.

#### **54 Privilege of witnesses**

- (1) A person shall not be compelled by virtue of an order under section 53 to give any evidence which he could not be compelled to give:
  - (a) in similar proceedings in the Territory; or
  - (b) in similar proceedings in the place in which jurisdiction is exercised by the court or tribunal pursuant to whose request the application for the order was made.
- (2) Subsection (1)(b) does not apply unless the claim of the person in question to be exempt from giving evidence is:
  - (a) supported (whether unconditionally or subject to conditions that are fulfilled) by a statement contained in the request; or
  - (b) conceded by the applicant for the order.
- (3) Where such a claim by a person is not so supported or conceded, he may (subject to the other provisions of this section) be required to give the evidence to which the claim relates, but that evidence shall not be transmitted to the court or tribunal in question if that court or tribunal, on the matter being referred to it, upholds the claim.

- (4) In this section, references to giving evidence include references to answering any question and producing any document, and the reference in subsection (3) to the transmission of evidence given by a person shall be construed accordingly.

## **55 Offence of giving false evidence**

A person who, in giving any testimony (either orally or in writing) otherwise than on oath where required to do so by an order under section 53, makes a statement:

- (a) which he knows to be false in a material particular; or
- (b) which is false in a material particular and which he or she does not believe to be true,

is guilty of an offence.

Penalty: Imprisonment for 14 years.

## **Part VIA Confidential communications**

### **56 Definitions**

In this Part:

***committal proceedings*** means the examination of an accused by a Justice, and other procedures relating to the examination, under Part V of the *Justices Act*.

***confidential communication*** means:

- (a) a communication, whether oral or written, made in confidence by a victim to a counsellor or to a victim by a counsellor in the course of the relationship of counsellor and client and includes:
  - (i) a communication that is not made in connection with the sexual offence or alleged sexual offence or a condition arising from the sexual offence or alleged sexual offence; and
  - (ii) a communication made in the presence of a parent or carer of the victim or any other person who is present to facilitate communication between the victim and the counsellor or to otherwise further the counselling of the victim;

- (b) a communication, whether oral or written, made about the victim to the counsellor by the parent, carer or other person referred to in paragraph (a)(ii) or by the counsellor to the parent, carer or other person;
- (c) a communication referred to in paragraph (a) or (b) that is made before or after the acts constituting the sexual offence committed against the victim occurred or are alleged to have occurred;
- (d) a record (including an electronic record) kept by a party to a confidential communication or any other person of the confidential communication or of any observation, opinion, advice, recommendation or other matter relating to the confidential communication; or
- (e) part of a confidential communication.

**counsellor** means a person who is treating a victim for an emotional, psychological or psychiatric condition.

**harm** includes physical bodily harm, financial loss, stress or shock, damage to reputation or shame, humiliation, fear or other emotional, psychological or psychiatric harm.

**party to a confidential communication** means:

- (a) the victim to whom the confidential communication relates;
- (b) the counsellor to whom or by whom the confidential communication is made; or
- (c) a parent, carer or other person referred to in paragraph (a)(ii) of the definition of **confidential communication**.

**victim** means a victim or alleged victim of a sexual offence.

## **56A Application of Part**

- (1) Subject to subsection (2), this Part applies in relation to a confidential communication whenever made.
- (2) This Part applies in relation to the following criminal proceedings:
  - (a) committal proceedings in respect of a sexual offence;
  - (b) the hearing of a charge for a sexual offence;
  - (c) a trial in respect of a sexual offence,

where those proceedings are commenced after the commencement of this Part, regardless of when the offence is alleged to have been committed.

- (3) For the purposes of subsection (2):
- (a) committal proceedings commence on the committal mention date;
  - (b) the hearing of a charge commences on the taking of a formal plea from the accused; and
  - (c) a trial commences on the arraignment of the accused.

**56B Protection of confidential communications**

- (1) A confidential communication is a privileged communication to the extent provided by this section.
- (2) Evidence that discloses a confidential communication:
- (a) is not to be subject to discovery or any other form of pre-hearing or pre-trial disclosure or inspection;
  - (b) is not admissible in committal proceedings; and
  - (c) is not to be adduced or produced as evidence at the hearing of a charge or at a trial except with the leave of the Court.

**56C Notice of intention to apply for leave to adduce or produce evidence of confidential communication**

A party to criminal proceedings who intends to apply for leave to adduce or produce evidence of a confidential communication must give reasonable notice in writing of that intention to:

- (a) the Court;
- (b) each other party to the proceedings; and
- (c) each party to the confidential communication who is not a party to the proceedings.

**56D Procedural matters relating to application for leave**

- (1) An application for leave to adduce or produce evidence of a confidential communication is to be heard in the absence of the jury (if any).

- (2) A party to the confidential communication may appear at the hearing of the application for leave if the party:
  - (a) is not also a party to the criminal proceedings in which the evidence is sought to be adduced or produced;
  - (b) is unlikely to be a witness in those proceedings; and
  - (c) is given leave by the Court to appear at the hearing.
- (3) If the evidence to which the application for leave relates is a document or record, the Court may order that the document or record be produced to it and may inspect the document or record but the Court must not make the document or record available to, or disclose its contents to, the applicant for leave.
- (4) For the purposes of determining the application for leave, the Court may order the counsellor:
  - (a) to provide written answers to questions;
  - (b) to produce documents or records relating to the confidential communication; or
  - (c) to appear for oral examination.
- (5) Evidence that is not to be adduced or produced in a criminal proceeding because of section 56A(2) is not admissible in the hearing of an application for leave.

**56E Giving leave to adduce or produce evidence of confidential communication**

- (1) A Court must not give leave to adduce or produce evidence of a confidential communication unless satisfied:
  - (a) that the evidence will, either by itself or together with other evidence that has been or will be adduced or produced, have substantial probative value in respect of a fact in issue;
  - (b) that other evidence of a similar or greater probative value in respect of the matters to which the confidential communication relates is not available; and
  - (c) that the public interest in preserving the confidentiality of confidential communications and protecting the victim from harm is substantially outweighed by the public interest in admitting into evidence information, or the contents of a document or record, that is of substantial probative value.

- (2) Without limiting the matters the Court may take into account for the purposes of subsection (1)(c), the Court must take into account the likelihood, nature and extent of the harm that could be caused to the victim if the evidence is adduced or produced.
- (3) In giving leave to adduce or produce evidence of a confidential communication, the Court may:
  - (a) allow evidence of part only of the confidential communication to be adduced or produced; or
  - (b) specify the manner in which the evidence is to be adduced or produced.
- (4) The Court must state its reasons for giving or refusing to give leave to adduce or produce evidence of a confidential communication.

**56F      Limitation on privilege under this Part**

Nothing in this Part prevents the adducing or producing of:

- (a) evidence with the consent of a victim or, if the victim is under 14 years of age, the consent of a person the Court considers appropriate to give consent;
- (b) evidence of information acquired by a medical practitioner or a registered nurse within the meaning of the *Nursing Act* from a physical examination of a victim in connection with the commission or alleged commission of the sexual offence, including evidence of communications between the practitioner or nurse and the victim during the examination; or
- (c) evidence of a criminal fraud or perjury.

**56G      Ancillary orders where evidence of confidential communication to be adduced or produced**

- (1) Where the leave of the Court or consent under section 56F(a) is given to adduce or produce evidence of a confidential communication, the Court may take action to limit the harm likely to be caused to the victim or any other person because of the disclosure of the confidential communication.
- (2) The action the Court may take includes but is not limited to making one or more of the following orders:
  - (a) an order that all or part of the evidence of the confidential communication be adduced or produced in camera;



- (b) an order relating to the production and inspection of a document that in the opinion of the Court is necessary to protect the safety and welfare of the victim, the counsellor or any other person who was a party to the confidential communication;
- (c) an order relating to the suppression of publication of all or part of the evidence of the confidential communication that in the opinion of the Court is necessary to protect the safety and welfare of the victim, the counsellor or any other person who was a party to the confidential communication;
- (d) an order relating to the disclosure of information about the victim, the counsellor or any other person who was a party to the confidential communication (including information that enables a person to ascertain the party's private, business or official address, email address or telephone number) that in the opinion of the Court is necessary to protect the party's safety and welfare.

## **Part VII                      Publication of evidence**

### **57                      Prohibition of the publication of evidence and of names of parties and witnesses**

- (1) Where it appears to any Court:
  - (a) that the publication of any evidence given or used or intended to be given or used, in any proceeding before the Court, is likely to offend against public decency; or
  - (b) that, for the furtherance of, or otherwise in the interests of, the administration of justice, it is desirable to prohibit the publication of the name of any party or intended party to, or witness or intended witness in, such proceeding,

the Court may, either before or during the course of the proceeding or thereafter, make an order:

- (i) directing that the persons specified (by name or otherwise) by the Court, or that all persons, except the persons so specified, shall absent themselves from the place wherein the Court is being held while the evidence is being given;
- (ii) forbidding the publication of the evidence, or any specified part thereof, or of any report or account of the evidence, or any specified part thereof, either absolutely or subject to such conditions, or in such terms or form, or

in such manner, or to such extent, as the Court approves; or

(iii) forbidding the publication of the name of any such party or witness.

(2) Where the Court makes an order under subsection (1)(iii), the publication of any reference or allusion to any party or witness, the name of whom is by the order forbidden to be published, shall, if the reference or allusion is, in the opinion of the Court hearing the complaint for the alleged offence, intended or is sufficient to disclose the identity of the party or witness, be deemed to be a publication of the name of the party or witness.

(3) When the Court makes an order under subsection (1)(ii) or (iii), forbidding the publication of any evidence or any report or account of any evidence, or the publication of any name, the Court shall report the fact to the Director of Public Prosecutions, and shall embody in its report a statement of:

(a) the evidence or name, as the case may be, by the order forbidden to be published; and

(b) the circumstances in which the order was made.

**58 Temporary prohibition of the publication of evidence where witnesses ordered out of Court**

Where, in the course of any proceeding before any Court, witnesses are ordered out of Court, and it appears to the Court that, for the furtherance or otherwise in the interests of the administration of justice, it is desirable to prohibit for any period the publication of any evidence given or used in the proceeding, the Court may make an order forbidding, for such period as the Court thinks fit, the publication of the evidence or any specified part thereof.

**59 Penalty for breach of order under section 57 or 58**

A person who contravenes or fails to comply with an order under section 57 or 58 is guilty of an offence.

Penalty: \$5,000 or imprisonment for 12 months.

---

**Part VIII General provisions**

**62 Proof of *public place* in certain cases**

(1) Whenever in any proceeding before Justices, in respect of any offence, it is an essential ingredient of the offence that the place

(where any fact or matter occurred or was done) should be a public place, an allegation, in the complaint or information, that the place (specified as that in which the fact or matter charged occurred or was done) was a public place, shall be prima facie evidence that the place was a public place.

- (2) The Court may, if it thinks fit, and at any stage of the proceeding, permit evidence to be called with respect to the question whether the place was a public place.

**62A Proof of place being within municipality, &c.**

- (1) In any complaint or information an allegation that any place is within a municipality, town or community government area shall be prima facie evidence of the fact so alleged.
- (2) In this section, **place** includes:
- (a) any place, public or private, however described in the complaint or information; and
  - (b) the whole or any part of:
    - (i) a street, road or other thoroughfare; or
    - (ii) a building or structure.

**63 Foreign law**

- (1) Evidence of a statute, code or other written law of any place outside Australia may be given by the production of a printed copy of it contained in a volume which:
- (a) purports to be published by the authority of the Government of that place; or
  - (b) is proved to the satisfaction of the Court to be commonly admitted as evidence of it in the courts of that place.
- (2) Evidence of the unwritten law of any place outside Australia may be given by the production of books purporting to contain reports of cases decided in the courts of that place and textbooks treating of the laws of that place.

**64      Reference by court to books, &c., or official certificates in certain matters relating to posts and telegraphs, locality and distance**

In any matter relating to:

- (a) the ordinary course of the post between any place within Australia and any other place, whether within or without Australia, or to the public business and transactions of the Postmaster-General's Department; or
- (b) the territorial limits of the area controlled by any municipal or community government council or other local governing body, or of any other area designated or proclaimed or appointed by or under any law or to the inclusion in any such area or the exclusion therefrom of any particular place; or
- (c) the distance between any 2 places in the Territory,

a Court may refer to:

- (i) any such published book, map, chart or document as the Court considers to be of authority upon the subject to which it relates; or
- (ii) any certificate purporting to be signed by some person occupying an official position which, in the opinion of the Court, qualifies him to certify to the fact in question:

Provided that nothing contained in this section shall be deemed to require any such Court to accept or act upon any such evidence when tendered unless it thinks fit.

**65      Regulations**

The Administrator may make regulations, not inconsistent with this Act, 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.

## The First Schedule      Repeal of State Acts or Ordinances

section 2

Number and year of Act or Ordinance	Title or short title of Act or Ordinance	Extent of repeal
17 of 1846	An Ordinance for adopting certain Acts passed in the Imperial Parliament which was held in Sixth and Seventh Years of the Reign of Her Majesty Queen Victoria, in the Administration of Justice in South Australia, in like manner as other Laws of England are applied therein	So much of the Ordinance as adopts the Act intituled "An Act for Improving the Law of Evidence" (6 & 7 Vict. c. 85)
2 of 1852	An Act to amend the Law of Evidence	The whole
24 of 1855-6	The Supreme Court Procedure Act, 1855	Sections 16 to 21 inclusive
13 of 1866-7	An Act for amending the Law of Evidence and Practice on Criminal Trials	Sections 3 to 8 inclusive
10 of 1869-70	Evidence Further Amendment Act, 1869	Sections 2 and 3
3 of 1873	The Telegraphic Messages Act, 1873	The whole
162 of 1879	The Bankers' Books Evidence Act, 1879	The whole
245 of 1882	An Act to enable Persons Accused of Offences to give Evidence on Oath	The whole
435 of 1888	Evidence Further Amendment Act, 1888	The whole

## The Fourth Schedule

section 33A

THE NORTHERN TERRITORY OF AUSTRALIA.  
IN THE COURT.

The Queen v.

[or, In the matter of a complaint by  
against *or as the case may be.*]

I, of  
a fingerprint expert of the Police Force of the State [*or Territory*] of  
make oath and say as follows:

1. I have examined the fingerprint card now produced and shown to me marked "A".
2. The fingerprints on that card are identical with those on a fingerprint card portion of the records of that Police Force, being the fingerprints of one (alias)
3. According to those records, which I believe to be accurate, the said has been found guilty in the said State [*or Territory*] of the following offences:

[Here insert description of offences, the Courts in  
which the convictions took place and the dates of  
the convictions.]

4. From an examination of those records I believe that the person referred to as having been found guilty, in the document(s) now shown to me and marked "B", "C", "D", &c. (respectively) is identical with the person whose fingerprints are on the said card marked "A".

Sworn at

this day of , 19 .

Before me a person having authority to take affidavits in  
the State [*or Territory*] in which the affidavit is sworn.

---

## ENDNOTES

**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Evidence Ordinance 1939 (Act No. 18, 1939)***

Assent date	3 August 1939
Commenced	3 August 1939

***Evidence Ordinance (No. 2) 1939 (Act No. 24, 1939)***

Assent date	16 November 1939
Commenced	16 November 1939 (s 2)

***Evidence Ordinance 1960 (Act No. 1, 1961)***

Assent date	8 February 1961
Commenced	8 February 1961

***Evidence Ordinance 1965 (Act No. 64, 1965)***

Assent date	17 December 1965
Commenced	14 February 1966 (s 2)

***Evidence Ordinance 1967 (Act No. 30, 1967)***

Assent date	23 August 1967
Commenced	23 August 1967

***Evidence Ordinance 1970 (Act No. 47, 1970)***

Assent date	3 December 1970
Commenced	18 Dec 1970 (s 2, s 2 <i>Records of Depositions Ordinance 1970</i> (Act No. 44, 1970) and Gaz No. 50A, 18 December 1970, p 365)

---

**Ordinances Revision Ordinance 1973 (Act No. 87, 1973)**

Assent date 11 December 1973  
Commenced 11 December 1973 (s 12(2))

**Amending Legislation**

**Ordinances Revision Ordinance 1974 (Act No. 34, 1974)**

Assent date 26 August 1974  
Commenced 11 December 1973 (s 3(2))

**Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)**

Assent date 24 October 1974  
Commenced 11 December 1973 (s 3)

**Ordinances Revision Ordinance 1976 (Act No. 27, 1976)**

Assent date 28 June 1976  
Commenced ss 1, 2 and 6: 28 June 1976 (s 6(2));  
ss 3 and 4: 11 December 1973; s 5: 24 October 1974

**Transfer of Powers (Further Provisions) Ordinance 1977 (Act No. 51, 1977)**

Assent date 9 December 1977  
Commenced 1 January 1978 (s 2)

**Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)**

Assent date 1 July 1978  
Commenced 1 July 1978 (s 8)

**Law Officers Ordinance 1978 (Act No. 61, 1978)**

Assent date 1 July 1978  
Commenced 1 July 1978

**Statute Law Revision Act (No. 2) 1979 (Act No. 128, 1979)**

Assent date 15 October 1979  
Commenced 15 October 1979

**Evidence Amendment Act 1982 (Act No. 23, 1982)**

Assent date 27 April 1982  
Commenced 27 April 1982

**Evidence (Criminal Code) Amendment Act 1983 (Act No. 61, 1983)**

Assent date 28 November 1983  
Commenced 1 January 1984 (s 2, s 2 *Criminal Code Act 1983* (Act No. 47, 1983), *Gaz* G46, 18 November 1983, p 11 and *Gaz* G8, 26 February 1986, p 5)

**Evidence Amendment Act 1984 (Act No. 20, 1984)**

Assent date 12 July 1984  
Commenced 1 August 1984 (*Gaz* S40, 1 August 1984)

**Statute Law Revision Act 1985 (Act No. 49, 1985)**

Assent date 1 October 1985  
Commenced 1 October 1985

**Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)**

Assent date 10 December 1986  
Commenced 19 December 1986 (*Gaz* S87, 17 December 1986)



---

**Statute Law Revision Act 1989 (Act No. 60, 1989)**

Assent date 2 October 1989  
Commenced 2 October 1989

**Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)**

Assent date 11 June 1990  
Commenced 21 January 1991 (s 2, s 2 *Director of Public Prosecutions Act 1990* (Act No. 35, 1990) and Gaz G2, 16 January 1991, p 9)

**Evidence Amendment Act 1990 (Act No. 36, 1990)**

Assent date 22 June 1990  
Commenced 9 July 1990 (Gaz S42, 6 July 1990)

**Financial Institutions (NT) (Consequential Amendments) Act 1992 (Act No. 23, 1992)**

Assent date 2 June 1992  
Commenced 1 July 1992 (s 2, s 2 *Financial Institutions (NT) Act 1992* (Act No. 22, 1992) and Gaz S35, 30 June 1992)

**Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)**

Assent date 31 December 1993  
Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and Gaz S35, 20 May 1994)

**Evidence Amendment Act 1994 (Act No. 3, 1994)**

Assent date 16 March 1994  
Commenced 1 August 1994 (Gaz G29, 20 July 1994, p 2)

**Evidence Amendment Act (No. 2) 1994 (Act No. 16, 1994)**

Assent date 14 April 1994  
Commenced 1 August 1994 (Gaz G29, 20 July 1994, p 2)

**Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)**

Assent date 19 April 1996  
Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

**Evidence Amendment Act 1999 (Act No. 20, 1999)**

Assent date 5 May 1999  
Commenced 16 June 1999 (Gaz G23, 16 June 1999, p 2)

**Statute Law Revision Act 1999 (Act No. 27, 1999)**

Assent date 18 June 1999  
Commenced 18 June 1999

**Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)**

Assent date 29 June 2001  
Commenced 15 July 2001 (s 2, s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth Gaz S285, 13 July 2001)

**Evidence Amendment Act 2001 (Act No. 37, 2001)**

Assent date 19 July 2001  
Commenced 26 September 2001 (Gaz G38, 26 September 2001, p 4)

**3****GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to the following provisions: ss 2, 8, 9, 14, 17, 21, 26A, 26D, 26H, 26J, 28, 29, 33, 37, 38, 42A 42B, 44, 45, 47, 48, 51, 52, 54, 55, 56, 57, 59 and First Schedule.

**4****LIST OF AMENDMENTS**

It	amd No. 36, 1990, s 22
s 1	amd No. 36, 1990, s 22
s 3	rep No. 128, 1979, s 37
s 4	amd No. 30, 1967, s 2; No. 36, 1990, ss 4 and 22; No. 23, 1992, s 4; No. 37, 2001, s 3
s 5	amd No. 36, 1990, s 22
s 6	amd No. 17, 1996, s 6
s 7	amd No. 36, 1990, s 22
s 8	sub No. 1, 1961, s 2
s 9	amd No. 61, 1983, s 4; No. 36, 1990, s 22; No. 17, 1996, s 6
s 9A	ins No. 24, 1939, s 2 amd No. 1, 1961, s 3 rep No. 30, 1967, s 3
s 9B	ins No. 24, 1939, s 2 rep No. 30, 1967, s 3
s 9C	ins No. 24, 1939, s 2 sub No. 3, 1994, s 3 amd No. 27, 1999, s 15
s 10	amd No. 36, 1990, s 22
s 11	amd No. 61, 1978, s 4 rep No. 61, 1983, s 5
s 13	amd No. 36, 1990, s 22
s 16	amd No. 36, 1990, s 22
s 17	sub No. 36, 1990, s 5
s 20	amd No. 47, 1970, s 3
s 21	sub No. 36, 1990, s 6
pt IIA hdg	ins No. 16, 1994, s 3
s 21A	ins No. 16, 1994, s 3 amd No. 37, 2001, s 5
s 21B	ins No. 16, 1994, s 3 amd No. 37, 2001, s 6
s 21C	ins No. 16, 1994, s 3 amd No. 37, 2001, s 7
s 24	rep No. 36, 1990, s 22
s 25	amd No. 36, 1990, s 7
s 26A	ins No. 1, 1961, s 4 amd No. 17, 1996, s 6
s 26B	ins No. 1, 1961, s 4 rep No. 36, 1990, s 22
s 26C	ins No. 1, 1961, s 4 amd No. 87, 1973, s 12; No. 36, 1990, s 22; No. 17, 1996, s 6
s 26D	ins No. 1, 1961, s 4
ss 26E – 26K	ins No. 1, 1961, s 4 rep No. 36, 1990, s 22
s 26L	ins No. 20, 1984, s 3
s 27	amd No. 87, 1973, s 12 sub No. 36, 1990, s 8
s 27A	ins No. 36, 1990, s 9

---

s 28A	ins No. 1, 1961, s 5 amd No. 54, 1978, s 4 sub No. 36, 1990, s 10
s 28B	ins No. 1, 1961, s 5 amd No. 87, 1973, s 12; No. 51, 1977, s 3; No. 54, 1978, s 4 rep No. 36, 1990, s 10
ss 28C – 28D	ins No. 1, 1961, s 5 amd No. 36, 1990, s 22
s 29	amd No. 64, 1965, s 3 sub No. 36, 1990, s 11
s 30	amd No. 87, 1973, s 12 sub No. 36, 1990, s 12
s 30A	ins No. 1, 1961, s 6 rep No. 36, 1990, s 22
s 31	rep No. 36, 1990, s 22
s 32	amd No. 36, 1990, s 13; No. 17, 1996, s 6
s 33	amd No. 36, 1990, s 22; No. 17, 1996, s 6
s 33A	ins No. 1, 1961, s 7 amd No. 87, 1973, s 12; No. 17, 1996, s 6
s 34	amd No. 36, 1990, s 22
s 35	amd No. 87, 1973, s 12
s 36	amd No. 1, 1961, s 8; No. 30, 1967, s 4; No. 47, 1970 s 4; No. 51, 1977, s 3; No. 54, 1978, s 4; No. 60, 1989, s 6 sub No. 36, 1990, s 14
s 37	amd No. 64, 1965, s 4 rep No. 36, 1990, s 22
s 38	amd No. 64, 1965, s 5 rep No. 36, 1990, s 22
s 40	amd No. 87, 1973, s 12; No. 60, 1989, s 6 rep No. 36, 1990, s 22
s 41	amd No. 87, 1973, s 12 rep No. 36, 1990, s 22
s 42	amd No. 36, 1990, s 22
s 42A	ins No. 1, 1961, s 9 amd No. 36, 1990, s 22
s 42B	ins No. 1, 1961, s 9 amd No. 51, 1977, s 3; No. 54, 1978, ss 3 and 4; No. 36, 1990, s 22; No. 17, 2001, s 21
pt IVA hdg	ins No. 23, 1982, s 2
ss 42C – 42G	ins No. 23, 1982, s 2
s 43	sub No. 36, 1990, s 15
s 44	amd No. 36, 1990, ss 16 and 22
s 45	sub No. 36, 1990, s 17
s 45A	ins No. 1, 1961 s 10
s 45B	ins No. 1, 1961, s 10 amd No. 87, 1973, s 12
ss 46 – 48	amd No. 36, 1990, s 22
s 49	amd No. 30, 1967, s 5 rep No. 36, 1990, s 22
pt VA hdg	ins No. 20, 1999, s 3
pt VA	
div 1 hdg	ins No. 20, 1999, s 3
ss 49 – 49C	ins No. 20, 1999, s 3
pt VA	
div 2 hdg	ins No. 20, 1999, s 3
ss 49D – 49M	ins No. 20, 1999, s 3
pt VA	
div 3 hdg	ins No. 20, 1999, s 3

---

ss 49N – 49T	ins No. 20, 1999, s 3
pt VA	
div 4 hdg	ins No. 20, 1999, s 3
ss 49U – 49ZC	ins No. 20, 1999, s 3
pt VI hdg	sub No. 36, 1990, s 18
pt VI	
div 1 hdg	sub No. 36, 1990, s 18
s 50	amd No. 87, 1973, s 12
	sub No. 36, 1990, s 18
s 51	sub No. 36, 1990, s 18
pt VI	
div 2 hdg	sub No. 36, 1990, s 18
s 52	sub No. 36, 1990, s 18
s 53	amd No. 30, 1967, s 6; No. 51, 1977, s 3
	sub No. 36, 1990, s 18
s 54	sub No. 36, 1990, s 18
s 55	amd No. 64, 1965, s 6
	sub No. 36, 1990, s 18
pt VIA hdg	ins No. 37, 2001, s 8
s 56	amd No. 64, 1965, s 7
	rep No. 36, 1990, s 18
	ins No. 37, 2001, s 8
ss 56A – 56G	ins No. 37, 2001, s 8
s 57	amd No. 49, 1985, s 4; No. 48, 1986, s 9; No. 29, 1990, s 7; No. 36, 1990, s 22
s 59	amd No. 64, 1965, s 8
	sub No. 36, 1990, s 19
ss 60 – 61	rep No. 36, 1990, s 22
s 62A	ins No. 1, 1961, s 11
	amd No. 84, 1993, s 6
s 63	amd No. 87, 1973, s 12
	sub No. 36, 1990, s 20
s 64	amd No. 87, 1973, s 12; No. 84, 1993, s 6
s 65	sub No. 36, 1990, s 21
second sch	rep No. 61, 1983, s 7
third sch	ins No. 24, 1939, s 3
	rep No. 30, 1967, s 7
fourth sch	ins No. 1, 1961, s 12
	amd No. 17, 1996, s 6