

Evidence (Consequential and Other Provisions) Act 1995 No 27

[1995-27]



New South Wales

Status Information

Currency of version

Historical version for 3 December 1999 to 31 December 2008 (accessed 29 April 2024 at 4:33)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Evidence Amendment Act 2007 No 46](#) (not commenced — to commence on 1.1.2009)
- **Note**
The Act is to be repealed by sec 5 (2) of the [Evidence Amendment Act 2007 No 46](#) on the day on which that Act is repealed.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Evidence (Consequential and Other Provisions) Act 1995 No 27



New South Wales

An Act to repeal the *Evidence Act 1898* and the *Evidence (Reproductions) Act 1967*, and to amend various other Acts, as a consequence of the enactment of the *Evidence Act 1995* and the *Evidence on Commission Act 1995*; and for other purposes.

1 Name of Act

This Act is the *Evidence (Consequential and Other Provisions) Act 1995*.

2 Commencement

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

3 Repeal of Acts

The following Acts are repealed:

Evidence Act 1898

Evidence (Reproductions) Act 1967

Evidence (Evidence on Commission) Amendment Act 1988.

4 (Repealed)

5 Savings, transitional and other provisions

Schedule 2 has effect.

Schedule 1 (Repealed)

Schedule 2 Savings, transitional and other provisions

(Section 5)

1 Savings and transitional regulations

- (1) The Governor may make regulations that contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Evidence Act 1995

Evidence on Commission Act 1995.

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

2 Proceedings

- (1) A provision of the *Evidence Act 1995* or *Evidence on Commission Act 1995* does not apply in relation to a proceeding the hearing of which began before the commencement of the provision, except as provided by this Schedule.
- (2) A provision of the *Evidence Act 1898* or the *Evidence (Reproductions) Act 1967* that is repealed by this Act continues to apply in relation to proceedings the hearing of which began before the repeal.

3 Prior operation of notification provisions

- (1) If, before the commencement of a notification provision, a document of a kind referred to in that provision is given or served:
 - (a) in the circumstances provided for in that provision, and
 - (b) in accordance with such requirements (if any) as would apply to the giving or serving of the document under that provision after its commencement,the document is taken to have been given or served under that provision.
- (2) The following provisions of the *Evidence Act 1995* are notification provisions for the purposes of subclause (1):
 - (a) section 33 (2) (c),
 - (b) section 49 (a),
 - (c) section 50 (2) (a),

- (d) section 67 (1),
 - (e) section 68 (2),
 - (f) section 73 (2) (b),
 - (g) section 168 (1),
 - (h) section 168 (3),
 - (i) section 168 (5),
 - (j) section 168 (6),
 - (k) section 173 (1),
 - (l) section 177 (2),
 - (m) section 177 (5).
- (3) If a notice given before the commencement of section 67 (1) of the *Evidence Act 1995* is taken because of this clause to have been given under that subsection, the period for an objection to be made under section 68 of that Act to the tender of evidence to which the notice relates is the period ending:
- (a) 7 days after the commencement of section 68 of that Act, or
 - (b) 21 days after the notice was given to the party concerned,
- whichever is the later.
- (4) If a notice given before the commencement of section 168 (1) or (3) of the *Evidence Act 1995* is taken because of this clause to have been given under one of those subsections, the period for a request to be made under that subsection in connection with the notice is the period ending:
- (a) 7 days after the commencement of section 168 of that Act, or
 - (b) 21 days after the notice was given to the party concerned,
- whichever is the later.
- (5) If a copy of a document served before the commencement of section 168 (5) or (6) of the *Evidence Act 1995* is taken because of this clause to have been served under one of those subsections, the period for a request to be made under that subsection in connection with the document is the period ending:
- (a) 7 days after the commencement of section 168 of that Act, or
 - (b) 21 days after the document was served on the party concerned,

whichever is the later.

4 Proof of voluminous or complex documents

A person is taken, for the purposes of section 50 (2) (b) of the *Evidence Act 1995*, to have been given a reasonable opportunity to examine or copy documents if such an opportunity was given to the person before the commencement of section 50 of that Act.

5 Notices for the purposes of sections 97 and 98 of the *Evidence Act 1995*

References in sections 97 (1) (a) and 98 (1) (a) of the *Evidence Act 1995* to giving notice are taken to include references to giving notice of the kind referred to in those paragraphs before the commencement of section 97 and section 98 of that Act, respectively.

6 Requests under section 167 of the *Evidence Act 1995*

The reference in section 167 of the *Evidence Act 1995* to making a request is taken to include a reference to making a request of the kind referred to in that section before the commencement of that section.

7 Requests under section 173 of the *Evidence Act 1995*

The reference in section 173 (2) of the *Evidence Act 1995* to a request is taken to include a reference to a request of the kind referred to in that subsection made before the commencement of section 173 of that Act.

8 Agreements under section 191 of the *Evidence Act 1995*

The reference in section 191 (3) (a) of the *Evidence Act 1995* to an agreement is taken to include a reference to an agreement of the kind referred to in that paragraph entered into before the commencement of section 191 of that Act.

9 Identifications already carried out

- (1) Section 114 of the *Evidence Act 1995* does not apply in relation to an identification made before the commencement of that section.
- (2) Section 115 of the *Evidence Act 1995* does not apply in relation to an identification made before the commencement of that section.

10 Cautioning of persons

Section 139 of the *Evidence Act 1995* does not apply in relation to a statement made or an act done before the commencement of that section.

11 Amendments made by this Act

- (1) An amended provision does not apply in relation to proceedings the hearing of which began before the commencement of the amendment.

(2) An amended provision continues to apply in relation to proceedings the hearing of which began before that commencement as if the amendment had not been made.

(3) In this section:

amended provision means a provision of another Act that is amended by Schedule 1 to this Act, and is taken to include a provision of another Act that is repealed or omitted by that Schedule.

amendment of provision, includes repeal or omission of the provision.

12 Admissibility of evidence or statements as to access by husband or wife

To remove doubt, it is declared that the common law rule relating to evidence by spouses as to access and marital intercourse abolished by section 14D of the [Evidence Act 1898](#) is not revived by the repeal of that section by this Act.

13 Imperial Acts

An Imperial Act or a provision of such an Act that was repealed by the [Evidence Act 1898](#) is not revived merely because the [Evidence Act 1898](#) is repealed by this Act.

14 Construction of references to old Acts

(1) In this clause:

old Act means:

- (a) the [Evidence Act 1898](#), or
- (b) the [Evidence \(Reproductions\) Act 1967](#).

(2) A reference in any Act or instrument to an old Act (or a provision of an old Act) is to be read as a reference to the [Evidence Act 1995](#) or the [Evidence on Commission Act 1995](#) (or the provision of those Acts) that, having regard to the reference and the context in which the reference occurs, most nearly corresponds to the old Act (or the provision of the old Act).

15 Saving of rules

Any rules made under Part 7 or 8 of the [Evidence Act 1898](#) and in force immediately before the repeal of that Act by this Act are taken to be rules made under the [Evidence on Commission Act 1995](#) and may be amended and repealed accordingly.