



Statutory Rules 1995 No. *L*₁

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Administering Department
Legislation Drafting
Unit
For the Secretary of the
Attorney-General's
Department



F.R.L.I.
1996B01283

For the Secretary of the
Attorney-General's
Department
Office of Legislative Drafting, Attorney-General's
Department.

44/

Evidence Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia,
acting with the advice of the Federal Executive Council and under
section 4 of the *Acts Interpretation Act 1901*, make the following
Regulations under the *Evidence Act 1995*.

Dated *L* 1995.

7 March/

L *BILL HAYDEN/*
Governor-General

By His Excellency's Command,

L
Minister for Justice

D. KERR/

Citation

1. These Regulations may be cited as the Evidence Regulations.

Commencement

2. These Regulations commence on 18 April 1995.

Interpretation

3. (1) In these Regulations, unless the contrary intention appears:

“**Act**” means the *Evidence Act 1995*;

“**notice of previous representation**” means a notice given under subsection 67 (1) of the Act;

“**notifying party**”, in relation to a notice, means the person giving the notice.

[NOTE: For notices of previous representation, see regulation 5.]

(2) In these Regulations, a reference to a Form by number is a reference to the Form of that number set out in the Schedule.

[NOTE: Section 25C of the *Acts Interpretation Act 1901* (“the Interpretation Act”) provides:

“25C. Where an Act[†] prescribes a form, then, unless the contrary intention appears, strict compliance with the form is not required and substantial compliance is sufficient.”.

[†]The effect of subsection 46 (1) of the Interpretation Act is that provisions in the Interpretation Act concerning Acts apply also to instruments - including regulations—made under an Act. Accordingly, section 25C applies to relevant provisions of these Regulations.]

Operation of other Acts

4. For the purposes of paragraph 8 (4) (a) of the Act, the following provisions of the Evidence Act 1971 of the Australian Capital Territory are specified:

- (a) Part I, other than the definitions in section 6 of “banker’s books”, “diplomatic or consular representative”, “document”, “government department”, “public authority” and “reserved law”;
- (b) sections 63A, 68A, 72 and 73;
- (c) Part XA, other than subsections 76F (1) and (3) and 76G (4);
- (d) Parts XIIA and XIIB;
- (e) sections 91 and 97.

Exceptions to hearsay rule—notices of previous representations

5. (1) This regulation is made for the purpose of section 67 of the Act.

(2) A notice of previous representation must state:

- (a)** subject to subregulation (6), the substance of evidence of a previous representation that the notifying party intends to adduce; and
- (b)** the substance of all other relevant representations made by the person who made that previous representation, so far as they are known to the notifying party; and
- (c)** particulars of:
 - (i)** the date, time, place and circumstances at or in which each of the representations mentioned in paragraph (a) or (b) was made; and
 - (ii)** the names and addresses of the persons by whom, and the persons to whom, each of those representations was made;

so far as they are known to the notifying party.

(3) If a notifying party intends to rely on any of paragraphs 63 (2) (a) or (b), 65 (2) (a), (b), (c) or (d), 65 (3) (a) or (b) or 65 (8) (a) or (b) of the Act, the party's notice of previous representation must state particulars of the facts on the basis of which it is alleged that the person who made a representation referred to in the notice is not available to testify concerning the fact to be proved by adducing evidence of that representation.

(4) If a notifying party intends to rely on paragraph 64 (2) (a) or (b) of the Act, the party's notice of previous representation must state particulars of the facts that the party will rely on to establish the grounds specified in subsection 64 (2) of the Act.

(5) If a notice of previous representation refers to a previous representation that is in writing:

- (a)** a copy of the document, or of the relevant portion of the document, containing the representation must be attached to the notice; and
- (b)** the notice must identify the document unless:
 - (i)** a copy of the document is attached to the notice; and

- (ii) the identity of the document is apparent on the face of the copy.

(6) Where a copy of a document, or of a portion of a document, is attached to a notice it is a sufficient compliance for the purposes of paragraph (2) (a) to specify in the notice, or in the copy of a document or portion of a document attached to the notice, the representation evidence of which the notifying party intends to adduce.

The tendency rule and the coincidence rule—form of notices

6. (1) This regulation is made for the purpose of section 99 of the Act.

(2) A notice given under subsection 97 (1) of the Act (relating to the “tendency” rule) must state:

- (a) the substance of the evidence of the kind referred to in that subsection that the party giving the notice intends to adduce; and
- (b) if that evidence consists of, or includes, evidence of the conduct of a person, particulars of:
 - (i) the date, time, place and circumstances at or in which the conduct occurred; and
 - (ii) the names and addresses of each person who saw, heard or otherwise perceived the conduct;so far as they are known to the notifying party.

(3) A notice given under subsection 98 (1) of the Act (relating to the “coincidence” rule) must state:

- (a) the substance of the evidence of the occurrence of 2 or more related events that the party giving the notice intends to adduce; and
- (b) particulars of:
 - (i) the date, time, place and circumstances at or in which each of those events conduct occurred; and
 - (ii) the names and addresses of each person who saw, heard or otherwise perceived each of those events;so far as they are known to the notifying party.

Privilege against self-incrimination—form of certificate

7. (1) A certificate under section 128 of the Act may be in accordance with Form 1.

(2) A certificate is not liable to be called into question by reason of its non-compliance with Form 1.

Fingerprint evidence of identity—affidavits by State or Territory police officers

8. For the purposes of paragraph 179 (1) (a) of the Act, Form 2 is prescribed.

Fingerprint evidence of identity—affidavits by Australian Federal Police officers

9. For the purposes of paragraph 180 (1) (a) of the Act, Form 3 is prescribed.

SCHEDULE

Subregulation 3 (2)

FORMS**FORM 1**

Regulation 7

*[Set out heading to action or matter]***CERTIFICATE UNDER SECTION 128 OF THE EVIDENCE
ACT 1995**

This Court certifies under section 128 of the *Evidence Act 1995* of the Commonwealth that evidence given in these proceedings by *[state name of witness]* on *[state date or dates]*, a record of which is attached to this certificate*, is evidence to which subsection 128 (7) of that Act applies.

**a transcript, or other record, of the evidence is to be attached to this certificate, and duly authenticated by the court or its proper officer*

Dated:

L.S.

(affix seal)

Judge or magistrate of the Court

[NOTE: Subsection 128 (7) of the *Evidence Act 1995* provides as follows:

“(7) In any proceeding in an Australian court:

(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.”].

SCHEDULE—continued

FORM 2

Regulation 8

Section 179 of the Evidence Act 1995

**AFFIDAVIT OF MEMBER OF STATE OR TERRITORY POLICE
FORCE CONCERNING FINGERPRINTS**

[Set out heading to action or matter]

I, *[name of deponent]* of *[address of deponent]*, a member of the police force of *[State or Territory]* make oath and say*/affirm*:

1. I am a fingerprint expert for the police force of *[State or Territory]*.
2. I have examined the fingerprint card marked for identification with the letter “A”.
3. I have compared the fingerprints shown on that card with the fingerprints shown on the fingerprint card in the records held by the police force of *[State or Territory]* showing the fingerprints of *[name of person and alias, if any]*.
4. The fingerprints on those cards are identical.
5. According to the records of the police force of *[State or Territory]*, which I believe to be accurate, *[name of person]* was convicted in that State*/Territory* of the following offences:
6. Annexed to this affidavit and marked with the letters *[insert an alphabetical sequence of letters, commencing at “B”, corresponding to the number of annexures]*, are certified copies or certificates of conviction for each of those convictions.
7. From an examination of the records referred to above, I believe that the person referred to in each annexed certified copy or certificate as having been convicted of the offence stated in it is identical with the person whose fingerprints are shown on the fingerprint cards referred to in paragraph 3 of this affidavit.

SCHEDULE—continued

SWORN*/AFFIRMED*

by the deponent at [*place*]

this day

of [*month and year*]

Before me:

(signature)

(signature)

A Justice of the Peace*/notary
public*/lawyer*/person authorised
to take affidavits in the Australian
Capital Territory*.

Deponent

**delete as appropriate*

SCHEDULE—continued

FORM 3

Regulation 9

AFFIDAVIT OF MEMBER OF AUSTRALIAN FEDERAL
POLICE CONCERNING FINGERPRINTS*[Set out heading to action or matter]*

I, *[name of deponent]* of *[address of deponent]*, a member*/special member*/staff member* of the Australian Federal Police of, make oath and say*/affirm*:

1. I am a fingerprint expert for the Australian Federal Police.
2. I have examined the fingerprint card marked for identification with the letter “A”.
3. I have compared the fingerprints shown on that card with the fingerprints shown on the fingerprint card in the records held by the Australian Federal Police showing the fingerprints of *[name of person and alias, if any]*.
4. The fingerprints on those cards are identical.
5. According to the records of the Australian Federal Police, which I believe to be accurate, *[name of person]* was convicted of the following offences against a law of the Commonwealth:
6. Annexed to this affidavit, and marked with the letters *[insert an alphabetical sequence of letters, commencing at “B”, corresponding to the number of annexures]*, are certified copies or certificates of conviction for each of those convictions.
7. From an examination of the records referred to above, I believe that the person referred to in each annexed certified copy or certificate as having been convicted of the offence stated in it is identical with the person whose fingerprints are shown on the fingerprint cards referred to in paragraph 3 of this affidavit.

SCHEDULE—continued

SWORN*/AFFIRMED*

by the deponent at [*place*]

this day

of [*month and year*]

Before me:

(signature)

(signature)

A Justice of the Peace*/notary
public*/lawyer*/person authorised
to take affidavits in the Australian
Capital Territory*.

Deponent

**delete as appropriate*

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

L 1995. *14 March*