

**EVIDENCE (AMENDMENT) ACT, 1979, No. 40**

**New South Wales**



**ANNO VICESIMO OCTAVO**

**ELIZABETHÆ II REGINÆ**

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**Act No. 40, 1979.**

An Act to amend the Evidence Act, 1898, in relation to Crown privilege. [Assented to, 4th May, 1979.]

*Evidence (Amendment).*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Evidence (Amendment) Short title. Act, 1979".

2. The Evidence Act, 1898, is amended—

Amend-  
ment of  
Act No. 11,  
1898.

(a) by inserting in section 1 after the matter relating to Part V the following matter :—  
**PART VI.—Crown Privilege—ss. 60–63.**

Sec. 1.  
(Short title  
and  
division.)

(b) by inserting after Part V the following Part :—  
**Pt. VI.**

**PART VI.**

*Crown Privilege.*

60. (1) In this Part—

Interpre-  
tation:  
Pt. VI.

"disclose" includes disclose by—

- (a) the production or discovery of documents;
- (b) the giving of evidence;
- (c) the answering of interrogatories; or
- (d) the furnishing of particulars;

"government communication" means a written or oral communication relating to the business of government at senior level, including, but

*Evidence (Amendment).*

without limiting the generality of the foregoing, a written or oral communication relating to—

- (a) proceedings of Cabinet, of a committee of Cabinet or of the Executive Council;
- (b) the formulation of government policy; or
- (c) government administration at senior level.

(2) A reference in this Part to a communication includes a reference to a statement or record that is not communicated to any person.

**Certificate  
of  
Attorney  
General  
conclusive  
in certain  
cases.**

61. (1) When the Attorney General certifies in writing that in his opinion—

- (a) any communication described in the certificate, or any communication relating to a matter so described, is a government communication and is confidential; and
- (b) the disclosure of the communication in any legal proceedings described in the certificate is not in the public interest,

the communication shall not be disclosed in or in relation to those legal proceedings or be admissible in evidence in those legal proceedings.

(2) A certificate under subsection (1) shall, without any court having examined, or heard a record of, the communication so certified or having inquired into the power of the Attorney General to give the certificate, be accepted in the legal proceedings described in the certificate as conclusive that the communication is a government communication and is confidential and that

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the disclosure of the communication in those legal proceedings is not in the public interest.

(3) A certificate under subsection (1) may be revoked by the Attorney General.

62. (1) A communication shall not be disclosed in or in relation to any legal proceedings or be admissible in evidence in any legal proceedings if—

Attorney  
General  
to be  
given  
opportun-  
ity to give  
certificate.

- (a) it appears to the person presiding in the court before which the legal proceedings are held or taken that the communication is a government communication; and
- (b) the Attorney General has not had an opportunity to give a certificate under section 61 in relation to the communication.

(2) Subsection (1) does not apply to a government communication the publication of which has previously been duly authorised.

(3) Subsection (1) does not prevent a communication from being disclosed in or in relation to any legal proceedings so far only as the disclosure is made to the person presiding in the court before which those legal proceedings are held or taken and is necessary to enable the person to decide whether or not the communication is a government communication and, if the person decides that it is such a communication, whether or not it is a government communication referred to in subsection (2).

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*Evidence (Amendment).*

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(4) The practice and procedure of any court for or with respect to the giving to the Attorney General of notice relating to the disclosure of any government communication in or in relation to any legal proceedings shall be—

- (a) where there is a power to make rules of court for or with respect to the practice and procedure of that court and any such rules are in force—in accordance with those rules of court; and
- (b) where there is no such power—in accordance with any regulations made for the purposes of this paragraph.

(5) The Governor may make regulations for the purposes of subsection (4) (b).

This Part  
not to  
limit other  
laws.

63. Nothing in this Part limits the operation of any law requiring a court to prohibit the disclosure of any written or oral communication on the grounds that it is in the public interest to do so.

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