



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 53 of 1972

An Act to amend the Evidence Act, 1929-1969.

[Assented to 27th April, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Evidence Act Amendment Act, 1972". Short titles.
- (2) The Evidence Act, 1929-1969, as amended by this Act, may be cited as the "Evidence Act, 1929-1972".
- (3) The Evidence Act, 1929-1969, is hereinafter referred to as "the principal Act".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 2 of the principal Act is amended by inserting after the item "PART VI—Telegraphic Messages" the item "PART VIA—Computer Evidence". Amendment of principal Act s. 2—Arrangement.

4. Section 4 of the principal Act is amended— Amendment of principal Act, s. 4—Interpretation.
 - (a) by striking out the definition of "electric telegraph" and inserting in lieu thereof the following definition:—
 - "electric telegraph" means any system of telecommunication operated by the Postmaster General of the Commonwealth or any other authority approved by proclamation;

and

(b) by striking out the definition of "telegraph station" and inserting in lieu thereof the following definition:—

"telegraph station" means a station established or used by the Postmaster General of the Commonwealth or other authority approved by proclamation for the receipt or transmission of telegraphic messages.

Amendment of
principal Act,
s. 8—
Affirmation in
lieu of oath.

5. Section 8 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsections:—

(1) A person who objects to being sworn and states as the ground of his objection—

(a) that he has no religious belief;

(b) that the taking of the oath is contrary to his religious belief or his conscience;

or

(c) any other ground that the court thinks sufficient,

shall be permitted to make a solemn affirmation instead of an oath in all circumstances in which, and for all purposes for which, an oath is required or permitted by law.

(1a) Where a person requests that an oath be administered to him otherwise than upon the Christian Bible and the book upon which, or the means by which, he requests that the oath be administered is not readily available to the court, he shall be permitted to make a solemn affirmation instead of an oath.

Repeal of
ss. 9 to 11 of
principal Act
and enactment
of section in
their place—

6. Sections 9 to 11 (inclusive) of the principal Act are repealed and the following section is enacted and inserted in their place:—

Evidence
without
formality.

9. (1) Where in any proceedings (including proceedings in the nature of a preliminary examination) it appears to a judge that a person does not understand the obligation of an oath, he may permit that person to give evidence without an oath and without formality.

(2) Before the judge receives any such evidence he must explain or cause to be explained to the person by whom the evidence is to be given that he is required to be truthful in anything that he may say before the court.

(3) Where it appears to a judge that a person called as an interpreter does not understand the obligation of an oath, he may, if he is satisfied of the ability of that person duly to

interpret the evidence that may be given, and of his impartiality, permit that person to act as an interpreter without the administration of an oath.

(4) A person who in giving evidence under this section wilfully makes any false statement shall be guilty of an offence and liable to be imprisoned for a term not exceeding two years.

(5) A justice to whom it appears that any person who desires to lay a complaint or information does not understand the obligation of an oath may ascertain by inquiry the subject matter thereof and reduce it into the form of a complaint or information and any action or proceedings may be taken upon the complaint or information in all respects as if the complainant or informant had deposed to the truth of the contents thereof upon oath.

7. Section 12 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 12 of principal Act and enactment of section in its place—

12. (1) A child under the age of ten years shall not be required to submit to the obligation of an oath, but may give evidence in any proceedings without an oath and without formality.

Evidence of child under the age of ten years.

(2) Before the judge receives any such evidence, he must explain or cause to be explained to the child that he is required to be truthful in anything that he may say before the court.

8. Section 13 of the principal Act is amended by striking out from subsection (1) the passage “the unsworn evidence of an aboriginal or a child” and inserting in lieu thereof the passage “unsworn evidence under section 9 or section 12 of this Act”.

Amendment of principal Act, s. 13—
Effect of unsworn evidence.

9. Section 14 of the principal Act is repealed.

Repeal of s. 14 of principal Act.

10. Section 45 of the principal Act is repealed and the following sections are enacted and inserted in its place:—

Repeal of s. 45 of principal Act and enactment of sections in its place—

45. (1) An apparently genuine document purporting to be a document of a prescribed nature and to relate to the transportation or shipment of any person or goods, from one place to another—

Documents relating to transportation of persons or goods.

(a) shall be admissible in evidence on production without further proof;

and

(b) shall be evidence of any fact stated, or referred to, in the document, or to be inferred from the document, and where the document relates to the shipment of goods, shall be evidence that the ownership of goods referred to in the document is in the consignee named in the document or his assignee.

(2) Evidence of the description of any package or property, or of any inscription or mark upon any package or property shall be admissible (without production of the original inscription or mark) for the purpose of raising an inference as to the identity of the package or property with that referred to in a document admissible in evidence under this section.

(3) For the purpose of determining the evidentiary weight, if any, of a document admitted in evidence under this section, consideration shall be given to the source from which the document is produced, the safeguards (if any) that have been taken to ensure its accuracy and any other relevant matters.

(4) In this section—

“document of a prescribed nature” means—

(a) bill of lading, manifest, shipping receipt, consignment note, way-bill, delivery sheet, register or order, invoice, ticket, passenger list or register, and any document of a like nature;

or

(b) any reproduction of any such document by photographic, photostatic, lithographic or other like process:

“shipment” means carriage by any means by air, land or water.

**Admission of
business records
in evidence.**

45a. (1) An apparently genuine document purporting to be a business record—

(a) shall be admissible in evidence without further proof;

and

(b) shall be evidence of any fact stated in the record, or any fact that may be inferred from the record (whether the inference arises wholly from the matter contained in the record, or from that matter in conjunction with other evidence).

(2) A document shall not be admitted in evidence under this section if the court is of the opinion—

- (a) that the person by, or at whose direction, the document was prepared can and should be called by the party tendering the document to give evidence of the matters contained in the document;
- (b) that the evidentiary weight of the document is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the document in evidence;

or

- (c) that it would be otherwise contrary to the interests of justice to admit the document in evidence.

(3) For the purpose of determining the evidentiary weight, if any, of a document admitted in evidence under this section, consideration shall be given to the source from which the document is produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.

(4) In this section—

“business” means business, occupation, trade or calling and includes the business of any governmental or local governmental body or instrumentality:

“business record” means—

- (a) any book of account or other document prepared or used in the ordinary course of a business for the purpose of recording any matter relating to the business;

or

- (b) any reproduction of any such record by photographic, photostatic, lithographic or other like process.

45b. (1) An apparently genuine document purporting to contain a statement of fact, or written, graphical or pictorial matter in which a statement of fact is implicit, or from which a statement of fact may be inferred shall, subject to this section, be admissible in evidence.

Admission of
certain
documents in
evidence.

(2) A document shall not be admitted in evidence under this section where the court is not satisfied that the person by whom, or at whose direction, the document was prepared could, at the time of the preparation of the document, have deposed of his own knowledge to the statement that is contained or implicit in, or may be inferred from, the contents of the document.

(3) A document shall not be admitted in evidence under this section if the court is of the opinion—

(a) that the person by, or at whose direction, the document was prepared can and should be called by the party tendering the document to give evidence of the matters contained in the document;

(b) that the evidentiary weight of the document is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the document in evidence;

or

(c) that it would be otherwise contrary to the interests of justice to admit the document in evidence.

(4) In determining whether to admit a document in evidence under this section, the Court may receive evidence by affidavit of any matter pertaining to the admission of that document in evidence.

(5) For the purpose of determining the evidentiary weight, if any, of a document admitted in evidence under this section, consideration shall be given to the source from which the document was produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.

(6) In this section—

“document” means—

(a) any original document;

or

(b) any reproduction of an original document by photographic, photostatic or lithographic or other like process.

Amendment of
principal Act,
s. 53—
Notice of
introduction of
telegraphic
message in
evidence.

11. Section 53 of the principal Act is amended by striking out from subsection (1) the passage “other than criminal proceedings”.

Amendment of
principal Act,
s. 55—
Proof of
sending of
message.

12. Section 55 of the principal Act is amended by striking out the passage “other than criminal proceedings”.

13. Section 56 of the principal Act is amended—

- (a) by inserting after the passage “the Under Treasurer” in subsection (2) the passage “, the Solicitor-General, the Crown Solicitor”;

and

- (b) by striking out from subsection (2) the passage “the President of the Marine Board”.

Amendment of principal Act, s. 56—

Certain documents may be transmitted by telegraph.

14. The following Part comprising the following sections is enacted and inserted in the principal Act immediately after section 59 thereof:—

Enactment of Part VIA of principal Act—

PART VIA

COMPUTER EVIDENCE

59a. In this Part, unless the contrary intention appears—

Interpretation.

“computer” means a device that is by electronic, electro-mechanical, mechanical or other means capable of recording and processing data according to mathematical and logical rules and of reproducing that data or mathematical or logical consequences thereof:

“computer output” or “output” means a statement or representation (whether in written, pictorial, graphical or other form) purporting to be a statement or representation of fact—

(a) produced by a computer;

or

(b) accurately translated from a statement or representation so produced:

“data” means a statement or representation of fact that has been transcribed by methods, the accuracy of which is verifiable, into the form appropriate to the computer into which it is, or is to be, introduced.

Admissibility
of computer
output.

59b. (1) Subject to this section, computer output shall be admissible as evidence in any civil proceedings.

(2) The court must be satisfied—

(a) that the computer is correctly programmed and regularly used to produce output of the same kind as that tendered in evidence pursuant to this section;

(b) that the data from which the output is produced by the computer is systematically prepared upon the basis of information that would normally be acceptable in a court of law as evidence of the statements or representations contained in or constituted by the output;

(c) that, in the case of the output tendered in evidence, there is, upon the evidence before the court, no reasonable cause to suspect any departure from the system, or any error in the preparation of the data;

(d) that the computer has not, during a period extending from the time of the introduction of the data to that of the production of the output, been subject to a malfunction that might reasonably be expected to affect the accuracy of the output;

(e) that during that period there have been no alterations to the mechanism or processes of the computer that might reasonably be expected adversely to affect the accuracy of the output;

(f) that records have been kept by a responsible person in charge of the computer of alterations to the mechanism and processes of the computer during that period;

and

(g) that there is no reasonable cause to believe that the accuracy or validity of the output has been adversely affected by the use of any improper process or procedure or by inadequate safeguards in the use of the computer.

(3) Where two or more computers have been involved, in combination or succession, in the recording of data and the production of output derived therefrom and tendered in evidence under this section, the court must be satisfied that the

requirements of subsection (2) of this section have been satisfied in relation to each computer so far as those requirements are relevant in relation to that computer to the accuracy or validity of the output, and that the use of more than one computer has not introduced any factor that might reasonably be expected adversely to affect the accuracy or validity of the output.

(4) A certificate under the hand of a person having prescribed qualifications in computer system analysis and operation or a person responsible for the management or operation of the computer system as to all or any of the matters referred to in subsection (2) or (3) of this section shall, subject to subsection (6) of this section, be accepted in any legal proceedings, in the absence of contrary evidence, as proof of the matters certified.

(5) An apparently genuine document purporting to be a record kept in accordance with subsection (2) of this section, or purporting to be a certificate under subsection (4) of this section shall, in any legal proceedings, be accepted as such in the absence of contrary evidence.

(6) The court may, if it thinks fit, require that oral evidence be given of any matters comprised in a certificate under this section, or that a person by whom such a certificate has been given attend for examination or cross-examination upon any of the matters comprised in the certificate.

59c. The Governor may make such regulations as he deems **Regulations.** necessary or expedient for the purposes of this Part, and without limiting the generality of the foregoing those regulations may—

(a) make any provision for the purposes of this Part with respect to the preparation, auditing or verification of data, or the methods by which it is prepared;

and

(b) prescribe the qualifications of a person by whom a certificate may be given, or a translation made, under this Part.

Enactment of
s. 63a of
principal Act—

15. The following section is enacted and inserted in the principal Act immediately after section 63 thereof:—

Evidence as to
foreign law.

63a. Where upon trial of any proceedings by judge and jury it is necessary to ascertain the law of any other country or state applicable to the proceedings, any question as to the effect of evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge.

Repeal of
second schedule
to principal
Act.

16. The second schedule to the principal Act is repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Governor's Deputy