

EVIDENCE (AMENDMENT) ACT.

Act No. 35, 1954.

An Act to amend the law of evidence; for this purpose to amend the Evidence Act, 1898, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 29th November, 1954.]

Elizabeth II,
No. 35, 1954.

BE it enacted by the Queen's Most Excellent Majesty, by 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:—

1. (1) This Act may be cited as the "Evidence (Amendment) Act, 1954."

Short title
and
citation.

(2) The Evidence Act, 1898, as amended by subsequent Acts and by this Act, may be cited as the Evidence Act, 1898-1954.

(3)

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No. 35, 1954. (3) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1954.

Amendment of Act No. 11, 1898. **2.** The Evidence Act, 1898, as amended by subsequent Acts, is amended—

Sec. 3. (Interpretation.) (a) (i) by inserting in section three after the word “Act,” the words “other than Part II_A,”;
(ii) by inserting at the end of the same section the following new subsection:—

(2) Nothing in the amendments made to this Act by the Evidence (Amendment) Act, 1954, prejudices the admissibility of any evidence which would apart from those amendments be admissible.

New Part II_A. (b) by inserting next after Part II the following new Part:—

PART II_A.

Admissibility of Documentary Evidence as to Facts in Issue.

Interpretation.
cf. 1 & 2 Geo. 6. c. 28, s. 6 (1).

14_A. In this Part of this Act—

“Court” means the court, judge, justice of the peace, arbitrator or person before whom proceedings are held or taken.

“Document” includes books, maps, plans, drawings and photographs.

“Proceedings” means any proceedings or inquiry in which evidence is or may be given, and includes an arbitration.

“Statement” includes any representation of fact, whether made in words or otherwise.

Admissibility of documentary evidence as to facts in issue.
cf. Ibid. s. 1.

14_B. (1) In any civil proceedings without a jury where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall,

shall, on production of the original document, **No. 35, 1954**
be admissible as evidence of that fact if the
following conditions are satisfied, that is to
say—

- (i) if the maker of the statement either—
 - (a) had personal knowledge of the matters dealt with by the statement; or
 - (b) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
- (ii) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings without a jury, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection one of this section shall be **admissible**

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—

admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

- (a) notwithstanding that the maker of the statement is available but is not called as a witness;
- (b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions of this section, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a legally qualified medical practitioner.

14c. (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Part of this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

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Weight to be attached to evidence.
cf. 1 & 2 Geo. 6. c. 23, s. 2.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Part of this Act shall not be treated as corroboration of evidence given by the maker of the statement.

(c) by inserting in Part III next before section fifteen the following new section:—

New sec. 14d.

14d. Notwithstanding any rule of law, neither the evidence of any person nor any statement made out of court by any person shall be inadmissible in any legal proceeding by reason of the fact that it is tendered with the object of proving or that it proves or tends to prove that marital intercourse did or did not take place at any time or during any period between that person and a person who is or was his or her wife or husband or that any child is or was or is not or was not their legitimate child.

Admissibility of evidence or statements as to access by husband or wife.
cf. Vict. Act No. 5547, s. 2.
Russell v. Russell [1924] A.C. 687.

(d) by inserting next after section sixteen the following new section:—

New sec. 16A.

16A. In any legal proceeding there shall, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement

Presumptions as to documents twenty years old.
cf. 1 & 2 Geo. 6. c. 23, s. 4.

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commencement of the Evidence (Amendment) Act, 1954, would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

**New sec.
23A.**

(e) by inserting next after section twenty-three the following new section:—

**Proof of
identity
of person
convicted
in another
State
and of
convictions.
cf. Tas. 7
Geo. VI.
No. 40, s. 2.**

23A. (1) An affidavit purporting to be made by a finger-print expert who is an officer of the police force of any other State or Territory (including the Territory of New Guinea) of the Commonwealth of Australia and in or to the effect of the form set out in the Second Schedule to this Act shall be admissible in evidence for the purpose of proving the identity of any person alleged to have been convicted in that State or Territory of any offence.

(2) Any such affidavit shall be evidence that the person, a copy of whose finger-prints is exhibited to such affidavit—

(a) is the person who, in any document exhibited to such affidavit and purporting to be a certificate of conviction or certified copy of such conviction, is referred to as having been convicted; and

(b) has been convicted of the offences mentioned in such affidavit.

**Sec. 28.
(Registered
deeds,
memorials
and
wills.)**

(f) by omitting from subsection three of section twenty-eight the words "thirty years" and by inserting in lieu thereof the words "twenty years";

**New sec.
35A.**

(g) by inserting next after section thirty-five the following new section:—

**Proof of
instrument
to validity
of which
attestation
is necessary.
cf. 1 & 2
Geo. 6.
c. 28, s. 3.**

35A. In any legal proceeding an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents. No. 35, 1954.

- (h) by inserting next after section forty-three the following new sections:— New secs.
43A, 43B.

43A. A statement in writing to the effect that wages or salary of any amount have been paid to a person during any period, purporting to be signed by or on behalf of his employer, shall be evidence of the facts therein stated in any proceedings taken by or against that person— Statement
of wages
to be
evidence.
cf. 15 & 16
Geo. 6 and
1 Eliz. 2.
c. 55, s. 80.

- (a) under the Deserted Wives and Children Act, 1901, as amended by subsequent Acts;
- (b) under the Matrimonial Causes Act, 1899, as amended by subsequent Acts, for maintenance of a wife or child or for alimony; or
- (c) under Part XII or Part XVI of the Child Welfare Act, 1939, as amended by subsequent Acts.

43B. (1) Rules of court of the Supreme Court or of the District Court may be made providing for orders being made at any stage of any action at law directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent at the trial for cross-examination. Affidavit
evidence of
facts in
actions
at law.
cf. 1 & 2
Geo. 6.
c. 23, s. 5.

Any rules so made shall contain a provision that an order shall not be made dispensing with the attendance of the deponent for cross-examination if any party desires his attendance for cross-examination.

(2) All rules of court made for the purpose referred to in subsection one of this section shall—

- (a) be published in the Gazette;
- (b)

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- (b) take effect from the date of publication or from a later date to be specified in the rules of court;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules of court have been laid before such House disallowing any rules of court or part thereof, such rule of court or part shall thereupon cease to have effect.

(3) The power to make rules of court conferred by this section may be exercised—

- (a) in relation to proceedings in the Supreme Court, by a majority of the judges of the Supreme Court;
- (b) in relation to proceedings in the District Courts, by a majority of the District Court judges.

New Part IIIA.

- (i) by inserting next after Part III the following new Part:—

PART IIIA.

Photographs of Old Records.

43c. (1) A print, whether enlarged or not, from any photographic film of—

- (a) any entry in any book or record kept by the Crown or any prescribed corporation and destroyed, lost, or delivered to a customer after such film was taken;

(b)

Conditions under which print from photographic film admissible in evidence. cf. 6 Geo. VI, c. 19. (Canada.)

- (b) any bill of exchange, promissory note, No. 35, 1954.
cheque, receipt, instrument or document
held by the Crown or any prescribed
corporation and destroyed, lost, or
delivered to a customer after such film
was taken; or
- (c) any record, document, plan, book or
paper belonging to or deposited with
the Crown or any prescribed
corporation,

shall be admissible in evidence in all cases in
which and for all purposes for which the
object photographed would have been received
upon proof that—

- (i) while such book, record, bill of
exchange, promissory note, cheque,
receipt, instrument or document, plan,
book or paper was in the custody or
control of the Crown or prescribed
corporation, the photographic film was
taken thereof in order to keep a
permanent record thereof; and
- (ii) the object photographed was subse-
quently destroyed by or in the presence
of one or more of the officers or
employees of the Crown or prescribed
corporation, or was lost or was
delivered to a customer.

(2) Proof of compliance with the
conditions prescribed by this section may be
given by any one or more of the officers or
employees of the Crown or prescribed corpora-
tion, having knowledge of the taking of the
photographic film, of such destruction, loss, or
delivery to a customer, or of the making of the
print, as the case may be, either orally or by
statutory declaration taken and received before
any notary public or commissioner for taking
affidavits.

(3)

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(3) Unless the court otherwise orders, a copy of any such declaration duly certified to be a true copy by affidavit made by any notary public or commissioner for taking affidavits shall be admissible in evidence in lieu of the original declaration.

(4) The provisions of this section apply only in respect of books, records, bills of exchange, promissory notes, cheques, receipts, instruments, documents, plans, books and papers which, if they were still in existence or in the possession or custody of the Crown or prescribed corporation, would be not less than twenty years old at the date when the print from the photographic film thereof is tendered in evidence:

Provided that in respect of the ledger record maintained by a prescribed corporation, being a bank, of the transactions by a customer of the bank upon his account with the bank, the foregoing provisions of this subsection shall be read and construed as if the words "twenty years" were omitted therefrom and the words "six years" were inserted in lieu thereof.

(5) In this section—

"Crown" means the Crown in right of the State.

"photographic film" includes any photographic plate, microphotographic film or photostatic negative.

"prescribed corporation" means—

(a) any statutory body representing the Crown;

(b) the Rural Bank of New South Wales and any body corporate authorised to carry on banking business under the Commonwealth Bank Act 1945 or the Banking Act 1945 of the Parliament of the Commonwealth of Australia

Australia or under any amend- No. 35, 1954.
ment of those Acts;

- (c) any public company within the meaning of the Companies Act, 1936, as amended by subsequent Acts, carrying on insurance business or such other class of business as may be prescribed by the Governor by order published in the Gazette.

“statutory body representing the Crown” includes the Metropolitan Water Sewerage and Drainage Board, the Hunter District Water Board, the Maritime Services Board of New South Wales, the Board of Fire Commissioners of New South Wales, the Housing Commission of New South Wales, the Water Conservation and Irrigation Commission, the Metropolitan Meat Industry Board and any public body declared by the Governor by order published in the Gazette to be a statutory body representing the Crown.

- (j) (i) by omitting the heading to the Schedule Schedule. and by inserting in lieu thereof the following:—

SCHEDULES.

FIRST SCHEDULE.

- (ii) by inserting at the end of the Schedule the following new Schedule:—

SECOND SCHEDULE.

Sec. 23A.

New South Wales
 In the (*insert name of court*).
 Regina v.
 [or Between Informant and
 Defendant, or, as the
 case may be.]

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I of
..... in the (State or Territory) make oath
and say as follows:—

1. I am a finger-print expert and an officer of the
police force of the said State [or Territory].

2. I have examined the finger-print card now
produced and shown to me marked "A".

3. The finger-prints on the said card are identical
with those appearing on a finger-print card in the
records of the police department, being the finger-
prints of one (name
of person; and alias, if any).

4. According to the said records, which I believe
to be accurate, the said.....
was convicted in the said State [or Territory] of the
following offences—

[Set out description of offences, dates of conviction,
and courts in which the person was convicted.]

5. From an examination of the said records I
believe that the person referred to in the document(s)
hereunto annexed now shown to me and marked "B"
["C", "D", &c., respectively] as having been convicted
of the offence(s) therein stated is identical with the
person whose finger-prints are shown on the said
card marked "A".

SWORN at }
this day of }
19...

Before me

.....
A person authorised to take affidavits
in the State [or Territory] of
.....

Sec. 1.
(Conse-
quential).

(k) (i) by inserting in section one next after the
matter relating to Part II the words and
figures "PART IIA.—Admissibility of
Documentary Evidence as to Facts in
Issue—ss. 14A-14C.";

(ii) by omitting from the matter relating to
Part III the figures "15-43" and by
inserting in lieu thereof the figures
"14D-43B";

(iii)

(iii) by inserting next after the matter relating to No. 35, 1954. Part III the words and figures "PART IIIA. —
—*Photographs of Old Records*—s. 43c."

(1) by inserting in section two after the words "mentioned in the" the word "First".
Sec. 2. (Conse-
quential).

3. The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended by inserting at the end of section seventy-nine the words—
Amendment of Act No. 14, 1899. Sec. 79.

"Notwithstanding the foregoing provisions of this section a party to any proceeding under this Act may be asked and shall be bound to answer any question tending to show adultery.)
of adultery if he is asked that question for the purpose of determining his fitness to be given custody of, or access to, children."

