

HEARSAY IN CRIMINAL PROCEEDINGS

RULE: Evidence of a previous representation made by a person is not admissible to prove the existence of a fact that it can reasonably be supposed that the person intended to assert by the representation **s59**

EXCEPTIONS

Restriction to first-hand hearsay **s62**

Maker not available Cl. 4, Pt. 2 of Dictionary

Hearsay rule does not apply to evidence of previous rep. made:

- under duty
- shortly after or when facts occurred and in circumstances that make fabrication unlikely
- in circumstances that make it highly probable it is reliable
- made against interests and in circumstances that make it likely to be reliable **s65(2) and s65(7)**

Hearsay rule does not apply to evidence of previous rep. made when giving evidence in another proceeding if defendant cross-examined maker, or had opportunity to do so, in that proceeding - transcript or recording may be tendered **s65(3)-s65(6)**

Hearsay rule does not apply to evidence of previous rep. adduced by a defendant and, if so adduced, evidence adduced by another party on the same matter **s65(8)-s65(9)**

Notice required **s67**

Maker available Cl. 4, Pt. 2 of Dictionary

Hearsay rule does not apply to evidence of previous rep. that was (i) made about a fact fresh in the memory of the maker or (ii) by a victim of the alleged offence who was under 18 at the time, if the maker is called to give evidence **s66** (see exception in **s66(3)**)

Contemporaneous representations about health etc. **s66A**

Hearsay rule does not apply **s66A**

Other Exceptions

- Evidence relevant for a non-hearsay purpose (not admissions) **s60**
- Business records **s69**
- Tags and labels in the course of business **s70**
- Electronic communications re identity, date, destination **s71**
- Aboriginal and Torres Strait Islander traditional laws and customs **s72**
- Reputation as to relationships, age and family history **s73**
- Reputation of public or general rights **s74**
- Interlocutory proceedings if source identified **s75**
- Admissions **s81**
- Judgments and convictions **s92**
- Character evidence **s110 and s111**

Discretionary and mandatory exclusions **Part 3.11**