

EVIDENCE (REPRODUCTIONS) ACT.

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 44, 1967.

An Act to reduce, in certain cases, the period for which documents are required by law to be preserved; for this and other purposes to facilitate the production to a court, and the use in evidence, of reproductions of documents; and for purposes connected therewith. [Assented to, 5th October, 1967.]

BE

Evidence (Reproductions).

BE it enacted by the Queen's Most Excellent Majesty, by No. 44, 1967 and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.**PRELIMINARY.**

1. This Act may be cited as the "Evidence (Reproductions) Act, 1967" and is divided into Parts, as follows :—

Short title
and division
into Parts.

PART I.—PRELIMINARY—ss. 1, 2.

**PART II.—REPRODUCTION OF PUBLIC DOCUMENTS—
s. 3.**

**PART III.—REPRODUCTION OF BUSINESS DOCUMENTS
—ss. 4–13.**

PART IV.—GENERAL—ss. 14–25.

2. In this Act, unless the context or subject-matter otherwise indicates or requires—

Interpre-
tation.

"Affidavit" includes statutory declaration.

"Business" includes public administration and business, profession, occupation and calling of every kind.

"Court" has the meaning ascribed to that expression in the Evidence Act, 1898, as amended by subsequent Acts.

"Document" includes part of a document.

"Legal proceeding" has the meaning ascribed to that expression in the Evidence Act, 1898, as amended by subsequent Acts.

"Machine-copy" in relation to a document means a copy of the document made by a machine performing a process—

(a) involving the production of a latent image of the document (not being a latent image on photo-sensitive material on a transparent base) and the development of that image by chemical means or otherwise; or

(b)

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- (b) that, without the use of photo-sensitive material, produces a copy of the document simultaneously with the making of the document.

"Original document" means—

- (a) when referred to in connection with the production of a document in answer to legal process issued by a court, the document that would, if this Act had not been enacted, be required to be produced in answer to that process; or
- (b) when referred to in connection with the admissibility of a document in evidence in a legal proceeding—
 - (i) a document that would, if this Act had not been enacted, be admissible in evidence in that legal proceeding in lieu of another document where a party to the legal proceeding failed to produce that other document in response to notice to do so given to him by another such party; or
 - (ii) any other document that would, if this Act had not been enacted, be admissible in evidence in that legal proceeding.

"Reproduction" in relation to a document means a machine-copy of the document or a print made from a transparency of the document; and "reproduce" and any derivatives thereof have a corresponding meaning.

"Transparency" in relation to a document means—

- (a) a developed negative or positive photograph of that document (in this definition referred to as an original photograph) made, on a transparent base, by means of light reflected from, or transmitted through, the document;
- (b)

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- (b) a copy of an original photograph made by No. 44, 1967 the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with the original photograph; or
- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b) of this definition, and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series.
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PART II.**REPRODUCTION OF PUBLIC DOCUMENTS.**

- 3.** (1) In this section "approved person" means—
 (a) any person or official declared by the Minister, by notification published in the Gazette, to be an approved person for the purposes of this section; or
 (b) where an original document to which this section relates is a document filed in a court or the official record of a legal proceeding, the Prothonotary, Registrar or other proper officer of the court in which the document was filed or before which the legal proceeding took place.

Certified reproductions of certain public documents, etc., to be admissible without further proof.
 cf. Act No. 6246 (Vic.), s. 53A.

(2) A document that purports to be a copy of an original document shall, without further proof, be admissible in evidence in a legal proceeding as if it were the original document of which it purports to be a copy, if it bears or is accompanied by a certificate, purporting to have been signed by an approved person, that it is a reproduction of a document that was in the custody or control of that person—

- (a) where the reproduction is a machine-copy, at the time the machine-copy was made; or

(b)

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- (b) where the reproduction is a print made from a transparency, at the time when the transparency was made.
- (3) Where an approved person is served with legal process to produce a document to a court it shall be a sufficient answer to such process if the person to whom the process is addressed sends by post, or causes to be delivered, to the Prothonotary, Registrar or proper officer of the court requiring production of the document a reproduction, certified as provided by this section, of the document.

(4) Part III of this Act shall not apply to or in respect of a reproduction of a document referred to in this Part.

PART III.**REPRODUCTION OF BUSINESS DOCUMENTS.**

Admissibility
of repro-
ductions of
business
documents
destroyed,
lost or
unavailable.
cf. Act. No.
6246 (Vic.),
s. 53B.

4. (1) Subject to this Act, a document that purports to be a copy of an original document made or used in the course of a business shall, upon proof that it is a reproduction made in good faith and that the original document has been destroyed or lost, whether wholly or in part, or that it is not reasonably practicable to produce the original document or to secure its production, be admissible in evidence in any legal proceeding to the extent to which the contents of the original document of which it purports to be a copy would have been admissible and it shall, subject to proof of the same matters, be a sufficient answer to legal process issued by a court, requiring production of a document to the court, for the person, required by that process to produce the document, to produce such a reproduction of the document.

(2) Without prejudice to any other mode of proof an affidavit purporting to have been made by a person at or about the time he made a machine-copy of, or photographed, a document—

- (a) stating his full name, address and occupation;
- (b) identifying or describing the document and indicating whether the document is itself a reproduction;
- (c)

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- (c) stating the day upon which he made the machine-^{No. 44, 1967}
copy or photograph, the condition of the
document at that time with respect to legibility and
the extent of any damage thereto;
- (d) describing the machine or process by which he
made the machine-copy or photograph;
- (e) stating that the making of the machine-copy or
photograph was properly carried out by the use of
apparatus or materials in good working condition
with the object of making a machine-copy or, as
the case may be, a transparency of the document;
and
- (f) stating that the machine-copy or photograph is a
machine-copy or photograph made in good faith,

shall be evidence, whether such person is available to be called as a witness or not, that the machine-copy or, as the case may be, a transparency, of the document referred to in the affidavit is a machine-copy or transparency made in good faith and, in the case of a machine-copy is, or, in the case of a transparency, can be used to produce, a reproduction of the document.

5. (1) For the purposes of this Act the Minister may, by notification published in the Gazette, approve for photographing documents in the ordinary course of business any make, model or type of machine and any such machine, so approved, is in this Part referred to as an "approved machine".

Minister
may approve
photo-
graphing
machines.
cf. Act No.
6246 (Vic.),
s. 53c.

(2) Any approval given by the Minister under subsection one of this section may be given subject to such conditions as the Minister thinks fit, and may, by notification published in the Gazette, be revoked or varied by the Minister.

(3) Subject to this Act, but in addition to and without derogating from the provisions of subsection one of section four of this Act, a print made from a transparency of an original document (being a document made or used in the course of a business) shall be admissible in evidence in a legal proceeding to the extent to which the contents of the original

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No. 44, 1967 original document would have been admissible, whether the document is still in existence or not, upon proof that the transparency was made in good faith by using a machine that, at the time the transparency was made, was an approved machine and that the print is a print of the image on the transparency.

(4) Without prejudice to any other mode of proof an affidavit purporting to have been made by a person at or about the time he photographed a document by means of an approved machine—

- (a) stating his full name, address and occupation and his functions or duties (if any) in relation to copying documents;
- (b) identifying or describing the document and indicating whether the document is itself a reproduction;
- (c) stating the day upon which the document was photographed, the condition of the document at that time with respect to legibility and the extent of any damage to the document;
- (d) stating the person from whose custody or control the document was produced for photographing or on whose behalf or in the course of whose business the document was photographed;
- (e) identifying the make, model or type of the approved machine citing the number and date of the Gazette in which approval of such machine was notified and stating that the photographing was properly carried out in the ordinary course of business by the use of apparatus and materials in good working order and condition and in accordance with the conditions, if any, attaching to the approval of such machine as so notified; and
- (f) stating that the document was photographed in good faith,

shall be evidence, whether such person is available to be called as a witness or not, that a transparency of the document referred to in the affidavit was made in good faith by using an approved machine and bears an image of the document.

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6. Without prejudice to any other mode of proof an affidavit purporting to have been made by a person at or about the time he made a print from a transparency of a document—

- (a) stating his full name, address and occupation;
- (b) identifying the transparency;
- (c) stating the day upon which the print was made, the condition of the transparency and the extent of any damage thereto;
- (d) describing the process by which he made the print;
- (e) stating that the printing was properly carried out by the use of apparatus and materials in good working order and condition with the object of reproducing the whole of the image on the transparency; and
- (f) stating that the print was made in good faith,

shall be evidence, whether such person is available to be called as a witness or not, that the print was made in good faith and reproduces the whole of the image on the transparency.

7. Where a person having the custody or control of a document—

- (a) delivers the document, or causes it to be delivered, to another person (in this section called "the processor") whose business is or includes the reproduction or photographing of documents for other persons; and
- (b) receives from the processor—
 - (i) a machine-copy or transparency of a document; and
 - (ii) an affidavit by the processor under section four or five of this Act,

an

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No. 44, 1967 an affidavit made by him at or about that time giving particulars of his custody or control of the document, its delivery to the processor and his receipt, from the processor, of the document and the machine-copy or transparency shall, whether the person who had the custody or control of the document is available to be called as a witness or not, be admissible in a legal proceeding as evidence of the facts stated therein.

Repro-
duction
not to be
admitted
as evidence
unless
transparency
in existence.
cf. Act No.
6246 (Vic.),
s. 53J.

8. (1) Save as provided in subsection two of this section a reproduction made from a transparency shall not be admitted as evidence pursuant to this Part in any legal proceeding unless the court is satisfied—

- (a) that the transparency is in existence at the time of the legal proceeding; and
- (b) that the document reproduced was—
 - (i) in existence for a period of at least twelve months after the document was made; or
 - (ii) delivered or sent by the party tendering the reproduction to the other party or one of the other parties to the proceedings.

(2) The provisions of paragraph (b) of subsection one of this section shall not apply with respect to a print made from a transparency made by using an approved machine where, at the time the print was made, the transparency was in the custody or control of—

- (a) a Minister of the Crown in right of the Commonwealth of Australia or of the State of New South Wales or of any other State of the Commonwealth of Australia or any officer in any Government Department under the direct control of any such Minister;
- (b) any council, board, commission, trust or other body established or constituted by or under the law of the Commonwealth of Australia or of the State of New South Wales or of any other State of the Commonwealth of Australia or a Territory of the Commonwealth of Australia for any public purpose;

(c)

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- (c) a bank as defined in section five of the Banking No. 44, 1967 Act 1959 of the Parliament of the Commonwealth of Australia, as amended by subsequent Acts of that Parliament, or any statutory corporation for the time being authorised to carry on any banking business in the State of New South Wales or in any other State, or a Territory, of the Commonwealth of Australia; or
- (d) any corporation that is registered under the Life Insurance Act 1945 of the Parliament of the Commonwealth of Australia, as amended by subsequent Acts of that Parliament, where the document reproduced relates to the life insurance business of that corporation.

9. Where any Act passed before or after the commencement of this Act requires a document to which this Part applies to be preserved for any purpose for a longer period of time than three years it shall be a sufficient compliance with such a requirement to preserve, in lieu of any such document over three years old, a transparency thereof made by using an approved machine together with an affidavit relating to the transparency, being a transparency and an affidavit to which section thirteen of this Act applies.

10. A statement by any person in an affidavit made for the purposes of this Part—

- (a) that he destroyed or caused the destruction of a document;
- (b) that after due search and inquiry a document cannot be found;
- (c) that, for the reasons specified therein, it is not reasonably practicable to produce a document or secure its production;
- (d) that a transparency of a document is in the custody or control of a person, corporation or body referred to in subsection two of section eight of this Act;

(e)

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- (e) that a document was made or was used in the course of his or his employer's business; or
- (f) that he has made transparencies of a series of documents including the affidavit by photographing them in their proper order,

shall be evidence of the fact or facts stated, whether that person is available to be called as a witness or not.

One affidavit sufficient in certain circumstances.

cf. Act No. 6246 (Vic.), s. 53H.

11. (1) This section applies to and in respect of transparencies, made by using an approved machine, of a series of documents that—

- (a) bear or have been given serial numbers in arithmetical order;
- (b) bear or have been marked with the same distinctive identification mark; or
- (c) purport from their contents to relate to the same subject-matter, to the same person or persons or to a matter between persons,

where the documents are photographed in their proper order on a continuous length of film or, where the documents are marked in accordance with paragraph (a) or (b) of this subsection, on separate films.

(2) An affidavit made pursuant to this Part shall be deemed to be an affidavit in respect of all or any of the transparencies of a series of documents to which this section applies if it is photographed as part of the series and in lieu of identifying or describing each individual document photographed, it states the general nature of the documents in the series and—

- (a) the serial numbers of the first and last document in the series;
- (b) the distinctive identification mark; or
- (c) the person or persons, or the matter between persons, to which the documents refer,

as the case may require.

(3)

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(3) Notwithstanding anything contained in this Part, No. 44, 1967 a print that purports to be made from a transparency of an affidavit referred to in subsection two of this section shall be admissible in evidence in a legal proceeding as if it were the affidavit from which the transparency was made, if—

- (a) it is produced or tendered with a print made from a transparency of a document in the series to which the affidavit relates; and
- (b) an affidavit under section six of this Act, relating to both prints, is also produced or tendered.

12. Where any affidavit relating to the reproduction of a document is not an affidavit referred to in subsection two of section eleven of this Act, a copy thereof duly certified to be a true copy—

- (a) in the case of an affidavit in the custody of a body corporate, by the chairman, secretary or by a director or manager thereof; or
- (b) in any other case, by a justice of the peace or commissioner for affidavits—

shall, unless the court otherwise orders, be admissible in evidence in a legal proceeding as if it were the affidavit of which it is certified to be a true copy.

13. (1) In this section “affidavit” includes—

- (a) a transparency, made as provided in section eleven of this Act, of an affidavit; and
- (b) a copy, certified as provided in section twelve of this Act, of an affidavit.

Discovery,
inspection
and
production
where
document
destroyed
or lost.

(2) This section applies to—

- (a) a transparency of a destroyed or lost document, where a print made from the transparency would, subject to compliance with the conditions prescribed by this Act for the purpose, be admissible in evidence in a legal proceeding; and

(b)

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- (b) an affidavit that would be evidence or, where the affidavit is itself in the form of a transparency, that could be the means of providing evidence pursuant to this Act, of compliance with those conditions in so far as they relate to the making of the transparency and the destruction or loss of the document.

(3) Where any person has the custody or control of a transparency and an affidavit to which this section applies and, but for the destruction or loss of the document from which the transparency was made would be required by any law, order of court, practice or usage—

- (a) to give discovery of the document;
- (b) to produce the document for inspection;
- (c) to permit the making of a copy of the document or the taking of extracts therefrom; or
- (d) to supply a copy of the document,

that law, order, practice or usage shall, subject to this section, be deemed to extend to the transparency and affidavit.

(4) For the purposes of this section—

- (a) the obligation imposed by this section in respect of a requirement referred to in paragraph (b) of subsection three of this section shall be deemed to include an obligation—

- (i) to provide proper facilities for reading the image on the transparency and, where the affidavit is itself in the form of a transparency, the image on the transparency of the affidavit; or
- (ii) to produce for inspection a print made from the transparency and, where the affidavit is itself in the form of a transparency, a print made from the transparency of the affidavit, together, in each case, with an affidavit that would, under

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under section six of this Act, be evidence No. 44, 1967
that the print was made in good faith and
reproduces the image on the transparency;
and

- (b) the obligation imposed by this section in respect of a requirement referred to in paragraph (d) of subsection three of this section shall be deemed not to include an obligation to supply a copy of any transparency but to include, in lieu thereof, an obligation to supply the print and affidavit or, as the case may require, the prints and affidavits, referred to in subparagraph (ii) of paragraph (a) of this subsection.

(5) Where any person has the custody or control of a transparency and an affidavit to which this section applies and is required by legal process issued by a court to produce to the court the document from which the transparency was made, that legal process shall be deemed to require the production by him of—

- (a) a print, made in good faith, that reproduces the image on the transparency; and
 - (b) the affidavit or, where the affidavit is itself in the form of a transparency, a print, made in good faith, that reproduces the image on the transparency of the affidavit.
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PART IV.

GENERAL.

14. (1) Subject to this section, where a print made from a transparency is, in a legal proceeding, tendered in evidence pursuant to the provisions of this Act and—

- (a) the court is not satisfied that the print is a legible copy of the original document; or
- (b) a party to the legal proceeding questions the authenticity of the print and applies for an order under this section,

Further reproduction may be ordered by court.

cf. Act No.
6246 (Vic.),
s. 53J.

the

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No. 44, 1967 the court may reject the print tendered and order that a further print be made from a transparency of the original document.

(2) A further print made in compliance with an order made under this section shall be made—

- (a) where the order is made under paragraph (a) of subsection one of this section, at the cost of the party who tendered the rejected print; or
- (b) where the order is made under paragraph (b) of that subsection, in the presence of a person appointed by the court for the purpose and at the cost of the party who applied for the order.

(3) Where a print to which Part II of this Act relates is rejected under this section, a print made in compliance with an order under this section shall be made in the same premises as the rejected print or, where this is not practicable, in accordance with directions given by the court.

Colours and
tones of
reproduc-
tions.

cf. Act No.
6246 (Vic.),
s. 53K.

15. (1) For the purposes of this Act, the production of a reproduction of a document to a court in answer to legal process, or the admission of such a reproduction in evidence in a legal proceeding, shall not be precluded on the ground that it is not a copy of an original document or, where the reproduction is a print made from a transparency, on the ground that the transparency does not bear an image of an original document, if the reproduction is not such a copy, or the transparency does not bear such an image, by reason only of the fact—

- (a) that, in the process by which the reproduction or transparency was made, the colours or tones appearing in the original document were altered or reversed in the reproduction or transparency; or
- (b) that any number or mark of identification added for the purposes of section eleven of this Act appears in the reproduction or transparency.

(2)

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(2) A document may be certified under Part II of No. 44, 1967 this Act to be a reproduction of an original document notwithstanding that—

- (a) any writing or representation describing or identifying colours in the original document appears in the reproduction; or
- (b) any colours appearing in the reproduction were added after it was made and before certification.

16. (1) Where a reproduction of a document is admissible in evidence pursuant to this Act, it shall be so admissible whether or not notice to produce the document of which it is a reproduction has been given.

Notice to produce not required.
cf. Act No. 6246 (Vic.), s. 53L.

(2) Where a reproduction of a document is tendered as evidence pursuant to this Act, no proof shall be required that the reproduction was compared with the original document.

Proof of comparison not required.

17. Any presumption that may be made in respect of a document over twenty years old may be made with respect to any reproduction of that document admitted in evidence under this Act in all respects as if the reproduction were the document.

18. Where a reproduction is made of a document in another State or in a Territory of the Commonwealth of Australia and would be admissible in evidence in a legal proceeding in that State or Territory under a law of that State or Territory corresponding with this Act, or a law of that State or Territory that the Minister, by notification published in the Gazette, declares to correspond with this Act, the reproduction shall be admissible in evidence in a legal proceeding in New South Wales in the same circumstances, to the same extent and for the like purpose as it would be admissible in evidence in a legal proceeding in that State or Territory.

Reproductions made in other States.
cf. Act No. 6246 (Vic.) s. 53N.

*Evidence (Reproductions).***No. 44, 1967**Judicial
notice.cf. Act No.
6246 (Vic.),
s. 53P.

19. Where any Act or law requires a court to take judicial notice of the seal or signature of any court, person or body corporate appearing on a document and a reproduction of that document is, pursuant to this Act, admitted in evidence in a legal proceeding, the court shall take judicial notice of the image of the seal or signature on the document.

Court may
reject
reproduc-
tion.cf. Act No.
6246 (Vic.),
s. 53R.

20. Notwithstanding anything contained in this Act, a court may refuse to admit in evidence a reproduction tendered pursuant to this Act if it considers it inexpedient in the interests of justice to do so as a result of any reasonable inference drawn by the court from the nature of the reproduction, the machine or process by which it or, in the case of a print from a transparency, by which the transparency was made, and any other circumstances.

Weight of
evidence.cf. Act No.
6246 (Vic.),
s. 53S

21. In estimating the weight to be attached to a reproduction of a document admitted in evidence pursuant to this Act, regard shall be had to the fact that, if the person making an affidavit pursuant to this Act is not called as a witness, there has been no opportunity to cross-examine him, and to all the circumstances from which any inference may reasonably be drawn as to—

- (a) the necessity for making the reproduction or, in the case of a print from a transparency, the transparency or for destroying or parting with the document reproduced;
- (b) the accuracy or otherwise of the reproduction; or
- (c) any incentive to tamper with the document or to misrepresent the reproduction.

Provisions
of Act are
alternative.
cf. Act No.
6246 (Vic.),
s. 53T.

22. The provisions of this Act shall be construed as in aid of and as alternative to any other law or any practice or usage with respect to the production to a court or the admissibility in evidence in a legal proceeding of reproductions of documents.

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23. Notwithstanding the provisions of this Act, where a No. 44, 1967 document is chargeable with stamp duty under the Stamp Duties Act, 1920, as amended by subsequent Acts, a reproduction of the document shall not be admissible in evidence under this Act unless—

- (a) the reproduction of the document shows or establishes to the satisfaction of the court or it is otherwise so established that the document was duly stamped in accordance with that Act, as so amended; or
- (b) the provisions of that Act, as so amended, which relate to documents that are not duly stamped in accordance therewith are complied with in respect of the reproduction as if it were the document of which it is a reproduction.

24. (1) The Minister may, by notification published in the Gazette, exclude the operation of this Act or any Part of this Act in respect of any document or class of documents specified in the notification.

(2) The Minister may, by a subsequent notification published in the Gazette, revoke any notification under subsection one of this section.

(3) The provisions of this Act referred to in a notification published under subsection one of this section shall not, while the notification remains unrevoked, apply to and in respect of any document or class of documents specified in the notification.

25. Nothing in this Act shall be construed as affecting the provisions of the Archives Act, 1960, as amended by the Decimal Currency Act, 1965.