



New South Wales

Evidence (Savings and Transitional) Regulation 1997

under the

Evidence (Consequential and Other Provisions) Act 1995

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Evidence (Consequential and Other Provisions) Act 1995*.

J W Shaw

Attorney General

Explanatory note

The *Crimes Legislation (Unsworn Evidence Amendment) Act 1994* ("the 1994 Act") abolished the right of an accused person to make an unsworn statement in a trial if the person was charged with an offence on or after the commencement of the amendments made to the *Crimes Act 1900* by that Act. However the right of a person charged before the commencement to make an unsworn statement was preserved and continues to be governed by the law in force before the commencement.

The object of this Regulation is to clarify the effect of the *Evidence Act 1995* in relation to an accused person who makes such an unsworn statement in proceedings to which that Act applies and to put it beyond doubt that the prosecution may call evidence in reply in those proceedings in order to rebut an assertion made in an unsworn statement of good character in the same way as the prosecution could before the 1994 Act.

Section 110 of the *Evidence Act 1995* provides exceptions to the hearsay rule, the opinion rule, the tendency rule and the credibility rule for evidence adduced by an accused person about his or her own good character, either

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generally or in a particular respect and for evidence adduced to rebut the accused's evidence. Proposed clause 4 (2) will ensure that the section will apply both to evidence adduced by a defendant and to an unsworn statement made by a defendant.

This Regulation is made under clause 1 of Schedule 2 to the *Evidence (Consequential and Other Provisions) Act 1995* and comprises matters of a savings or transitional nature.

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1 Name of Regulation

This Regulation is the *Evidence (Savings and Transitional) Regulation 1997*.

2 Commencement

This Regulation commences on 7 June 1997.

3 Notes

The explanatory note and table of contents do not form part of this Regulation.

4 Defendants making unsworn statements after commencement of Evidence Act 1995

- (1) This clause applies only in criminal proceedings to which the *Evidence Act 1995* applies in which a defendant makes an unsworn statement after the commencement of this clause in accordance with the law of this State as in force after the commencement of the *Crimes Legislation (Unsworn Evidence) Amendment Act 1994*.
- (2) A reference in section 110 of the *Evidence Act 1995* to adducing evidence to prove a matter includes a reference to a defendant making an unsworn statement in a proceeding to which this clause applies in which that matter is raised.