

# **Evidence Regulations (Amendment) 1998 No. 17**

## EXPLANATORY STATEMENT

### STATUTORY RULES 1998 NO. 17

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

*Evidence Act 1995*

## EVIDENCE REGULATIONS (AMENDMENT)

Section 197 of the *Evidence Act 1995* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Section 67 of the Act provides that in certain circumstance, and subject to any directions of the court, reasonable notice in writing must be given of an intention to adduce hearsay evidence and that notice must be given in accordance with any regulations or rules of court. Sections 97 and 98 of the Act respectively provide that, subject to an exception and any directions of the court, tendency evidence and coincidence evidence is not admissible unless reasonable notice in writing has been given of intention to adduce the evidence. Section 99 of the Act provides that notices under section 97 or 98 are to be given in accordance with any regulations or orders of court.

Regulation 5 of the Evidence Regulations (the principal Regulations) requires that a notice under section 67 of the Act must state, among other things, particulars of the names and addresses so far as they are known to the notifying party of each person by whom and to whom representations were made, hearsay evidence of which the notifying party intends to adduce.' Regulation 6 of the principal Regulations provides that a notice under section 97 or 98 of the Act must state, among other things, particulars of the names and addresses, so far as they are known to the notifying party, of each person who saw, heard of otherwise perceived conduct (in relation to tendency evidence) or events ( in relation to coincidence evidence) evidence of which the notifying party intends to adduce. These Regulations amend the principal Regulations:

- \* to remove the requirement to give particulars of addresses of persons named in notices of intention to adduce hearsay evidence tendency evidence or coincidence evidence in criminal proceedings;
- \* to enable the court to order the address be provided on application by a party to the proceedings; and
- \* to delete a superfluous word.

The Regulations are intended to protect persons who are to give evidence in criminal proceedings by ensuring their addresses are not normally disclosed. The Regulations are similar to regulations that have been made under the almost identical *Evidence Act 1995* (NSW).

Details of the Regulations are as follows:

Regulation 1 is formal.

Regulation 2 amends Regulation 3 of the principal Regulations.

Paragraph 2.1 inserts a definition of "address" in subregulation 3(1).

Regulation 3 amends Regulation 5 of the principal Regulations.

Paragraph 3.1 amends subregulation 5(2) to delete the requirement for addresses to be provided in a notice of intention to adduce hearsay evidence.

Paragraph 3.2 inserts a new subparagraph 5(2)(c)(iii) to require that in civil proceedings the address be provided of persons named in a notice of intention to adduce hearsay evidence.

Paragraph 3.3 inserts new subregulations 5(7) and (8) to enable the court, on application, to order provision of the address of persons named in a notice of intention to adduce hearsay evidence in criminal proceedings, subject to terms the court considers appropriate.

Regulation 4 amends Regulation 6 of the principal Regulations.

Paragraph 4.1 amends subregulation 6(2) to delete the requirement for addresses to be provided in a notice of intention to adduce tendency evidence.

Paragraph 4.2 inserts a new subparagraph 6(2)(b)(iii) to require that in civil proceedings the address be provided of persons named in a notice of intention to adduce tendency evidence.

Paragraph 4.3 deletes "conduct" in subparagraph 6(3)(b)(i) to rectify a drafting error.

Paragraph 4.4 amends subregulation 6(3) to delete the requirement for addresses to be provided in a notice of intention to adduce coincidence evidence.

Paragraph 4.5 inserts a new subparagraph 6(3)(b)(iii) to require that in civil proceedings the address be provided of persons named in a notice of intention to adduce coincidence evidence.

Paragraph 4.6 inserts new subregulations 6(4) and (5) to enable the court, on application, to order provision of the address of persons named in a notice of intention to adduce tendency evidence or coincidence evidence in criminal proceedings, subject to terms the court considers appropriate.