

[Act 1995 No 27]



New South Wales

## Evidence (Consequential and Other Provisions) Bill 1995

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Evidence Bill 1995*.

### Overview of Bill

The objects of this Bill are:

- (a) to repeal the *Evidence Act 1898* and the *Evidence (Reproductions) Act 1967* as a consequence of the enactment of the proposed *Evidence Act 1995* and the *Evidence on Commission Act 1995* and to make necessary consequential amendments to various Acts, and
  - (b) to amend the *Crimes Act 1900* to set out the criteria to be satisfied in order for admissions by accused persons made in the course of official questioning and made at a time when they were under suspicion of having committed an offence to be admissible as evidence, and
  - (c) to enact consequential savings, transitional and other provisions.
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## Outline of provisions

**Clauses 1–5** are machinery provisions.

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** repeals the Acts referred to in paragraph (a) of the Overview of this Bill.

**Clauses 4 and 5** are formal provisions giving effect to the amendments set out in Schedule 1 and the savings, transitional and other provisions set out in Schedule 2.

**Schedule 1** contains the amendments referred to in paragraphs (a) and (b) of the Overview of this Bill.

The amendments referred to in paragraph (a) of the Overview of this Bill include amendments:

- to repeal provisions of the *Crimes Act 1900* to be superseded by the proposed Acts (for example, section 405C which will be superseded by proposed section 164 (3) of the Evidence Act 1995 and section 413A which will be superseded by proposed section 104)
- to repeal provisions of the Oaths Act 1900 to be replaced by the proposed Act (for example, sections 33 and 34 which will be superseded by proposed section 13 of the *Evidence Act 1995*)
- to make it clear that proposed section 127 (Religious confessions) of the Evidence Act 1995 will apply to hearings or proceedings before certain bodies (for example, the New South Wales Crime Commission) to which other provisions of the proposed Act are not to apply
- to translate references to the *Evidence Act 1898* to corresponding references in the proposed *Evidence Act 1995*.

The amendment referred to in paragraph (b) of the Overview of this Bill is based on the recommendations of the Criminal Law Review Division of the Attorney General's Department in a report titled *A Proposed System of Electronically Recording Police Interviews with Suspected Persons* (1986).

Proposed section 424A of the Crimes Act 1900 (Schedule 1.5 (3)) provides that evidence of admissions allegedly made to police officers (and other prescribed investigating officials) but not electronically recorded should generally not be admissible. If, however, an investigating official has a reasonable excuse for failing to make such a recording the evidence is admissible but only if the other requirements of the proposed section are met.

If an investigating official has a reasonable excuse for not recording an admission, evidence of the admission is admissible if investigating officials subsequently hold a recorded interview and put the earlier admission to the suspect and invite comment. If no later recorded interview is held, the evidence is inadmissible unless investigating officials can demonstrate a reasonable excuse for not holding such a recorded interview.

Proposed section 424A will provide additional requirements concerning the admissibility of admissions to which it applies to those contained in Part 3.4 of the proposed *Evidence Act 1995*.

Schedule 2 contains the provisions referred to in paragraph (c) of the Overview of this Bill. It contains a power to make regulations of a savings and transitional nature (clause 1) and makes certain savings relating to the repeal of some of the provisions of the *Evidence Act 1898* and the *Evidence (Reproductions) Act 1967* (clauses 11–15).

The provisions of the *Evidence Act 1995* and Evidence on Commission Act 1995 will not apply to proceedings the hearings of which began before the commencement of the provisions (clause 2). For example, a provision of the proposed *Evidence Act 1995* that is applicable to criminal proceedings will not apply to proceedings if the arraignment of the accused has occurred before commencement of the provision. However, Schedule 2 enables procedural steps on which the operation of particular provisions depend to be taken before the provision concerned commences (clauses 3 (1) and (2) and 4, 5, 6, 7 and 8).