

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EVIDENCE (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL  
AMENDMENTS) BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice,  
the Honourable Duncan Kerr MP)



# EVIDENCE (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1994

## OUTLINE

This Bill -

repeals the *State and Territorial Laws and Records Recognition Act 1901* and most provisions of the *Evidence Act 1905*;

amends the *Acts Interpretation Act 1901*, *Crimes Act 1914*, *Federal Court of Australia Act 1976* and *Judiciary Act 1903* consequentially upon the Evidence Bill 1993;

amends the *Australian Securities Commission Act 1989*, *Federal Court of Australia Act 1976*, *National Health Act 1953*, *Nursing Homes Assistance Act 1974*, *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 1984*, *Nuclear Non-Proliferation (Safeguards) Act 1987*, *States Grants (Petroleum Products) Act 1965*, *Telecommunications (Interception) Act 1979* and *Torres Strait Fisheries Act 1984* in consequence of the repeal of the *Evidence Act 1905*;

continues the application of provisions of Acts repealed or amended by the Bill in proceedings the hearing of which began before the repeal or amendment; and

continues the operation of the present law in relation to -

- visual identification evidence in respect of an identification made before the commencement of section 114 of the *Evidence Act 1994*;
- evidence of a statement made or act done during questioning by an official before the commencement of section 139 of the *Evidence Act 1994*.

## FINANCIAL IMPACT

2. The Bill is expected to have no impact on Commonwealth expenditure or revenue.

## NOTES ON CLAUSES

### Clause 1: Short Title

3. This clause provides for the short title of the Act.

### Clause 2: Commencement

4. This clause provides that Parts 1 and 2 of this Act commence on Royal Assent and that other clauses commence when specified provisions of the *Evidence Act 1994* commence. However, subsection 9(1), which relates to the *Australian Securities Commission Act 1989*, is to commence on Proclamation, which must not be made until certain amendments have been made to the law of all States and the Northern Territory.

### Clause 3: Repeals

5. This clause provides for repeal of the *State and Territorial Laws and Records Recognition Act 1901* and all provisions of the *Evidence Act 1905* which are not repealed by the *Evidence and Procedure (New Zealand) (Transitional Provisions and Consequential Amendments) Act 1994*.

6. The repeals to be effected by this clause (except that of Part I of the *Evidence Act 1905*) are to take effect on the earlier of a day fixed by Proclamation or 1 January 1995. Part I of the *Evidence Act 1905* is to be repealed immediately after the repeal (by this Act or the other Act mentioned above) of all other provisions of the *Evidence Act 1905*.

### Clause 4: Proceedings already begun

7. This clause provides that provisions of the *Evidence Act 1994* do not apply in proceedings the hearing of which began before the commencement of the relevant provisions. It also continues the application of the provisions of the *Evidence Act 1905* and the *State and Territorial Laws and Records Recognition Act 1901* which are repealed under clause 3 to proceedings the hearing of which began before the repeal.

### Clause 5: Identification already carried out

8. This clause provides that section 114 of the *Evidence Act 1994* does not apply with respect to an identification made before the commencement of section 114. Section 114 makes inadmissible certain visual identification evidence.

#### Clause 6: Cautioning of persons

9. This clause provides that section 139 of the *Evidence Act 1994* does not apply with respect to a statement made or act done before the commencement of section 139. Section 139 deems certain evidence obtained during questioning by an official to have been obtained improperly if a caution was not administered in accordance with the section.

#### Clause 7: Amendments made by this Act

10. This clause provides that amendments (including repeals) made by Part 4 of this Act or the Schedule do not apply in proceedings the hearing of the which began before the commencement of the amendment. The original provision continues to apply in relation to such proceedings.

#### Clause 8: Meaning of service by post

11. This clause amends section 29 of the *Acts Interpretation Act 1901* so that it does not affect the operation of section 160 of the *Evidence Act 1994*. Both sections provide for a presumption in relation to service of documents by post. But for the amendment, section 29 would prevail over section 160 because of subsection 8(1) of the *Evidence Act 1994*.

#### Clause 9: Application of Crimes Act and Evidence Act

12. This clause amends subsection 88(2) of the *Australian Securities Commission Act 1989* to replace a reference to Part IIIA of the *Evidence Act 1905* by a reference to corresponding provisions of the *Evidence Act 1994*. Until the amendment takes effect Part IIIA of the *Evidence Act 1905* is to remain in force for the purposes of the operation of subsection 88(2) of the *Australian Securities Commission Act 1989*, and any State or Territory law that corresponds to that provision, despite the repeal of Part IIIA.

#### Clause 10: Cautioning persons under arrest

13. This clause amends section 23F of the *Crimes Act 1914* so that it accords with section 139 of the *Evidence Act 1994*. Both sections relate to cautioning of persons.

#### Clause 11: Right to remain silent etc not affected

14. This clause amends section 23S of the *Crimes Act 1914* (which preserves certain rights, powers and obligations protective of an accused person) to reflect the changes

to the law relating to the admission of a confession made by a person made by Part 3.4 of the *Evidence Act 1994*.

**Clause 12: Oaths and affirmations**

15. This clause repeals subsections 44(2) and (3) of the *Federal Court of Australia Act 1976*. These subsections, which provide for oaths and affirmations in the Federal Court, are made redundant by the *Evidence Act 1994*.

**Clause 13: Rules of Court**

16. This clause amends paragraph 59(2)(u) of the *Federal Court of Australia Act 1976* consequentially upon the repeal of provisions of the *Evidence Act 1905* to be effected under this Act.

**Clause 14: Oaths and affirmations**

17. This clause repeals subsections 77F(2) and (4) of the *Judiciary Act 1903*. These subsections, which provide for oaths and affirmations in the High Court, are made redundant by the *Evidence Act 1994*.

**Clause 15: Judicial notice of signature of Secretary**

18. This clause amends section 139 of the *National Health Act 1953* consequentially upon the repeal of the *Evidence Act 1905*.

**Clause 16: Judicial notice of signature of Secretary**

19. This clause amends section 32 of the *Nursing Homes Association Act 1974* consequentially upon the repeal of the *Evidence Act 1905*.

**Clause 17: Other consequential amendments**

20. This clause amends the Acts specified in the Schedule as set out in the Schedule.





9 780644 316620