

OVERVIEW

OF THE

EVIDENCE ACT 2008

Public Records Office Workshop
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Marta Ago



Evidence Act 2008 Overview



Overview

- Background
- Policy underpinning the UEA
- Overview of the Act
 - Major changes to Victorian law
- Departure from Uniformity
- Uniform Regulations

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Background

- 1987 ALRC *Evidence* Report
- NSW and Commonwealth Evidence Acts 1995
- Review of UEA by Law Reform Commissions 2006
- SCAG Working Group
- Model Amendment Bill 2007

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Policy framework of the UEA

- Underlying proposition – the laws of evidence must serve the trial system
- Civil trial – resolution of disputes between parties
- Criminal trial – accusatorial process
- To satisfy the purpose of each - evidence law must enable the courts to ascertain facts

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Policy framework of the UEA Cont.

- Limitations must be justified
- For criminal trials, limitations to ensure fairness for an accused are justified
- Importance of enabling parties to produce the most probative evidence
- Clarity and simplicity are important

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Overview of Evidence Act

- Provides core evidentiary provisions
- Act is divided into 5 chapters
- Chapters follow ordinary flow of a trial
- Internal structure of chapters also follows logical sequence
- Language is generally more straightforward and more user friendly

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Chapters

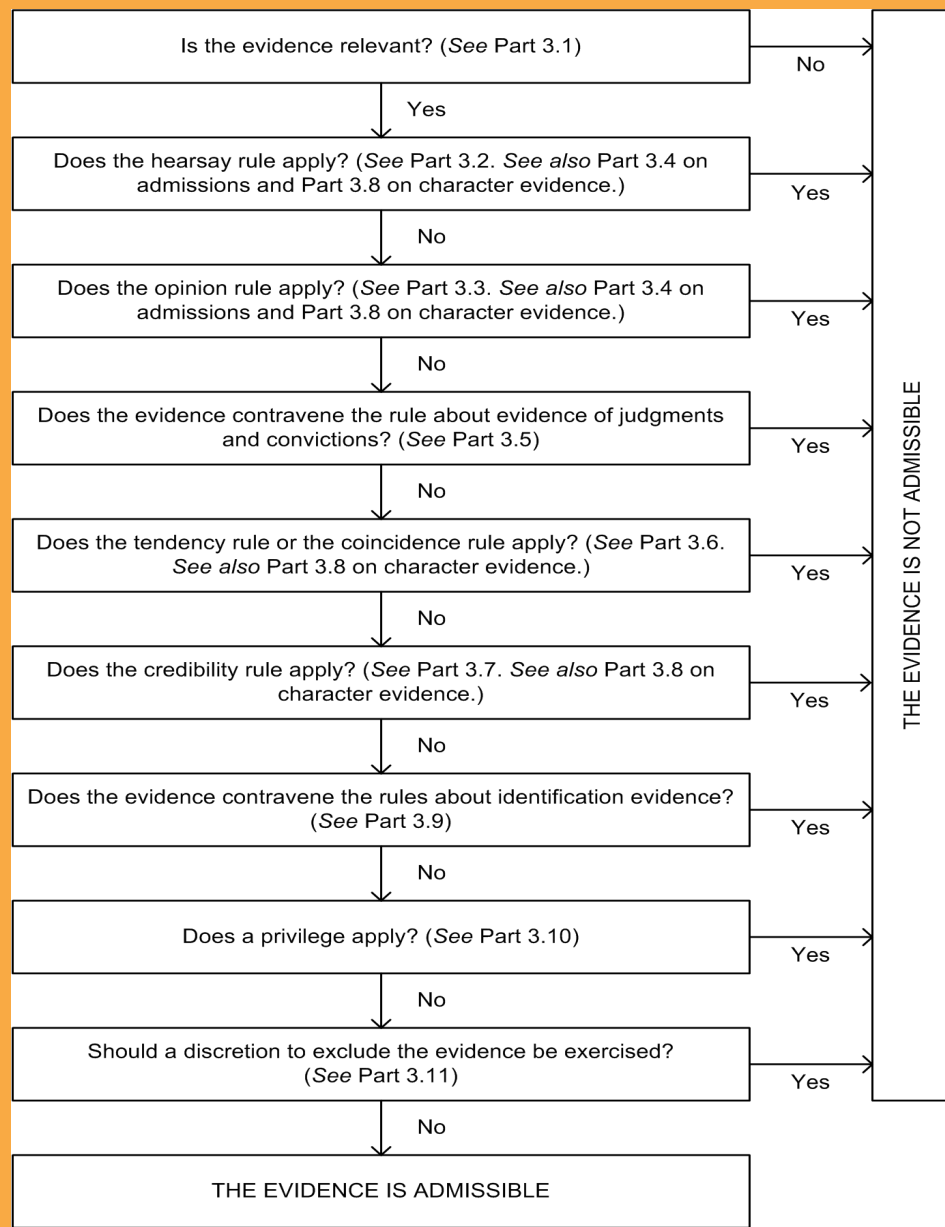
- Chapter 1 - Preliminary
 - Application of the Act (s. 4 – 11)
- Chapter 2 - Adducing Evidence
 - Competence and compellability of witnesses (s. 12 – 20)
 - Oaths and affirmations (s. 21 – 25)
 - Rules about giving evidence (s. 26 – 36)
 - Conduct of exam; cross and re-exam (s. 37 – 46)
 - Documents (s. 47 – 51)

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Chapters Cont.

- Chapter 3 - Admissibility of Evidence
 - Relevance (s. 55 – 58)
 - Hearsay, Opinion and exceptions (s. 59 – 80)
 - Admissions (s. 81 – 90)
 - Judgments and convictions (s.91 – 93)
 - Tendency and coincidence (s.94 – 100)
 - Credibility and character (s.101A – 112)
 - Identification (s.113 – 116)
 - Privileges (s.117 – 134)
 - Public interest and other discretionary and mandatory exclusions (s.135 – 139)



Is the evidence relevant?



See Part 3.1 - Relevance

No?

Evidence is inadmissible

Yes? Proceed to next question

Does the hearsay rule apply?



See Part 3.2 – Hearsay

(note Part 3.4 - Admissions and Part 3.8 - Character)

Yes?

Evidence is inadmissible

No? Proceed to next question

Does the opinion rule apply?

See Part 3.3 – Opinion

(note Part 3.4 – Admissions and Part 3.8

Character)



Yes?

Evidence is inadmissible

No? Proceed to next question

Does the evidence contravene the rule about evidence of judgments and convictions?

See Part 3.5 – Evidence of judgments and convictions



Yes?

Evidence is inadmissible

No? Proceed to next question

Does the tendency rule or the coincidence rule apply?

See Part 3.6 – Tendency and coincidence
(note Part 3.8 – Character)



Yes?

Evidence is inadmissible

No? Proceed to next question

Does the credibility rule apply?

See Part 3.7 – Credibility
(note Part 3.8 – Character)



Yes?

Evidence is inadmissible

No? Proceed to next question

Does the evidence contravene
the rules about identification
evidence?

See Part 3.9 Identification Evidence



Yes?

Evidence is inadmissible

No? Proceed to next question

Does a privilege apply?

See Part 3.10 - Privileges



Yes?

Evidence is inadmissible

No? Proceed to next question

Does a mandatory or discretionary exclusion apply?

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See Part 3.11 – Discretionary and Mandatory Exclusions

Yes?

Evidence is inadmissible

No: ?

The Evidence...

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Is...

ADMISSIBLE

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Chapters Cont.

- Chapter 4 - Proof
 - Standards and Judicial Notice (s. 140 – 145)
 - Facilitation of proof (s. 146 – 163)
 - Corroboration (s. 164)
 - Warnings (s.165 – 165B)
 - Calling witnesses etc (s.166 – 169)
 - Proof by affidavit or written statement (s. 170 – 173)
 - Foreign law (s.174 – 176)
 - Procedures for proving other matters (s. 177 – 181)

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Chapters Cont.

- Chapter 5 – Miscellaneous
- Schedule 1 – Form of oaths and affirmations
- Dictionary
 - Document
 - De facto partners

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Major changes to current Victorian Law

- Hearsay
- Admissions
- Privilege against self-incrimination
- Abolition of the original document rule

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Victorian departure from Uniformity

- **Improper questioning** (Recommendation 5-2)

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Uniform Evidence Regulations

- Form of section 128 Certificate
- Content of notices required:
 - Hearsay
 - Tendency and coincidence
- Form of fingerprint affidavits

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The Evidence Act is available at:

<http://www.legislation.vic.gov.au/>