

Evidence (Amendment) Bill

NOTES ON CLAUSES

Clause 1 Recites the short title of the Act.

Clause 2 Provides for commencement on a date or dates to be proclaimed.

Clause 3 Cites the *Evidence Act 1958* as the Principal Act.

Clause 4 Inserts in Part I. of the Principal Act a new Division 6 entitled "Disclosure of Information Relating to Applications for Legal Aid" which provides that a document received or information communicated in the course of making an application for legal aid shall not be divulged by the person assisting the applicant or a member of the legal aid body without the consent of the applicant. It further provides that where an applicant has died, consent may be given by the legal personal representative of the applicant or the spouse or a child of the applicant. A consequential amendment is made to the Table of Contents in Section 1 of the Principal Act.

Clause 5 Inserts a new sub-section (5) in section 23 of the Principal Act to provide that evidence of children may be given on affirmation.

Clause 6 Paragraph (b) inserts a new sub-section (3) in section 28 of the Principal Act which provides for waiver of medical privilege after the death of the patient by the legal personal representative of the patient, or by the spouse or child of the patient.

Paragraph (a) makes a consequential amendment to section 28 (2) of the Principal Act.

Clause 7 Paragraph (a) substitutes for section 53A (1) of the Principal Act provision for certification of public documents by the holder of an office declared by order of the Governor in Council published in the *Government Gazette* to be an office to which the section applies so that reproduction of a document may be admissible in evidence without further proof.

Paragraph (b) inserts a similar provision in section 53A (3).

The clauses are a simplification process to enable the name of an office to be changed without the need for amendment of the Evidence Act.

Clause 8 Amends section 67 of the Principal Act to replace all references to amounts of fees with a general power to prescribe fees by regulation.

Clause 9 Substitutes for section 79 of the Principal Act a provision that signatures and seals of which judicial notice shall be taken shall be those of offices and bodies to be declared by order of the Governor in Council published in the *Government Gazette*.

Clause 10 sub-clause (1) substitutes for section 102 of the Principal Act a new provision specifying the circumstances in which a person may make an affirmation instead of taking an oath.

Sub-clause (2) inserts in section 103 of the Principal Act a new sub-section (3) which provides a form for administering an affirmation to two or more persons simultaneously.

Sub-clause (3) makes a consequential amendment in section 100 (6) of the Principal Act.

Clause 11 sub-clause (1) provides for the repeal and replacement of Division 7, 8 and 9 of Part IV. of the Principal Act by the following Divisions:

Division 7—Commissioners for taking Affidavits

Section 113 defines a Commissioner.

Section 114 provides that the Governor in Council may appoint, revoke an appointment or accept the resignation of a Commissioner by order published in the *Government Gazette*.

Section 114 (4) provides that every member for the time being of either House of the Victorian Parliament not being a member of the Executive Council shall by virtue of that office be a Commissioner for taking Affidavits.

Section 115 empowers a Commissioner to take affidavits.

Section 116 empowers a Commissioner to take declarations.

Section 117 provides that judicial notice shall be taken of the signature of every Commissioner.

Section 118 provides for a register of Commissioners to be kept by the Secretary to the Law Department.

Section 119 specifies procedure for renewal of registration.

Section 120 specifies the duration of registration of a Commissioner.

Section 121 requires changes in the register to be made by the Secretary to the Law Department upon notification by a Commissioner.

Section 122 forbids a person acting as a Commissioner unless registered.

Section 123 establishes an indictable offence of assuming or pretending to act as a Commissioner. /

Section 123A inserts a regulation-making power in relation to the new Division 7.

Division 8—Authorized persons for taking Declarations

Section 123B enumerates the classes of persons empowered to take and receive certain declarations, and provides a penalty for demanding or taking a fee for taking any declaration under this section.

Division 9—Affidavits in Victoria

Section 123C enumerates the classes of persons before whom an affidavit may be taken for use in any court in Victoria and provides a penalty for taking or demanding a fee for taking or demanding a fee for taking and receiving an affidavit under this section.

Sub-clause (2) amends section 124 of the Principal Act to provide that affidavits may be taken in places out of Victoria before a Commissioner, and provides a penalty for taking or demanding a fee for taking and receiving an affidavit under this section.

Sub-clause (3) makes consequential amendments to sections 1, 128 and 129 of the Principal Act.

Sub-clauses (4), (5) and (6) are transitional provisions.

Sub-clause (7) removes the geographical limitation on commissions to take and receive affidavits for use in the Supreme Court on and from the commencement of this section.