

Serial 64

Evidence and Other Legislation (Witness Assistance) Amendment Bill 2006

Dr Toyne

**A BILL
for
AN ACT**

to amend the *Evidence Act* and other legislation relating to the assistance given to witnesses in legal proceedings

NORTHERN TERRITORY OF AUSTRALIA
EVIDENCE AND OTHER LEGISLATION (WITNESS ASSISTANCE)
AMENDMENT ACT 2006

Act No. [] of 2006

TABLE OF PROVISIONS

Section

PART 1 – PRELIMINARY MATTERS

1. Short title

PART 2 – AMENDMENT OF *EVIDENCE ACT*

2. Act amended
3. Amendment of section 4 (Definitions)
4. Repeal and substitution of section 21
 - 20A. Power to require a person present at proceeding to give evidence or produce evidentiary material
 21. Failure to comply with evidentiary summons
5. Amendment of section 53 (Power of Supreme Court to give effect to application)

PART 3 – CONSEQUENTIAL AMENDMENT OF ACTS

Division 1 – Amendment of Justices Act

6. Act amended
7. Repeal of section 24
8. Amendment of section 28 (Proof by affidavit of service of process, handwriting, &c.)

Division 2 – Amendment of Local Court Act

9. Act amended
10. Amendment of section 3 (Definitions)
11. Amendment of section 34 (Contempt)

PART 3 – CONSEQUENTIAL AMENDMENT OF SUBORDINATE
LEGISLATION

Division 1 – Amendment of Justices Regulations

- 12. Regulations amended
- 13. Amendment of Schedule

Division 2 – Amendment of Local Court Rules

- 14. Rules amended
- 15. Amendment of rule 21.06 (Person about to leave territory)
- 16. Amendment of rule 23.08 (Conduct money, expense or loss)
- 17. Amendment of Schedule 1

Division 3 – Amendment of Mining Regulations

- 18. Regulations amended
- 19. Amendment of regulation 41 (Attendance of witnesses)

Division 4 – Amendment of Supreme Court Rules

- 20. Rules amended
- 21. Amendment of rule 42.01 (Definitions)
- 22. Amendment of rule 42.06 (Compliance with subpoena)
- 23. Amendment of rule 42.11 (Costs and expenses of compliance)
- 24. Amendment of Schedule 1

Division 5 – Amendment of Work Health Court Rules

- 25. Rules amended
- 26. Amendment of rule 19.01 (Definitions)
- 27. Amendment of rule 19.08 (Conduct money, expense or loss)

PART 4 – EXPIRY OF ACT

- 28. Expiry



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2006

AN ACT

to amend the *Evidence Act* and other legislation relating to the assistance given to witnesses in legal proceedings

[Assented to [] 2006]
[Second reading [] 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PREMIMINARY MATTERS

1. Short title

This Act may be cited as the *Evidence and Other Legislation (Witness Assistance) Amendment Act 2006*.

PART 2 – AMENDMENT OF *EVIDENCE ACT*

2. Act amended

This Part amends the *Evidence Act*.

3. Amendment of section 4 (Definitions)

Section 4

insert (in alphabetical order)

"evidentiary material" means a document or other thing that may be of evidentiary value in a proceeding before a Court;

"evidentiary summons" means a summons to appear before a Court to give evidence or to produce evidentiary material, and includes a subpoena;

4. Repeal and substitution of section 21

Section 21

repeal, substitute

20A. Power to require a person present at proceeding to give evidence or produce evidentiary material

(1) A Court may require a person who is within the precincts of the Court, and who is competent and compellable to give evidence in a proceeding before the Court, to give evidence in the proceeding.

(2) A Court may require a person who is within the precincts of the Court, and who has evidentiary material in his or her possession or power relevant to a proceeding before the Court, to produce the evidentiary material to the Court or an officer of the Court.

(3) A person who fails, without reasonable excuse, to comply with a requirement under this section is guilty of a contempt of the Court.

21. Failure to comply with evidentiary summons

(1) This section applies if a person (the "prospective witness") fails to appear before a Court to give evidence or to produce evidentiary material as required by an evidentiary summons.

(2) The Court may, if satisfied by oral or affidavit evidence that the evidentiary summons was properly served:

(a) issue a summons calling on the prospective witness to show cause why the non-compliance with the summons should not be dealt with as a contempt of the Court; or

(b) issue a warrant to have the prospective witness arrested and brought before the Court.

(3) However, before the Court issues the warrant, the Court must also be satisfied:

(a) the prospective witness's non-compliance with the summons is without reasonable excuse; and

(b) if the evidentiary summons was issued on the application of a party to a proceeding (the "applicant party"):

- (i) the applicant party made, or attempted to make, appropriate arrangements for the prospective witness's travel and accommodation; and
 - (ii) the applicant party did everything necessary to comply with the party's obligations under any arrangements made for the prospective witness's travel and accommodation.
- (4) The applicant party makes, or attempts to make, appropriate arrangements for a prospective witness's travel and accommodation if:
- (a) a reasonable time before the prospective witness is required to comply with the summons the applicant party tenders to the prospective witness an amount sufficient to meet the reasonable expenses of the prospective witness's travel and accommodation; or
 - (b) the applicant party makes reasonable arrangements for the prospective witness's travel and accommodation and the prospective witness agrees to those arrangements in writing; or
 - (c) the applicant party proposes reasonable arrangements for the prospective witness's travel and accommodation, written notice of the proposal is given to the prospective witness a reasonable time before the prospective witness is required to comply with the summons and either of the following apply:
 - (i) the prospective witness fails to respond to the proposal within the time allowed in the notice;
 - (ii) in negotiation between the applicant party and the prospective witness, the prospective witness fails to agree to reasonable arrangements for the prospective witness's travel and accommodation (either on the terms proposed by the applicant party or on some reasonable modification of those terms); or
 - (d) a reasonable time before the prospective witness is required to comply with the summons the applicant party gives the prospective witness written notice inviting the prospective witness to contact the applicant party or a representative of the applicant party at a stated address so that reasonable arrangements may be agreed for the prospective witness's travel and accommodation and either of the following apply:
 - (i) the prospective witness fails to respond to the invitation within the time allowed in the notice;

- (ii) in negotiation between the applicant party and the prospective witness, the applicant party proposes, but the prospective witness fails to agree to, reasonable arrangements for the prospective witness's travel and accommodation.

(5) The address stated in the notice mentioned in subsection (4)(d) must include a telephone number.

(6) The Court may, instead of, or as well as, issuing a warrant deal with non-compliance with the summons as a contempt of the Court.

(7) In this section:

"arrangements" for travel and accommodation means arrangements under which the applicant party bears the cost of the travel and accommodation;

"travel and accommodation" means travel and accommodation of a reasonable standard that a prospective witness will reasonably require to comply with an evidentiary summons, and includes the provision of meals.

5. Amendment of section 53 (Power of Supreme Court to give effect to application)

Section 53(7)

omit, substitute

- (7) If an order under this section requires a person to attend at a place:
 - (a) the order has effect as an evidentiary summons for section 21; and
 - (b) the person is entitled to payment for other expenses and loss of time on attendance as a witness in a proceeding before the Supreme Court.

PART 3 – CONSEQUENTIAL AMENDMENT OF ACTS

Division 1 – Amendment of Justices Act

6. Act amended

This Division amends the *Justices Act*.

7. Repeal of section 24

Section 24

repeal

8. Amendment of section 28 (Proof by affidavit of service of process, handwriting, &c.)

(1) Section 28(1)(a), at the end

insert

or

(2) Section 28(1)(b)

omit

document; or

substitute

document;

(3) Section 28(1)(c)

omit

Division 2 – Amendment of Local Court Act

9. Act amended

This Division amends the *Local Court Act*

10. Amendment of section 3 (Definitions)

Section 3, definition of "conduct money"

omit

11. Amendment of section 34 (Contempt)

(1) Section 34(1)(a)

omit, substitute

(a) having been summoned as a witness, the person fails without lawful excuse to comply with the summons; or

- (2) Section 34(1)(b) and (c), at the end

insert

or

- (3) Section 34(5)(a)

omit

all words from "and having"

substitute

, the person fails without lawful excuse to comply with the summons; or

PART 3 – CONSEQUENTIAL AMENDMENT OF SUBORDINATE LEGISLATION

Division 1 – Amendment of Justices Regulations

12. Regulations amended

This Division amends the *Justices Regulations*.

13. Amendment of Schedule

Schedule, Form 3

omit

, and that a reasonable sum was paid (tendered) to him/her for the costs and expenses of attendance

Division 2 – Amendment of Local Court Rules

14. Rules amended

This Division amends the *Local Court Rules*

15. Amendment of rule 21.06 (Person about to leave Territory)

Rule 21.06(3)

omit, substitute

(3) An order under this section has effect as an evidentiary summons for section 21 of the *Evidence Act* and rule 23.08 applies (with the necessary changes) to the order.

16. Amendment of rule 23.08 (Conduct money, expense or loss)

- (1) Rule 23.08, heading

omit, substitute

Expenses and losses incurred complying with summons

- (2) Rule 23.08(1)

omit, substitute

(1) A person is not required to comply with a summons for production or a summons to give evidence unless the requirements of section 21 of the *Evidence Act* are complied with in relation to appropriate arrangements to meet the person's reasonable expenses for travel and accommodation for complying with the summons.

- (3) Rule 23.08(2)(b)

omit

conduct money given or offered under subrule (1),

substitute

provision made under appropriate arrangements under section 21 of the *Evidence Act* to meet the person's reasonable expenses for travel and accommodation for complying with the summons;

17. Amendment of Schedule 1

- (1) Schedule 1, Form 23A, Note 1, at the end

insert

However, you need not comply with this summons unless the requirements of section 21 of the *Evidence Act* are complied with in relation to appropriate arrangements to meet your reasonable expenses for travel and accommodation for complying with this summons.

- (2) Schedule 1, Form 23A, Note 3

omit

- (3) Schedule 1, Form 23B, Note 1, at the end

insert

However, you need not comply with this summons unless the requirements of section 21 of the *Evidence Act* are complied with in relation to appropriate arrangements to meet your reasonable expenses for travel and accommodation for complying with this summons.

- (4) Schedule 1, Form 23B, Note 4

omit

- (5) Schedule 1, Form 23C, Note 1, at the end

insert

However, this summons does not need to be complied with unless the requirements of section 21 of the *Evidence Act* are complied with in relation to appropriate arrangements to meet reasonable expenses for travel and accommodation for complying with this summons.

- (6) Schedule 1, Form 23C, Note 4

omit

Division 3 – Amendment of Mining Regulations

18. Regulations amended

This Division amends the *Mining Regulations*.

19. Amendment of regulation 41 (Attendance of witnesses)

Regulation 41(2)

omit, substitute

(2) A witness subpoenaed to attend a warden's court is entitled to the fees prescribed by the *Supreme Court Rules*.

(3) A witness is not required to attend on the subpoena unless the requirements of section 21 of the *Evidence Act* are complied with in relation to appropriate arrangements to meet the witness's reasonable expenses for travel and accommodation for complying with the subpoena.

Division 4 – Amendment of Supreme Court Rules

20. Rules amended

This Division amends the *Supreme Court Rules*.

21. Amendment of rule 42.01 (Definitions)

Rule 42.01(1), definition of "conduct money"

omit

22. Amendment of rule 42.06 (Compliance with subpoena)

Rule 42.06(1)

omit, substitute

(1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless the issuing party makes, or attempts to make, appropriate arrangements under section 21 of the *Evidence Act* to meet the addressee's reasonable expenses for travel and accommodation for complying with the subpoena.

23. Amendment of rule 42.11 (Costs and expenses of compliance)

Rule 42.11(3)

omit, substitute

(3) An amount fixed under this rule is in addition to:

(a) an amount payable to the addressee under appropriate arrangements under section 21 of the *Evidence Act* to meet the addressee's reasonable expenses for travel and accommodation for complying with the subpoena; and

(b) any witness expenses payable to the addressee.

24. Amendment of Schedule 1

(1) Schedule 1, Form 42A, note 4

omit, substitute

Witness assistance

4. You need not comply with this subpoena to the extent it requires you to attend to give evidence unless the issuing party makes, or attempts to make, appropriate arrangements under section 21 of the *Evidence Act* to

meet your reasonable expenses for travel and accommodation for complying with the subpoena.

- (2) Schedule 1, Form 42A, note 13

omit

conduct money

substitute

witness assistance mentioned in note 4

Division 5 – Amendment of Work Health Court Rules

25. Rules amended

This Division amends the *Work Health Court Rules*.

26. Amendment of rule 19.01 (Definitions)

Rule 19.01, definition of "conduct money"

omit

27. Amendment of rule 19.08 (Conduct money, expense or loss)

- (1) Rule 19.08, heading

omit, substitute

Expenses and losses incurred complying with summons

- (2) Rule 19.08(1)

omit, substitute

(1) A person is not required to comply with a summons for production or a summons to give evidence unless the requirements of section 21 of the *Evidence Act* are complied with in relation to appropriate arrangements to meet the person's reasonable expenses for travel and accommodation for complying with the summons.

- (3) Rule 19.08(2)(b)

omit

conduct money given or offered under subrule (1),

substitute

provision made under appropriate arrangements under section 21 of the *Evidence Act* to meet the person's reasonable expenses for travel and accommodation for complying with the summons;

PART 4 – EXPIRY OF ACT

28. Expiry

This Act expires on the day after it commences.
