

Serial 138
Evidence Amendment Act 1999
Mr Burke

**A BILL
for
AN ACT**

to amend the *Evidence Act*



100-100000-1000



100-100000-1000

NORTHERN TERRITORY OF AUSTRALIA

EVIDENCE AMENDMENT ACT 1999

No. of 1999

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NORTHERN TERRITORY OF AUSTRALIA

No. of 1999

AN ACT

to amend the *Evidence Act*

[Assented to 1999]
[Second reading 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Evidence Amendment Act 1999*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. New Part

The *Evidence Act* is amended by inserting after Part V the following:

"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;

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'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

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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."
