



# **Evidence (Transitional Provisions and Consequential Amendments) Act 1995**

**No. 3 of 1995**

## **TABLE OF PROVISIONS**

### **PART 1—PRELIMINARY**

**Section**

- 1.** Short title
- 2.** Commencement

### **PART 2—REPEALS**

- 3.** Repeals

### **PART 3—TRANSITIONAL PROVISIONS**

- 4.** Proceedings already begun
- 5.** Prior operation of notification provisions
- 6.** Proof of voluminous or complex documents
- 7.** Notices for the purposes of sections 97 and 98 of the *Evidence Act 1995*
- 8.** Requests under section 167 of the *Evidence Act 1995*
- 9.** Approval of persons for the purposes of section 171 of the *Evidence Act 1995*
- 10.** Requests under section 173 of the *Evidence Act 1995*

TABLE OF PROVISIONS—*continued*

Section

- 11. Agreements under section 191 of the *Evidence Act 1995*
- 12. Identifications already carried out
- 13. Cautioning of persons
- 14. Amendments made by this Act

PART 4—CONSEQUENTIAL AMENDMENTS

- 15. Meaning of service by post
- 16. Application of Crimes Act and Evidence Act
- 17. Identification parades
- 18. Identification by means of photographs
- 19. Cautioning persons under arrest
- 20. Right to remain silent etc. not affected
- 21. Oaths and affirmations
- 22. Rules of Court
- 23. Oaths and affirmations
- 24. Oaths and affirmations
- 25. Judicial notice of signature of Secretary
- 26. Judicial notice of signature of Secretary
- 27. Other consequential amendments

SCHEDULE

OTHER CONSEQUENTIAL AMENDMENTS

*Acts Interpretation Act 1901*

*Defence Act 1903*

*Disability Services Act 1986*

*Federal Airports Corporation Act 1986*

*Fisheries Management Act 1991*

*Fishing Industry Research and Development Act 1987*

*Health Insurance Act 1973*

*Liquefied Petroleum Gas (Grants) Act 1980*

*Liquid Fuel Emergency Act 1987*

*National Health Act 1953*

*Nuclear Non-Proliferation (Safeguards) Act 1987*

*Nursing Homes Assistance Act 1974*

*States Grants (Petroleum Products) Act 1965*

*Telecommunications (Interception) Act 1979*

*Torres Strait Fisheries Act 1984*



# **Evidence (Transitional Provisions and Consequential Amendments) Act 1995**

**No. 3 of 1995**

---

---

**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 1995***

[Assented to 23 February 1995]

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 1995*.

*Evidence (Transitional Provisions and Consequential  
Amendments) No. 3, 1995*

**Commencement**

**2.(1)** This Part and Parts 2 and 3 commence on the day on which this Act receives the Royal Assent.

**(2)** Section 15 of this Act commences on the day on which section 160 of the *Evidence Act 1995* commences.

**(3)** Subject to subsection (4) of this section, subsection 16(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 1995* referred to in subsection 16(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).

**(5)** Subsection 16(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.

**(6)** Section 17 of this Act commences:

**(a)** on the day on which section 114 of the *Evidence Act 1995* commences; or

**(b)** on a day fixed by Proclamation;

whichever is earlier.

**(7)** Section 18 of this Act commences:

**(a)** on the day on which section 115 of the *Evidence Act 1995* commences; or

**(b)** on a day fixed by Proclamation;

whichever is earlier.

**(8)** Section 19 of this Act commences on the day on which section 139 of the *Evidence Act 1995* commences.

**(9)** Section 20 of this Act commences on the day on which section 85 of the *Evidence Act 1995* commences.

**(10)** Sections 21, 23 and 24 of this Act commence on the day on which section 21 of the *Evidence Act 1995* commences.

**(11)** Section 22 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.

**(12)** Sections 25 and 26 of this Act commence on the day on which section 3 of the *Evidence Act 1995* commences.

**(13)** Section 27 of this Act and the Schedule to this Act commence:

*Evidence (Transitional Provisions and Consequential  
Amendments) No. 3, 1995*

- (a) on the day on which sections 153 and 155 of the *Evidence Act 1995* commence; or
- (b) if those sections commence on different days—the first day on which both of those sections are in force.

**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
- (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 18 April 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)** Subject to this Part, a provision of the *Evidence Act 1995* 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.

**Prior operation of notification provisions**

**5.(1)** If, before the commencement of a notification provision, a document of a kind referred to in that provision is given or served:

- (a) in the circumstances provided for in that provision; and
- (b) in accordance with such requirements (if any) as would apply to the giving or serving of the document under that provision after its commencement;

*Evidence (Transitional Provisions and Consequential  
Amendments) No. 3, 1995*

the document is taken to have been given or served under that provision.

(2) The following provisions of the *Evidence Act 1995* are notification provisions for the purposes of subsection (1):

- (a) paragraph 33(2)(c);
- (b) paragraph 49(a);
- (c) paragraph 50(2)(a);
- (d) subsection 67(1);
- (e) subsection 68(2);
- (f) paragraph 73(2)(b);
- (g) subsection 168(1);
- (h) subsection 168(3);
- (i) subsection 168(5);
- (j) subsection 168(6);
- (k) subsection 173(1);
- (l) subsection 177(2);
- (m) subsection 177(5).

(3) If a notice given before the commencement of subsection 67(1) of the *Evidence Act 1995* is taken because of this section to have been given under that subsection, the period for an objection to be made under section 68 of that Act to the tender of evidence to which the notice relates is the period ending:

- (a) 7 days after the commencement of that section; or
  - (b) 21 days after the notice was given to the party concerned;
- whichever is later.

(4) If a notice given before the commencement of subsection 168(1) or (3) of the *Evidence Act 1995* is taken because of this section to have been given under one of those subsections, the period for a request to be made under that subsection in connection with the notice is the period ending:

- (a) 7 days after the commencement of that section; or
  - (b) 21 days after the notice was given to the party concerned;
- whichever is later.

(5) If a copy of a document served before the commencement of subsection 168(5) or (6) of the *Evidence Act 1995* is taken because of this section to have been served under one of those subsections, the period for a request to be made under that subsection in connection with the document is the period ending:

- (a) 7 days after the commencement of that section; or
  - (b) 21 days after the document was served on the party concerned;
- whichever is later.

**Proof of voluminous or complex documents**

6. A person is taken, for the purposes of paragraph 50(2)(b) of the *Evidence Act 1995*, to have been given a reasonable opportunity to examine or copy documents if such an opportunity was given to the person before the commencement of section 50 of the *Evidence Act 1995*.

**Notices for the purposes of sections 97 and 98 of the *Evidence Act 1995***

7. References in paragraphs 97(1)(a) and 98(1)(a) of the *Evidence Act 1995* to giving notice are taken to include references to giving notice of the kind referred to in those paragraphs before the commencement of section 97 of that Act or section 98 of that Act, as the case requires.

**Requests under section 167 of the *Evidence Act 1995***

8. The reference in section 167 of the *Evidence Act 1995* to making a request is taken to include a reference to making a request of the kind referred to in that section before the commencement of that section.

**Approval of persons for the purposes of section 171 of the *Evidence Act 1995***

9. The reference in paragraph (d) of the definition of “authorised person” in subsection 171(3) of the *Evidence Act 1995* to a person authorised by the Attorney-General is taken to include a reference to:

- (a) any person who, immediately before the commencement of section 171 of the *Evidence Act 1995*, was a person authorised by the Attorney-General under paragraph 7J(4)(b) of the *Evidence Act 1995*; and
- (b) any person who, before that commencement, is authorised by the Attorney-General under this section.

**Requests under section 173 of the *Evidence Act 1995***

10. The reference in subsection 173(2) of the *Evidence Act 1995* to a request is taken to include a reference to a request of the kind referred to in that subsection made before the commencement of section 173 of the *Evidence Act 1995*.

**Agreements under section 191 of the *Evidence Act 1995***

11. The reference in paragraph 191(3)(a) of the *Evidence Act 1995* to an agreement is taken to include a reference to an agreement of the kind referred to in that paragraph entered into before the commencement of section 191 of the *Evidence Act 1995*.

**Identifications already carried out**

12.(1) Section 114 of the *Evidence Act 1995* does not apply in relation to an identification made before the commencement of that section.

*Evidence (Transitional Provisions and Consequential  
Amendments) No. 3, 1995*

(2) Section 115 of the *Evidence Act 1995* does not apply in relation to an identification made before the commencement of that section.

**Cautioning of persons**

13. Section 139 of the *Evidence Act 1995* does not apply in relation to a statement made or an act done before the commencement of that section.

**Amendments made by this Act**

14.(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**

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

“(2) This section does not affect the operation of section 160 of the *Evidence Act 1995*.”.

**Application of Crimes Act and Evidence Act**

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

“(2) Part 2.2, sections 69, 70, 71 and 147 and Division 2 of Part 4.6 of the *Evidence Act 1995* 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.”.

(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.

### **Identification parades**

**17.** Section 3ZM of the *Crimes Act 1914* is amended:

(a) by inserting after subsection (2) the following subsection:

“(2A) Without limiting the matters that may be taken into account in determining whether it is reasonable in the circumstances to hold an identification parade, the following must be taken into account:

- (a) the kind of offence, and the gravity of the offence, concerned;
- (b) the likely importance in the circumstances of the evidence of identification;
- (c) the practicality of holding an identification parade, having regard, among other things:
  - (i) if the suspect fails to cooperate in the conduct of the parade—to the manner and extent of, and the reason (if any) for, the failure; and
  - (ii) in any case—to whether an identification was made at or about the time of the commission of the offence; and
- (d) the appropriateness of holding an identification parade, having regard, among other things, to the relationship (if any) between the suspect and the person who may make an identification at the identification parade.”;

(b) by omitting from subsection (7) “The following questions are to be decided according to the common law:” and substituting “Nothing in this Act affects the determination of the following questions:”.

### **Identification by means of photographs**

**18.** Section 3ZO of the *Crimes Act 1914* is amended:

(a) by inserting after paragraph (1)(a) the following paragraph:

“(aa) the suspect’s appearance has changed significantly since the offence was committed; or”;

(b) by inserting after subsection (1) the following subsection:

“(1A) Without limiting the matters that may be taken into account in determining whether it would be unreasonable in the circumstances to hold an identification parade, the following must be taken into account:

- (a) the kind of offence, and the gravity of the offence, concerned;
- (b) the likely importance in the circumstances of the evidence of identification;

*Evidence (Transitional Provisions and Consequential Amendments) No. 3, 1995*

- (c) the practicality of holding an identification parade, having regard, among other things:
  - (i) if the suspect fails to cooperate in the conduct of the parade—to the manner and extent of, and the reason (if any) for, the failure; and
  - (ii) in any case—to whether an identification was made at or about the time of the commission of the offence; and
- (d) the appropriateness of holding an identification parade, having regard, among other things, to the relationship (if any) between the suspect and the person who may make an identification at the identification parade.”;

(c) by inserting after paragraph (2)(b) the following paragraph:

“(ba) the photographs or pictures shown to the witness must not suggest that they are photographs or pictures of persons in police custody;”.

#### **Cautioning person under arrest**

19. 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**

20. 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”.

#### **Oaths and affirmations**

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

#### **Rules of Court**

22. 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”.

*Evidence (Transitional Provisions and Consequential  
Amendments) No. 3, 1995*

**Oaths and affirmations**

23. Section 474 of the *Industrial Relations Act 1988* is amended by omitting subsections (2) and (3).

**Oaths and affirmations**

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

**Judicial notice of signature of Secretary**

25. 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:

‘Australian court’ has the same meaning as in the *Evidence Act 1995*.”.

**Judicial notice of signature of Secretary**

26. 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:

‘Australian court’ has the same meaning as in the *Evidence Act 1995*.”.

**Other consequential amendments**

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

**SCHEDULE**

Section 27

**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.

*Evidence (Transitional Provisions and Consequential Amendments) No. 3, 1995*

**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.

*Evidence (Transitional Provisions and Consequential Amendments) No. 3, 1995*

**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.

---

*[Minister's second reading speech made in—  
House of Representatives on 19 October 1994  
Senate on 7 November 1994]*