



New South Wales

# Evidence Amendment Act 2010 No 69

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New South Wales

## **Evidence Amendment Act 2010 No 69**

Act No 69, 2010

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An Act to amend the *Evidence Act 1995* to make further provision with respect to the privilege against self-incrimination and the unavailability of witnesses; and for other purposes. [Assented to 28 September 2010]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Evidence Amendment Act 2010*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

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## **Schedule 1      Amendment of Evidence Act 1995 No 25**

**[1] Section 128 Privilege in respect of self-incrimination in other proceedings**

Omit “If” from section 128 (3). Insert instead “Subject to subsection (4), if”.

**[2] Section 128 (3)**

Insert “is not to require the witness to give the evidence, and” before “is to inform”.

**[3] Section 128 (12)–(14)**

Insert after section 128 (11) (before the notes):

- (12) If a person has been given a certificate under a prescribed State or Territory provision in respect of evidence given by a person in a proceeding in a State or Territory court, the certificate has the same effect, in a proceeding to which this subsection applies, as if it had been given under this section.
- (13) For the purposes of subsection (12), a prescribed State or Territory provision is a provision of a law of a State or Territory declared by the regulations to be a prescribed State or Territory provision for the purposes of that subsection.
- (14) Subsection (12) applies to a proceeding in relation to which this Act applies because of section 4, other than a proceeding for an offence against a law of the Commonwealth or for the recovery of a civil penalty under a law of the Commonwealth.

**[4] Section 128, note 3**

Omit the note. Insert instead:

- 3 Section 128 (12)–(14) of the Commonwealth Act give effect to certificates in relation to self-incriminating evidence under the NSW Act in proceedings in federal and ACT courts and in prosecutions for Commonwealth and ACT offences.

**[5] Section 128A Privilege in respect of self-incrimination—exception for certain orders etc**

Insert after section 128A (10) (before the note):

- (11) If a person has been given a certificate under a prescribed State or Territory provision in respect of information of a kind referred to in subsection (6) (a), the certificate has the same effect, in a proceeding to which this subsection applies, as if it had been given under this section.

- (12) For the purposes of subsection (11), a prescribed State or Territory provision is a provision of a law of a State or Territory declared by the regulations to be a prescribed State or Territory provision for the purposes of that subsection.
- (13) Subsection (11) applies to a proceeding in relation to which this Act applies because of section 4, other than a proceeding for an offence against a law of the Commonwealth or for the recovery of a civil penalty under a law of the Commonwealth.

**[6] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

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**[7] Dictionary**

Omit clause 4 from Part 2. Insert instead:

**4 Unavailability of persons**

- (1) For the purposes of this Act, a person is taken not to be available to give evidence about a fact if:
  - (a) the person is dead, or
  - (b) the person is, for any reason other than the application of section 16 (Competence and compellability: judges and jurors), not competent to give the evidence, or
  - (c) the person is mentally or physically unable to give the evidence and it is not reasonably practicable to overcome that inability, or
  - (d) it would be unlawful for the person to give the evidence, or
  - (e) a provision of this Act prohibits the evidence being given, or
  - (f) all reasonable steps have been taken, by the party seeking to prove the person is not available, to find the person or secure his or her attendance, but without success, or
  - (g) all reasonable steps have been taken, by the party seeking to prove the person is not available, to compel the person to give the evidence, but without success.

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- (2) In all other cases the person is taken to be available to give evidence about the fact.

[Agreement in principle speech made in Legislative Assembly on 1 September 2010  
Second reading speech made in Legislative Council on 22 September 2010]

BY AUTHORITY