

# **TASMANIA**

---

## **EVIDENCE AMENDMENT BILL 2010**

---

### **CONTENTS**

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 3B amended (Unavailability of persons)
6. Section 13 substituted
  13. Competence: lack of capacity
7. Section 14 amended (Compellability: reduced capacity)
8. Section 21 amended (Sworn evidence by oath or affirmation)
9. Section 29 amended (Manner and form of questioning and responses of witness)
10. Section 33 amended (Evidence by police officers)
11. Section 37 amended (Leading questions)
12. Section 41 substituted
  41. Improper questions
13. Section 50 amended (Proof of voluminous or complex documents)
14. Section 59 amended (Hearsay rule – exclusion of hearsay evidence)
15. Section 60 substituted
  60. Exception: evidence relevant for non-hearsay purpose

16. Section 61 amended (Exception to hearsay rule dependent on competency)
17. Section 62 amended (Restriction to first-hand hearsay)
18. Section 64 amended (Exception: civil proceedings if maker available)
19. Section 65 amended (Exception: criminal proceedings if maker not available)
20. Section 66 amended (Exception: criminal proceedings if maker available)
21. Section 66A inserted
  - 66A. Exception: contemporaneous statements about a person's health, &c.
22. Sections 71 and 72 substituted
  71. Exception: electronic communications
  72. Exception: Aboriginal and Torres Strait Islander traditional laws and customs
23. Section 78A inserted
  - 78A. Exception: Aboriginal and Torres Strait Islander traditional laws and customs
24. Section 79 substituted
  79. Exception: opinion based on specialised knowledge
25. Section 79A repealed
26. Section 85 amended (Criminal proceedings: reliability of admissions by defendants)
27. Section 89 amended (Evidence of silence)
28. Section 97 amended (Tendency rule)
29. Section 98 substituted
  98. Coincidence rule
30. Chapter 3, Part 7 substituted
  - PART 7 – Credibility
  - Division 1 – Credibility evidence*
  - 101A. Credibility evidence
  - Division 2 – Credibility of witnesses*
  102. Credibility rule
  103. Exception: cross-examination as to credibility
  104. Further protection: cross-examination of defendant
  105. ....
  106. Exception: rebutting denials by other evidence

- 107. (Repealed)
- 108. Exception: re-establishing credibility
- Division 3 – Credibility of persons who are not witnesses*
- 108A. Admissibility of evidence of credibility of person who has made a previous representation
- 108B. Further protections: previous representations of an accused who is not a witness
- Division 4 – Persons with specialised knowledge*
- 108C. Exception: evidence of persons with specialised knowledge
- 31. Section 112 amended (Leave required for cross-examination on character of accused or co-accused)
- 32. Section 117 amended (Interpretation of Division)
- 33. Section 118 amended (Legal advice)
- 34. Section 122 substituted
  - 122. Loss of client legal privilege: consent and related matters
- 35. Chapter 3, Part 10, Division 1A inserted
  - Division 1A – Professional confidential relationship privilege*
  - 126A. Definitions
  - 126B. Exclusion of evidence of protected confidence
  - 126C. Loss of professional confidential relationship privilege: consent
  - 126D. Loss of professional confidential relationship privilege: misconduct
  - 126E. Ancillary orders
  - 126F. Application of Division
- 36. Section 128 substituted
  - 128. Privilege in respect of self-incrimination in other proceedings
- 37. Section 128A inserted
  - 128A. Privilege in respect of self-incrimination – exception for certain orders, &c.
- 38. Section 131A inserted
  - 131A. Application of Division to preliminary proceedings of courts
- 39. Chapter 3, Part 11: Heading amended
- 40. Section 139 amended (Cautioning person)

41. Section 148 amended (Evidence of certain acts of justices, lawyers and notaries public)
42. Section 161 substituted
  161. Electronic communications
43. Section 164 amended (Corroboration requirements abolished)
44. Chapter 4, Part 5: Heading amended
45. Section 165 amended (Unreliable evidence)
46. Sections 165A and 165B inserted
  - 165A. Warnings in relation to children's evidence
  - 165B. Delay in prosecution
47. Section 184 substituted
  184. Accused may admit matters and give consent
48. Section 189 amended (The voir dire)
49. Section 190 amended (Waiver of rules of evidence)
50. Section 191 amended (Agreements as to facts)
51. Section 192A inserted
  - 192A. Advance rulings and findings
52. Section 197 amended (Regulations)
53. Section 200 inserted
  200. Savings, transitional and other provisions
54. Schedule 2 inserted
  - Schedule 2 – Savings, Transitional and Other Provisions
55. Repeal of Act

# **EVIDENCE AMENDMENT BILL 2010**

*(Brought in by the Minister for Justice, the Honourable  
Larissa Tahireh Giddings)*

## **A BILL FOR**

### **An Act to amend the *Evidence Act 2001***

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Evidence Amendment Act 2010*.

#### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

#### **3. Principal Act**

In this Act, the *Evidence Act 2001*\* is referred to as the Principal Act.

---

\*No. 76 of 2001

*Evidence Amendment Act 2010*  
*Act No. of*

s. 4

---

**4. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of “Australian law”:

**“Australian lawyer”** has the meaning it has in the *Legal Profession Act 2007*;

**“Australian legal practitioner”** has the meaning it has in the *Legal Profession Act 2007*;

- (b) by inserting the following definitions after the definition of “Australian Parliament”:

**“Australian practising certificate”** has the meaning it has in the *Legal Profession Act 2007*;

**“Australian-registered foreign lawyer”** has the meaning it has in the *Legal Profession Act 2007*;

- (c) by inserting the following definition after the definition of “credibility”:

**“credibility evidence”** is defined in section 101A;

- (d) by inserting the following definition after the definition of “document”:

**“electronic communication”** has the meaning it has in the *Electronic Transactions Act 2000*;

- (e) by omitting the definition of “lawyer”;
- (f) by inserting the following definition after the definition of “leading question”:

**“legal counsel”** means an Australian lawyer employed in or by a government agency or other body who by law is exempted from holding an Australian practising certificate, or who does not require an Australian practising certificate, to engage in legal practice in the course of that employment;

- (g) by inserting the following definition after the definition of “opinion rule”:

**“overseas-registered foreign lawyer”** has the meaning it has in Part 2.6 of Chapter 2 of the *Legal Profession Act 2007*;

- (h) by inserting the following definition after the definition of “probative value”:

**“prosecutor”** means a person who institutes or is responsible for the conduct of a prosecution;

- (i) by inserting the following definition after the definition of “tendency rule”:

*Evidence Amendment Act 2010*  
*Act No. of*

s. 5

---

**“traditional laws and customs”** of an Aboriginal or Torres Strait Islander group (including a kinship group) includes any of the traditions, customary laws, customs, observances, practices, knowledge and beliefs of the group;

**5. Section 3B amended (Unavailability of persons)**

Section 3B of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (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, 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.

**6. Section 13 substituted**

Section 13 of the Principal Act is repealed and the following section is substituted:

**13. Competence: lack of capacity**

- (1) A person is not competent to give evidence about a fact if, for any reason (including a mental, intellectual or physical disability) –
  - (a) the person does not have the capacity to understand a question about the fact; or
  - (b) the person does not have the capacity to give an answer that can be understood to a question about the fact –

*Evidence Amendment Act 2010*  
*Act No. of*

s. 6

---

and that incapacity cannot be overcome.

- (2) A person who, because of subsection (1), is not competent to give evidence about a fact may be competent to give evidence about other facts.
- (3) A person who is competent to give evidence about a fact is not competent to give sworn evidence about the fact if the person does not have the capacity to understand that, in giving evidence, he or she is under an obligation to give truthful evidence.
- (4) A person who is not competent to give sworn evidence about a fact may, subject to subsection (5), be competent to give unsworn evidence about the fact.
- (5) A person who, because of subsection (3), is not competent to give sworn evidence is competent to give unsworn evidence if the court has told the person –
  - (a) that it is important to tell the truth; and
  - (b) that he or she may be asked questions that he or she does not know, or cannot remember, the answer to, and that he or she should tell the court if this occurs; and
  - (c) that he or she may be asked questions that suggest certain

*Evidence Amendment Act 2010*  
*Act No. of*

s. 7

---

statements are true or untrue and that he or she should agree with the statements that he or she believes are true and should feel no pressure to agree with statements that he or she believes are untrue.

- (6) It is presumed, unless the contrary is proved, that a person is not incompetent because of this section.
- (7) Evidence that has been given by a witness does not become inadmissible merely because, before the witness finishes giving evidence, he or she dies or ceases to be competent to give evidence.
- (8) For the purpose of determining a question arising under this section, the court may inform itself as it thinks fit, including by obtaining information from a person who has relevant specialised knowledge based on the person's training, study or experience.

**7. Section 14 amended (Compellability: reduced capacity)**

Section 14(a) of the Principal Act is amended by omitting “be capable of hearing or understanding, or of communicating replies to, questions on that matter” and substituting “have the capacity to understand a question about the

*Evidence Amendment Act 2010*  
*Act No. of*

s. 8

---

matter or to give an answer that can be understood to a question about the matter”.

**8. Section 21 amended (Sworn evidence by oath or affirmation)**

Section 21(2) of the Principal Act is amended by omitting “section 13(2)” and substituting “section 13”.

**9. Section 29 amended (Manner and form of questioning and responses of witness)**

Section 29 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) A court may, on its own motion or on the application of the party that called the witness, direct that the witness give evidence wholly or partly in narrative form.

**10. Section 33 amended (Evidence by police officers)**

Section 33(2)(c) of the Principal Act is amended by omitting “lawyer” and substituting “Australian legal practitioner or legal counsel”.

**11. Section 37 amended (Leading questions)**

Section 37(1)(c) of the Principal Act is amended by omitting “a lawyer” and substituting “an Australian legal practitioner, legal counsel or prosecutor”.

**12. Section 41 substituted**

Section 41 of the Principal Act is repealed and the following section is substituted:

**41. Improper questions**

- (1) The court must disallow a question put to a witness in cross-examination, or inform the witness that it need not be answered, if the court is of the opinion that the question (referred to as a “**disallowable question**”) –
  - (a) is misleading or confusing; or
  - (b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; or
  - (c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate; or
  - (d) has no basis other than a stereotype (for example, a stereotype based on the witness’s sex, race, culture, ethnicity, age

*Evidence Amendment Act 2010*  
*Act No. of*

s. 12

---

or mental, intellectual or physical disability).

- (2) Without limiting the matters the court may take into account for the purposes of subsection (1), it is to take into account –
- (a) any relevant condition or characteristic of the witness of which the court is, or is made, aware, including age, education, ethnic and cultural background, gender, language background and skills, level of maturity and understanding and personality; and
  - (b) any mental, intellectual or physical disability of which the court is, or is made, aware and to which the witness is, or appears to be, subject; and
  - (c) the context in which the question is put, including –
    - (i) the nature of the proceeding; and
    - (ii) in a criminal proceeding, the nature of the offence to which the proceeding relates; and
    - (iii) the relationship (if any) between the witness and

any other party to the proceeding.

- (3) A question is not a disallowable question merely because –
  - (a) the question challenges the truthfulness of the witness or the consistency or accuracy of any statement made by the witness; or
  - (b) the question requires the witness to discuss a subject that could be considered distasteful to, or private by, the witness.
- (4) A party may object to a question put to a witness on the ground that it is a disallowable question.
- (5) However, the duty imposed on the court by this section applies whether or not an objection is raised to a particular question.
- (6) A failure by the court to disallow a question under this section, or to inform the witness that it need not be answered, does not affect the admissibility in evidence of any answer given by the witness in response to the question.

*Evidence Amendment Act 2010*  
*Act No. of*

s. 13

---

**13. Section 50 amended (Proof of voluminous or complex documents)**

Section 50 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) The court may, on the application of a party, direct that the party may adduce evidence of the contents of 2 or more documents in question in the form of a summary if the court is satisfied that it would not otherwise be possible conveniently to examine the evidence because of the volume or complexity of the documents in question.

**14. Section 59 amended (Hearsay rule – exclusion of hearsay evidence)**

Section 59 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “it can reasonably be supposed that” after “that”;
- (b) by inserting the following subsection after subsection (2):
  - (2A) For the purposes of determining under subsection (1) whether it can reasonably be supposed that the person intended to assert a particular fact by the representation, the court may



have regard to the circumstances  
in which the representation was  
made.

**15. Section 60 substituted**

Section 60 of the Principal Act is repealed and  
the following section is substituted:

**60. Exception: evidence relevant for non-hearsay purpose**

- (1) The hearsay rule does not apply to evidence of a previous representation that is admitted because it is relevant for a purpose other than proof of an asserted fact.
- (2) This section applies whether or not the person who made the representation had personal knowledge of the asserted fact (within the meaning of section 62(2)).
- (3) However, this section does not apply in a criminal proceeding to evidence of an admission.

**16. Section 61 amended (Exception to hearsay rule dependent on competency)**

Section 61 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

*Evidence Amendment Act 2010*  
*Act No. of*

s. 17

---

- (1) This Part does not enable use of a previous representation to prove the existence of an asserted fact if, when the representation was made, the person who made it was not competent to give evidence about the fact because of section 13(1).

**17. Section 62 amended (Restriction to first-hand hearsay)**

Section 62 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) For the purposes of section 66A, a person has personal knowledge of the asserted fact if it is a fact about the person's health, feelings, sensations, intention, knowledge or state of mind at the time the representation referred to in that section was made.

**18. Section 64 amended (Exception: civil proceedings if maker available)**

Section 64 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) If the person who made the representation has been or is to be called to give evidence, the hearsay rule does

*Evidence Amendment Act 2010*  
*Act No. of*

s. 19

---

not apply to evidence of the representation given by –

- (a) that person; or
- (b) a person who saw, heard or otherwise perceived the representation being made.

**19. Section 65 amended (Exception: criminal proceedings if maker not available)**

Section 65 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) The hearsay rule does not apply to evidence of a previous representation given by a person who saw, heard or otherwise perceived the representation being made, if the representation –
  - (a) was made under a duty to make that representation or to make representations of that kind; or
  - (b) was made when or shortly after the asserted fact occurred and in circumstances that make it unlikely that the representation is a fabrication; or
  - (c) was made in circumstances that make it highly probable that the representation is reliable; or

*Evidence Amendment Act 2010*  
*Act No. of*

s. 20

---

(d) was –

- (i) against the interests of the person who made it at the time it was made; and
- (ii) made in circumstances that make it likely that the representation is reliable.

**20. Section 66 amended (Exception: criminal proceedings if maker available)**

Section 66 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (2A) In determining whether the occurrence of the asserted fact was fresh in the memory of a person, the court may take into account all matters that it considers are relevant to the question, including –
- (a) the nature of the event concerned; and
  - (b) the age and health of the person; and
  - (c) the period of time between the occurrence of the asserted fact and the making of the representation.

**21. Section 66A inserted**

After section 66 of the Principal Act, the following section is inserted in Division 2:

**66A. Exception: contemporaneous statements about a person's health, &c.**

The hearsay rule does not apply to evidence of a previous representation made by a person if the representation was a contemporaneous representation about the person's health, feelings, sensations, intention, knowledge or state of mind.

**22. Sections 71 and 72 substituted**

Sections 71 and 72 of the Principal Act are repealed and the following sections are substituted:

**71. Exception: electronic communications**

The hearsay rule does not apply to a representation contained in a document recording an electronic communication so far as the representation is a representation as to –

- (a) the identity of the person from whom or on whose behalf the communication was sent; or

*Evidence Amendment Act 2010*  
*Act No. of*

s. 23

---

(b) the date on which or the time at which the communication was sent; or

(c) the destination of the communication or the identity of the person to whom the communication was addressed.

**72. Exception: Aboriginal and Torres Strait Islander traditional laws and customs**

The hearsay rule does not apply to evidence of a representation about the existence or non-existence, or the content, of the traditional laws and customs of an Aboriginal or Torres Strait Islander group.

**23. Section 78A inserted**

After section 78 of the Principal Act, the following section is inserted in Part 3:

**78A. Exception: Aboriginal and Torres Strait Islander traditional laws and customs**

The opinion rule does not apply to evidence of an opinion expressed by a member of an Aboriginal or Torres Strait Islander group about the existence or non-existence, or the content, of the traditional laws and customs of the group.

**24. Section 79 substituted**

Section 79 of the Principal Act is repealed and the following section is substituted:

**79. Exception: opinion based on specialised knowledge**

- (1) If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.
- (2) To avoid doubt, and without limiting subsection (1) –
  - (a) a reference in that subsection to specialised knowledge includes a reference to specialised knowledge of child development and child behaviour (including specialised knowledge of the impact of sexual abuse on children and their development and behaviour during and following the abuse); and
  - (b) a reference in that subsection to an opinion of a person includes, if the person has specialised knowledge of the kind referred to in paragraph (a), a reference to an opinion relating to either or both of the following:

*Evidence Amendment Act 2010*  
*Act No. of*

s. 25

---

- (i) the development and behaviour of children generally;
- (ii) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.

**25. Section 79A repealed**

Section 79A of the Principal Act is repealed.

**26. Section 85 amended (Criminal proceedings: reliability of admissions by defendants)**

Section 85 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) This section applies only in a criminal proceeding and only to evidence of an admission made by a defendant –
  - (a) to, or in the presence of, an investigating official who at that time was performing functions in connection with the investigation of the commission, or possible commission, of an offence; or



- (b) as a result of an act of another person who was, and who the defendant knew or reasonably believed to be, capable of influencing the decision whether a prosecution of the defendant should be brought or should be continued.

**27. Section 89 amended (Evidence of silence)**

Section 89(1) of the Principal Act is amended by omitting “in the course of official questioning” and substituting “by an investigating official who at that time was performing functions in connection with the investigation of the commission, or possible commission, of an offence”.

**28. Section 97 amended (Tendency rule)**

Section 97 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) Evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, is not admissible to prove that a person has or had a tendency (whether because of the person’s character or otherwise) to act in a particular way, or to have a particular state of mind unless –

*Evidence Amendment Act 2010*  
*Act No. of*

s. 29

---

- (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party's intention to adduce the evidence; and
- (b) the court thinks that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

**29. Section 98 substituted**

Section 98 of the Principal Act is repealed and the following section is substituted:

**98. Coincidence rule**

- (1) Evidence that 2 or more events occurred is not admissible to prove that a person did a particular act or had a particular state of mind on the basis that, having regard to any similarities in the events or the circumstances in which they occurred, or any similarities in both the events and the circumstances in which they occurred, it is improbable that the events occurred coincidentally unless –
  - (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of

the party's intention to adduce the evidence; and

- (b) the court thinks that the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have significant probative value.

(2) Subsection (1)(a) does not apply if –

- (a) the evidence is adduced in accordance with any directions made by the court under section 100; or
- (b) the evidence is adduced to explain or contradict coincidence evidence adduced by another party.

**30. Chapter 3, Part 7 substituted**

Part 7 of Chapter 3 of the Principal Act is repealed and the following Part is substituted:

**PART 7 – CREDIBILITY**  
***Division 1 – Credibility evidence***

**101A. Credibility evidence**

Credibility evidence, in relation to a witness or other person, is evidence

*Evidence Amendment Act 2010*  
*Act No. of*

s. 30

---

relevant to the credibility of the witness or person that –

- (a) is relevant only because it affects the assessment of the credibility of the witness or person; or
- (b) is relevant –
  - (i) because it affects the assessment of the credibility of the witness or person; and
  - (ii) for some other purpose for which it is not admissible, or cannot be used, because of a provision of Parts 2 to 6 of Chapter 3.

***Division 2 – Credibility of witnesses***

**102. Credibility rule**

Credibility evidence about a witness is not admissible.

**103. Exception: cross-examination as to credibility**

- (1) The credibility rule does not apply to evidence adduced in cross-examination of a witness if the evidence could

substantially affect the assessment of the credibility of the witness.

- (2) Without limiting the matters that the court may have regard to for the purposes of subsection (1), it is to have regard to –
  - (a) whether the evidence tends to prove that the witness knowingly or recklessly made a false representation when the witness was under an obligation to tell the truth; and
  - (b) the period that has elapsed since the acts or events to which the evidence relates were done or occurred.

**104. Further protection: cross-examination of defendant**

- (1) This section applies only to credibility evidence in a criminal proceeding and so applies in addition to section 103.
- (2) A defendant must not be cross-examined about a matter that is relevant to the assessment of the defendant's credibility, unless the court gives leave.
- (3) Despite subsection (2), leave is not required for cross-examination by the prosecutor about whether the defendant –

*Evidence Amendment Act 2010*  
*Act No. of*

s. 30

---

- (a) is biased or has a motive to be untruthful; or
  - (b) is, or was, unable to be aware of or recall matters to which his or her evidence relates; or
  - (c) made a prior inconsistent statement.
- (4) Leave must not be given for cross-examination by the prosecutor under subsection (2) unless –
  - (a) the defendant or the person representing the defendant has questioned the witnesses for the prosecution to prove that the defendant is, either generally or in a particular respect, a person of good character; or
  - (b) the nature or conduct of the defence involves imputations on the character of the prosecutor or any witness for the prosecution.
- (5) Leave is not to be given for cross-examination by another defendant unless –
  - (a) the evidence that the defendant to be cross-examined has given includes evidence adverse to the defendant seeking leave to cross-examine; and

- (b) that evidence has been admitted.

*Note: This section differs from section 104 of the Evidence Act 1995 of the Commonwealth.*

**105.** .....

.....

**106. Exception: rebutting denials by other evidence**

- (1) The credibility rule does not apply to evidence that is relevant to a witness's credibility and that is adduced otherwise than from the witness if –

- (a) in cross-examination of the witness –

- (i) the substance of the evidence was put to the witness; and

- (ii) the witness denied, or did not admit or agree to, the substance of the evidence; and

- (b) the court gives leave to adduce the evidence.

- (2) Leave under subsection (1)(b) is not required if the evidence tends to prove that the witness –

*Evidence Amendment Act 2010*  
*Act No. of*

s. 30

---

- (a) is biased or has a motive for being untruthful; or
- (b) has been convicted of an offence, including an offence against the law of a foreign country; or
- (c) has made a prior inconsistent statement; or
- (d) is, or was, unable to be aware of matters to which his or her evidence relates; or
- (e) has knowingly or recklessly made a false representation while under an obligation, imposed by or under an Australian law or a law of a foreign country, to tell the truth.

**107. (Repealed)**

.....

**108. Exception: re-establishing credibility**

- (1) The credibility rule does not apply to evidence adduced in re-examination of a witness.
- (2) The credibility rule does not apply to evidence of a prior consistent statement of a witness if –



- (a) evidence of a prior inconsistent statement of the witness has been admitted; or
- (b) it is or will be suggested, either expressly or by implication, that evidence given by the witness has been fabricated or reconstructed, whether deliberately or otherwise, or is the result of a suggestion –

and the court gives leave to adduce the evidence of the prior consistent statement.

***Division 3 – Credibility of persons who are not witnesses***

**108A. Admissibility of evidence of credibility of person who has made a previous representation**

(1) If –

- (a) evidence of a previous representation has been admitted in a proceeding; and
- (b) the person who made the representation has not been called, and will not be called, to give evidence in the proceeding –

credibility evidence about the person who made the representation is not admissible unless the evidence could

*Evidence Amendment Act 2010*  
*Act No. of*

s. 30

---

substantially affect the assessment of the person's credibility.

- (2) Without limiting the matters which the court may have regard to for the purposes of subsection (1), it is to have regard to –
  - (a) whether the evidence tends to prove that the person who made the representation knowingly or recklessly made a false representation when the person was under an obligation to tell the truth; and
  - (b) the period that elapsed between the doing of the acts or the occurrence of the events to which the representation related and the making of the representation.

**108B. Further protections: previous representations of an accused who is not a witness**

- (1) This section applies only in a criminal proceeding and so applies in addition to section 108A.
- (2) If the person referred to in that section is a defendant, the credibility evidence is not admissible unless the court gives leave.

- (3) Despite subsection (2), leave is not required if the evidence is about whether the defendant –
  - (a) is biased or has a motive to be untruthful; or
  - (b) is, or was, unable to be aware of or recall matters to which his or her previous representation relates; or
  - (c) has made a prior inconsistent statement.
- (4) The prosecution must not be given leave under subsection (2) unless –
  - (a) the defendant or the person representing the defendant has questioned the witnesses for the prosecution to prove that the defendant is, either generally or in a particular respect, a person of good character; or
  - (b) the nature or conduct of the defence involves imputations on the character of the prosecutor or any witness for the prosecution.
- (5) Another defendant must not be given leave under subsection (2) unless the previous representation of the defendant that has been admitted includes evidence adverse to the defendant seeking leave.

***Division 4 – Persons with specialised knowledge***

**108C. Exception: evidence of persons with specialised knowledge**

- (1) The credibility rule does not apply to evidence given by a person concerning the credibility of another witness if –
  - (a) the person has specialised knowledge based on the person’s training, study or experience; and
  - (b) the evidence is evidence of an opinion of the person that –
    - (i) is wholly or substantially based on that knowledge; and
    - (ii) could substantially affect the assessment of the credibility of the witness; and
  - (c) the court gives leave to adduce the evidence.
- (2) To avoid doubt, and without limiting subsection (1) –
  - (a) a reference in that subsection to specialised knowledge includes a reference to specialised knowledge of child development and child behaviour (including specialised knowledge of the

*Evidence Amendment Act 2010*  
*Act No. of*

**s. 31**

---

impact of sexual abuse on children and their behaviour during and following the abuse); and

- (b) a reference in that subsection to an opinion of a person includes, if the person has specialised knowledge of that kind, a reference to an opinion relating to either or both of the following:
  - (i) the development and behaviour of children generally;
  - (ii) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.

**31. Section 112 amended (Leave required for cross-examination on character of accused or co-accused)**

Section 112 of the Principal Act is amended by omitting “is not to be” and substituting “must not be”.

**32. Section 117 amended (Interpretation of Division)**

Section 117(1) of the Principal Act is amended as follows:

*Evidence Amendment Act 2010*  
*Act No. of*

s. 32

---

(a) by omitting paragraph (a) from the definition of “client” and substituting the following paragraph:

(a) a person or body who engages a lawyer to provide legal services or who employs a lawyer (including under a contract of service);

(b) by omitting the definition of “lawyer” and substituting the following definition:

**“lawyer”** means –

- (a) an Australian lawyer; and
- (b) an Australian-registered foreign lawyer; and
- (c) an overseas-registered foreign lawyer or a natural person who, under the law of a foreign country, is permitted to engage in legal practice in that country; and
- (d) an employee or agent of a lawyer referred to in paragraph (a), (b) or (c);

**33. Section 118 amended (Legal advice)**

Section 118(c) of the Principal Act is amended by omitting “client or a lawyer” and substituting “client, lawyer or another person”.

**34. Section 122 substituted**

Section 122 of the Principal Act is repealed and the following section is substituted:

**122. Loss of client legal privilege: consent and related matters**

- (1) This Division does not prevent the adducing of evidence given with the consent of the client or party concerned.
- (2) Subject to subsection (5), this Division does not prevent the adducing of evidence if the client or party concerned has acted in a way that is inconsistent with the client or party objecting to the adducing of the evidence because it would result in a disclosure of a kind referred to in section 118, 119 or 120.
- (3) Without limiting subsection (2), a client or party is taken to have so acted if –
  - (a) the client or party knowingly and voluntarily disclosed the substance of the evidence to another person; or

*Evidence Amendment Act 2010*  
*Act No. of*

s. 34

---

- (b) the substance of the evidence has been disclosed with the express or implied consent of the client or party.
- (4) The reference in subsection (3)(a) to a knowing and voluntary disclosure does not include a reference to a disclosure by a person who was, at the time of the disclosure, an employee or agent of the client or party or of a lawyer of the client or party unless the employee or agent was authorised by the client, party or lawyer to make the disclosure.
- (5) A client or party is not taken to have acted in a manner inconsistent with the client or party objecting to the adducing of the evidence merely because –
  - (a) the substance of the evidence has been disclosed –
    - (i) in the course of making a confidential communication or preparing a confidential document; or
    - (ii) as a result of duress or deception; or
    - (iii) under compulsion of law; or
    - (iv) if the client or party is a body established by, or a



person holding an office under, an Australian law, to the Minister, or the Minister of the Commonwealth, the State or Territory, administering the law, or part of the law, under which the body is established or the office is held; or

- (b) of a disclosure by a client to another person if the disclosure concerns a matter in relation to which the same lawyer is providing, or is to provide, professional legal services to both the client and the other person; or
  - (c) of a disclosure to a person with whom the client or party had, at the time of the disclosure, a common interest relating to the proceeding or an anticipated or pending proceeding in an Australian court or a foreign court.
- (6) This Division does not prevent the adducing of evidence of a document that a witness has used to try to revive the witness's memory about a fact or opinion or has used as mentioned in section 32 (Attempts to revive memory in court) or section 33 (Evidence by police officers).

*Evidence Amendment Act 2010*  
*Act No. of*

s. 35

---

**35. Chapter 3, Part 10, Division 1A inserted**

After section 126 of the Principal Act, the  
following Division is inserted in Part 10:

***Division 1A – Professional confidential relationship  
privilege***

**126A. Definitions**

(1) In this Division –

**“harm”** includes actual physical  
bodily harm, financial loss, stress  
or shock, damage to reputation or  
emotional or psychological harm  
(such as shame, humiliation and  
fear);

**“protected confidence”** means a  
communication made by a person  
in confidence to another person  
(in this Division called the  
**“confidant”**) –

- (a) in the course of a  
relationship in which the  
confidant was acting in a  
professional capacity; and
- (b) when the confidant was  
under an express or  
implied obligation not to  
disclose its contents,  
whether or not the  
obligation arises under

law or can be inferred from the nature of the relationship between the person and the confidant;

**“protected confider”** means a person who made a protected confidence;

**“protected identity information”** means information about, or enabling a person to ascertain, the identity of the person who made a protected confidence.

- (2) For the purposes of this Division, a communication may be made in confidence even if it is made in the presence of a third party if the third party’s presence is necessary to facilitate communication.

**126B. Exclusion of evidence of protected confidence**

- (1) The court may direct that evidence not be adduced in a proceeding if the court finds that adducing it would disclose –
- (a) a protected confidence; or
  - (b) the contents of a document recording a protected confidence; or
  - (c) protected identity information.

*Evidence Amendment Act 2010*  
*Act No. of*

s. 35

---

- (2) The court may give such a direction –
  - (a) on its own initiative; or
  - (b) on the application of the protected confider or confidant concerned (whether or not either is a party).
- (3) The court must give such a direction if it is satisfied that –
  - (a) it is likely that harm would or might be caused (whether directly or indirectly) to a protected confider if the evidence is adduced; and
  - (b) the nature and extent of the harm outweighs the desirability of the evidence being given.
- (4) Without limiting the matters that the court may take into account for the purposes of this section, it is to take into account the following matters:
  - (a) the probative value of the evidence in the proceeding;
  - (b) the importance of the evidence in the proceeding;
  - (c) the nature and gravity of the relevant offence, cause of action or defence and the nature of the subject matter of the proceeding;

- (d) the availability of any other evidence concerning the matters to which the protected confidence or protected identity information relates;
- (e) the likely effect of adducing evidence of the protected confidence or protected identity information, including the likelihood of harm, and the nature and extent of harm that would be caused to the protected confider;
- (f) the means (including any ancillary orders that may be made under section 126E) available to the court to limit the harm or extent of the harm that is likely to be caused if evidence of the protected confidence or the protected identity information is disclosed;
- (g) if the proceeding is a criminal proceeding, whether the party seeking to adduce evidence of the protected confidence or protected identity information is a defendant or the prosecutor;
- (h) whether the substance of the protected confidence or the protected identity information has already been disclosed by the

*Evidence Amendment Act 2010*  
*Act No. of*

s. 35

---

protected confider or any other person;

- (i) the public interest in preserving the confidentiality of protected confidences;
- (j) the public interest in preserving the confidentiality of protected identity information.

- (5) The court must state its reasons for giving or refusing to give a direction under this section.

**126C. Loss of professional confidential relationship privilege: consent**

This Division does not prevent the adducing of evidence given with the consent of the protected confider concerned.

**126D. Loss of professional confidential relationship privilege: misconduct**

- (1) This Division does not prevent the adducing of evidence of a communication made or the contents of a document prepared in the furtherance of the commission of a fraud or an offence or the commission of an act that renders a person liable to a civil penalty.

(2) For the purposes of this section, if the commission of the fraud, offence or act is a fact in issue and there are reasonable grounds for finding that –

- (a) the fraud, offence or act was committed; and
- (b) a communication was made or document prepared in furtherance of the commission of the fraud, offence or act –

the court may find that the communication was so made or document so prepared.

#### **126E. Ancillary orders**

Without limiting any action the court may take to limit the possible harm, or extent of the harm, likely to be caused by the disclosure of evidence of a protected confidence or protected identity information, the court may –

- (a) order that all or part of the evidence be heard in camera; and
- (b) make such orders relating to the suppression of publication of all or part of the evidence given before the court as, in its opinion, are necessary to protect the safety

*Evidence Amendment Act 2010*  
*Act No. of*

s. 36

---

and welfare of the protected  
confider.

**126F. Application of Division**

- (1) This Division does not apply in relation to a proceeding the hearing of which began before the commencement of this Division.
- (2) This Division applies in relation to a protected confidence within the meaning of this Division whether made before or after the commencement of this Division.
- (3) This Division does not apply to section 127B.
- (4) The court may give a direction under this Division in respect of a protected confidence or protected identity information whether or not the protected confidence or protected identity information is privileged under another section of this Part or would be so privileged except for a limitation or restriction imposed by that section.

**36. Section 128 substituted**

Section 128 of the Principal Act is repealed and  
the following section is substituted:



**128. Privilege in respect of self-incrimination in other proceedings**

- (1) This section applies if a witness objects to giving particular evidence, or evidence on a particular matter, on the ground that the evidence may tend to prove that the witness –
  - (a) has committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (b) is liable to a civil penalty.
- (2) The court must determine whether or not there are reasonable grounds for the objection.
- (3) Subject to subsection (4), if the court determines that there are reasonable grounds for the objection, the court is not to require the witness to give that particular evidence or evidence on a particular matter, and the court is to inform the witness –
  - (a) that the witness need not give the evidence unless required by the court to do so under subsection (4); and
  - (b) that the court will give a certificate under this section if –
    - (i) the witness willingly gives the evidence

*Evidence Amendment Act 2010*  
*Act No. of*

s. 36

---

without being required to  
do so under  
subsection (4); or

(ii) the witness gives the  
evidence after being  
required to do so under  
subsection (4); and

(c) of the effect of such a certificate.

(4) The court may require the witness to give the evidence if the court is satisfied that –

(a) the evidence does not tend to prove that the witness has committed an offence against or arising under, or is liable to a civil penalty under, a law of a foreign country; and

(b) the interests of justice require that the witness give the evidence.

(5) If the witness either willingly gives the evidence without being required to do so under subsection (4), or gives it after being required to do so under that subsection, the court must cause the witness to be given a certificate under this section in respect of the evidence.

(6) The court is also to cause a witness to be given a certificate under this section if –

(a) the objection has been overruled;  
and

- (b) after the evidence has been given, the court finds that there were reasonable grounds for the objection.
- (7) In any proceeding in a Tasmanian court or before any person or body authorised by a law of this State, or by consent of parties, to hear, receive and examine evidence –
  - (a) evidence given by a person in respect of which a certificate under this section has been given; and
  - (b) evidence of any information, document or thing obtained as a direct or indirect consequence of the person having given evidence –

cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence.

- (8) Subsection (7) has effect despite any challenge, review, quashing or calling into question on any ground of the decision to give, or the validity of, the certificate concerned.
- (9) If a defendant in a criminal proceeding for an offence is given a certificate under this section, subsection (7) does not apply in a proceeding that is a retrial of

*Evidence Amendment Act 2010*  
*Act No. of*

s. 36

---

the defendant for the same offence or a trial of the defendant for an offence arising out of the same facts that gave rise to that offence.

- (10) In a criminal proceeding, this section does not apply in relation to the giving of evidence by a defendant, being evidence that the defendant –
  - (a) did an act the doing of which is a fact in issue; or
  - (b) had a state of mind the existence of which is a fact in issue.
- (11) A reference in this section to doing an act includes a reference to failing to act.
- (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.

**37. Section 128A inserted**

After section 128 of the Principal Act, the following section is inserted in Division 2:

**128A. Privilege in respect of self-incrimination – exception for certain orders, &c.**

- (1) In this section –

**“disclosure order”** means an order made by a Tasmanian court in a civil proceeding requiring a person to disclose information as part of, or in connection with a freezing or search order under the *Supreme Court Rules 2000* but does not include an order made by a court under the *Proceeds of Crime Act 2002* of the Commonwealth or *Crime (Confiscation of Profits) Act 1993*;

**“relevant person”** means a person to whom a disclosure order is directed.

*Evidence Amendment Act 2010*  
*Act No. of*

s. 37

---

- (2) If a relevant person objects to complying with a disclosure order on the grounds that some or all of the information required to be disclosed may tend to prove that the person –
  - (a) has committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (b) is liable to a civil penalty –the person must –
  - (c) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (d) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken (the “**privilege affidavit**”) and deliver it to the court in a sealed envelope; and
  - (e) file and serve on each other party a separate affidavit setting out the basis of the objection.
- (3) The sealed envelope containing the privilege affidavit must not be opened except as directed by the court.
- (4) The court must determine whether or not there are reasonable grounds for the objection.

(5) Subject to subsection (6), if the court finds that there are reasonable grounds for the objection, the court must not require the information contained in the privilege affidavit to be disclosed and must return it to the relevant person.

(6) If the court is satisfied that –

- (a) any information disclosed in the privilege affidavit may tend to prove that the relevant person has committed an offence against or arising under, or is liable to a civil penalty under, an Australian law; and
- (b) the information does not tend to prove that the relevant person has committed an offence against or arising under, or is liable to a civil penalty under, a law of a foreign country; and
- (c) the interests of justice require the information to be disclosed –

the court may make an order requiring the whole or any part of the privilege affidavit containing information of the kind referred to in paragraph (a) to be filed and served on the parties.

(7) If the whole or any part of the privilege affidavit is disclosed (including by order under subsection (6)), the court must cause the relevant person to be given a

*Evidence Amendment Act 2010*  
*Act No. of*

s. 37

---

certificate in respect of the information referred to in subsection (6)(a).

(8) In any proceeding in a Tasmanian court or before any person or body authorised by a law of this State, or by consent of parties to hear, receive and examine evidence –

(a) evidence of information disclosed by a relevant person in respect of which a certificate has been given under this section; and

(b) evidence of any information, document or thing obtained as a direct result or indirect consequence of the relevant person having disclosed that information –

cannot be used against the person. However, this does not apply to a criminal proceeding in respect of the falsity of the evidence concerned.

(9) Subsection (8) does not prevent the use against the relevant person of any information disclosed by a document –

(a) that is an annexure or exhibit to a privilege affidavit prepared by the person in response to a disclosure order; and

(b) that was in existence before the order was made.



- (10) Subsection (8) has effect despite any challenge, review, quashing or calling into question on any ground of the decision to give, or the validity of, the certificate concerned.
- (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.

**38. Section 131A inserted**

Before section 132 of the Principal Act, the following section is inserted in Division 4:

**131A. Application of Division to preliminary proceedings of courts**

(1) If –

- (a) a person is required by a disclosure requirement to give information, or to produce a document, which would result in the disclosure of a communication, a document or its contents or other information of a kind referred to in Division 1, 1A or 3 or section 127A or 127B; and
- (b) the person objects to giving that information or providing that document –

the court must determine the objection by applying the provisions of this part (other than sections 123 and 128) with any necessary modifications as if the objection to giving information or producing the document were an objection to the giving or adducing of evidence.

(2) In this section –

**“disclosure requirement”** means a process or order of a court that requires the disclosure of information or a document and includes the following:

*Evidence Amendment Act 2010*  
*Act No. of*

s. 39

---

- (a) a summons or subpoena to produce documents or give evidence;
- (b) pre-trial discovery;
- (c) non-party discovery;
- (d) interrogatories;
- (e) a notice to produce;
- (f) a request to produce a document under Division 1 of Part 6 of Chapter 4.

**39. Chapter 3, Part 11: Heading amended**

Part 11 of Chapter 3 of the Principal Act is amended by omitting “**DISCRETIONS TO EXCLUDE EVIDENCE**” from the heading to that Part and substituting “**DISCRETIONARY AND MANDATORY EXCLUSIONS**”.

**40. Section 139 amended (Cautioning person)**

Section 139(2) of the Principal Act is amended by omitting “official questioning” and substituting “questioning”.

*Evidence Amendment Act 2010*  
*Act No. of*

s. 41

---

**41. Section 148 amended (Evidence of certain acts of justices, lawyers and notaries public)**

Section 148 of the Principal Act is amended as follows:

- (a) by omitting “lawyer” first occurring and substituting “Australian lawyer”;
- (b) by omitting from paragraph (a) “a lawyer” and substituting “an Australian lawyer”.

**42. Section 161 substituted**

Section 161 of the Principal Act is repealed and the following section is substituted:

**161. Electronic communications**

- (1) If a document purports to contain a record of an electronic communication other than one referred to in section 162, it is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that the communication –
  - (a) was sent or made in the form of electronic communication that appears from the document to have been the form by which it was sent or made; and
  - (b) was sent or made by or on behalf of the person by or on whose behalf it appears from the

document to have been sent or made; and

- (c) was sent or made on the day on which, at the time at which and from the place from which it appears from the document to have been sent or made; and
- (d) was received at the destination to which it appears from the document to have been sent; and
- (e) if it appears from the document that the sending of the communication concluded at a particular time, was received at that destination at that time.

(2) A provision of subsection (1) does not apply if –

- (a) the proceeding relates to a contract; and
- (b) all the parties to the proceeding are parties to the contract; and
- (c) the provision is inconsistent with a term of the contract.

**43. Section 164 amended (Corroboration requirements abolished)**

Section 164 of the Principal Act is amended by omitting subsection (4).

*Evidence Amendment Act 2010*  
*Act No. of*

s. 44

---

**44. Chapter 4, Part 5: Heading amended**

Part 5 of Chapter 4 of the Principal Act is amended by inserting in the heading to that Part “**AND INFORMATION**” after “**WARNINGS**”.

**45. Section 165 amended (Unreliable evidence)**

Section 165 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(f) “official questioning” and substituting “questioning by an investigating official”;
- (b) by inserting the following subsection after subsection (5):
  - (6) Subsection (2) does not permit a judge to warn or inform a jury in proceedings before it in which a child gives evidence that the reliability of the child’s evidence may be affected by the age of the child. Any such warning or information may be given only in accordance with section 165A(2) and (3).

---

**46. Sections 165A and 165B inserted**

After section 165 of the Principal Act, the following sections are inserted in Part 5:

**165A. Warnings in relation to children's evidence**

- (1) A judge in any proceeding in which evidence is given by a child before a jury must not do any of the following:
  - (a) warn the jury, or suggest to the jury, that children as a class are unreliable witnesses;
  - (b) warn the jury, or suggest to the jury, that the evidence of children as a class is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults;
  - (c) give a warning, or suggestion to the jury, about the unreliability of the particular child's evidence solely on account of the age of the child;
  - (d) in the case of a criminal proceeding, give a general warning to the jury of the danger of convicting on the uncorroborated evidence of a witness who is a child.
- (2) Subsection (1) does not prevent the judge, at the request of a party, from –

*Evidence Amendment Act 2010*  
*Act No. of*

s. 46

---

- (a) informing the jury that the evidence of the particular child may be unreliable and the reasons why it may be unreliable; and
- (b) warning or informing the jury of the need for caution in determining whether to accept the evidence of the particular child and the weight to be given to it –

if the party has satisfied the court that there are circumstances (other than solely the age of the child) particular to the child that affect the reliability of the child's evidence and that warrant the giving of a warning or the information.

- (3) This section does not affect any other power of a judge to give a warning to, or to inform, the jury.

**165B. Delay in prosecution**

- (1) This section applies in a criminal proceeding in which there is a jury.
- (2) If the court, on application by the defendant, is satisfied that the defendant has suffered a significant forensic disadvantage because of the consequences of delay, the court must inform the jury of the nature of that disadvantage and the need to take that disadvantage into account when considering the evidence.



- (3) The judge need not comply with subsection (2) if there are good reasons for not doing so.
- (4) It is not necessary that a particular form of words be used in informing the jury of the nature of the significant forensic disadvantage suffered and the need to take that disadvantage into account, but the judge must not in any way suggest to the jury that it would be dangerous or unsafe to convict the defendant solely because of the delay or the forensic disadvantage suffered because of the consequences of the delay.
- (5) The judge must not warn or inform the jury about any forensic disadvantage the defendant may have suffered because of delay except in accordance with this section, but this section does not affect any other power of the judge to give any warning to, or to inform, the jury.
- (6) For the purposes of this section –
  - (a) delay includes delay between the alleged offence and its being reported; and
  - (b) significant forensic disadvantage is not to be regarded as being established by the mere existence of a delay.

*Evidence Amendment Act 2010*  
*Act No. of*

s. 47

---

**47. Section 184 substituted**

Section 184 of the Principal Act is repealed and the following section is substituted:

**184. Accused may admit matters and give consent**

(1) In or before a criminal proceeding, a defendant may –

- (a) admit matters of fact; and
- (b) give any consent –

that a party to a civil proceeding may make or give.

(2) A defendant's admission or consent is not effective for the purposes of subsection (1) unless –

- (a) the defendant has been advised to do so by his or her Australian legal practitioner or legal counsel; or
- (b) the court is satisfied that the defendant understands the consequences of making the admission or giving the consent.

**48. Section 189 amended (The voir dire)**

Section 189(6) of the Principal Act is amended by omitting “Section 128(8)” and substituting “Section 128(10)”.

**49. Section 190 amended (Waiver of rules of evidence)**

Section 190(2)(a) of the Principal Act is amended by omitting “lawyer” and substituting “Australian legal practitioner or legal counsel”.

**50. Section 191 amended (Agreements as to facts)**

Section 191(3)(a) of the Principal Act is amended by omitting “lawyers” and substituting “Australian legal practitioners, legal counsel or prosecutors”.

**51. Section 192A inserted**

After section 192 of the Principal Act, the following section is inserted in Part 1:

**192A. Advance rulings and findings**

Where a question arises in any proceedings, being a question about –

- (a) the admissibility or use of evidence proposed to be adduced; or
- (b) the operation of a provision of this Act or another law in relation to evidence proposed to be adduced; or
- (c) the giving of leave, permission or direction under section 192 –

*Evidence Amendment Act 2010*  
*Act No. of*

s. 52

---

the court may, if it considers it to be appropriate to do so, give a ruling or make a finding in relation to the question before the evidence is adduced in the proceedings.

**52. Section 197 amended (Regulations)**

Section 197 of the Principal Act is amended by omitting subsections (3) and (4).

**53. Section 200 inserted**

After section 199 of the Principal Act, the following section is inserted in Part 2:

**200. Savings, transitional and other provisions**

Schedule 2 has effect.

**54. Schedule 2 inserted**

After Schedule 1 to the Principal Act, the following Schedule is inserted:

---

**SCHEDULE 2 – SAVINGS, TRANSITIONAL AND  
OTHER PROVISIONS**

Section 200

**PART 1 – PRELIMINARY**

**1. Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may take effect on and from the day on which this Act commences or a later day.

**PART 2 – PROVISIONS CONSEQUENT ON THE ENACTMENT OF  
THE EVIDENCE AMENDMENT ACT 2010**

**1. Interpretation**

In this Part –

**“the amending Act”** means the  
*Evidence Amendment Act 2010*.

**2. Proceedings already begun**

- (1) Subject to this Part, an amendment made to this Act by the amending Act does not apply in relation to proceedings the hearing of which began before the commencement of the amendment.

*Evidence Amendment Act 2010*  
*Act No. of*

s. 54

---

- (2) This Act, as in force immediately before the commencement of the amendment, continues to apply in relation to proceedings the hearing of which began before that commencement.

**3. Admissions**

- (1) The amendment made by the amending Act to section 85 does not apply in relation to admissions made before the commencement of the amendment.
- (2) Section 85, as in force immediately before the commencement of the amendment, continues to apply in relation to admissions made before that commencement.

**4. Failure or refusal to answer questions &c.**

- (1) The amendment made by the amending Act to section 89 does not apply in relation to any failure or refusal, before the commencement of the amendment –
  - (a) to answer one or more questions;  
or
  - (b) to respond to a representation.
- (2) Section 89, as in force immediately before the commencement of the amendment, continues to apply in

relation to any such refusal or failure before that commencement.

## **5. Prior operation of notice provisions**

If, before the commencement of an amendment made to section 97 or 98 by the amending Act, a notice of the kind referred to in section 97 or 98 is given –

- (a) in the circumstances provided for in the section concerned; and
- (b) in accordance with such requirements (if any) as would apply to the giving of the notice under that section after that commencement –

the notice is taken to have been given under that section as in force after that commencement.

## **6. Disclosure orders**

Section 128A, as inserted by the amending Act, does not apply in relation to any disclosure order made before the commencement of that section.

*Evidence Amendment Act 2010*  
*Act No. of*

s. 55

---

**7. Disclosure requirements**

Section 131A, as inserted by the amending Act, does not apply in relation to any disclosure requirement made before the commencement of that section.

**55. Repeal of Act**

This Act is repealed on the ninetieth day from the day on which all of the provisions of this Act commence.