

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Attorney-General's)

**EVIDENCE (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) BILL 1994**

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A BILL

FOR

**An Act to repeal provisions of the *Evidence Act 1905*, to
repeal the *State and Territorial Laws and Records
Recognition Act 1901* and to make transitional provisions
and certain amendments consequential upon the enactment
of the *Evidence Act 1994***

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1 This Act may be cited as the *Evidence (Transitional Provisions and
Consequential Amendments) Act 1994*.

Commencement

2.(1) This Part and Part 2 commence on the day on which this Act receives the Royal Assent.

(2) Section 8 of this Act commences on the day on which section 160 of the *Evidence Act 1994* commences. 5

(3) Subject to subsection (4) of this section, subsection 9(1) commences on a day to be fixed by Proclamation.

(4) A Proclamation is not to be made under subsection (3) of this section until the law of each State and the law of the Northern Territory have been amended to the effect that the provisions of the *Evidence Act 1994* referred to in subsection 9(1) of this Act apply, for the purposes of the ASC Law, as a law of that State or the Northern Territory (as the case requires). 10

(5) Subsection 9(2) commences on the day on which the provisions of Part IIIA of the *Evidence Act 1905* are repealed under subsection 3(1) of this Act. 15

(6) Section 10 of this Act commences on the day on which section 139 of the *Evidence Act 1994* commences.

(7) Section 11 of this Act commences on the day on which section 85 of the *Evidence Act 1994* commences.

(8) Sections 12 and 14 of this Act commence on the day on which section 21 of the *Evidence Act 1994* commences. 20

(9) Section 13 of this Act commences on the day on which those provisions of Part VA of the *Evidence Act 1905* that may be repealed under subsection 3(1) of this Act are so repealed.

(10) Sections 15 and 16 of this Act commence on the day on which section 3 of the *Evidence Act 1994* commences. 25

(11) Section 17 of this Act and the Schedule to this Act commence:

(a) on the day on which sections 153 and 155 of the *Evidence Act 1994* commence; or

(b) if those sections commence on different days—the first day on which both of those sections are in force. 30

PART 2—REPEALS

Repeals

3.(1) Subject to subsection (2):

(a) the provisions of the *Evidence Act 1905* (other than the provisions of Part I of that Act and sections 11B and 11D, paragraphs 11F(1)(c) and (d) and sections 11G, 11H, 11J and 11K of that Act); and 35

(b) the provisions of the *State and Territorial Laws and Records Recognition Act 1901*;

are repealed on a day or days to be fixed by Proclamation.

(2) If a provision to which subsection (1) applies is not repealed under that subsection before 1 January 1995, it is repealed on that day.

(3) Part I of the *Evidence Act 1905* is repealed immediately after the remaining provisions of that Act have been repealed under this Act and the *Evidence and Procedure (New Zealand) (Transitional Provisions and Consequential Amendments) Act 1994*.

(4) This section does not affect the operation of subsection 4(2).

PART 3—TRANSITIONAL PROVISIONS

Proceedings already begun

4 (1) A provision of the *Evidence Act 1994* does not apply in relation to proceedings the hearing of which began before the commencement of the provision.

(2) A provision of the *Evidence Act 1905*, or the *State and Territorial Laws and Records Recognition Act 1901*, that is repealed under section 3 continues to apply in relation to proceedings the hearing of which began before the repeal.

Identifications already carried out

5. Section 114 of the *Evidence Act 1994* does not apply in relation to an identification made before the commencement of that section.

Cautioning of persons

6. Section 139 of the *Evidence Act 1994* does not apply in relation to a statement made or an act done before the commencement of that section.

Amendments made by this Act

7.(1) An amended provision does not apply in relation to proceedings the hearing of which began before the commencement of the amendment.

(2) An amended provision continues to apply in relation to proceedings the hearing of which began before that commencement as if the amendment had not been made.

(3) In this section:

“**amended provision**” means a provision of another Act that is amended by Part 4 of this Act or the Schedule to this Act, and is taken to include a provision of another Act that is repealed or omitted by that Part or the Schedule;

“**amendment**”, in relation to a provision, includes repeal or omission of the provision.

PART 4—CONSEQUENTIAL AMENDMENTS

Meaning of service by post

8. Section 29 of the *Acts Interpretation Act 1901* is amended by adding at the end the following subsection: 5

“(2) This section does not affect the operation of section 160 of the *Evidence Act 1994*.”.

Application of Crimes Act and Evidence Act

9.(1) Section 88 of the *Australian Securities Commission Act 1989* is amended by omitting subsection (2) and substituting the following subsection: 10

“(2) Part 2.2, sections 69, 70, 71 and 147 and Division 2 of Part 4.6 of the *Evidence Act 1994* apply to an examination in the same way that they apply to a proceeding to which that Act applies under section 4 of that Act.”. 15

(2) Until subsection (1) of this section commences, for the purposes of the operation of subsection 88(2) of the *Australian Securities Commission Act 1989* and for the purposes of the operation of any provision of a law of a State or Territory that corresponds to that subsection, Part IIIA of the *Evidence Act 1905* is taken to remain in force despite any repeal under section 3 of this Act. 20

Cautioning person under arrest

10. Section 23F of the *Crimes Act 1914* is amended by adding at the end of subsection (2) “unless the person cannot hear adequately”.

Right to remain silent etc. not affected 25

11. Section 23S of the *Crimes Act 1914* is amended:

(a) by omitting from paragraph (b) “the burden” and substituting “any burden”;

(b) by inserting after paragraph (b) the following paragraph:

“(ba) any burden on the prosecution to prove that an admission or confession was made in such circumstances as to make it unlikely that the truth of the admission or confession was adversely affected; or”. 30

Oaths and affirmations

12. Section 44 of the *Federal Court of Australia Act 1976* is amended by omitting subsections (2) and (3). 35

Rules of Court

5 **13.** Section 59 of the *Federal Court of Australia Act 1976* is amended by omitting from paragraph 59(2)(u) “, for the purposes of Part IIIA of this Act and Part VA of the *Evidence Act 1905*,” and substituting “from New Zealand”.

Oaths and affirmations

14. Section 77F of the *Judiciary Act 1903* is amended by omitting subsections (2) and (4).

Judicial notice of signature of Secretary

- 10 **15.** Section 139 of the *National Health Act 1953* is amended:
- (a) by omitting from subsection (1) “all Courts shall” and substituting “every Australian court is to”;
 - (b) by omitting subsection (2) and substituting the following subsection:
“**(2)** In this section:
15 **‘Australian court’** has the same meaning as in the *Evidence Act 1994*.”.

Judicial notice of signature of Secretary

- 20 **16.** Section 32 of the *Nursing Homes Assistance Act 1974* is amended:
- (a) by omitting from subsection (1) “all courts shall” and substituting “every Australian court is to”;
 - (b) by omitting subsection (2) and substituting the following subsection:
“**(2)** In this section:
25 **‘Australian court’** has the same meaning as in the *Evidence Act 1994*.”.

25 Other consequential amendments

17. The Acts specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

OTHER CONSEQUENTIAL AMENDMENTS

Acts Interpretation Act 1901

Paragraph 46A(1)(d):

Add at the end “and”.

Paragraph 46A(1)(e):

Omit the paragraph.

Defence Act 1903

Section 58D:

Repeal the section.

Disability Services Act 1986

Subsection 31(5):

Omit the subsection.

Federal Airports Corporation Act 1986

Subsection 72(8):

Omit the subsection.

Fisheries Management Act 1991

Subsection 19(4):

Omit the subsection.

Fishing Industry Research and Development Act 1987

Subsection 36(4):

Omit the subsection.

Health Insurance Act 1973

Subsection 4BC(5):

Omit the subsection.

Subsection 23DB(8):

Omit the subsection.

SCHEDULE—continued

Subsection 23DC(15):

Omit the subsection.

Subsection 23DF(16):

Omit the subsection.

Subsection 23DN(12):

Omit the subsection.

Subsection 124H(6):

Omit the subsection.

Liquefied Petroleum Gas (Grants) Act 1980

Subsection 6A(8):

Omit the subsection.

Section 9:

Repeal the section.

Liquid Fuel Emergency Act 1984

Subsection 43(1):

Omit the subsection.

National Health Act 1953

Subsection 85(2E):

Omit the subsection.

Nuclear Non-Proliferation (Safeguards) Act 1987

Subsection 4(10):

Omit the subsection.

Subsection 11(13):

Omit the subsection.

Nursing Homes Assistance Act 1974

Subsection 36A(5).

Omit the subsection.

SCHEDULE—continued

States Grants (Petroleum Products) Act 1965

Section 8:

Repeal the section.

Telecommunications (Interception) Act 1979

Subsection 34(2):

Omit the subsection.

Torres Strait Fisheries Act 1984

Subsection 14(16):

Omit the subsection.

Subsection 16(10):

Omit the subsection.

Subsection 17(4):

Omit the subsection.