



Western Australia

Evidence Act 1906

Reprinted as at 22 November 1999

Western Australia

Evidence Act 1906

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Notes

Defined Terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 22 November 1999

Evidence Act 1906

An Act to consolidate and amend the Statute Law of Evidence.

1. Short title

This Act may be cited as the *Evidence Act 1906*¹.

2. Repeal

[Omitted under the Reprints Act 1984 s.7(4)(f).]

3. Interpretation

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

“**Act**” includes Ordinance;

“**Australasian colony**” means and includes New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia during such time as such possessions constituted separate colonies; New Zealand, and any part of New Zealand during such time as such part constituted a separate colony; Fiji; and any other British possession which may at any time be created within Her Majesty’s possessions in Australasia;

“**bank**” means —

- (a) an ADI (authorized deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or

(b) a bank constituted by a law of a State, a Territory or the Commonwealth;

“**bankers’ books**” and expressions referring to bankers’ books include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank however such books are compiled, recorded or stored, whether in written form or on microfilm or by electronic process or otherwise;

“**colony**” includes province;

“**the Commonwealth**” means the Commonwealth of Australia;

“**court**” includes the High Court of Australia, the Supreme Court, the District Court, the Children’s Court, the Family Court, a Local Court, a warden’s court under the *Mining Act 1978*, and a court of summary jurisdiction;

“**examined copy**” means a copy proved to have been examined with the original, and to correspond therewith. The examination may be made either by one person reading both the original and the copy or by 2 persons, one reading the original and the other the copy, and it is not necessary that each should alternately read both;

“**Gazette**” means and includes the *London Gazette*, the *Edinburgh Gazette*, the *Dublin Gazette*, the *Commonwealth of Australia Gazette* and the *Government Gazette*, *Royal Gazette*, or other official gazette of any State or Australasian colony;

“**Government Printer**” means and includes the Printer to Her Majesty, and any person printing for the Government of the Commonwealth or of any State or Australasian colony, and any printer purporting to be the printer authorized to print the Statutes, Ordinances, Acts of State, or other public Acts of the Legislature of any Australasian colony, or otherwise to be the Government Printer of such colony;

“judge” means a Justice of the High Court of Australia and a Judge of the Supreme Court of Western Australia, and includes a Judge of The District Court of Western Australia, a Judge of the Family Court of Western Australia, a Judge or magistrate of the Children’s Court of Western Australia, a stipendiary magistrate, and also any justice or justices of the peace and any member or members of the Children’s Court of Western Australia sitting in court;

“legal proceeding” or **“proceeding”** includes any action, trial, inquiry, cause, or matter, whether civil or criminal, in which evidence is or may be given, and includes an arbitration;

“person acting judicially” means any person having, in Western Australia, by law or by consent of parties, authority to hear, receive, and examine evidence;

“photograph” means a durable facsimile of an original obtained by any photographic, photostatic or similar process;

“prisoner” means and includes any person committed to prison for punishment, or on remand, or for trial, safe custody, or otherwise;

“State” means a State of the Commonwealth;

“the State” means the State of Western Australia or the colony of Western Australia prior to the establishment of the Commonwealth;

“uncorroborated evidence”, in relation to the conviction of a person accused of an offence, means evidence that is not corroborated in some material particular by other evidence implicating the accused person;

“votes and proceedings” shall be deemed to include journals and minutes, and any papers purporting to be printed by the authority of and to be laid before either House of the

Parliament of the Commonwealth, or of any State or of any Australasian colony.

[Section 3 amended by No. 11 of 1964 s.2; No. 111 of 1978 s.2; No. 66 of 1987 s.4; No. 70 of 1988 s.35; No. 15 of 1991 s.23; No. 73 of 1994 s.4; No. 26 of 1999 s.78(2).]

4. Application of Act

All the provisions of this Act, except where the contrary intention appears, shall apply to every legal proceeding.

5. This Act not to derogate from existing powers

The provisions of this Act shall be in addition to and not in derogation of any powers, rights, or rules of evidence existing at common law, or given by any law at any time in force in the State not inconsistent with the provisions of this Act.

Competency and compellability of witnesses

6. Witnesses interested or convicted of offence

No person shall be excluded from giving evidence in any proceeding on the ground that he has or may have an interest in the matter in question, or in the result of the proceeding, or on the ground that he has previously been convicted of any offence.

7. Evidence of party, or of wife, former wife, husband or former husband of party, in civil cases

In any civil proceeding the parties thereto and the persons on whose behalf such proceeding is brought or defended, and the wives, former wives, husbands and former husbands of such parties or persons respectively, shall, subject to the provisions of this Act, be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding.

[Section 7 amended by No. 48 of 1991 s.5.]

8. Witnesses in criminal cases

- (1) Except as in this Act it is otherwise provided, every person charged with an offence shall be a competent but not a compellable witness at every stage of the proceedings whether the person so charged is charged solely or jointly with any other person: Provided as follows —
- (a) a person so charged shall not be called as a witness except upon his own application;
 - [(b) deleted]*
 - (c) the failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution;
 - (d) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged;
 - (e) a person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless —
 - (i) the proof that he has committed or been convicted of such other offence is admissible in evidence to show that he is guilty of the offence wherewith he is then charged; or
 - (ii) he has personally, or by his advocate, asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

- (iii) he has given evidence against any other person charged with the same offence;
 - (f) when subsection (e)(ii) or (iii) is or becomes applicable to any person charged who gives evidence for the defence, it shall be open to the prosecution, or to any other person charged against whom he has given evidence, to call evidence, that such person is of bad character or has been convicted of or charged with any offence other than that with which he then stands charged, notwithstanding that the case for the prosecution or of such other person charged may already have been closed;
 - (g) every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence;
 - (h) nothing in this section shall affect the provisions of section 102 of the *Justices Act 1902*.
- (2) Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

[Section 8 amended by No. 16 of 1913 s.2; No. 48 of 1991 s.6.]

9. Evidence of wife or husband of defendant in criminal cases

- (1) In any criminal proceeding (and at every stage of the proceeding), the wife or husband of a defendant shall, subject to this Act, be —
- (a) competent to give evidence on behalf of the prosecution, the defendant or any person being tried jointly with the defendant;
 - (b) compellable to give evidence on behalf of the defendant or any person being tried jointly with the defendant; and

- (c) compellable to give evidence on behalf of the prosecution against the defendant or any person being tried jointly with the defendant if —
- (i) the defendant is charged with an offence under a provision mentioned in the Second Schedule;
 - (ii) the defendant is charged with attempting or conspiring to commit, or with inciting the commission of, an offence under a provision mentioned in the Second Schedule;
 - (iii) the defendant is charged on the complaint of the wife or husband with an offence committed with respect to the property of the wife or husband; or
 - (iv) the wife or husband is compelled, under another enactment, to give that evidence.
- (2) In any criminal proceeding (and at every stage of the proceeding), a former wife or former husband of a defendant shall, subject to this Act, be competent and compellable to give evidence on behalf of the prosecution, the defendant or any person being tried jointly with the defendant.
- (3) A reference in subsection (1) or (2) to a person being tried jointly with the defendant includes a reference to a person appearing with the defendant at a preliminary hearing under Part V of the *Justices Act 1902*.
- (4) Nothing in this section shall operate to compel a defendant in any criminal proceeding to give evidence in the proceeding.
- (5) If the wife or husband of a defendant in any criminal proceeding is called as a witness for the prosecution but is not a compellable witness for the prosecution, it is the duty of the judge to inform the wife or husband that she or he is not compellable to give evidence on behalf of the prosecution if she or he is unwilling to do so.

[Section 9 inserted by No. 48 of 1991 s.7.]

[10. *Repealed by No. 48 of 1991 s.8.]*

11. Power to compel answer to incriminating question

- (1) Whenever in any proceeding any person called as a witness, or required to answer any interrogatory, declines to answer any question or interrogatory on the ground that his answer will criminate or tend to criminate him, the judge may, if it appears to him expedient for the ends of justice that such person should be compelled to answer such question or interrogatory, tell such person that, if he answers such question or interrogatory, and other questions or interrogatories that may be put to him, in a satisfactory manner, he will grant him the certificate hereinafter mentioned.
- (2) Thereupon such person shall no longer be entitled to refuse to answer any question or interrogatory on the ground that his answer will criminate or tend to criminate him; and thereafter if such person shall have given his evidence to the satisfaction of the judge, the judge shall give such person a certificate to the effect that he was called as a witness or interrogated in the said proceeding and that his evidence was required for the ends of justice, and was given to his satisfaction.
- (2a) Where in a proceeding a person is given a certificate under subsection (2) in respect of any evidence, a statement made by him, as part of that evidence, in answer to a question or interrogatory is not admissible in evidence in criminal proceedings against the person other than on a prosecution for perjury committed in the proceeding.
- (3) In subsections (1) and (2), “**judge**” does not include —
 - (a) a justice of the peace appointed under section 6 or 9 of the *Justices Act 1902*; or
 - (b) a member of the Children’s Court of Western Australia, whether sitting alone or with another so appointed.

[Section 11 amended by No. 47 of 1990 s.4²; No. 15 of 1991 s.23.]

11A. Judge may restrict publication of evidence where certificate given

- (1) Where in a proceeding a judge gives to a person a certificate under section 11(2) in respect of any evidence and the judge considers that publication of a report of the evidence or of the giving of the certificate may tend to prejudice any prosecution that has been or may be brought against the person, the judge may make an order prohibiting publication of a report of or relating to the evidence, or any part of the evidence, and may extend the order to include a report of the fact that the certificate was granted.
- (2) A person who fails to comply with an order made under subsection (1) commits a contempt of the Supreme Court and is punishable accordingly by that court.
- (3) Where a body corporate fails to comply with an order made under subsection (1) and it is proved that the failure occurred with the consent, connivance, or authority of any director, manager, secretary or other officer of the body corporate, or of any member of the managing body of the body corporate, or of any person who was purporting to act in any such capacity, he or she as well as the body corporate commits the contempt and is punishable under subsection (2).

[Section 11A inserted by No. 47 of 1990 s.5.]

12. Witnesses in revenue cases may be compelled to give evidence

- (1) In any proceeding for the breach of any Act relating to —
 - (a) stamp duties; or
 - (b) the public revenues; or
 - (c) the sale of intoxicating liquors,

or in any proceeding brought by or on behalf of or against the Crown under or in pursuance of the provisions of any such Act, the judge may require any person, except the accused in proceedings under paragraph (c), to be examined as a witness.

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- (2) A person so required to be examined as aforesaid shall not be excused from being so examined, or from answering any question put to him touching any such breach as aforesaid, on the ground that his evidence will tend to incriminate him.
- (3) If any such person refuses to be examined, or to answer any such question as aforesaid, he shall be deemed to be a witness appearing under a *subpoena* and refusing without lawful cause or excuse to be sworn or to give evidence.
- (4) Every person required to be examined under this section touching any such breach as aforesaid, who on such examination makes to the best of his knowledge true and faithful discovery of all matters whereon he is so examined touching such breach and thereby gives evidence tending to incriminate himself shall, on application, receive from the judge before whom he is examined a certificate in writing under his hand that he has made such true and faithful discovery.
- (5) In subsections (1) and (4), “**judge**” does not include —
 - (a) a justice of the peace appointed under section 6 or 9 of the *Justices Act 1902*; or
 - (b) a member of the Children’s Court of Western Australia, whether sitting alone or with another so appointed.

[Section 12 amended by No. 15 of 1991 s.23.]

13. Certificate may be pleaded in bar to prosecution

If any person examined as a witness under section 12 receives the certificate therein mentioned (but not otherwise) he shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures, and punishments to which he was liable for anything done before that time in respect of the matters touching which he is so examined:

Provided that nothing herein contained shall make such certificate pleadable in bar of any indictment or information brought against such person for perjury committed in such proceedings as aforesaid.

[Section 13 amended by No. 47 of 1990 s.6.]

14. Customs prosecutions

In every Customs prosecution, except for an indictable offence or for an offence directly punishable by imprisonment, the defendant is compellable to give evidence.

15. Persons may be examined without a *subpoena*

Any person present at any legal proceeding wherein he might have been compellable to give evidence and produce documents by virtue of a *subpoena* or other summons or order duly issued and served for that purpose, shall be compellable to give evidence and produce documents then in his possession and power, in the same manner, and in case of refusal shall be subject to the same penalties and liabilities, as if he had been duly *subpoenaed* or summonsed for that purpose.

16. Witnesses failing to attend trial

(1) Where any person duly bound by recognizance or served with a *subpoena*, summons, or order to attend in any court as a witness at the trial of any case, civil or criminal, fails to appear when called in open court, either at such trial or upon the day appointed for such trial, the court may —

- (a) upon proof of such recognizance or of his having been duly served with such *subpoena*, summons, or order, call upon him to show cause why execution upon such recognizance or an attachment for disobedience to such *subpoena*, summons, or order should not be issued against him; or

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- (b) upon proof of such recognizance or service, and also that his non-appearance is without just cause or reasonable excuse, and upon oath that he will probably be able to give material evidence, issue a warrant to bring him before the court to give evidence at such trial.
- (2) Such proof may be oral before the court or by affidavit.

17. Procedure

- (1) Every rule or order to show cause as aforesaid may —
 - (a) be made returnable before the court itself at the then sittings or at some future sitting; or
 - (b) in respect of the non-appearance of a witness at a Circuit Court or on the trial of a case pending in the Supreme Court, be made returnable in the Supreme Court.
- (2) On the return of any such rule or order, the court may deal with the case as the Supreme Court might and would have done upon a rule to the like effect issued out of that court.

Privilege of witnesses

18. Communications during marriage

Subject to the provisions of section 9, a husband shall not be compellable in any proceeding to disclose any communication made to him by his wife, or by him to his wife, during the marriage, and a wife shall not be compellable in any proceeding to disclose any communication made to her by her husband, or by her to her husband, during the marriage:

Provided that this section shall not apply, in any proceeding in the Supreme Court in its divorce and matrimonial causes jurisdiction, or in any proceeding in the Family Court of Western Australia, to any husband and wife who are both parties to such proceeding.

[Section 18 amended by No. 111 of 1978 s.3; No. 48 of 1991 s.9.]

Spouses competent to give evidence as to non-access**19. Evidence of non-access**

In any proceedings including proceedings pending at the commencement of the *Evidence Act Amendment Act 1956*¹, either party to a marriage may give evidence proving or tending to prove that the parties to the marriage did not have sexual relations with each other at any particular time notwithstanding that such evidence would show or tend to show that any child born to the wife during the marriage was illegitimate.

[Section 19 inserted by No. 16 of 1956 s.2.]

Impeaching credit of witnesses**20. How far a party may discredit his own witness**

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but may contradict him by other evidence, if in the opinion of the judge he is hostile to the party producing him.

21. Cross-examination as to previous inconsistent statement or deposition

Every witness under cross-examination in any proceeding, civil or criminal, may be asked whether he has made any former statement relative to the subject-matter of the proceeding, and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not distinctly admit that he made such statement, proof may be given that he did in fact make it.

The same course may be taken with a witness upon his examination in chief or re-examination, if the judge is of opinion that the witness is hostile to the party by whom he was called and permits the question.

[Section 21 amended by No. 16 of 1913 s.3.]

22. Proof of contradictory statements of witness

A witness under cross-examination, or a witness whom the judge, under the provisions of the last preceding section, has permitted to be examined by the party who called him as to previous statements inconsistent with his present testimony, may be questioned as to —

- (a) a previous statement made or supposed to have been made by him in writing or reduced into writing; or
- (b) evidence given or supposed to have been given by him before any justice,

without such writing or the deposition of such witness being shown to him.

But if it is intended to contradict him by such writing or deposition, his attention must, before such contradictory proof can be given, be called to those parts of the writing or deposition which are to be used for the purpose of so contradicting him.

Provided that the judge may, at any time during the trial, require the writing or deposition to be produced for his inspection, and may thereupon make use of it for the purposes of the trial as he thinks fit.

23. Proof of previous conviction of witness

- (1) A witness may be questioned as to whether he has been convicted of any indictable offence, and, upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, the cross-examining party may prove such conviction.
- (2) A certificate containing the substance and effect only (omitting formal parts) of the conviction for such offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was convicted, shall, upon proof of the identity of the person, be

sufficient evidence of such conviction without proof of the signature or official character of the person appearing to have signed the same.

- (3) A fee of 50 cents, and no more, shall be payable for such certificate.

[Section 23 amended by No. 113 of 1965 s.4.]

Protection in respect of certain questions

[Heading inserted by No. 47 of 1990 s.7.]

24. Questions tending to criminate

Except as hereinbefore provided, nothing in this Act shall render any person compellable to answer any question tending to criminate himself.

25. Cross-examination as to credit

- (1) If any question put to a witness upon cross-examination relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, it shall be the duty of the court to decide whether or not the witness shall be compelled to answer it, and the court may, if it thinks fit, inform the witness that he is not obliged to answer it.
- (2) In exercising this discretion, the court shall have regard to the following considerations —
- (a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;
 - (b) such questions are improper if the imputation they convey relates to matters so remote in time, or of such character, that the truth of the imputation would not affect, or would affect in a slight degree only, the opinion of the court as to the credibility of the witness on the matter to which he testifies;

- (c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.
- (3) Nothing herein shall be deemed to make any witness compellable to give evidence upon any matter he is now by law privileged from disclosing.

26. Indecent or scandalous questions

The court may forbid any question it regards as —

- (a) indecent or scandalous, although such question may have some bearing on the case before the court, unless the question relates to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed; or
- (b) intended to insult or annoy, or needlessly offensive in form, notwithstanding that such question may be proper in itself.

27. Prohibited questions not to be published

- (1) It shall not be lawful for any person to print or publish any question or inquiry which the court —
 - (a) has, under the provisions of the last preceding section, forbidden or disallowed and has ordered shall not be published; or
 - (b) has warned the witness he is not obliged to answer and has ordered shall not be published.
- (2) Every person who prints or publishes any question in breach of this section commits a contempt of court, and shall be liable to punishment for such contempt as if the contempt had been committed in face of the court against which the contempt is committed and on the like proceedings as in such, last-mentioned case.

General rules of evidence**28. Evidence of authority**

[(1) repealed]

- (2) Any indictment filed or presented in any court, and which purports to be signed by any person duly appointed to prosecute on behalf of the Crown in respect of the offence alleged in such indictment, shall be deemed to be duly signed and presented until the contrary is shown.
- (3) Any person who knowingly and wilfully signs and presents any indictment which he is not authorized to sign shall be deemed guilty of and liable to punishment as for a contempt of the court in which such indictment is presented committed in face of the court.

[Section 28 amended by No. 31 of 1993 s.40.]

29. Intention to defraud

On the trial of a person charged with any offence of which an intent to injure or deceive or defraud, or an intent to enable another person to deceive or defraud, is an element, it shall not be necessary to prove an intent to injure or deceive or defraud any particular person or an intent to enable any particular person to deceive or defraud any particular person.

30. Proof by attesting witness

It shall not be necessary to prove, by the attesting witness, any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto.

31. Comparison of disputed hand-writing

Comparison of a disputed hand-writing with any writing proved to the satisfaction of the judge to be genuine may be made by

witnesses, and such writings and the testimony of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

32. Admissions in criminal cases

An accused person, either personally or by his counsel or solicitor, in his presence, may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be sufficient proof of the fact without other evidence.

32A. Derogation of privilege in civil proceedings

- (1) This section applies only in respect of —
 - (a) civil proceedings in or before a court;
 - (b) arbitrations; and
 - (c) civil proceedings in or before any tribunal that is not a court.
- (2) In this section —

“privilege” means privilege that would, apart from this section and the rules of court mentioned in subsection (3), attach to documents prepared for the purpose of pending or contemplated proceedings or in connection with the obtaining or giving of legal advice; and

“rules of court”, without affecting the operation of section 40 of the *Interpretation Act 1918*³, includes rules, regulations, and by-laws prescribing the practice and procedure for and in relation to proceedings in respect of which this section applies.
- (3) There shall be a derogation of privilege to the extent that rules of court applicable to expert evidence so provides.
- (4) Without limiting any other power to make rules of court in respect of any tribunal of the kind that is referred to in subsection (1)(c), such rules of court may make provision for

prescribing matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature and substance of the expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for the disclosure of the nature and substance of expert evidence, and in relation thereto —

- (a) for the imposition of differing requirements depending on different classes of cases, different classes of matters, or other different circumstances; and
- (b) for the conferring of a discretionary authority.

[Section 32A inserted by No. 111 of 1976 s.3.]

Rules in particular cases

[33, 34. Repealed by No. 70 of 1988 s.36.]

35. Evidence on charge of perjury

- (1) Notwithstanding any rule of law to the contrary, a person may be convicted of committing perjury or of counselling or procuring the commission of perjury upon the uncorroborated evidence of one witness.

[(2) repealed]

[Section 35 inserted by No. 70 of 1988 s.37; amended by No. 36 of 1992 s.4.]

36. Evidence on trial for perjury and subornation

On the trial of a person charged with an offence of which the giving of false testimony by any person at the trial of a person charged with an offence is an element, a certificate setting out the substance and effect only, without the formal parts, of the indictment or complaint, and the proceedings at the trial, and purporting to be signed by the officer having the custody of the records of the court where the indictment or complaint was

s. 36A

tried, or by his deputy, shall be sufficient evidence of the trial, without proof of the signature or official character of the person who appears to have signed the certificate.

36A. Interpretation

- (1) In this section and in sections 36B, 36BA, 36BC, 36BD and 36C —

“**complainant**” in relation to proceedings for a sexual offence means a person upon or in respect of whom it is alleged that a sexual offence was committed, attempted or proposed;

“**defendant**” in relation to a hearing or trial, means any defendant at the hearing or trial whether or not that defendant is charged with a sexual offence;

“**sexual offence**” means an offence —

- (a) under section 186, 191(1) or 195 of *The Criminal Code*;
 - (b) under Chapter XXXI of *The Criminal Code*;
 - (c) of attempting to commit any of the offences under paragraph (a) or (b); or
 - (d) of conspiring to commit any of the offences under paragraph (a) or (b).
- (2) In this section and in sections 36B, 36BA and 36BC, proceedings for a sexual offence means proceedings in which a person stands charged with a sexual offence whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable on the charge to be found guilty of any other offence.

[Section 36A inserted by No. 74 of 1985 s.15; amended by No. 70 of 1988 s.38; No. 14 of 1992 s.13.]

36B. Evidence as to sexual reputation of complainant

In proceedings for a sexual offence, evidence relating to the sexual reputation of the complainant shall not be adduced or elicited by or on behalf of a defendant.

[Section 36B inserted by No. 74 of 1985 s.15; amended by No. 14 of 1992 s.13.]

36BA. Evidence as to sexual disposition of complainant

In proceedings for a sexual offence, evidence relating to the disposition of the complainant in sexual matters shall not be adduced or elicited by or on behalf of a defendant.

[Section 36BA inserted by No. 74 of 1985 s.15; amended by No. 14 of 1992 s.13.]

36BC. Evidence as to sexual experience of complainant

- (1) In proceedings for a sexual offence, evidence relating to the sexual experiences of the complainant, being sexual experiences of any kind, at any time and with any person, not being part of the *res gestae* of the proceedings, shall not be adduced or elicited by or on behalf of a defendant unless leave of the court has first been obtained on application made in the absence of the jury (if any).
- (2) The court shall not grant leave under subsection (1) unless satisfied that —
 - (a) what is sought to be adduced or elicited has substantial relevance to the facts in issue; and
 - (b) the probative value of the evidence that is sought to be adduced or elicited outweighs any distress, humiliation or embarrassment which the complainant might suffer as a result of its admission.

[Section 36BC inserted by No. 74 of 1985 s.15; amended by No. 14 of 1992 s.13.]

s. 36BD

36BD. Warning by court as to lack of complaint

Where on the trial of a person for a sexual offence or an offence under Chapter XXII of *The Criminal Code* evidence is given or a question is asked of a witness which tends to suggest an absence of complaint in respect of the commission of the alleged offence by the complainant or to suggest delay by the complainant in making any such complaint, the judge shall —

- (a) give a warning to the jury to the effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
- (b) inform the jury that there may be good reasons why a victim of an offence such as that alleged may hesitate in making or may refrain from making a complaint of that offence.

[Section 36BD inserted by No. 74 of 1985 s.15; amended by No. 14 of 1992 s.13.]

[36BE. Repealed by No. 70 of 1988 s.39.]

36C. Names of complainants not to be published

- (1) Subject to subsection (5) after a person is accused of a sexual offence no matter likely to lead members of the public to identify the complainant and, in the case of a complainant who is attending a school, no matter likely to lead members of the public to identify the school which the complainant attends, in relation to that accusation shall be published in a written publication available to the public or be broadcast, except by leave of the court which has or may have jurisdiction to try the person accused for that offence.
- (2) If any matter is published or broadcast in contravention of subsection (1), the following persons, namely —
 - (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

- (b) in the case of any other publication, the person who publishes it; and
- (c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$500.

- (3) For the purposes of this section a person is accused of a sexual offence if —
- (a) a complaint is made under the *Justices Act 1902*, alleging that the person has committed a sexual offence;
 - (b) the person appears before a court charged with a sexual offence; or
 - (c) a court before which the person is appearing commits him for trial on a new charge alleging a sexual offence,

and references in this section to an accusation alleging a sexual offence shall be construed accordingly.

- (4) In this section —

“a broadcast” means a broadcast by wireless telegraphy of a sound or visual images intended for general reception, and cognate expressions shall be construed accordingly;

“complainant”, in relation to a person accused of a sexual offence or an accusation alleging a sexual offence, means the person against whom the offence is alleged to have been committed; and

“written publication” includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

- (5) Nothing in this section prohibits the publication or broadcasting, in consequence of an accusation alleging a sexual offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence, and the giving of leave in pursuance of this section does not affect the operation of subsection (1) at any time before the leave is given.

[Section 36C inserted by No. 145 of 1976 s.6; amended by No 74 of 1985 s.16; No. 14 of 1992 s.13.]

[37. Repealed by No. 70 of 1988 s.40.]

[38. Repealed by No. 14 of 1992 s.14.]

[39. Repealed by No. 108 of 1982 s.29.]

40. Averment of prosecution sufficient

In every Customs prosecution the averment of the prosecution or plaintiff contained in the information, declaration, or claim shall be deemed to be proved in the absence of proof to the contrary, but so that —

- (a) when an intent to defraud the revenue is charged, the averment shall not be deemed sufficient to prove the intent; and
- (b) in all proceedings for an indictable offence, or for an offence directly punishable by imprisonment, the guilt of the defendant must be established by evidence.

41. Evidence on charges of offences against Customs laws

On the trial of a person charged with any offence of which the fact that some person was at some particular time an officer of Customs, or was at some particular time employed for the prevention of smuggling, is an element, the averment in the indictment or complaint that any person therein mentioned was an officer of Customs, or was employed for the prevention of

smuggling at any time therein stated, shall be sufficient evidence of the fact until the contrary is shown.

41A. Evidence of ownership in cases relating to property stolen from ships, wharves, etc.

- (1) On the prosecution of any person for the stealing of any property in or from any vessel, barge, or boat, or from any dock, wharf, or quay, or from any store or shed used in connection with or adjoining any such dock, wharf, or quay, or for receiving any such property, knowing it to have been so stolen, or for having on his person or in any place or conveying in any manner anything which may be reasonably suspected of being so stolen —
 - (a) evidence may be given of any writing, printing, or marks upon the said property without producing the original writing, printing or marks, or requiring the production thereof by notice or otherwise; and
 - (b) any apparently genuine document purporting to be the bill of lading, manifest, shipping receipt, delivery order, specification, schedule, packing list, or invoice relating to the said property, or to property which from the description thereof in the document or from the writing, printing, or marks thereon, or on any package containing the same as detailed in the document, coupled with any other relevant circumstances, may be reasonably assumed to be the same as the property the subject of the prosecution, shall be admissible in evidence on production and without further proof, and shall be *prima facie* evidence of the particulars and facts contained therein and that the ownership of the property, the subject matter of the prosecution, is in the consignee referred to in the document or his assignee.
- (2) In deciding whether any property described as aforesaid may be reasonably assumed to be the same as the property the subject of the prosecution, regard shall be had to the source from which

the document was produced, and the circumstances of its receipt or custody by the person producing it, or from whom it was obtained for the purposes of the prosecution.

- (3) It shall be no objection to the admissibility in evidence of any such document as aforesaid that the statement of the place in or from which the stealing took place forms no part of the charge, if the evidence adduced on the prosecution indicates that the stealing did in fact take place in or from a place such as is hereinbefore mentioned.

[Section 41A inserted by No. 19 of 1921 s.2.]

42. Evidence on trial for defamation

On the trial of a person charged with the unlawful publication of defamatory matter which is contained in a periodical, after evidence sufficient in the opinion of the court has been given of the publication by the accused person of the number or part of the periodical containing the matter complained of, other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published, and containing a printed statement that they were published by or for the accused person, shall be admissible in evidence on either side, without further proof of publication of them.

The term “**periodical**” includes any newspaper, review, magazine, or other writing or print, published periodically.

[43. Repealed by No. 10 of 1960 s.2.]

44. Evidence on certain charges of stealing money

- (1) On the trial of a person charged with stealing money, an entry in any book of account shown to be kept by the accused person, or kept in, under, or subject to his charge or supervision, purporting to be an entry of the receipt of any money, shall be evidence that the money so purporting to have been received was so received by him.

- (2) On the trial of a person charged with any such offence, it shall not be necessary to prove the stealing by the accused person of any specific sum of money, if, on examination of the books of account or entries kept or made by him, or kept or made in, under, or subject to his charge or supervision, or by any other evidence, there is proof of a general deficiency and if the jury are satisfied that the accused person stole the deficient money or any part of it.

45. Evidence on charges relating to seals and stamps

On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue, or of the post office in any part of Her Majesty's dominions, or in any foreign State, a despatch from one of Her Majesty's principal Secretaries of State, transmitting to the Governor any stamp, mark, or impression and stating it to be a genuine stamp, mark, or impression, of a die, plate, or other instrument, provided, made or used by or under the direction of the proper authority of the country in question, for the purpose of expressing or denoting any stamp duty or postal charge, shall be admissible as evidence of the facts stated in the despatch; and the stamp, mark, or impression, so transmitted may be used by the court and jury and by witnesses for the purposes of comparison.

46. Evidence in cases of receiving stolen property

Where proceedings are taken against any person for having received anything which has been obtained by means of any act constituting an indictable offence, knowing the same to have been so obtained, evidence may be given at any stage of the proceedings that there was found in the possession of such person any other thing obtained by such means within the preceding period of 12 months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to have been obtained by means of an act constituting an indictable offence.

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46A. Evidence of sunrise and sunset

Where in any proceedings it is material to prove the time of sunrise or sunset, or both, in the State, in any area of the State, or at any place in the State on a particular day and such a time has, under the authority of the Perth Astronomical Observatory or such other body as the Governor by proclamation nominates in lieu of the Perth Astronomical Observatory, been specified by a notice in the *Government Gazette*, the production of the *Government Gazette* containing the notice shall be evidence that the time of sunrise or sunset, or both, in the State, in that area, or in that place, as the case may be, on that day was the time so specified.

[Section 46A inserted by No. 33 of 1978 s.2.]

47. Proof of conviction, acquittal and identity

- (1) A conviction or an acquittal of any person may be proved in any proceeding whatever by producing a record or extract of such conviction or acquittal, and by giving proof of the identity of the person in respect of whom the conviction or acquittal is sought to be proved with the person appearing in the record or extract of conviction or acquittal to have been convicted or acquitted.
- (1a) For the purpose of proving the identity of a person alleged to have been convicted, whether before or after the commencement of the *Evidence Act Amendment Act 1956*¹, an affidavit substantially in the form in the Sixth Schedule shall be admissible in evidence in all courts and shall be *prima facie* evidence that the person whose fingerprints are exhibited thereto —
 - (a) is the person, who, in any document exhibited to the affidavit and purporting to be a record or abstract or certificate of conviction or a certified copy of a record or abstract or certificate of conviction, is referred to as having been convicted;
 - (b) has been convicted of the offences mentioned in the affidavit.

- (2) A record or extract of a conviction or acquittal may, in the case of an indictable offence, consist of a certificate containing the substance and effect only (omitting the formal part of the indictment and conviction or acquittal), and purporting to be signed by the clerk of the court or other officer having the custody of the records of the court before which such conviction or acquittal took place, or purporting to be signed by the deputy of such clerk or officer; and, in the case of a summary conviction or acquittal, may consist of a copy of such conviction or acquittal purporting to be signed by any justice of the peace having jurisdiction over the offence in respect of which such conviction or acquittal took place, or to be signed by the proper officer of the court before which such conviction or acquittal took place, or by the clerk or other officer of any court to which such conviction or acquittal has been returned.
- (3) A record or extract of any conviction or acquittal made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.
- (4) A conviction or an acquittal in any part of Her Majesty's dominions may be proved under this section in respect of any person, and a conviction or an acquittal before the passing of this Act shall be admissible in the same manner as if it had taken place after the passing thereof.
- (5) The mode of proving a conviction or an acquittal or identity authorized by this section shall be in addition to, and not in exclusion of, any other authorized mode of proving such conviction or acquittal or identity.
- (6) A conviction shall be presumed not to have been appealed against or quashed or set aside until the contrary is shown.

[Section 47 amended by No. 16 of 1956 s.3.]

[48.] *Repealed by No. 70 of 1988 s.41.]*

49. Actions for seduction

In any action to recover damages for seduction brought by a parent of the woman seduced, or by a person standing to her in the place of a parent, it shall not be necessary to allege or prove that she was in the service of the plaintiff, or that he sustained any loss of service by reason of the seduction.

50. No requirement for warning as to conviction on uncorroborated evidence of one witness

- (1) In this section “**corroboration warning**” in relation to a trial means a warning to the effect that it is unsafe to convict the person who is being tried on the uncorroborated evidence of one witness.
- (2) On the trial of a person on indictment for an offence —
 - (a) the judge is not required by any rule of law or practice to give a corroboration warning to the jury in relation to any offence of which the person is liable to be convicted on the indictment; and
 - (b) the judge shall not give a corroboration warning to the jury unless the judge is satisfied that such a warning is justified in the circumstances.

[Section 50 inserted by No. 70 of 1988 s.42; amended by No. 36 of 1992 s.5.]

50A. Evidence of transcript of recording

- (1) A document consisting of a transcript of a recording that is admitted in evidence in any proceedings is admissible in those proceedings as evidence of the contents of the recording if the transcript bears a certificate that purports to be signed by the person who transcribed the recording and meets the requirements of subsection (2).
- (2) A certificate under subsection (1) must —

- (a) state the full name, address and occupation of the certifier;
- (b) identify the recording to which the transcript refers;
- (c) state the day upon which the certifier made the transcript, the condition of the recording at that time, the extent of any damage to the recording and the extent and nature of any difficulty encountered by the certifier in making an accurate and complete transcription of the contents of the recording;
- (d) certify that the transcript has been made in good faith and is an accurate and complete transcription of the contents of the recording, except as stated under paragraph (c); and
- (e) if the certifier was authorized under the *Surveillance Devices Act 1998* to listen to the recording to which the transcript relates, state the details of that authorization.

[Section 50A inserted by No. 56 of 1998 s.46.]

Evidence of witnesses in prison

51. Prisoner required to give evidence may be brought up on order

When any person is detained in any prison under sentence or awaiting trial, or on remand for any offence, or for any other cause, and a trial, inquiry, inquest, or inquisition is pending at which it is deemed necessary that such prisoner should be present, any judge, or, in criminal proceedings the Sheriff of Western Australia or the chief executive officer, within the meaning of that expression as defined in section 3 of the *Prisons Act 1981*, may make an order under his hand directing any gaoler to produce such person, and such order shall be sufficient warrant or authority to any gaoler for producing such prisoner.

[Section 51 amended by No. 31 of 1993 s.41.]

52. Expense of bringing up prisoner

In every civil proceeding the judge shall, and in every other proceeding he may, before making such order, require the applicant to deposit a sum sufficient to pay the expense of bringing up the prisoner, maintaining him while out of prison, and returning him thither, including the expense of his custody from the time he leaves until the time he returns to the prison.

Judicial notice

53. Commonwealth and States etc., and their Acts to be judicially noticed

- (1) All courts and all persons acting judicially shall take judicial notice —
 - (a) of the Commonwealth and the States and of every Australasian colony, and the extent of their respective territories; and
 - (b) of all Acts of the Parliament of the United Kingdom and of the Commonwealth, and of any State, and of any Australasian colony, passed before or after the commencement of this Act.
- (2) Any paper purporting to be a copy of any Act of the Parliament of the United Kingdom or of the Commonwealth, or of any State, or of any Australasian colony, whether passed before or after the commencement of this Act, and purporting to be printed by the Government Printer, shall *prima facie* be deemed to be a correct copy of such Act without any further proof thereof.

The date which appears on any such copy purporting to be the day on which such Act received the Royal Assent, or was proclaimed to commence, shall be received for all purposes as evidence of the date of such assent, or commencement.

54. Judicial notice of the seal of the Commonwealth and States

All courts and all persons acting judicially shall take judicial notice of the impression of the seal of the Commonwealth and

of the seal of any State, and of the seal of any Australasian colony, without evidence of the seal having been impressed or any other evidence relating thereto.

55. Judicial notice of official seals

When by any Act any seal or stamp is authorized to be used by any court, officer, body corporate, or any other person, judicial notice shall be taken of the impression of such seal or stamp without evidence of the same having been impressed or any other evidence relating thereto.

56. Certain signatures to be judicially noticed

All courts and all persons acting judicially shall take judicial notice of —

- (a) the official signature of any person who holds or has held the office of Governor-General, Minister of State, President of the Senate, Speaker of the House of Representatives, Secretary to the Federal Executive Council, Justice of the High Court, Principal Registrar, Deputy Registrar or District Registrar of the High Court, President or Deputy President of the Commonwealth Court of Conciliation and Arbitration, Industrial Registrar or Deputy Industrial Registrar, or President or Judge or member of any Federal Court, or of the Inter-State Commission, or any office to which the Governor-General, by order published in the *Gazette*, declares this section to apply; and
- (b) the official signature of every person who is for the time being, and of every person who has at any time been Governor, Minister of the Crown, Judge of the Supreme Court, Prothonotary, Master, Principal Registrar, Registrar, or Deputy Registrar, or Chief Clerk of the Supreme Court, Commissioner of Titles, Registrar of Titles, Assistant or Deputy Registrar of Titles, the Registrar or a Deputy Registrar of Births, Deaths and Marriages, Government Statist or Assistant or Deputy

Government Statist, Judge or Presiding Magistrate or Registrar or Deputy Registrar of any County Court, or District, Family or Local Court, or Court of Mines, Warden, Chairman of any Court of General or Quarter Sessions, Judge of any Court of Bankruptcy or Insolvency, or Police or stipendiary magistrate, or justice of the peace in any State or part or district of any State, or in any Australasian colony or part or district of any Australasian colony, and of any person holding in any State or in any Australasian colony or part or district of any State or Australasian colony any office corresponding to any of the aforesaid offices, and of any person holding in any such State or colony any office to which the Governor may, at any time, by order published in the *Gazette*, declare this section to apply; and

- (c) the seal of every such court or person; and
- (d) the fact that such person holds or has held such office,

if the signature or seal purports to be attached or appended to any judicial or official document.

[Section 56 amended by No. 16 of 1956 s.4; No. 111 of 1978 s.4; No. 67 of 1979 s.50; No. 40 of 1998 s.12(a).]

Proof of certain documents

57. Royal Proclamations, Orders of the Privy Council, etc.

- (1) Evidence of any Royal Proclamation, Order of Her Majesty's Privy Council, order, regulation, despatch, or any other instrument whatsoever made or issued before or after the commencement of this Act by Her Majesty, or by Her Majesty's Privy Council, or by or under the authority of any of Her Majesty's Secretaries of State, or any department of Her Majesty's Government in the United Kingdom may be given in any court or before any person acting judicially —

- (a) by the production of a copy of the *London Gazette* or by the production of a copy of the *Government Gazette* purporting to contain a reprint or copy of such Proclamation, Order of the Privy Council, order, regulation, despatch, or other instrument;
 - (b) by the production of a copy of such proclamation purporting to be printed by the Government Printer, or under the authority of Parliament;
 - (c) by the production in the case of any proclamation, order, or regulation issued by Her Majesty or by the Privy Council of a copy or extract purporting to be certified to be true by the Clerk of the Privy Council, or by any one of the Lords or others of the Privy Council, and, in the case of any proclamation, order, or regulation issued by or under the authority of any departments of the Government or officers mentioned in the first column of the Fourth Schedule, by the production of a copy or extract purporting to be certified to be true by the person or persons specified in the second column of the said schedule in connection with such department or officer.
- (2) Any copy or extract made in pursuance of this section may be in print or in writing, or partly in print or partly in writing.
 - (3) No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this section, to the truth of any copy of or extract from any proclamation, order, or regulation.
 - (4) In this section the words “**Privy Council**” include Her Majesty in Council and the Lords and others of Her Majesty’s Privy Council, or any of them, and any Committee of the Privy Council that is not specially named in the Fourth Schedule.

[Section 57 amended by No. 16 of 1956 s.5.]

58. Proclamations, orders in council, etc.

- (1) Evidence of any proclamation, order in council, commission, order, regulation, or other instrument whatsoever made or issued before or after the commencement of this Act by the Governor-General of the Commonwealth, or by the Governor of any State or of any Australasian colony, or by or under the authority of any Minister of the Crown for the Commonwealth, or for any State or Australasian colony, or of any public commission or board, may be given in any court or before any person acting judicially in any of the following modes, that is to say —
- (a) by the production of a copy of the *Gazette* purporting to contain the same;
 - (b) by the production of a document purporting to be a copy thereof, and purporting to be printed by the Government Printer or by the authority of the Government;
 - (c) by the production (in the case of any proclamation, order, commission, or regulation issued or made by the Governor-General of the Commonwealth) of a document purporting to be certified by the Secretary to the Federal Executive Council as a true copy thereof or extract therefrom;
 - (d) by the production (in the case of any proclamation, order in council, commission, order, regulation, or other instrument whatsoever made or issued by the Governor of any State, or of any Australasian colony) of a copy or extract purporting to be certified by the Clerk of the Executive Council of such State or Australasian colony;
 - (e) by the production (in the case of any proclamation, order, commission, regulation, or other instrument made or issued by or under the authority of any Minister of the Crown) of a document purporting to be certified as a true copy thereof or extract therefrom by such Minister or any other Minister of the Crown.

- (2) No proof shall be required of the handwriting or official position of any person certifying in pursuance of this section.

59. Proof of proclamation etc. under *Customs Act 1901*

The production of the Commonwealth of Australia *Gazette* containing any proclamation, gazette notice, or regulation appearing to have been issued or made under the *Customs Act 1901*, or the production of any document certified by the Comptroller General of Customs or a State Collector of Customs to be a true copy of or extract from any such proclamation, gazette notice, or regulation issued or made under the said Act, shall be *prima facie* evidence of the issue or making of such proclamation, gazette notice, or regulation, and that the same is in force.

60. Proof of proclamations and acts of State

Evidence of any proclamation or other act of State of any State may be given in any court or before any person acting judicially by the production of a copy thereof either —

- (a) proved to be an examined copy thereof; or
- (b) purporting to be sealed with the seal of that State.

61. Proof of proclamations, orders, etc., by official copies

Evidence of any proclamation, order, regulation, or notice made or issued before or after the commencement of this Act by or under the authority of the Governor, or of the Governor in Executive Council, or of the Legislative Council or Legislative Assembly, or of the Head⁴ of any department of the Government, or of any body or board in the first column of the Fifth Schedule mentioned, may be given in any court or before any person acting judicially by the production of a copy of or extract therefrom, such copy or extract purporting to be certified to be true by the person or persons specified in the second column of the said schedule in connection with the officer, department, or board in the said first column mentioned.

62. Documents admissible in the United Kingdom etc., to be admissible in Western Australia

Every document admissible in evidence for any purpose in any court of justice in any part of Her Majesty's dominions, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the like purpose in any court or before any person acting judicially in Western Australia, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same.

63. Manner of proving acts of State of any other country

- (1) All proclamations, treaties, and other acts of State of any foreign State, or of any British possession may be proved in any court or before any person acting judicially, either by examined copies or by copies sealed with the seal of the foreign State or British possession to which the original document belongs.
- (2) Any copy purporting to be sealed as in this section directed shall be admitted in evidence in every case where the original document could have been so admitted, without any proof of the seal.

64. Proclamations etc., receivable although not proved by sealed copies

Proclamations, international treaties, and orders in council of any country, although not proved in the manner provided by the last preceding section, may nevertheless be received in evidence in any court or before any person acting judicially, if such court or person considers the same to be authentic.

65. Certain public documents how provable

- (1) Whenever in any part of Her Majesty's dominions any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any court or before any person acting judicially, if —

- (a) it is proved to be an examined copy or extract; or
 - (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.
- (2) Every officer to whose custody the original of any book or document of such a public nature as aforesaid is entrusted in Western Australia is hereby required to furnish a certified copy of such book or extract therefrom to any person applying at a reasonable time, and paying a reasonable sum for the same, not exceeding 4 cents for every folio of 72 words.

[Section 65 amended by No. 113 of 1965 s.4(1).]

65A. Certain photographs may be admissible in evidence without proof

- (1) A photograph that is certified by an officer of the Library Board of Western Australia⁵, as being a true reproduction of, or of part of, any book or other printed matter or of any document, in the custody and control of that board, is admissible in evidence, to the same extent that the book or other printed matter or the original document would, if produced, be admissible.
- (2) In this section, “**officer of the Library Board of Western Australia**” means an officer appointed by that board under the provisions of section 6 of the *Library Board of Western Australia Act 1951*; and judicial notice shall, for the purposes of this section, be taken of the official signature of every such officer.

[Section 65A inserted by No. 11 of 1964 s.3.]

66. Votes and proceedings of Parliament

All documents purporting to be copies of the votes and proceedings of either House of the Parliament of the Commonwealth, or of any State, or of any Australasian colony, if purporting to be printed by the Government Printer, shall, on the mere production of the same, be admitted as evidence in any court, or before any person acting judicially.

67. Proof of seal, signature and official character dispensed with

Whenever by any Act of the Imperial Parliament, or of the Parliament of any State or of any Australasian colony, now or hereafter to be in force —

- (a) any certificate; or
- (b) any official or public document; or
- (c) any document or proceeding of any corporation or joint-stock or other company; or
- (d) any copy of or extract from any document or by-law, or entry in any register or other book, or of or from any other proceeding,

is admissible in evidence in any legal proceeding in the United Kingdom or in the particular State or colony, the same shall respectively be admitted in evidence in all courts and before all persons acting judicially in Western Australia, if it purports to be certified or sealed, or impressed with a stamp, or sealed and signed, or signed alone, or impressed with a stamp and signed, as directed by such Act, without any proof —

- (i) of the seal or stamp, where a seal or stamp is necessary; or
- (ii) of the signature; or
- (iii) of the official character of the person appearing to have signed the same,

and without any further proof thereof.

68. Register of British vessels, etc., admissible as evidence

- (1) Every register of a vessel kept under any of the Acts of the Imperial Parliament or of any British possession relating to the registry of any British or colonial vessels, may be proved in any court or before any person or persons acting judicially either by the production of the original, or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person

applying at a reasonable time for the same, upon payment of the sum of 25 cents.

- (2) Every such register or such copy of a register, and also every certificate of registry granted under any of the Acts of the Imperial Parliament or of any British possession relating to the registry of any British or colonial vessels, and purporting to be signed as required by law, shall be received in evidence in any court, or before any person acting judicially, as *prima facie* proof of all the matters contained or recited in such register when the register or such copy thereof as aforesaid is produced, and of all the matters contained or recited in or endorsed on such certificate of registry when the said certificate is produced.

[Section 68 amended by No. 113 of 1965 s.4.]

69. Copy of register of newspaper proprietors

Every copy of an entry in or extract from the register of newspaper proprietors established under *The Newspaper Libel and Registration Act 1884*, purporting to be certified by the Registrar of the Supreme Court or his deputy for the time being, or under the official seal of the Registrar, shall be received as conclusive evidence of the contents of the said register of newspaper proprietors, so far as the same appear in such copy or extract, without proof of the signature thereto, or of the seal of office affixed thereto.

Every such certified copy or extract shall, in all proceedings, civil or criminal, be accepted as sufficient *prima facie* evidence of all matters and things thereby appearing, unless and until the contrary thereto is shown.

69A. Proof of registers

When by any Statute in force in the State any person is required to keep any register, then any register purporting or appearing to be kept pursuant to the Statute shall (save in so far as the contrary may be proved) be deemed to be and be admissible in evidence as a complete and accurate register and record and —

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- (a) any document purporting to be a copy of the register and to be certified as correct by the person aforesaid; or
- (b) a *Gazette* containing what purports to be a copy of the register; or
- (c) any document purporting to be a copy of the register and to be printed by the Government Printer or by the authority of the Government of the State,

shall be *prima facie* evidence of the contents of the register as existing on the date when the document or *Gazette* purports to have been certified, or printed, or issued, and the production thereof in any court or before any person shall (save in so far as it may be proved not to be a true copy) be equivalent to the production of the original register.

[Section 69A inserted by No. 16 of 1913 s.4.]

70. Statutes of any country published by authority

Books purporting to have been printed or published, whether before or after the commencement of this Act, under the authority of the Government of any country, or by the printer to such Government, and purporting to contain Statutes, Ordinances, or other written laws in force in such country, shall, on production, be admitted and received by all courts and persons, acting judicially as *prima facie* evidence of such laws.

71. Certain law-books may be referred to as evidence of laws

Printed books purporting to contain Statutes, Ordinances, or other written laws in force in any country, although not purporting to have been printed or published by authority as aforesaid, books purporting to contain reports of decisions of courts or judges in such country, and text-books treating of the laws of such country, may be referred to by all courts and persons acting judicially for the purpose of ascertaining the laws in force in such country; but such courts or persons shall not be bound to accept or act on the statements in any such books as evidence of such laws.

72. Standard works of general literature

All courts and persons acting judicially may, in matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, maps, or charts as such courts or persons consider to be of authority on the subjects to which they respectively relate.

73. Document may be impounded

Where any document has been received in evidence, the court or person acting judicially admitting the same may direct that such document be impounded and kept in the custody of some officer of the court, or other proper person, until further order.

Reproduction of documents

[Heading inserted by No. 20 of 1966 s.3.]

73A. Interpretation

In sections 73B to 73V, inclusive, unless the contrary intention appears —

“**business**” includes public administration and business, profession, occupation and calling of every kind;

“**document**” includes any book, plan, paper, parchment or other material or part thereof on which is any writing or printing or which is marked with any letters or marks denoting words or any other signs capable of carrying a definite meaning to persons conversant with them;

“**machine-copy**” in relation to a document means a copy of the document that is made by a machine wherein or process by which an image of the contents of the document is produced from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film;

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“negative” in relation to a document means a transparent negative photograph used or intended to be used as a medium for reproducing the contents of that document and includes any transparent photograph made from surface contact with the original negative photograph;

“reproduction” in relation to a document means a machine-copy of that document or a print made from a negative of that document; and **“to reproduce”** and derivatives thereof have corresponding meanings;

“this Division” means sections 73A to 73V.

[Section 73A inserted by No. 20 of 1966 s.3.]

73B. Certified reproductions of certain public documents, etc., admissible without further proof

- (1) If a reproduction of a document that is or at any time was in the custody or under the control of the Registrar of Births, Deaths and Marriages, the Registrar of Titles, Commissioner for Corporate Affairs or the Government Statist bears a certificate that purports to be signed by the Registrar of Births, Deaths and Marriages, the Registrar of Titles, an Assistant Registrar of Titles, Commissioner for Corporate Affairs, a Deputy Commissioner for Corporate Affairs, an Assistant Commissioner for Corporate Affairs, or the Government Statist, as the case requires, certifying that it is a reproduction of that document, the reproduction is admissible in evidence without further proof as if it were the document of which it is certified to be a reproduction.
- (2) If a reproduction of a document that is at any time filed in a court or of the official record of any proceedings in a court bears a certificate purporting to be signed by the registrar, clerk or other proper officer of that court certifying that it is a reproduction of that document or that record, the reproduction is admissible in evidence without further proof as if it were the document or record of which it is certified to be a reproduction.
- (3) Where the Registrar of Births, Deaths and Marriages, the Registrar of Titles, Commissioner for Corporate Affairs, the

Government Statist or the registrar, clerk or proper officer of a court is served with legal process to produce a document or record in a court or before a person acting judicially, it is sufficient answer to that process if the person to whom it is addressed sends by prepaid post or causes to be delivered to the registrar, clerk or proper officer of the court in which the document or record is to be produced or the person before whom the document or record is to be produced, a reproduction of the document or record certified as provided in subsection (1) or (2) as the case requires.

[Section 73B inserted by No. 20 of 1966 s.4; amended by No. 90 of 1975 s.3; No. 67 of 1979 s.51; No. 40 of 1998 s.12(b).]

73C. Admissibility of reproductions of business documents destroyed, lost or unavailable

- (1) A reproduction of a document being a document made or used in the course of a business is, subject to this Division, admissible in any proceedings as evidence of that document upon proof that it is a reproduction thereof made in good faith and that the document has been destroyed or lost, whether wholly or in part, or that it is not reasonably practicable to produce the document or to secure its production.
- (2) Without prejudice to any other mode of proof an affidavit or statutory declaration purporting to have been made by a person at or about the time he made a machine-copy or a negative of a document —
 - (a) stating his full name, address and occupation;
 - (b) identifying or describing the document;
 - (c) stating the day upon which he made the machine-copy or negative, 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 negative; and

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- (e) stating that the processing was properly carried out in the ordinary course of business by the use of apparatus and materials in good working order and condition with the object of reproducing the document,

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

[Section 73C inserted by No. 20 of 1966 s.5.]

73D. Approved machines

- (1) For the purposes of this Division the Attorney General may by notice published in the *Gazette*, approve for micro-filming documents, in the ordinary course of business, any make, model or type of photographic copying machine (in this section called “**an approved machine**”) if he is satisfied that the machine automatically photographs documents passed through it in normal operating conditions at a speed that will prevent interference by the operator with the course of copying a document.
- (2) An approval given by the Attorney General under subsection (1) —
 - (a) may be given subject to a condition that the approved machine shall be used when reproducing documents only with such materials or types of materials as are specified in the notice referred to in that subsection; and
 - (b) may be revoked or varied by the Attorney General by a notice published in the *Gazette*.
- (3) In addition to and without derogating from section 73C, a reproduction made of a document, being a document made or used in the course of a business, from a negative made by an approved machine is, subject to this Division, admissible in any proceedings as evidence of the document, whether that document is in existence or not, upon proof that —
 - (a) the negative was made in good faith by means of an approved machine; and

- (b) the print reproduces the image on the negative.
- (4) Without prejudice to any other mode of proof an affidavit or statutory declaration 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;
 - (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 or body 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; and
 - (e) identifying the make, model or type of the approved machine 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,

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

[Section 73D inserted by No. 20 of 1966 s.6.]

73E. Proof where document processed by independent processor

Where —

- (a) a person having the custody or control of a document delivers or causes that document to be delivered to a person whose business is or includes the reproduction or

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photographing of documents from other persons (in this section called “**the processor**”); and

- (b) the first-mentioned person subsequently receives a machine-copy or negative of that document from the processor together with an affidavit or statutory declaration made by the processor as to the making of the machine-copy or negative,

an affidavit or statutory declaration made by the first-mentioned person at or about that time as —

- (c) to his custody or control of the document;
- (d) its delivery and return to him by the processor; and
- (e) his subsequent disposal of the document and the machine-copy or negative,

is admissible as evidence of the facts stated therein whether the first-mentioned person is available to be called as a witness or not.

[Section 73E inserted by No. 20 of 1966 s.7.]

73F. Affidavit or declaration of maker of print from microfilming etc., to be evidence

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

- (a) stating his full name, address and occupation;
- (b) identifying the negative;
- (c) stating the day upon which the print was made, the condition of the negative and the extent of any damage thereto;
- (d) describing the process or procedure by which he made the print; and
- (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 negative,

is evidence, whether that person is available to be called as a witness or not, that the print reproduces the whole of the image on the negative.

[Section 73F inserted by No. 20 of 1966 s.8.]

73G. Proof of destruction of documents, etc.

A statement by a person in an affidavit or statutory declaration made for the purposes of this Division that —

- (a) he destroyed or caused the destruction of a document;
- (b) a negative is in the custody or control of a person, corporation or body referred to in section 73K(3); or
- (c) a document came into existence or was used in the course of his business or that of his employer,

is evidence of the fact or facts stated.

[Section 73G inserted by No. 20 of 1966 s.9.]

73H. Certified copy of affidavits etc., to be admissible

Unless the court or person acting judicially otherwise orders a copy of an affidavit or statutory declaration made for the purposes of this Division duly certified to be a true copy —

- (a) in the case of an affidavit or statutory declaration 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 a commissioner for taking affidavits in the Supreme Court or a commissioner for declarations appointed under the *Declarations and Attestations Act 1913*,

is admissible in evidence in proceedings before that court or that person instead of the original affidavit or declaration of which it is a copy.

[Section 73H inserted by No. 20 of 1966 s.10.]

73J. One affidavit or statutory declaration sufficient in certain circumstances

- (1) Where documents are numbered in regular arithmetical series and photographed in the order in which they are so numbered so as to be recorded on a continuous length of film as a series of negatives, one affidavit or statutory declaration may be made for the purposes of this Division relating to all the negatives on the length of film; and it is a sufficient identification or description of the documents if the affidavit or declaration states the general nature of the documents in the series and the serial numbers of the first and last documents recorded on the film.
- (2) Where documents bear a distinctive identification mark and are so photographed that the film produced records only the images of documents bearing that mark, one affidavit or statutory declaration may be made for the purposes of this Division relating to all the documents recorded on that film; and it is a sufficient identification or description of the documents if the affidavit or declaration states the general nature of the documents recorded on the film and describes the common identification mark.
- (3) Where documents purport from their contents to relate to the same subject-matter, to the same person or persons, or to a matter between persons, it is a sufficient identification or description of the documents if the affidavit or declaration states the general nature of the documents and describes them as the documents relating to the subject-matter, the person or persons or the matter between the persons, as the case may be.
- (4) For the purposes of this section where one of the images appearing on a length of film is the image of a statement signed by the person who photographed the documents recorded on the film the statement shall be deemed, in the absence of anything in the statement to the contrary, to relate to all the images on that length of film.

[Section 73J inserted by No. 20 of 1966 s.11.]

73K. Certain reproductions not to be admitted in evidence unless negative in existence, etc.

- (1) Except as provided in subsections (2) and (3), a reproduction made through the medium of a negative shall not be admitted as evidence pursuant to this Division in any proceedings unless the court by which the proceedings are being heard or the person acting judicially thereon is satisfied —
 - (a) that the negative is in existence at the time of the proceedings; and
 - (b) that the document reproduced was —
 - (i) in existence for a period of not less than 2 years 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 subsection (1) do not apply with respect to any reproduction referred to in section 73B.
- (3) The provisions of subsection (1)(b) do not apply with respect to a reproduction made from a negative made by an approved machine within the meaning of section 73D where at the time the print was made the negative was in the custody or control of —
 - (a) a Minister of the Crown in right of the Commonwealth or of this State or of any other State of the Commonwealth or an officer in a Government department under the direct control of any of those Ministers;
 - (b) an officer or a board, commission, trust or other body corporate or unincorporate (including a local government) established or constituted by or under the law of the Commonwealth or of this State or of any other State or a Territory of the Commonwealth for any public purpose;

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- (c) a bank as defined in section 5 of the *Banking Act 1959* of the Parliament of the Commonwealth as amended from time to time or any statutory corporation for the time being authorized to carry on any banking business in this State or in any other State or a Territory of the Commonwealth; or
 - (d) any public company within the meaning of the *Companies Act 1961*⁶, (including a corporation that is a public company under the law of another State or a Territory of the Commonwealth and is registered as a foreign company in this State under that Act) that is registered under the *Life Insurance Act 1945*⁷ of the Parliament of the Commonwealth as amended from time to time where the document in question relates to the life insurance business of that company.
- (4) Where a reproduction made through the medium of a negative is admitted as evidence pursuant to this Division, in any proceedings before a court or person acting judicially, that court or the person may at any time order a further reproduction to be made from the negative in the presence of a person appointed for the purpose by the court or person acting judicially.

[Section 73K inserted by No. 20 of 1966 s.12; amended by No. 14 of 1996 s.4.]

73L. Changes in colour or tone

A reproduction of a document may be taken to be a reproduction of the document notwithstanding that the colour or tone of any writing, printing or representation on the document is reversed or altered in the reproduction or, in the case of a reproduction certified under section 73B(1), that any colour appearing in the document or any representation not reproduced by reason of its colour was added to the reproduction before the reproduction was certified.

[Section 73L inserted by No. 20 of 1966 s.13.]

73M. Notice to produce not required

- (1) A reproduction of a document may be admitted in evidence in any proceedings before any court or before any person acting judicially without any notice to produce the original document.
- (2) Where a reproduction is tendered as evidence no proof is required that the reproduction was compared with the original document.

[Section 73M inserted by No. 20 of 1966 s.14.]

73N. Presumptions as to ancient documents

A presumption that may be made in respect of a document over 30 years old may be made with respect to a reproduction of that document admitted in evidence under this Division in all respects as if the reproduction were the document.

[Section 73N inserted by No. 20 of 1966 s.15.]

73P. Reproductions made in other States, etc.

Where a reproduction is made of a document in another State or in a Territory of the Commonwealth and would be admissible in evidence in that State or Territory by virtue of any enactment of that State or Territory corresponding with this Division, the reproduction is admissible in evidence in this State in the same circumstances, to the same extent and for the like purposes as it would be admissible in evidence in the first-mentioned State or Territory under the law of that State or Territory.

[Section 73P inserted by No. 20 of 1966 s.16.]

73Q. Judicial notice

Where an Act or law requires a court or person acting judicially 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 admitted in evidence pursuant to this Division in any proceedings before the court or person

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acting judicially, the court or person acting judicially shall take judicial notice of the image of the seal or signature on the reproduction to the same extent as it or he would be required to take judicial notice of the seal or signature on the document.

[Section 73Q inserted by No. 20 of 1966 s.17.]

73R. Power to preserve microfilm instead of document after 3 years

Unless the application of this section is expressly stated not to apply, where an Act, law or duty requires a document to be preserved or kept for any purpose for a longer period of time than 3 years it is sufficient compliance with such requirement to preserve or keep instead of the document that is over 3 years old, a negative thereof made by means of an approved machine within the meaning of section 73D together with an affidavit or statutory declaration in accordance with subsection (4) of that section, that refers to the negative.

[Section 73R inserted by No. 20 of 1966 s.18.]

73S. Factors determining admissibility

For the purpose of deciding whether or not a reproduction of a document is admissible in any proceedings before a court or person acting judicially as evidence of the document under the foregoing provisions of this Division, that court or that person may draw any reasonable inference from the nature of the reproduction of the machine or of the process used in making the reproduction or the negative from which it was produced or from any other circumstances, and may reject the reproduction, notwithstanding that the requirements of this Division are satisfied with respect thereto, if for any reason it appears inexpedient in the interests of justice that the reproduction should be admitted in evidence.

[Section 73S inserted by No. 20 of 1966 s.19.]

73T. Estimating weight to be attached to evidence

In estimating the weight of evidence to be attached to a reproduction rendered admissible as evidence by this Division, regard shall be had to the fact that if the person making an affidavit or statutory declaration is not called as a witness there has been no opportunity to cross-examine him and to all the circumstances from which any inference can reasonably be drawn as to —

- (a) the necessity for making the reproduction or negative or for destroying or parting with the document;
- (b) the apparent accuracy or otherwise of the reproduction; and
- (c) any incentive to tamper with the document or to misrepresent the reproduction.

[Section 73T inserted by No. 20 of 1966 s.20.]

73U. Reproduction of document admissible subject to Stamp Act 1921

- (1) Notwithstanding the provisions of this Division, but subject to section 27(3) of the *Stamp Act 1921*, where a document is chargeable with stamp duty under that Act a reproduction of the document is not admissible under this Division in any proceedings before a court or person acting judicially unless —
 - (a) the reproduction of the document shows or establishes to the satisfaction of the court or the person or it is otherwise so established that the document was duly stamped in accordance with that Act; or
 - (b) where the reproduction does not so show or establish and it is not otherwise so established, the provisions of that Act which relate to documents that are not duly stamped in accordance with that Act are complied with with respect to the reproduction as though it were the document.

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- (2) Subject to this section, stamp duty is not chargeable under the *Stamp Act 1921* on —
- (a) a reproduction of a document made in accordance with this Division; or
 - (b) an affidavit or statutory declaration made for the purposes of this Division.

[Section 73U inserted by No. 20 of 1966 s.21; amended by No. 41 of 1995 s.9.]

73V. Power of Governor to except documents

- (1) The Governor may by proclamation except from the provisions of this Division any document or class of documents specified in the proclamation⁸.
- (2) The Governor may by subsequent proclamation revoke or vary any proclamation made under subsection (1).

[Section 73V inserted by No. 20 of 1966 s.22.]

Proof of certain matters

74. Proof of Gazette

The mere production of a paper purporting to be the *London Gazette*, the *Edinburgh Gazette*, the *Dublin Gazette*, the *Commonwealth of Australia Gazette*, or the *Gazette* of any State or of any Australasian colony shall, before all courts and persons acting judicially, be evidence that the paper is such *Gazette*, and was published on the day on which it bears date.

75. Proof of printing by Government Printer

The mere production of a paper purporting to be printed by the Government Printer, or by the authority of the Imperial Government or the Government of the Commonwealth, or of any State, or of any Australasian colony, shall, before all courts and persons acting judicially, be evidence that the paper was printed by the Government Printer or by such authority.

76. Documents printed under authority of Stationery Office

Where by this Act or any other enactment, whether passed before or after this Act, it is provided that a copy of any Act of Parliament, proclamation, order, regulation, rule, warrant, circular, list, gazette, or document, shall be conclusive evidence or have any other effect when purporting to be printed by the Government Printer, or the Queen's Printer, or a printer authorized by Her Majesty, whatever may be the precise expression used, such copy shall also be conclusive evidence, or evidence, or have the said effect as the case may be if it purports to be printed under the superintendence or authority of Her Majesty's Stationery Office.

77. Proof of act done by Governor or Minister

Where by any law at any time in force the Governor-General or the Governor of any State or of any Australasian colony, or any Minister of the Crown for the Commonwealth or a State, or any Australasian colony, is authorized or empowered to do any act, production of the *Gazette* purporting to contain a copy or notification of any such act shall, before all courts and persons acting judicially, be evidence of the act having been duly done.

78. Local laws, by-laws and regulations

Where by any Act of the Commonwealth or of any State, power to make local laws, by-laws or regulations is conferred upon any person or body, and any printed paper purporting to be such local laws, by-laws or regulations, and to be printed by the Government Printer or by the authority of the Government of the Commonwealth or of the State, shall, before all courts and persons acting judicially, be evidence —

- (a) that local laws, by-laws or regulations in the words printed in such paper were duly made by such person or body; and
- (b) that such local laws, by-laws or regulations have been approved of or confirmed by the Governor-General or

the Governor of the State, if they appear by such paper to have been so approved or confirmed.

[Section 78 amended by No. 14 of 1996 s.4.]

79. Proof of incorporation of any company

- (1) All courts and persons acting judicially shall admit and receive as evidence of the incorporation of a company incorporated or registered in the United Kingdom or in any State or Territory of the Commonwealth, either before or after the commencement of this Act¹, a certificate of the incorporation or registration thereof which purports to have been signed —
- (a) by the registrar or an assistant or deputy registrar of companies in England, Scotland, or Ireland, or in that State or Territory; or
 - (b) by a person whose authority to give the same shall be verified by a statutory declaration made before any judge or justice of the peace of such State or Territory, of whose signature such courts and persons aforesaid shall take judicial notice.

And the date of incorporation or registration mentioned in such certificate shall be evidence of the date on which the company was incorporated or registered.

- (2) Any copy of or extract from any document kept and registered at the office for the registration of companies in the United Kingdom or any part thereof, or in any State or Territory of the Commonwealth or of or from a transparency (within the meaning of the *Companies (Western Australia) Code*⁹) of a document which has been kept and registered at any such office if certified under the hand of the registrar or an assistant or deputy registrar, shall, before all courts and persons acting judicially, be admissible in evidence in all cases in which the original document is admissible in evidence and for the same purposes and to the same extent.
- (3) A reference in subsection (1) or (2) to the registrar or an assistant or deputy registrar shall be construed —

- (a) as including a reference to the Corporate Affairs Commission of any State or Territory of the Commonwealth or to a Commissioner of or for Corporate Affairs, an Assistant Commissioner of or for Corporate Affairs or a Deputy Commissioner of or for Corporate Affairs of any State or Territory of the Commonwealth; and
- (b) as including a reference to a person holding within the office for the registration of companies in the United Kingdom or any part thereof or in any State or Territory of the Commonwealth an office which corresponds to the office of Commissioner for Corporate Affairs or Assistant Commissioner for Corporate Affairs or Deputy Commissioner for Corporate Affairs under the *Companies (Administration) Act 1982*¹⁰, the *Companies Act 1961*⁶, or any corresponding previous enactment.

[Section 79 amended by No. 10 of 1982 s.28.]

79A. Proof of document requiring attestation

Where a document requires attestation to be valid that document may, in any legal proceeding, be proved in the manner in which it might be proved if no attesting witness to the document were alive, but this section does not apply to the proof of a will or other testamentary document.

[Section 79A inserted by No. 12 of 1962 s.2.]

79B. Interpretation

In this section and in sections 79C, 79D, 79E, 79F and 79G —

“**derived**” means derived, by the use of a computer or otherwise, by calculation, comparison, selection, sorting, consolidation or by accounting, statistical or logical procedures;

“**document**” means any record of information and includes, in addition to a document in writing —

- (a) any book, map, plan, graph or drawing;

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- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other device) of being reproduced therefrom; and
- (d) any film, negative, disc, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other device) of being reproduced therefrom;

“proceedings” includes arbitrations and references and **“court”** shall be construed accordingly;

“qualified person”, in relation to a statement, means a person who —

- (a) had, at the time of making of the statement, or may reasonably be supposed to have had at that time, personal knowledge of the matters dealt with by the statement; or
- (b) where the statement is not admissible in evidence unless made by an expert on the subject of the statement, was at the time of making of the statement such an expert;

“statement” includes any representation of fact or opinion whether made in words or otherwise.

[Section 79B inserted by No. 66 of 1987 s.5.]

79C. Admissibility of documentary evidence

- (1) Subject to subsection (2), in any proceedings where direct oral evidence of a fact or opinion would be admissible, any statement in a document and tending to establish the fact or opinion shall, on production of the document, be admissible as evidence of that fact or opinion if the statement —
 - (a) was made by a qualified person; or

- (b) directly or indirectly reproduces or is derived from one or other or both of the following —
 - (i) information in one or more statements, each made by a qualified person;
 - (ii) information from one or more devices designed for, and used for the purpose of, recording, measuring, counting or identifying information, not being information based on a statement made by any person.
- (2) Where a statement referred to in subsection (1) is made by a qualified person or reproduces or is derived from information in a statement made by a qualified person, that person must be called as a witness unless —
 - (a) he is dead;
 - (b) he is unfit by reason of his bodily or mental condition to attend or give evidence as a witness;
 - (c) he is out of the State and it is not reasonably practicable to secure his attendance;
 - (d) all reasonable efforts to identify or find him have been made without success;
 - (e) no party to the proceedings who would have the right to cross-examine him requires him to be called as a witness;
 - (f) having regard to the time which has elapsed since he made the statement and to all the circumstances, he cannot reasonably be expected to have any recollection of the matters dealt with in the statement;
 - (g) having regard to all the circumstances of the case, undue delay, inconvenience or expense would be caused by calling him as a witness; or
 - (h) he refuses to give evidence.
- (3) This section makes a statement admissible notwithstanding —
 - (a) the rules against hearsay;

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- (b) the rules against secondary evidence of the contents of a document;
- (c) that the person who made the statement or the person who made a statement from which the information in the statement is reproduced or derived is a witness in the proceedings, whether or not he gives evidence consistent or inconsistent with the statement; or
- (d) that the statement is in such a form that it would not be admissible if given as oral evidence,

but does not make admissible a statement which is otherwise inadmissible.

- (4) Notwithstanding subsections (1) and (2), in any criminal proceedings a statement in a document which was made in the course of or for the purpose of —
 - (a) the investigation of facts constituting or being constituents of the alleged offence being dealt with in the proceedings;
 - (b) an investigation which led to the discovery of facts constituting or being constituents of the alleged offence;
 - (c) the preparation of a defence to a charge for any offence; or
 - (d) the preparation of the case of the prosecution in respect of any offence,

shall not be rendered admissible as evidence by this section.

- (5) For the purposes of this section a court may —
 - (a) for the purpose of deciding whether or not a statement is admissible as evidence, draw any reasonable inference from the form of contents of the document in which the statement is contained, or from any other circumstances;
 - (b) in deciding whether or not a person is fit to attend or give evidence as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner.

- (6) For the purposes of this section a court may, in its discretion, reject a statement notwithstanding that the requirements of this section are satisfied with respect thereto, if the court is of the opinion that the probative value of the statement is outweighed by the consideration that its admission or the determination of its admissibility —
- (a) may necessitate undue consumption of time; or
 - (b) may create undue prejudice, confuse the issues, or in proceedings with a jury mislead the jury.

[Section 79C inserted by No. 66 of 1987 s.5.]

79D. Weight of evidence and corroboration

- (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by section 79C 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 —
- (a) to the question of whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated;
 - (b) to the question of whether or not the qualified person or any person concerned with making or keeping the document containing the statement, had any incentive to conceal or misrepresent the facts;
 - (c) to the question of whether or not the information in the statement was of a kind which was collected systematically;
 - (d) to the question of whether or not the information in the statement was collected pursuant to a duty to do so;
 - (e) where the statement wholly or in part reproduces or is derived from information from one or more devices, to the reliability of the device or devices; and

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- (f) where the statement reproduces or is derived from any information, to the reliability of the means of reproduction or derivation.
- (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 virtue of section 79C shall not be treated as corroboration of the evidence given by the qualified person.

[Section 79D inserted by No. 66 of 1987 s.5.]

79E. Evidence of credibility of person making statement

Where in any proceedings a statement is admitted as evidence under section 79C but the qualified person is not called as a witness in the proceedings —

- (a) any evidence —
 - (i) which, if that person had been so called, would have been admissible for the purpose of destroying or supporting his credibility as a witness shall be admissible for that purpose in those proceedings; or
 - (ii) tending to prove that, whether before or after that person made that statement, he made another statement (whether orally or in a document or otherwise) inconsistent therewith shall be admissible for the purpose of showing that he has contradicted himself,

but nothing in subparagraph (i) or (ii) shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party; and

- (b) any evidence proving that that person has been guilty of any indictable offence shall be admissible in the proceedings to the same extent as if he had been so called and on being questioned as to whether or not he had been convicted of an indictable offence had denied the fact or had not admitted the fact or had refused to answer the question.

[Section 79E inserted by No. 66 of 1987 s.5.]

79F. Dispute as to happening of event

- (1) Where in any proceedings the happening of an event is in question, and a system has been followed to make and keep a record of the happening of all events of that description, oral or other evidence to establish that there is no record of the happening of the event is admissible to prove that the event did not happen.
- (2) Where evidence is, or is proposed to be, tendered under this section, a court may require that the whole or part of the record concerned be produced and, in default, may reject the evidence or, if it has been received, exclude it.
- (3) In estimating the weight, if any, to be attached to evidence rendered admissible by this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the evidence, including whether or not any person concerned with the making or keeping of the relevant record had any incentive to omit recording the happening of the event in question.

[Section 79F inserted by No. 66 of 1987 s.5.]

79G. Method of production of documents

- (1) For the purposes of sections 79C and 79F —
- (a) a statement in a document may be proved by the production of a copy of the document, or of the material

part of the document, certified to be a true copy of the document or part of the document in such manner as is approved by the court;

- (b) a statement in a document which is designed to be used to reproduce the statement in the form of sound or of a visual image may be proved by reproducing the statement in that form in the presence of the court; and
 - (c) a statement in a document in which sounds or data are embodied so as to be capable (with or without the aid of some other device) of being reproduced therefrom may be proved by reproducing the statement in a form which is capable of being understood by sight.
- (2) The absence of a record of the happening of an event in a record of information made by the use of a computer or any other device for storing, recording or processing information may be proved by the production of a document produced by the use of the computer or other device containing a statement affirming the absence of the first-mentioned record.
- (3) Where a person proposes to prove, or proves, a statement in a document otherwise than by producing the document the court may require that the document be produced or made available to the court or to other parties for examination or testing and, in default, may reject the statement, or if it is in evidence, exclude it.
- (4) Where a person proposes to prove, or proves, a statement by reproducing the statement in the form of sound or of a visual image the court may direct a record of the statement to be produced, and, in default, may reject the statement, or if it is in evidence, exclude it.

[Section 79G inserted by No. 66 of 1987 s.5.]

Proof of judicial proceedings**80. Proof of judicial proceedings**

Evidence of any judgment, decree, rule, order, or other judicial proceeding of any court in any part of Her Majesty's dominions, or in any foreign State, including any affidavit, pleading, or legal document filed or deposited in any such court, may be given in all courts and before all persons acting judicially by the production of a document purporting to be a copy thereof, and —

- (a) proved to be an examined copy thereof; or
- (b) purporting to be sealed with the seal of the court; or
- (c) purporting to be certified as a true copy by a registrar or chief officer of the court; or
- (d) purporting to be signed by a judge of such court, with a statement in writing attached by him to his signature that such court has no seal, and without proof of his judicial character or of the truth of such statement.

81. Faith and credit to be given to documents properly authenticated

All public acts, records, and judicial proceedings of any State, if proved or authenticated as required by this Act, shall have such faith and credit given to them before all courts and persons acting judicially, and in every public office, as they have by law or usage in the courts and public offices of the State from whence they are taken.

Proof of telegraphic messages**82. Notice to admit telegraphic messages may be given in civil proceedings**

- (1) Any party to any civil proceeding may, at any time after the commencement thereof, give notice to any other party that he

proposes to adduce in evidence at the trial or hearing any telegraphic message that before the date of such notice shall have been received by electric telegraph in Western Australia:

Provided that —

- (a) the time between the giving of such notice and the day on which such evidence shall be tendered shall not in any case be less than 2 days before the day of such hearing or trial; and
 - (b) every such notice shall specify the names of the sender and receiver of such message, and its date as nearly as may be.
- (2) Any such notice may be served and the service thereof proved in the same manner as notices to admit and produce may now be served and proved respectively.

83. Proof of message

Whenever such notice is given, the production of any telegraphic message described in such notice, and purporting to have been sent by any person, together with evidence that the same was received from a telegraph station, shall be *prima facie* evidence that such message was signed and sent by the person so purporting to be the sender thereof to the person to whom the same is addressed, without any further proof of the identity of the sender:

But the party against whom such message is given in evidence shall be at liberty to prove that the same was not in fact sent by the person by whom it purports to have been sent.

84. Proof of sending a message

In any civil proceeding, the production of any telegraphic message or a copy thereof verified on oath, together with evidence that such message was taken to a telegraph station, and that the fees (if any) for the transmission thereof were paid, shall be *prima facie* evidence that such message was duly delivered to

the person named therein as the person to whom the same was to be transmitted; and the burden of proving that such message was not in fact received shall be upon the person against whom such message is given in evidence:

Provided that notice shall be first given by the party adducing the same in evidence to the other party of his intention to do so, and such notice may be given in such manner and at such times as by the practice of the court in which the proceeding is taken, notices to produce or admit are required to be given.

85. Certain documents may be transmitted by electric telegraph

It shall be lawful for the Governor, any member of the Executive Council, the President of the Legislative Council, the Speaker of the Legislative Assembly, the Chief Justice, or any other Judge of the Supreme Court, any stipendiary magistrate, the magistrate or any 2 or more justices of the peace exercising the power of the court under the *Local Courts Act 1904*, any officer of Government or other person whom the Governor may authorize in that behalf by warrant under his hand, or any solicitor, to cause to be transmitted by electric telegraph, the contents of any writ, warrant, rule, authority, order, affidavit, statutory declaration, or other communication requiring signature or seal, subject to the provisions following, that is to say —

- (1) The original document shall be delivered at the telegraph station in the presence and under the inspection of some justice of the peace or public notary.
- (2) The person to whom the contents of any such document shall be so sent shall forthwith and under the supervision of a justice of the peace or public notary cause to be sent back by electric telegraph a copy of the message received by him; and in the event of any error appearing therein the process shall be repeated under the like supervision until it shall appear that a true copy of such

document has been received by the person to whom it shall have been sent.

- (3) When it shall appear that such true copy has been so received, such first-mentioned justice or notary public shall endorse upon the original document a certificate that a true copy thereof has been sent under the provisions of this Act to the person to whom the same shall have been so sent, and shall forthwith by electric telegraph inform such person that such certificate has been so endorsed, and such last-mentioned person shall forthwith endorse on such copy a certificate that such copy was duly received by him under the provisions of this Act, and this certificate shall be countersigned by the justice of the peace or notary public under whose supervision such copy was received.

86. Copies so transmitted to be as valid as originals

- (1) Every copy so endorsed, certified, and countersigned shall be as valid to all intents and purposes as the original whereof it purports to be a copy would have been, and shall be admissible as evidence in any case in which the original would have been so admissible.
- (2) Any person by whom such copy shall have been so received or who shall be thereby authorized, instructed or commanded, or who shall or may be lawfully charged with any duty in respect thereof, shall have and become liable to the same rights or duties in respect thereof as if he had received such original document duly signed and sealed, or signed, or sealed, or sworn or declared, as the case may be.
- (3) And in the case of documents intended to be served, or the efficacy or use whereof depends upon service, every such copy shall, for the purpose of such service, be deemed to be the original document whereof it purports to be a copy.

87. Original document may be inspected

Every original document a copy whereof shall have been transmitted under section 85 shall be kept at the telegraph station at which it was delivered for the purpose of such transmission, and shall, after the expiration of 2 days from the date of the certificate under subsection (3) of that section being endorsed upon it, be open within reasonable hours to the inspection of any person, upon payment of a fee of 10 cents.

[Section 87 amended by No. 113 of 1965 s.4.]

88. Penalty for false certificates

Any justice of the peace or public notary who shall wilfully and falsely endorse upon any original document delivered at a telegraph station, for the purpose of being transmitted under the provisions of this Act, a certificate that a true copy thereof has been sent under this Act, or who shall by telegraph wilfully and falsely inform any person to whom such document shall have been so sent that a certificate under the provisions of this Act has been endorsed thereon, shall forfeit and pay a sum not exceeding \$200, to be recoverable summarily before any justice of the peace in petty sessions.

[Section 88 amended by No. 113 of 1965 s.4.]

Bankers' Books**89. Entries in a banker's book**

Subject to this Act —

- (a) any entry in a banker's book shall be evidence of the matters, transactions, and accounts therein recorded; and
- (b) a copy of any entry in a banker's book shall be evidence of the entry and of the matters, transactions, and accounts therein recorded.

[Section 89 inserted by No. 66 of 1987 s.6.]

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90. Proof that book is a banker's book

- (1) A copy of an entry in a banker's book shall not be received in evidence, unless it is first proved —
 - (a) that the book was, at the time of the making of the entry, one of the ordinary books of the bank; and
 - (b) that the entry was made in the usual and ordinary course of business.
- (2) Such proof may be given by a partner or officer of the bank, and may be given either orally or by affidavit.

[Section 90 amended by No. 66 of 1987 s.7.]

91. Verification of copy

A copy of an entry in a banker's book shall not be received in evidence unless it is certified to be a true copy of the entry in such manner as is approved by the court.

[Section 91 inserted by No. 66 of 1987 s.8.]

92. Legal proceedings

In any legal proceedings in which it is necessary to prove —

- (a) the state of an account in the books of any bank; or
- (b) that any person had not an account or any funds to his credit in such books,

it shall not be necessary to produce any such book, but evidence of the state of such account, or that no such account or funds existed, may be given either orally or by affidavit by any officer or clerk of such bank who has examined such books.

[Section 92 amended by No. 10 of 1960 s.3.]

92A. Application of sections 89 to 92 to banks

The provisions of sections 89, 90, 91 and 92 shall apply to bankers' books and banks and branches of banks in any State or Territory of the Commonwealth.

[Section 92A inserted by No. 10 of 1960 s.4.]

93. Cases in which banker, etc., not compellable to produce book, etc.

An officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable —

- (a) to produce any banker's book, the contents of which can be proved under the provisions of this Act; or
- (b) to appear as a witness to prove the matters, transactions, and accounts therein recorded,

unless by order of a Judge of the Supreme Court made for special cause.

[Section 93 amended by No. 26 of 1999 s.78(3).]

94. Inspection of banker's books

- (1) On the application of any party to a legal proceeding, the court or a Judge of the Supreme Court may order that such party be at liberty to inspect and take copies of any entries in a banker's book relating to the matters in question in such proceeding.
- (2) An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank by delivering a copy of the order to an officer of such bank at a principal or a branch office thereof, having the custody of the book of which inspection is desired, 3 clear days before the same is to be obeyed, unless the court or judge otherwise directs.
- (3) Sunday, Christmas Day, Good Friday, and any bank holiday shall be excluded from the computation of time under this section.

95. Costs

- (1) The costs of —

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- (a) any application to a court or judge under or for the purposes of sections 93 or 94; or of
- (b) anything done or to be done under an order of a court or Judge made under or for the purposes of section 94,

shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank where the same have been occasioned by any default or delay on the part of the bank.

- (2) Any such order against a bank may be enforced as if the bank was a party to the proceeding.

96. Powers of judge extended to magistrates, etc.

A Judge of the District Court of Western Australia, a Judge of the Family Court of Western Australia, a judge, magistrate and member of the Children's Court of Western Australia, the magistrate of any local court, and any stipendiary magistrate, and any justice of the peace on the investigation of complaints of indictable offences may, with respect to any legal proceeding in the court in which he presides, exercise the powers of a Judge of the Supreme Court under this Act in regard to banker's books.

[Section 96 amended by No. 111 of 1978 s.5; No. 15 of 1991 s.23.]

Mode of taking evidence

97. Sworn evidence

- (1) Subject to any other Act in which express provision is made to the contrary, in any civil or criminal proceeding, or in any inquiry or examination in any court or before any person acting judicially, every witness other than —
 - (a) a witness the evidence of whom may be received pursuant to this Act though not given on oath;

- (b) a witness called for the purpose only of producing a document, where there is another witness called or to be called who can identify the document;
- (c) counsel giving evidence of the terms of a compromise reached between the parties to litigation in which he acted for one of those parties; and
- (d) a judge, or counsel, giving evidence by way of explanation of a case in which he acted as such,

shall give evidence on oath.

- (2) In any criminal proceeding, no accused person shall be entitled to make a statement of fact at his trial, otherwise than by way of admission of a fact alleged against him so as to dispense with proof of that fact, unless such statement is made by him as a witness.
- (3) Every oath shall be binding which is administered and taken in a form and manner that —
 - (a) the person taking it declares to be binding on his conscience; and
 - (b) the court or person acting judicially, on being satisfied that the person taking it understands the nature and intent of the oath approves.
- (4) Where a person is tendered as a witness and —
 - (a) it is found not to be reasonably practicable without inconvenience or delay, at the time and place when and where he is so tendered, to administer to him an oath in the form and manner required to make it binding on his conscience;
 - (b) he declares that the taking of an oath is contrary to his religious belief or conscience; or
 - (c) for any other sufficient reason the taking of an oath is found not to be appropriate,

he may be required to make solemn affirmation in the form provided by section 99.

[Section 97 inserted by No. 142 of 1976 s.2.]

98. Short form of oath

Every witness in any civil or criminal proceeding, or in any inquiry or examination in any court or before any person acting judicially, shall be entitled, if he so wishes, instead of taking the oath usually administered to witnesses, to have an oath administered to him in the form following, that is to say: The officer or person tendering the oath shall hold up his hand, and say to the witness, “Witness, hold up your hand, and repeat after me —

“ I swear by Almighty God, that I will speak the truth, the whole truth, and nothing but the truth. ”
”.

98A. Method of administering oath to persons making an affidavit

Any person making an affidavit shall be entitled, if he so wishes, instead of having administered to him the oath usually administered, to have an oath administered to him in the form following, that is to say — The person tendering the oath shall hold up his hand and say to the deponent “Hold up your hand and repeat after me — ‘I swear that this (pointing or referring to the signature of deponent, on the affidavit) is my name and hand-writing (and in the case of exhibits or productions, add — ‘and that these are the exhibits or productions referred to in my affidavit’), and the contents of this my affidavit are true, So help me God.’ ”.

[Section 98A inserted by No. 34 of 1930 s.2.]

99. Affirmation in lieu of oath

- (1) Every person shall be entitled as of right to make his solemn affirmation, instead of taking an oath, in all places and for all purposes where an oath is required by law, and such affirmation shall be of the same force and effect as an oath.
- (2) Every such affirmation shall be as follows: "I, A.B., do solemnly, sincerely, and truly declare and affirm," and shall then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.
- (3) Every affirmation in writing shall begin, "I, A.B., of _____, do solemnly and sincerely affirm;" and the form in lieu of jurat shall be, "Affirmed at _____, this _____ day of _____, 19____, before me."

[Section 99 amended by No. 142 of 1976 s.3.]

100. Oath not affected by want of religious belief

Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had at the time of taking such oath no religious belief shall not for any purpose affect the validity of such oath.

100A. Where an oath or affirmation may not be used

- (1) Where in any civil or criminal proceeding, or in an inquiry or examination in any court or before any person acting judicially the court or that person is satisfied that a person who is tendered as a witness does not understand the nature of, or the obligation imposed by, an oath or solemn affirmation but does understand —
 - (a) that he is required to speak the truth and, where the witness is a compellable witness, to tell what he knows about the matter to which the testimony relates; and
 - (b) that he will be liable to punishment if he does not do so,

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the evidence of that person may be received without an oath and without formality.

- (2) In taking into account the weight and credibility that ought to be afforded to testimony given by a witness otherwise than on oath or solemn affirmation regard shall be had to the manner and circumstances in which it is given and received and to the fact that it was given without the sanction of an oath or solemn affirmation.
- (3) Where it appears to a justice that any person who desires to lay a complaint or information is a person to whom the provisions of subsection (1) may apply, the justice 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 that complaint or information in all respects as if the complainant or informant had deposed to the truth of the contents thereof upon oath.
- (4) Before evidence is received or a complaint or information is laid pursuant to this section the court or person acting judicially, or the justice, as the case may be, shall explain or cause to be explained to the person tendered as a witness or seeking to lay that complaint or information that he is required to speak the truth and, where the witness is a compellable witness, to tell what he knows about the matter in question and that he will be liable to punishment if he does not do so.
- (5) A person who, in giving evidence or laying any complaint or information pursuant to this section, knowingly makes a false statement material to the subject matter thereof is guilty of a misdemeanour and liable on conviction to imprisonment for a term of not more than 5 years.
- (6) References in this section to —
 - (a) a person who is tendered as a witness; or
 - (b) a person who desires to lay a complaint or information,

extend to a child who is of or over the age of 12 years and who is tendered as a witness or who desires to lay a complaint or information; and the provisions of this section have effect accordingly.

- (7) Except as provided in subsection (6), this section does not apply to a child, as defined in section 106A.

[Section 100A inserted by No. 142 of 1976 s.4; amended by No. 36 of 1992 s.6.]

[101. Repealed by No. 36 of 1992 s.7.]

102. Interpretation on oath or affirmation, or on declaration

- (1) Where a person is called to act as an interpreter in any court, or before any person acting judicially, and that person, had he been tendered as a witness, would have been required to take an oath or make a solemn affirmation he shall be required to take an oath or make a solemn affirmation to well and truly translate the evidence given, but if any such person objects to so doing, or is objected to as incompetent so to do, such person may be admitted to act as interpreter, if the court or person acting judicially is satisfied as to his ability to do so competently and as to his impartiality, in the same way as if he had taken the usual oath required of a person so called, on his making the following promise or declaration —

I, A.B., of, solemnly promise and declare that I will well and truly translate such of the evidence given to as I shall be asked to interpret.

and such declaration shall be of the same force and effect as an oath.

- (2) A person who, having taken the oath or made a solemn affirmation or declaration as an interpreter under this section, in interpreting any testimony pursuant to this section knowingly fails to translate or translates falsely any material matter is

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guilty of a crime and liable on conviction to imprisonment for a term of not more than 14 years.

[Section 102 inserted by No. 142 of 1976 s.6.]

103. Interpretation otherwise than on oath, or affirmation

- (1) If any person is called to act as an interpreter in any court, or before any person acting judicially, and for any reason is not required to take an oath or make a solemn affirmation such person may be admitted to act as interpreter, if the court or person acting judicially is satisfied as to his ability to do so competently and as to his impartiality, in the same way as if he had taken the usual oath required of a person so called where, had he been a person tendered as a witness, his evidence might have been received pursuant to this Act without an oath and without formality, and the provisions of section 100A shall apply to and in relation to any such person and to the testimony interpreted by him *mutatis mutandis*.
- (2) Any person who, in interpreting any testimony pursuant to this section, knowingly fails to translate or translates falsely any material matter is guilty of a misdemeanour and liable on conviction to imprisonment for a term of not more than 5 years.

[Section 103 inserted by No. 142 of 1976 s.7.]

104. Who may administer oaths

- (1) All courts and persons acting judicially are hereby empowered to administer an oath to all such witnesses as are lawfully called or voluntarily come before them respectively, or to take the affirmation of any such witness in lieu of such oath.
- (2) Every clerk of petty sessions and clerk of a local court, the registrar of the Department of Mines¹¹, and every mining registrar shall have the same authority to administer oaths and to take affirmations in lieu of oaths and statutory declarations as a justice of the peace now has, and oaths administered and affirmations and declarations made in pursuance of this

subsection shall have the same force and effect as if administered or taken before a justice of the peace.

104A. Power of person appointed by foreign authority to take or receive evidence and administer oath

- (1) Where an authority desires to take or receive evidence in the State, the authority may by instrument in writing appoint a person to so take or so receive evidence.
- (2) Subject to subsection (3), a person appointed pursuant to subsection (1) has power to take or receive evidence in the State for the authority and for that purpose has power to administer an oath.
- (3) Where the authority is not a court or judge a person so appointed is not empowered to take or receive evidence or administer an oath in the State unless he has first obtained the consent in writing of the Attorney General.
- (4) This section does not authorize the taking or receiving of evidence by a person so appointed in or for use in criminal proceedings.
- (5) In this section “**authority**” means any court, judge, person or body that is authorized under the law of a foreign country to take or receive evidence on oath in that country.

[Section 104A inserted by No. 23 of 1967 s.2.]

[105. Repealed by No. 70 of 1988 s.43.]

106. Statutory declarations

It shall be lawful for any justice of the peace or other person by law authorized to administer an oath to take and receive the declaration of any person voluntarily making the same before him in the following form, namely —

I, A.B., *[insert place of abode and occupation]*, do solemnly and sincerely declare that *[here state the facts]*, and I make this solemn declaration by virtue of section 106 of the *Evidence Act 1906*.

s. 106A

Declared at this day of 19 , before me,
C.D., justice of the peace [*or as the case may be*].

Evidence of children and special witnesses

[*Heading inserted by No. 36 of 1992 s.8.*]

106A. Interpretation

In sections 106B to 106S and in Schedule 7, unless the contrary intention appears —

“affected child” means —

- (a) in relation to an application referred to in clause 2 of Part A of Schedule 7, the child in respect of whom the application is made;
- (b) in relation to any other Schedule 7 proceeding, the child upon or in respect of whom it is alleged that an offence was committed, attempted or proposed;

“child” means —

- (a) any boy or girl under the age of 18 years;
- (b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years; and
- (c) in any proceeding in the Children’s Court, any boy or girl dealt with under section 19(2) of the *Children’s Court of Western Australia Act 1988*;

“counsel” includes a solicitor;

“defendant”—

- (a) in relation to an application referred to in clause 2 of Part A of Schedule 7 —
 - (i) means any party to the proceeding, other than the affected child and an applicant who is a police officer or an officer of the department established under section 4 of the *Community Services Act 1972*;

(ii) in sections 106K(3)(e) and 106N as they apply to such an application means any such party specified by the judge;

(b) in relation to any other Schedule 7 proceeding, a person complained against for an offence;

“proceeding” means any civil or criminal proceeding or any examination in any Court or before any person acting judicially, and includes a preliminary hearing under the *Justices Act 1902* and a pre-trial hearing under section 106K;

“prosecutor”, in relation to an application referred to in clause 2 of Part A of Schedule 7, means the applicant in that application;

“Schedule 7 proceeding” means a proceeding that comes within the provisions of Schedule 7;

“trial”, in relation to an application referred to in clause 2 of Part A of Schedule 7, means the hearing of that application;

“video-taped recording” means any recording on any medium from which a moving image may be produced by any means, and includes the accompanying sound track;

“video-taped recording of evidence” means a video-taped recording of evidence made —

- (a) pursuant to an order under section 106J; or
- (b) in a pre-trial hearing held pursuant to an order under section 106K or 106R.

[Section 106A inserted by No. 36 of 1992 s.8; amended by No. 53 of 1992 s.37; No. 57 of 1997 s.57.]

106B. Sworn evidence of children

- (1) A child who is under the age of 12 years may in any proceeding, if the child is competent under subsection (2), give evidence on oath under section 97(3) or after making a solemn affirmation under section 97(4).

s. 106C

- (2) A child who is under the age of 12 years is competent to take an oath or make a solemn affirmation if in the opinion of the Court or person acting judicially the child understands that —
- (a) the giving of evidence is a serious matter; and
 - (b) he or she in giving evidence has an obligation to tell the truth that is over and above the ordinary duty to tell the truth.

[Section 106B inserted by No. 36 of 1992 s.8.]

106C. Unsworn evidence of children

A child under the age of 12 years who is not competent to give evidence under section 106B may give evidence without taking any oath or making a solemn affirmation if the Court or person acting judicially forms the opinion, before the evidence is given, that the child is able to give an intelligible account of events which he or she has observed or experienced.

[Section 106C inserted by No. 36 of 1992 s.8.]

106D. Particular form of corroboration warning not to be given

In any proceeding on indictment for an offence in which evidence is given by a child, the judge is not to warn the jury, or suggest to the jury in any way, that it is unsafe to convict on the uncorroborated evidence of that child because children are classified by the law as unreliable witnesses.

[Section 106D inserted by No. 36 of 1992 s.8.]

106E. Support for child witness

- (1) A child who is under the age of 16 years is entitled, while he or she is giving evidence in any proceeding in a Court, to have near to him or her a person who may provide the child with support.
- (2) The person referred to in subsection (1) is to be approved by the Court and is not to be a person who is a witness in or a party to the proceeding.

[Section 106E inserted by No. 36 of 1992 s.8.]

106F. Assistance in communicating questions and evidence

- (1) Where a child under the age of 16 years is to give evidence in any proceeding in a Court, the Court may appoint a person that it considers suitable and competent to act as a communicator for the child.
- (2) The function of a person appointed under this section is, if requested by the judge, to communicate and explain —
 - (a) to the child questions put to the child; and
 - (b) to the Court, the evidence given by the child.
- (3) A person appointed under this section is to take an oath or make a declaration, in such form as the Court thinks fit, that he or she will faithfully perform his or her function under subsection (2).
- (4) A person appointed under this section who, while performing or purportedly performing his or her function under subsection (2), wilfully makes any false or misleading statement to the child or to the Court commits an indictable offence and is liable on conviction to imprisonment for 5 years.

[Section 106F inserted by No. 36 of 1992 s.8.]

106G. Cross-examination by unrepresented defendant

Where in any proceeding for an offence a defendant who is not represented by counsel wishes to cross-examine a child who is under 16 years of age, the defendant —

- (a) is not entitled to do so directly; but
- (b) may put any question to the child by stating the question to the judge or a person approved by the Court,

and that person is to repeat the question accurately to the child.

[Section 106G inserted by No. 36 of 1992 s.8.]

s. 106H

106H. Admission of child's statement in proceeding for sexual offences, etc.

- (1) In any Schedule 7 proceeding, a relevant statement may, at the discretion of the judge, be admitted in evidence if —
 - (a) there has been given to the defendant —
 - (i) a copy of the statement; or
 - (ii) if the statement is not recorded in writing or electronically, details of the statement; and
 - (b) the defendant is given the opportunity to cross-examine the affected child.
- (2) Subsection (1) does not affect the operation of —
 - (a) section 106G; or
 - (b) section 69 of the *Justices Act 1902*, other than subsection (1) of that section.
- (3) In subsection (1) “**relevant statement**” means a statement that —
 - (a) relates to any matter in issue in the proceeding; and
 - (b) was made by the affected child to another person before the proceeding was commenced,

whether the statement is recorded in writing or electronically or not.

[Section 106H inserted by No. 36 of 1992 s.8.]

106I. Video-taping of child's evidence, application for directions

- (1) Where any Schedule 7 proceeding has been commenced in a Court, the prosecutor may apply to a judge of that Court for an order directing —
 - (a) that the affected child's evidence in chief be taken, in whole or in part, and presented to the Court in the form of a video-taped recording of oral evidence given by the affected child; or

- (b) that the affected child's evidence be taken at a pre-trial hearing.
- (2) The defendant is to be served with a copy of, and is entitled to be heard on, an application under subsection (1).

[Section 106I inserted by No. 36 of 1992 s.8.]

106J. Giving of evidence by video-tape

- (1) A judge who hears an application under section 106I(1)(a) may make such order as the judge thinks fit which may include directions as to —
 - (a) the procedure to be followed in the taking of the evidence, the presentation of the recording and the excision of matters from it; and
 - (b) the manner in which any cross-examination or re-examination of the affected child is to be conducted at the trial.
- (1a) An order under subsection (1) —
 - (a) is to include directions, with or without conditions, as to the persons, or classes of persons, who are authorized to have possession of the video-taped recording of the evidence; and
 - (b) may include directions and conditions as to the giving up of possession and as to the playing, copying or erasure of the recording.
- (2) An order under subsection (1) may be varied or revoked by the judge who made the order or a judge who has jurisdiction co-extensive with that judge.

[Section 106J inserted by No. 36 of 1992 s.8; amended by No. 53 of 1992 s.38.]

s. 106K

106K. Giving of evidence at pre-trial hearing

- (1) A judge who hears an application under section 106I(1)(b) may make such order as the judge thinks fit which is to include —
 - (a) directions, with or without conditions, as to the persons who may be present at the pre-trial hearing;
 - (b) directions, with or without conditions, as to the persons, or classes of persons, who are authorized to have possession of the video-taped recording of the evidence, and, without limiting section 106M, may include directions and conditions as to the giving up of possession and as to the playing, copying or erasure of the recording.
- (2) An order under subsection (1) may be varied or revoked by the judge who made the order or a judge who has jurisdiction co-extensive with that judge.
- (3) At a pre-trial hearing ordered under subsection (1) —
 - (a) no person other than a person authorized by the judge under subsection (1) is to be present at the hearing;
 - (b) subject to the control of the presiding judge, the affected child is to give his or her evidence and be examined and cross-examined;
 - (c) except as provided by this section, the usual rules of evidence apply;
 - (d) the proceedings are to be recorded on video-tape;
 - (e) the defendant is to be in a room separate from the room in which the hearing is held but is to be capable of observing the proceedings by means of a closed circuit television system.
- (4) The affected child's evidence at the trial is to be given by the presentation to the Court of the recording made under subsection (3), and the affected child need not be present at the trial.

- (5) Where circumstances so require, more than one pre-trial hearing may be held under this section for the purpose of taking the evidence of the affected child, and section 106I and this section are to be read with all changes necessary to give effect to any such requirement.

[Section 106K inserted by No. 36 of 1992 s.8; amended by No. 53 of 1992 s.39.]

106L. Status of video-taped evidence

A presentation to a Court of video-taped evidence under section 106H, 106J or 106K is admissible as if the evidence were given orally in the proceeding in accordance with the usual rules and practice of that Court.

[Section 106L inserted by No. 36 of 1992 s.8.]

106M. Recording not to be altered without approval

- (1) The original recording of video-taped evidence made at a pre-trial hearing under section 106K for the purposes of a trial is not to be edited or altered in any way without the approval of a Judge before it is presented to the Court at the trial.
- (2) A video-taped recording that is edited or altered contrary to subsection (1) is inadmissible in evidence at the trial for which it was made.
- (3) In subsection (1) “**Judge**” means the Judge who presided at the pre-trial hearing or a Judge who has jurisdiction co-extensive with that Judge.

[Section 106M inserted by No. 36 of 1992 s.8.]

106MA. Unauthorized possession or dealing in video-taped evidence

- (1) A person commits an offence who, without authority —
- (a) has a video-taped recording of evidence in his possession; or

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- (b) supplies or offers to supply a video-taped recording of evidence to any person.
- (2) A person commits an offence who, without authority plays, copies, erases or permits a person to copy or erase a video-taped recording of evidence.
- (3) A person has authority for the purposes of subsection (1) or (2) only if he or she has possession of a video-taped recording of evidence or does anything mentioned in subsection (1) or (2), as the case may be —
 - (a) in the case of a public official, for a purpose connected with the proceeding for which the recording was made or any resulting proceeding by way of appeal; or
 - (b) in any other case, as authorized by a judge under section 106J, 106K or 106R.
- (4) A person who commits an offence against this section is liable to a fine of \$5 000.

[Section 106MA inserted by No. 53 of 1992 s.40.]

106MB. Broadcast of video-taped evidence

- (1) A person shall not broadcast a video-taped recording of evidence or any part of such a recording except with approval of the Supreme Court and in accordance with any condition attached to the approval.
Penalty: \$100 000 or imprisonment for 12 months, or both.
- (2) An approval under subsection (1) is only to be given in exceptional circumstances.
- (3) In subsection (1) “**broadcast**” means disseminate to the public by radio or television or otherwise by the transmission of light or sound.

[Section 106MB inserted by No. 53 of 1992 s.40.]

106N. Use of closed circuit television or screening arrangements

- (1) This section —
 - (a) applies only to a Schedule 7 proceeding, but subject to any order under section 106O;
 - (b) is to operate only to the extent that the giving of evidence by the affected child is not provided for by an order under section 106K; and
 - (c) has effect notwithstanding section 635 of *The Criminal Code*.
- (2) Where the necessary facilities and equipment are available one of the following arrangements is to be made by the judge for the giving of evidence by the affected child —
 - (a) he or she is to give evidence outside the courtroom but within the court precincts, and the evidence is to be transmitted to the courtroom by means of video link as defined in section 120; or
 - (b) while he or she is giving evidence the defendant is to be held in a room apart from the courtroom and the evidence is to be transmitted to that room by means of video link as defined in section 120.
- (3) Where subsection (2)(b) applies the defendant is at all times to have the means of communicating with his or her counsel.
- (4) Where the necessary facilities and equipment referred to in subsection (2) are not available, a screen, one-way glass or other device is to be so placed in relation to the affected child while he or she is giving evidence that —
 - (a) the affected child cannot see the defendant; but
 - (b) the judge, the jury (in the case of proceedings on indictment), the defendant and his or her counsel can see the affected child.

[Section 106N inserted by No. 36 of 1992 s.8; amended by No. 48 of 1998 s.8.]

s. 106O

106O. Order that section 106N does not apply

- (1) Where any Schedule 7 proceeding has been commenced in a Court the prosecutor may apply to a judge of that Court for an order that section 106N does not apply to those proceedings.
- (2) A judge who hears an application under subsection (1) may grant the application if it is shown to the judge's satisfaction that the affected child is able and wishes to give evidence in the presence of the defendant in the courtroom or other room in which the proceedings are being held.
- (3) An order under subsection (2) may be varied or revoked.

[Section 106O inserted by No. 36 of 1992 s.8.]

106P. Instructions to be given to jury

Where in any proceeding on indictment evidence of an affected child is given in a manner described in section 106N(2) or (4), the judge is to instruct the jury that the procedure is a routine practice of the Court and that they should not draw any inference as to the defendant's guilt from the use of the procedure.

[Section 106P inserted by No. 36 of 1992 s.8.]

106Q. Identification of defendant

Where evidence of an affected child is given in a manner described in section 106N(2) or (4), and the identification of the defendant is an issue, the affected child is not to be required to be in the presence of the defendant for that purpose —

- (a) for any longer than is necessary for that purpose; and
- (b) before the affected child's evidence (including cross-examination and re-examination) is completed.

[Section 106Q inserted by No. 36 of 1992 s.8.]

106R. Persons may be declared special witnesses

- (1) A judge of a Court may make an order —
 - (a) declaring that a person who is giving, or is to give, evidence in any proceeding in that Court is a special witness;
 - (b) directing that one or more of the arrangements referred to in subsection (4) are to be made for the giving of that evidence; and
 - (c) providing for any incidental or related matter.
- (2) An order may be made under subsection (1) on application by a party to a proceeding, on notice to the other parties, or of the Court's own motion.
- (3) The grounds on which an order may be made are that if the person is not treated as a special witness he or she would, in the Court's opinion —
 - (a) by reason of physical disability or mental impairment (as defined in the *Criminal Law (Mentally Impaired Defendants) Act 1996*), be unlikely to be able to give evidence, or to give evidence satisfactorily; or
 - (b) be likely —
 - (i) to suffer severe emotional trauma; or
 - (ii) to be so intimidated or distressed as to be unable to give evidence or to give evidence satisfactorily,by reason of age, cultural background, relationship to any party to the proceeding, the nature of the subject-matter of the evidence, or any other factor that the Court considers relevant.
- (4) The arrangements that may be made under this section are —
 - (a) that the person have near to him or her a person, approved by the Court, who may provide him or her with support;

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- (b) in any proceeding for an offence —
 - (i) that an arrangement of the kind described in section 106N(2) or (4) is to be made; and
 - (ii) that the evidence be given at a pre-trial hearing in the manner provided for by section 106K.
- (4a) Where evidence is to be given at a pre-trial hearing an order under this section is to include directions as to the matters referred to in subsection (1) of section 106K and may include directions as to the other matters referred to in that subsection.
- (5) The Court may at any time vary or revoke an order in force under this section.
- (6) This section does not apply to an affected child.

[Section 106R inserted by No. 36 of 1992 s.8; amended by No.53 of 1992 s.41; No. 69 of 1996 s.30.]

106S. Pre-trial hearings to consider what orders should be made

- (1) In any proceeding in which —
 - (a) the giving of evidence by a person; or
 - (b) a matter affecting a person as a witness,

is likely to require the making of an order or the giving of directions under sections 106E(2), 106F(1), 106J, 106K, 106O, or 106R, the party who is to call that person as a witness is to apply for a pre-trial hearing for the purpose of having all such matters dealt with before the trial.

- (2) In subsection (1) “**pre-trial hearing**” in relation to a Court means a hearing provided for by rules of that Court for the purposes of this section.

[Section 106S inserted by No. 36 of 1992 s.8.]

Depositions

107. Depositions under the *Justices Act 1902*

- (1) Subject to subsection (2), a deposition taken in any proceeding under Part V of the *Justices Act 1902*, may be produced and given in evidence at the trial of the person against whom it was taken —
- (a) if it is proved to the satisfaction of the judge that the witness is dead, or out of Western Australia, or so ill as not to be able to travel, although there may be a prospect of his recovery; or
 - (b) if the witness is kept out of the way by the person accused; and
 - (c) if —
 - (i) being a deposition that was reduced to writing under section 73(1)(a) of the *Justices Act 1902*, it purports to be signed by the justices by or before whom it purports to have been taken; or
 - (ii) being a deposition that was recorded under section 73(1)(b) of the *Justices Act 1902*, a transcript of the recording has been made and certified in the manner prescribed under that Act to be a correct transcription of the recording.

If there is a prospect of the recovery of a witness proved to be too ill to travel, the judge shall not be obliged to receive the deposition, but may postpone the trial, discharging the jury, where a jury has been empanelled, if he thinks fit.

- (2) A deposition referred to in —
- (a) subsection (1)(c)(i) shall not be produced and given in evidence under subsection (1) if it is proved that the deposition was not in fact signed by the justices by or before whom it purports to be signed;
 - (b) subsection (1)(c)(ii) shall not be produced and given in evidence under subsection (1) if it is proved that the

transcript to be used is not a correct transcription of the recording.

- (3) A person shall not allege that a deposition intended to be given in evidence at the trial of the person against whom it was taken is an incorrect transcription of a recording unless, not less than 7 days before the commencement of the trial, that person has given the prosecutor notice in the prescribed form of his intention to raise that allegation.

[Section 107 amended by No. 81 of 1986 s.6.]

108. Depositions of persons dangerously ill

- (1) If a person dangerously ill and unable to travel is believed to be able to give material and important information relating to an indictable offence, or to a person accused thereof, the proceedings described in the next subsection may take place.
- (2) If it is made to appear to the satisfaction of any justice of the peace that any such person is dangerously ill and not likely to recover from such illness, and that it is not practicable for any justice of the peace to take a deposition of such person, in accordance with the provisions of Part IV of the *Justices Act 1902*, the justice may take, in writing, the statement on oath or affirmation of such person, and the justice shall thereupon subscribe the same, and add thereto a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof.

If the deposition relates to any indictable offence for which any accused person is already committed or bailed to appear for trial, the justice shall transmit the same, with the said addition, to the proper officer of the court for trial at which the accused person has been committed or bailed; and in all other cases he shall transmit the same to the stipendiary magistrate for the district in which he has taken the same, who shall preserve the same and file it of record.

- (3) A deposition taken under this section may be produced and read as evidence, either for or against the accused, upon the trial of any offender or offence to which it relates —
- (a) if the deponent is proved to be dead; or
 - (b) if it is proved that there is no reasonable probability that the deponent will ever be able to travel or to give evidence; and
 - (c) the deposition purports to be signed by the justice of the peace by or before whom it purports to be taken; and
 - (d) it is shown to the satisfaction of the court by the contents of the deposition or the statement of the justice before whom the same is taken attached thereto, or otherwise howsoever —
 - (i) that the person (whether prosecutor or accused) against whom it is proposed to read such deposition, or his counsel or solicitor had, or might have had if he had chosen to be present, full opportunity of cross-examining the deponent; and
 - (ii) in cases where the person against whom it is proposed to read the deposition is not shown to have been present or represented by counsel or solicitor, at the taking thereof, that notice in writing of the intention to take such deposition was given to such person a reasonable and sufficient time beforehand, having regard to the urgency of the circumstances, to have enabled him to be present.
- (4) Nothing in this section contained shall render inadmissible in evidence any declaration in writing or otherwise which is admissible in evidence as a dying declaration.

Examination of witnesses outside the State

[Heading inserted by No. 66 of 1987 s.9.]

109. Interpretation

- (1) In this section and in sections 110 to 114, unless the contrary intention appears —

“**Australia**” includes the Territories of the Commonwealth (whether internal or external) for the government of which as a Territory provision is made by any Commonwealth Act;

“**examination**” includes any proceeding for the taking of evidence of a person conducted by the judicial authorities of a foreign country in relation to a letter of request issued as a result of an order made by a court under this Act;

“**inferior court**” means a court of the State, except when exercising federal jurisdiction, not being a superior court;

“**judicial authority**” in relation to a place outside the State, means a court or person prescribed as an appropriate judicial authority for that place;

“**superior court**” means the Supreme Court, the District Court or the Family Court of Western Australia, except when exercising federal jurisdiction.

- (2) In sections 109 to 114, a reference to a place outside the State shall be taken to refer to a place outside the State whether within or outside Australia.

[Section 109 inserted by No. 66 of 1987 s.9.]

110. Proceedings in superior courts

- (1) In any civil or criminal proceedings before a superior court, the court may, in its discretion and where it appears in the interests of justice to do so, on the application of a party to the proceeding, make, in relation to a person outside the State, an order —
- (a) for the examination of the person on oath or affirmation at any place outside the State before a judge of the court, an officer of the court or such other person as the court may appoint;

- (b) for the issue of a commission for the examination of the person on oath or affirmation at any place outside the State; or
 - (c) for the issue of a letter of request to the judicial authorities of a place outside the State to take, or to cause to be taken, the evidence of the person.
- (2) In determining whether it is in the interests of justice to make an order under subsection (1) in relation to the taking of evidence of a person, the matters to which the court shall have regard include the following —
 - (a) whether the person is willing or able to come to Western Australia to give evidence in the proceeding;
 - (b) whether the person will be able to give evidence material to any issue to be tried in the proceeding;
 - (c) whether, having regard to the interests of the parties to the proceeding, justice will be better served by granting or refusing the order.
- (3) Where a court makes an order under subsection (1) of the kind referred to in subsection (1)(a) or (b), the court may, in its discretion, at the time of the making of the order or at a subsequent time, give such directions as it thinks just relating to the procedure to be followed in and in relation to the examination, including directions as to the time, place and manner of the examination, and to any other matter that the court thinks relevant.
- (4) Where a court makes, in relation to a proceeding, an order under subsection (1) of the kind referred to in subsection (1)(c) in relation to the taking of evidence of a person, the court may, in its discretion, include in the order a request as to any matter relating to the taking of that evidence, including any of the following matters —

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- (a) the examination, cross-examination or re-examination of the person, whether the evidence of the person is given orally, upon affidavit or otherwise;
 - (b) the attendance of the legal representative of each party to the proceeding and the participation of those persons in the examination in appropriate circumstances;
 - (c) any prescribed matter.
- (5) Subject to subsection (6), the court may, on such terms, if any, as it thinks fit, permit a party to the proceeding to tender as evidence in the proceeding the evidence of a person taken in an examination held as a result of an order made under subsection (1) or a record of that evidence.
- (6) Evidence of a person so tendered is not admissible if —
 - (a) it appears to the satisfaction of the court at the hearing of the proceeding that the person is in Western Australia and is able to attend the hearing; or
 - (b) the evidence would not have been admissible had it been given or produced at the hearing of the proceeding.
- (7) Where it is in the interests of justice to do so, the court may, in its discretion, exclude from the proceeding evidence taken in an examination held as a result of an order made under subsection (1), notwithstanding that it is otherwise admissible.
- (8) In this section, a reference to evidence taken in an examination includes a reference to —
 - (a) a document produced at the examination; and
 - (b) answers made, whether in writing, or orally and reduced to writing, to any written interrogatories presented at the examination.

[Section 110 inserted by No. 66 of 1987 s.9.]

111. Proceedings in inferior courts

- (1) The Supreme Court may, in its discretion, on the application of a party to a civil or criminal proceeding before an inferior court exercise the same power to make an order of the kind referred to in section 110(1) for the purpose of that proceeding as the Supreme Court has under that subsection for the purpose of a proceeding in the Supreme Court.
- (2) Section 110(5), (6) and (7) apply in relation to evidence taken in an examination held as a result of an order made by a court by virtue of this section in relation to an inferior court as if —
 - (a) in subsections (5), (6) and (7) —
 - (i) a reference to the proceeding were a reference to the proceeding in the inferior court; and
 - (ii) a reference to the court were a reference to the inferior court;
 - and
 - (b) in subsections (5) and (7), a reference to an order made under subsection (1) were a reference to an order made by a court by virtue of this section.

[Section 111 inserted by No. 66 of 1987 s.9.]

112. Exclusion of evidence in criminal proceeding

Sections 109 to 114 do not affect the power of a court in a criminal proceeding to exclude evidence that has been obtained illegally or would, if admitted, operate unfairly against the defendant.

[Section 112 inserted by No. 66 of 1987 s.9.]

113. Operation of other laws

Sections 109 to 114 are not intended to exclude or limit the operation of any law of the State, or of any rule or regulation made under, or in pursuance of, such a law, that makes

s. 114

provision for the examination of witnesses outside the State for the purpose of a proceeding in the State.

[Section 113 inserted by No. 66 of 1987 s.9.]

114. Regulations and rules of court

- (1) The Governor may make regulations for or with respect to any matter that by sections 109 to 113 is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to those sections and, in particular, for or with respect to the practice and procedure of a superior court in proceedings for the making of an order under section 110 or 111.
- (2) The power of an authority to make rules regulating the practice and procedure of a superior court extends, for the purpose of regulating proceedings brought under sections 109 to 113 in or before that court, to making any rules, not inconsistent with any regulations made under this section, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to those sections and, in particular, for or with respect to the practice and procedure of that superior court in proceedings for the making of an order under section 110 or 111.
- (3) This section does not affect any power to make regulations or rules under any other law.

[Section 114 inserted by No. 66 of 1987 s.9.]

Taking of evidence for foreign and Australian courts

[Heading inserted by No. 34 of 1988 s.4.]

115. Interpretation

In this section and in sections 116 to 118C —

“**Australia**” includes the Territories of the Commonwealth (whether internal or external) for the government of which

as a Territory provision is made by any Commonwealth Act;

“proceedings” means —

- (a) proceedings in any civil or commercial matter; or
- (b) proceedings in or before a court in relation to the commission of an offence or an alleged offence;

“property” includes any land, chattel or other corporeal property of any description;

“request” includes any commission, order or other process issued by or on behalf of a requesting court;

“requesting court” means a court or tribunal by or on whose behalf a request is issued, as referred to in section 116.

[Section 115 inserted by No. 34 of 1989 s.4.]

116. Application to the Supreme Court for assistance in obtaining evidence for proceedings in other court

- (1) If an application is made to the Supreme Court for an order for evidence to be obtained in Western Australia and the Supreme Court is satisfied —
 - (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal exercising jurisdiction in a place outside Western Australia; and
 - (b) that the evidence to which the application relates is to be obtained for the purposes of proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the provisions of sections 117 to 118B apply.

- (2) Sections 117 to 118B do not apply in respect of proceedings relating to the commission of an offence or an alleged offence unless the requesting court is a court of a place in Australia or of New Zealand.

[Section 116 inserted by No. 34 of 1989 s.4.]

117. Power of the Supreme Court to give effect to application for assistance

- (1) The Supreme Court has power, on any such application as is mentioned in section 116, by order to make such provision for obtaining evidence in Western Australia as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made.
- (2) An order under this section may require a specified person to take such steps as the court may consider appropriate for that purpose.
- (3) Without limiting the generality of subsections (1) and (2), an order under this section may, in particular, make provision —
 - (a) for the examination of witnesses, either orally or in writing;
 - (b) for the production of documents;
 - (c) for the inspection, photographing, preservation, custody or detention of any property;
 - (d) for the taking of samples of any property and the carrying out of any experiments on or with any property;
 - (e) for the medical examination of any person;
 - (f) without limiting paragraph (e), for the taking and testing of samples of blood from any person.
- (4) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of proceedings in the Supreme Court (whether or not proceedings of the same description as those to which the application for the order relates).
- (5) Subsection (4) does not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.
- (6) An order under this section shall not require a person —

- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in the person's possession, custody or power; or
 - (b) to produce any documents other than particular documents specified in the order and appearing to the court making the order to be, or to be likely to be, in the person's possession, custody or power.
- (7) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time on attendance as a witness in proceedings before the Supreme Court.

[Section 117 inserted by No. 34 of 1989 s.4.]

118. Privilege of witnesses

- (1) A person shall not be compelled by virtue of an order under section 117 to give any evidence which the person could not be compelled to give —
- (a) in similar proceedings in Western Australia; or
 - (b) in similar proceedings in the place in which the requesting court exercises jurisdiction.
- (2) Subsection (1)(b) does not apply unless the claim of the person in question to be exempt from giving evidence is either —
- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
 - (b) conceded by the applicant for the order.
- (3) Where such a claim by any person is not so supported or conceded, the person may (subject to the other provisions of this section) be required to give the evidence to which the claim relates, but that evidence shall not be transmitted to the requesting court unless that court, on the matter being referred to it, dismisses the claim.

s. 118A

- (4) In this section, references to giving evidence include references to answering any question and to producing any document, and the reference in subsection (3) to the transmission of evidence given by a person shall be construed accordingly.

[Section 118 inserted by No. 34 of 1989 s.4.]

118A. Rules of court

- (1) Rules may be made under the *Supreme Court Act 1935* for or with respect to —
- (a) the manner in which an application mentioned in section 116 is to be made;
 - (b) the circumstances in which an order can be made under section 117; and
 - (c) the manner in which any reference mentioned in section 118(3) is to be made.
- (2) Any such rules may include such incidental, supplementary and consequential provisions as are necessary or convenient.

[Section 118A inserted by No. 34 of 1989 s.4.]

118B. Offence

If any person, in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under section 117, makes a statement —

- (a) which the person knows to be false in a material particular; or
- (b) which is false in a material particular and which the person does not believe to be true,

the person is guilty of a crime and is liable to imprisonment for 7 years.

[Section 118B inserted by No. 34 of 1989 s.4.]

118C. Operation of other laws

Sections 115 to 118C are not intended to exclude or limit the operation of any other law of the State that makes provision for the taking of evidence in the State for the purpose of a proceeding outside the State.

[Section 118C inserted by No. 34 of 1989 s.4.]

Allowances to witnesses and interpreters in specified proceedings

119. Regulations for fees to witnesses and interpreters in specified proceedings

(1) In this section —

“public official” means a Minister of the Crown, a person employed in the Public Service of the State, a member of the Police Force, or a person employed by a local government or any other statutory body and includes any person acting as agent of or under the instructions of such a person or body;

“Summary Court” means a court of petty sessions, or the Children’s Court of Western Australia.

(2) The Governor may make regulations with respect to fixing and requiring the payment of fees and expenses to —

(a) witnesses called, and interpreters arranged, by the prosecution —

(i) in criminal trials and criminal appeal proceedings in the Supreme Court and in criminal trials in the District Court of Western Australia established under the *District Court of Western Australia Act 1969*; and

s. 120

- (ii) in proceedings in a Summary Court against a person charged with an offence on a complaint by a public official acting or purporting to act by virtue of his office, and in proceedings on appeal therefrom;
 - (b) witnesses and interpreters at inquests held under the *Coroners Act 1996*; and
 - (c) persons appointed under section 106F.
- (3) The regulations made under this section —
 - (a) may require that any information or account required to be given or furnished thereunder shall be verified by statutory declaration; and
 - (b) may confer a discretionary authority.
- (4) Where a fee or an allowance required to be paid pursuant to the regulations made under this section is with respect to proceedings of a kind mentioned in subsection (2)(a)(ii) in which the complainant was a person employed by a local government, or any other statutory body, or was another person acting as agent of or under the instructions of such a person or body, the fee or allowance shall be paid by that body and shall be recoverable as a civil debt, but in all other cases a fee or allowance required to be paid pursuant to the regulations made under this section shall be charged to the Consolidated Fund.

[Section 119 inserted by No. 61 of 1975 s.2; amended by No. 15 of 1991 s.23; No. 36 of 1992 s.9; No. 6 of 1993 s.13; No. 73 of 1994 s.4; No. 2 of 1996 s.61; No. 14 of 1996 s.4; No. 49 of 1996 s.64.]

Interpretation of sections 120 to 132

[Heading inserted by No. 48 of 1998 s.9.]

120. Interpretation

- (1) In this section and sections 121 to 132, unless the contrary intention appears —

“audio link” means facilities (including telephone) that enable, at the same time, a court at one place to hear a person giving evidence or making a submission at another place and vice versa;

“Australia” includes the Territories of the Commonwealth (whether internal or external) for the government of which as a Territory provision is made by any Commonwealth Act;

“participating jurisdiction” means —

- (a) another State or a Territory in which provisions of an Act in terms substantially corresponding to this section and sections 121 to 132, are in force; or
- (b) any other jurisdiction outside the State prescribed to be a participating jurisdiction;

“recognized court” means a court or tribunal of a participating jurisdiction —

- (a) that is authorized by the provisions of an Act of that jurisdiction in terms substantially corresponding to this section and sections 121 to 132 to direct that evidence be taken or a submission be made by video link or audio link from this State; or
- (b) that is prescribed to be a recognized court;

“tribunal” of a State or Territory means a person or body authorized by or under a law of the State or Territory to take evidence on oath or affirmation;

“video link” means facilities (including closed circuit television) that enable, at the same time, a court at one place to see and hear a person giving evidence or making a submission at another place and vice versa;

“WA court” means —

- (a) the Supreme Court; or
- (b) a court or tribunal established in this State under a written law.

s. 121

- (2) In this section and sections 121 to 132, a reference to a place outside the State shall be taken to refer to a place outside the State whether within or outside Australia.

[Section 120 inserted by No. 48 of 1998 s.9.]

Use of video links or audio links by WA courts

[Heading inserted by No. 48 of 1998 s.9.]

121. WA court may take evidence or receive a submission by video link or audio link

- (1) Subject to this section, a WA court may, on its own initiative or on the application of a party to a proceeding in or before the court, direct that in that proceeding evidence be taken or a submission be received by video link or audio link from a person at a place, whether in or outside this State, that is outside the courtroom or other place where the court is sitting.
- (2) The court shall not make such a direction unless the court is satisfied that —
- (a) the video link or audio link is available or can reasonably be made available; and
 - (b) the direction is in the interests of justice.
- (3) For the purposes of taking evidence or receiving a submission by video link or audio link from a place in this State in accordance with such a direction, the place shall be taken to be part of the court.
- (4) For the purposes of taking evidence or receiving a submission by video link or audio link from a place in a participating jurisdiction, the court may exercise in that place any of its powers that the court is permitted, under the law of the jurisdiction, to exercise in that place.

[Section 121 inserted by No. 48 of 1998 s.9¹².]

122. Counsel entitled to practise

Despite section 76(1) of the *Legal Practitioner's Act 1893*, a person who is entitled to practise as a legal practitioner in a participating jurisdiction is entitled to practise as a barrister, solicitor or both —

- (a) in relation to the examination, cross-examination or re-examination of a witness in the participating jurisdiction whose evidence is being given by video link or audio link before a WA court; and
- (b) in relation to the making of a submission by video link or audio link from the participating jurisdiction in a proceeding before a WA court.

[Section 122 inserted by No. 48 of 1998 s.9.]

Use of video links or audio links in this State by recognized courts

[Heading inserted by No. 48 of 1998 s.9.]

123. Recognized court may take evidence or receive a submission from a person in this State

A recognized court may, for the purposes of a proceeding in or before it, take evidence or receive a submission by video link or audio link from a person in this State.

[Section 123 inserted by No. 48 of 1998 s.9.]

124. Powers of a recognized court

- (1) For the purposes of the proceeding the recognized court may exercise in this State any of its powers in relation to the taking of evidence or the receipt of a submission except its powers —
 - (a) to punish for contempt; and
 - (b) to enforce or execute its orders or process.
- (2) The laws of the participating jurisdiction (including rules of court) that apply to the proceeding in that jurisdiction also apply, by force of this subsection, to the practice and procedure of the

s. 125

recognized court in taking evidence or receiving a submission by video link or audio link from a person in this State.

- (3) For the purposes of the court exercising its powers under subsection (1), the place in this State where the evidence is given or the submission is made shall be taken to be part of the court.

[Section 124 inserted by No. 48 of 1998 s.9.]

125. Orders made by a recognized court

Without limiting section 124, the recognized court may, by order —

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private;
- (b) require a person to leave a place in this State where the giving of evidence or the making of a submission is taking place or is going to take place; or
- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

[Section 125 inserted by No. 48 of 1998 s.9.]

126. Enforcement of an order under section 125

- (1) An order under section 125 shall be complied with.
- (2) Subject to rules of court, the order may be enforced by the Supreme Court as if the order were an order of that court.
- (3) Without limiting subsection (2), a person who contravenes the order —
 - (a) shall be taken to be in contempt of the Supreme Court; and
 - (b) is punishable accordingly,

unless the person establishes that the contravention should be excused.

[Section 126 inserted by No. 48 of 1998 s.9.]

127. Privileges, protection and immunity of participants in proceedings in a recognized court

- (1) A person acting judicially in a proceeding in or before a recognized court has, in connection with evidence being taken or a submission being received by video link or audio link from a person in this State, the same privileges, protection and immunity as a judge of the Supreme Court.
- (2) A person appearing as a legal practitioner in a proceeding in or before a recognized court has, in connection with evidence being taken or a submission being received by video link or audio link from a person in this State, the same protection and immunity as a barrister has in appearing for a party in a proceeding, in or before the Supreme Court.
- (3) A person appearing as a witness in a proceeding in or before a recognized court by video link or audio link from this State has the same protection as a witness in a proceeding in or before the Supreme Court.

[Section 127 inserted by No. 48 of 1998 s.9.]

128. Recognized court may administer an oath in the State

- (1) A recognized court may, for the purpose of obtaining in the proceeding by video link or audio link the testimony of a person in this State, administer an oath or affirmation in accordance with the practice and procedure of the recognized court.
- (2) Evidence given by a person on oath or affirmation so administered is, for the purposes of *The Criminal Code*, testimony given in a judicial proceeding.

[Section 128 inserted by No. 48 of 1998 s.9.]

129. Assistance to a recognized court

An officer of a WA court may, at the request of a recognized court —

s. 130

- (a) attend at the place in the State where evidence is to be or is being given, or submissions are to be or are being made, in the proceeding;
- (b) take such action as the recognized court directs to facilitate the proceeding; and
- (c) assist with the administering by the recognized court of an oath or affirmation.

[Section 129 inserted by No. 48 of 1998 s.9.]

130. Contempt of a recognized court

- (1) A person shall not, while evidence is being given or a submission is being made in this State by video link or audio link, in the proceeding in a recognized court —
 - (a) threaten, intimidate or wilfully insult any of the following:
 - (i) a person acting judicially in the proceeding;
 - (ii) a Master, Registrar, Deputy Registrar or other officer of that court who is taking part in or assisting in the proceeding;
 - (iii) a person appearing in the proceeding as a legal practitioner;
 - (iv) a witness in the proceeding; or
 - (v) a juror in the proceeding;
 - (b) wilfully interrupt or obstruct the proceeding; or
 - (c) wilfully and without lawful excuse disobey an order or direction of the court.
- (2) A person who contravenes subsection (1) is taken to commit a contempt of the Supreme Court and is punishable accordingly by that court.

[Section 130 inserted by No. 48 of 1998 s.9.]

General provisions relating to the use of video links or audio links

[Heading inserted by No. 48 of 1998 s.9.]

131. Regulations for fees and expenses relating to the use of a video link or an audio link

The Governor may make regulations with respect to fixing and requiring the payment of fees and expenses relating to the taking of evidence or receiving of a submission by video link or audio link.

[Section 131 inserted by No. 48 of 1998 s.9.]

132. Operation of other laws

Sections 120 to 132 are not intended to exclude or limit the operation of any other law of the State that makes provision for the taking of evidence or making of a submission —

- (a) in the State for the purpose of a proceeding in the State;
- (b) outside the State for the purpose of a proceeding in the State; and
- (c) in the State for the purpose of a proceeding outside the State.

[Section 132 inserted by No. 48 of 1998 s.9.]

[First Schedule omitted under The Reprints Act 1984, s.7(4)(f).]

The Second Schedule

[Section 9]

Part 1 — Offences under *The Criminal Code*

Provision	Description of offence
s.58	Threatening a person who is to give, or has given, evidence before Parliament
s.68	Going armed in public so as to cause fear
s.74	Threatening violence in relation to a dwelling house
s.98	Undue influence of an elector
s.123	Threatening a juror or corruption of or by a juror
s.128	Threatening a witness before a Royal Commission or public inquiry
s.144	Using force to rescue a person undergoing, or liable to, strict security life imprisonment
s.186	Occupier or owner permitting a young person to be on premises for unlawful carnal knowledge
s.191	Procuration
s.192(1), (3) and (4)	Procuring unlawful carnal knowledge of a person by threats, intimidation or drugs
s.199	Abortion
s.278 (as read with s.282)	Wilful murder
s.279 (as read with s.282)	Murder
s.280 (as read with s.287)	Manslaughter
s.281 (as read with s.287)	Killing on provocation

The Second Schedule

Provision	Description of offence
s.281A (as read with s.287A)	Infanticide
s.283	Attempt to murder
s.288	Procuring, inducing or aiding suicide
s.290	Killing an unborn child
s.292	Disabling in order to commit an indictable offence or facilitate the flight of an offender
s.293	Stupefying in order to commit an indictable offence or facilitate the flight of an offender
s.294	Acts intended to maim, disfigure or disable, do grievous bodily harm, or resist or prevent arrest
s.294A	Offences relating to dangerous goods on aircraft
s.295	Preventing or obstructing escape or rescue from a wreck
s.296	Intentionally endangering the safety of persons travelling on a railway
s.296A	Intentionally endangering the safety of persons travelling on an aircraft
s.297	Grievous bodily harm
s.298	Causing an explosion likely to endanger life
s.299	Attempting to cause an explosion likely to endanger life or possessing an explosive substance with intent to endanger life
s.300	Endangering life by unlawful administration of poison etc., with intent to injure or annoy
s.301(1)	Unlawful wounding
s.301(2)	Unlawful administration of poison etc., with intent to injure or annoy
s.302	Endangering life or health by failing to provide necessaries
s.303	Endangering the life or health of a servant or apprentice under 16
s.304	Endangering the life or health of a child under 7 by abandonment or exposure
s. 305	Setting mantraps

The Second Schedule

Provision	Description of offence
s.306	Causing bodily harm by unlawful act or by omission to perform duty
s.307	Endangering the safety of persons travelling on a railway by unlawful act or omission to perform duty
s.308	Sending or taking an unseaworthy ship to sea
s.309	Endangering the safety of persons on board a steam vessel by unlawful act or omission to perform a duty relating to machinery
s.310	Offence by engineer where there is a contravention of section 309
s.313	Common assaults
s.317	Assaults occasioning bodily harm
s.317A	Assaults with intent
s.318	Serious assaults
s.318A	Assaulting or threatening a member of the crew of an aircraft
s.320	Child under 13: Sexual offences against
s.321	Child of or over 13 and under 16: Sexual offences against
s.321A	Child under 16: Sexual relationship with
s.322	Child of or over 16: Sexual offences against by person in authority etc.
s.322A	Juvenile male: Sexual offences against
s.323	Indecent assault
s.324	Aggravated indecent assault
s.325	Sexual penetration without consent
s.326	Aggravated sexual penetration without consent
s.327	Sexual coercion
s.328	Aggravated sexual coercion
s.329	Relatives and the like: Sexual offences by
s.330	Incapable person: Sexual offences against
s.332	Kidnapping
s.333	Deprivation of liberty

The Second Schedule

Provision	Description of offence
s.336	Procuring apprehension or detention of persons not suffering from mental illness or impairment
s.337	Unlawful detention or custody of persons who are mentally ill or impaired
s.338A	Threats with intent to influence
s.338B	Threats
s.338C	False statements as to the existence of threats or plans to harm persons or property
s.343	Child stealing
s.344	Desertion of a child
s.391 (as read with s.393)	Robbery
s.394	Assault with intent to commit robbery
s.395	Assault with intent to steal
s.396	Demanding property with threats with intent to steal
s.397	Demanding property with threats with intent to extort or gain
s.399	Procuring execution, destruction etc., of documents by violence or restraint or by threats
s.444	Criminal damage
s.449	Casting away, destroying or endangering vessels
s.451	Obstructing or damaging railways
s.451A	Endangering the safe use of aircraft
s.451B	Unlawful interference with mechanism of aircraft
s.454	Causing explosion likely to do serious damage to property
s.455	Attempting to cause explosion likely to do serious damage to property
s.456	Attempts to damage or obstruct mines
s.457	Interfering with marine signals
s.458	Interfering with navigation works

The Second Schedule

Part 2 — Offences under the *Road Traffic Act 1974*

Provision	Description of offence
s. 54	Failure to stop when a vehicle is involved in an accident
s.56	Failure to report an accident involving a vehicle whereby bodily injury is caused
s.57	Failure of the owner etc., to identify the driver or person in charge or control of a vehicle involved in an accident
s.59	Dangerous driving causing death or grievous bodily harm
s.59A	Dangerous driving causing bodily harm
s.60	Reckless driving
s.61	Dangerous driving

Part 3 — Offence under the *Police Act 1892*

Provision	Description of offence
s.57	Negligent, careless or furious driving or riding

Part 4 — Offence under the *Child Welfare Act 1947*

Provision	Description of offence
s.31A	Misconduct or neglect causing a child to become an offender or be in need of care and protection

Part 5 — Offences under the *Misuse Of Drugs Act 1981*

Provision	Description of offence
s.6(1)	Indictable offences concerned with prohibited drugs
s.7(1)	Indictable offences concerned with prohibited plants
s.18(2)	Dealing with property to which an embargo notice relates

The Second Schedule

Provision	Description of offence
s.33(1)	Attempting, or inciting another, to commit, or becoming an accessory after the fact to, an indictable offence under section 6(1) or 7(1)
s.33(2)	Conspiring with another to commit an indictable offence under section 6(1) or 7(1).

[Second Schedule inserted by No. 48 of 1991 s.10; amended by No. 14 of 1992 s.15(2); No. 82 of 1994 s.13(4); No. 69 of 1996 s.31; No. 15 of 1998 s.6(1).]

[Third Schedule repealed by No. 70 of 1988 s.44.]

The Fourth Schedule

The Fourth Schedule

[Section 57]

Column 1	Column 2
Name of department or Officer	Names of Certifying Officers
The Commissioners of the Treasury	Any Commissioner, Secretary, or Assistant Secretary of the Treasury
The Commissioners for executing the office of Lord High Admiral	Any of the Commissioners for executing the office of Lord High Admiral or either of the Secretaries to the said Commissioners
Secretaries of State	Any Secretary or Under Secretary of State
Committee of Privy Council for Trade	Any member of the Committee of Privy Council for Trade, or any Secretary or Assistant Secretary of the said Committee
The Poor Law Board	Any Commissioner of the Poor Law Board, or any Secretary or Assistant Secretary of the said board.

The Fifth Schedule

The Fifth Schedule

[Section 61]

Column 1	Column 2
Name of Officer, department, Body or Board	Names of Certifying Officers
The Governor	The Governor or his Private Secretary
The Governor in Executive Council	The Clerk of the Executive Council
The Legislative Council or Legislative Assembly	The Clerk or Clerk Assistant
The Lands and Surveys Department ¹³	The Minister for Lands, the Under Secretary for Lands, or the Surveyor General
The Treasurer's Department ¹⁴	The Treasurer, the Under Treasurer, or the Auditor General
The Education Department	The Minister of Education, or the Director General of Schools
The Agricultural Department ¹⁵	The Minister for Agriculture, the Director of Agriculture, or the Secretary to the Department of Agriculture
The Attorney General's Department	The Attorney General, the Under Secretary for Law, the Master Supreme Court, the Registrar or Deputy Registrar of Titles, or the Chief Electoral Officer
The Mines Department ¹¹	The Minister for Mines, or the Under Secretary for Mines
The Railway Department ¹⁶	The Minister for Railways, the Commissioner of Railways, or the Secretary to the Commissioner of Railways

The Fifth Schedule

Column 1	Column 2
Name of Officer, department, Body or Board	Names of Certifying Officers
The Chief Secretary's Department	The Chief Secretary, the Under Secretary, the Director of the Department of Corrections, the Director of Mental Health Services, the Commissioner of Police, or the Registrar General
The Public Works Department	The Minister for Works, or the Under Secretary for Public Works
Any Board constituted under any Act in force in Western Australia	The Chairman or Secretary

[The Fifth Schedule amended by No. 8 of 1925 s.2.]

The Sixth Schedule

[S.47(1a)]

Western Australia

Evidence Act 1906

(In the (a))

(b)

IN THE MATTER of (c) by

..... against

.....

I of

....., a fingerprint expert

attached to the (d)

make oath and say as follows —

1. I have examined the fingerprint card, now produced and shown to me marked "A". The fingerprints on the card are identical with those on a fingerprint card, portion of the records of the (d) being the fingerprints of one alias

2. According to those records, which I believe to be accurate, the said has been convicted of the offences set out below, namely —

(Here insert description of offences, the courts in which the conviction, took place, and the dates of the convictions.)

3. From an examination of those records I believe that the person referred to as having been convicted, in the document(s) now shown to me and marked respectively "B" ("C", "D", etc.), is identical with the person whose fingerprints are on the card marked "A".

Sworn at)

this day of)

..... 19)

Before me

.....

The Sixth Schedule

A person having authority to take affidavits in

-
- ((a) Designation of Court) ((b) Parties) ((c) Description of legal proceedings,
e.g. **“an action”, “a complaint”, “an indictment”, “an information”**)
 - ((d) Designation of department)

[Sixth Schedule inserted by No. 16 of 1956 s.5.]

Schedule 7

(Section 106A)

Part A

1. A proceeding comes within the provisions of this schedule if —
 - (a) it is a proceeding in which a person stands charged with an offence under a section or Chapter of *The Criminal Code* mentioned in Part B or C —
 - (i) whether as a single offence or together with any other offence as an additional or alternative count; and
 - (ii) whether or not the person is liable on the charge to be found guilty of any other offence;and
 - (b) the affected child was under the age of 16 years on the day on which the complaint of the offence was made or, in the case of an indictment under section 579 of *The Criminal Code*, on the day on which the indictment was presented; and
 - (c) in the case of a proceeding for an offence mentioned in Part C, the defendant is a person to whom this paragraph applies.
2. A proceeding also comes within the provisions of the schedule if it is an application under section 30 of the *Child Welfare Act 1947* for a declaration that a child is in need of care and protection.
3. A proceeding also comes within the provisions of the schedule if it is a proceeding by way of appeal from a decision made, or a penalty imposed, in any proceeding that comes within clause 1 or 2.
4. Paragraph (c) of clause 1 applies to —
 - (a) a parent, step-parent, grandparent, step-grandparent, brother, sister, step-brother, step-sister, uncle, aunt, nephew or niece of the complainant and a child of any uncle or aunt of the complainant;
 - (b) a person who is or was, at the time when the offence was committed, living in the same household as the complainant;
or

Schedule 7

- (c) a person who at any time had the care of, or exercised authority over, the child in the household on a regular basis, and it is immaterial whether a relationship referred to in paragraph (a) is of the whole blood or of the half blood.

Part B

Chapter or Section	Matter to which Chapter or section relates
181	Carnal knowledge of animal
184	Indecent practices between males in public
186	Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge
191	Procuration
192	Procuring person to have unlawful carnal knowledge by threats, fraud, or administering drugs
195	Permitting boys to resort to brothels
XXXI	Sexual offences

Part C

Chapter or Section	Matter to which Chapter or section relates
XXVIII	Homicide; suicide; concealment of birth
292	Disabling in order to commit indictable offence
293	Stupefying in order to commit indictable offence
294	Acts intended to cause grievous bodily harm or prevent arrest
294A	Dangerous goods on aircraft
297	Grievous bodily harm
298	Causing explosion likely to endanger life
299	Attempting to cause explosion likely to endanger life
300	Maliciously administering poison with intent to harm
301	Wounding and similar acts
302	Failure to supply necessities
304	Endangering life of children by exposure

Chapter or Section	Matter to which Chapter or section relates
306	Negligent acts causing harm
313	Common assaults
317	Assaults occasioning bodily harm
317A	Assaults with intent
318	Serious assaults
332	Kidnapping
333	Deprivation of liberty
347	Child stealing

[Schedule 7 inserted by No. 36 of 1992 s.10; amended by No. 82 of 1994 s.13(4).]



Notes

¹ This reprint is a compilation as at 22 November 1999 the *Evidence Act 1906* and includes the amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Evidence Act 1906</i>	28 of 1906	14 December 1906	14 December 1906	
<i>Evidence Act Amendment Act 1913</i>	16 of 1913	30 December 1913	30 December 1913	
<i>Evidence Act Amendment Act 1921</i>	19 of 1921	29 November 1921	29 November 1921	
<i>Ministers' Titles Act 1925</i> , section 2	8 of 1925	24 September 1925	24 September 1925	
<i>Evidence Act Amendment Act 1930</i>	34 of 1930	22 December 1930	22 December 1930	
<i>Matrimonial Causes and Personal Status Code 1948</i> , section 3(2)	73 of 1948	4 March 1949	1 January 1950 (see section 1 and <i>Gazette</i> 19 October 1949 p.2499)	
<i>Evidence Act Amendment Act 1956</i>	16 of 1956	26 October 1956	26 October 1956	
<i>Evidence Act Amendment Act 1960</i>	10 of 1960	6 October 1960	6 October 1960	
<i>Evidence Act Amendment Act 1962</i>	12 of 1962	1 October 1962	1 October 1962	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Evidence Act Amendment Act 1963</i>	54 of 1963	17 December 1963	1 July 1964 (see section 2 and <i>Gazette</i> 26 June 1964 p.2525)	
<i>Evidence Act Amendment Act 1964</i>	11 of 1964	2 October 1964	2 October 1964	
<i>Decimal Currency Act 1965, section 4</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2(2)) Balance: 21 December 1965	
<i>Evidence Act Amendment Act 1966</i>	20 of 1966	17 October 1966	1 February 1967 (see section 2 and <i>Gazette</i> 20 January 1967 p.89)	
<i>Evidence Act Amendment Act 1967</i>	23 of 1967	27 October 1967	27 October 1967	
<i>Evidence Act Amendment Act (No. 2) 1967</i>	69 of 1967	5 December 1967	5 December 1967	
<i>Evidence Act Amendment Act 1971</i>	41 of 1971	10 December 1971	10 December 1971	
<i>Evidence Act Amendment Act 1975</i>	61 of 1975	24 October 1975	24 October 1975	
<i>Evidence Act Amendment Act (No. 2) 1975</i>	90 of 1975	20 November 1975	20 May 1977 (see section 2 and <i>Gazette</i> 20 May 1977 p.1489)	
<i>Acts Amendment (Expert Evidence) Act 1976, Part I</i>	111 of 1976	25 November 1976	25 November 1976	

Evidence Act 1906

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Evidence Act Amendment Act (No. 2) 1976</i>	142 of 1976	13 December 1976	13 December 1976	
<i>Evidence Act Amendment Act 1976</i>	145 of 1976	13 December 1976	20 May 1977 (see section 2 and <i>Gazette</i> 20 May 1977 p.1489)	
<i>Evidence Act Amendment Act 1978</i>	33 of 1978	21 August 1978	21 August 1978	
<i>Evidence Act Amendment Act (No. 2) 1978</i>	111 of 1978	12 December 1978	12 December 1978	
<i>Acts Amendment (Master, Supreme Court) Act 1979, Part X</i>	67 of 1979	21 November 1979	11 February 1980 (see section 2 and <i>Gazette</i> 8 February 1980 p.383)	
<i>Companies (Consequential Amendments) Act 1982, section 28</i>	10 of 1982	14 May 1982	1 July 1982 (see section 2(1) and <i>Gazette</i> 25 June 1982 p.2079)	
<i>Acts Amendment (Betting and Gaming) Act 1982, Part IV</i>	108 of 1982	7 December 1982	31 December 1982 (see section 2 and <i>Gazette</i> 31 December 1982 p.4968)	
<i>Artificial Conception Act 1985, section 8</i>	14 of 1985	12 April 1985	1 July 1985 (see section 2 and <i>Gazette</i> 28 June 1985 p.2291)	Section 4: application ²²
<i>Acts Amendment (Sexual Assaults) Act 1985, Part III</i>	74 of 1985	20 November 1985	1 April 1986 (see <i>Gazette</i> 28 February 1986 p.605)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Recording of Depositions) Act 1986, Part III</i>	81 of 1986	9 December 1986	1 August 1987 (see section 2 and <i>Gazette</i> 10 July 1987 p.2607)	
<i>Evidence Amendment Act 1987</i>	66 of 1987	1 December 1987	Act, other than sections 9 & 10: 8 April 1988 (see section 2 and <i>Gazette</i> 8 April 1988 p.1107) sections 9 and 10: 8 March 1991 (see section 2 and <i>Gazette</i> 8 March 1991 p.1030)	Section 10 repealed by No. 18 of 1974
<i>Criminal Law Amendment Act 1988, Part 3</i>	70 of 1988	15 December 1988	1 February 1989 (see section 2(1) and <i>Gazette</i> 20 January 1989 p.110)	
<i>Evidence Amendment Act 1989</i>	34 of 1989	22 December 1989	8 March 1991 (see section 2 and <i>Gazette</i> 8 March 1991 p.1029)	Section 5: repeals ¹⁷
<i>Evidence Amendment Act 1990</i>	47 of 1990	4 December 1990	4 December 1990	Section 4(2): transitional ²
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991, section 23</i>	15 of 1991	21 June 1991	9 August 1991 (see section 2(2) and <i>Gazette</i> 9 August 1991 p.4101)	
<i>Acts Amendment (Evidence) Act 1991, Part 2</i>	48 of 1991	17 December 1991	31 March 1992 (see section 2 and <i>Gazette</i> 24 March 1992 p.1317)	Section 3: transitional ¹⁸

Evidence Act 1906

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Sexual Offences) Act 1992, Part 4</i>	14 of 1992	17 June 1992	1 August 1992 (see section 2 and <i>Gazette</i> 28 July 1992 p.3671)	
<i>Acts Amendment (Evidence of Children and Others) Act 1992, Part 2</i>	36 of 1992	22 September 1992	16 November 1992 (see section 2 and <i>Gazette</i> 6 November 1992 p.5415)	Section 13: transitional ¹⁹
<i>Acts Amendment (Jurisdiction and Criminal Procedure) Act 1992, Part 6</i>	53 of 1992	9 December 1992	9 December 1992 (see section 2)	
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	
<i>Acts Amendment (Ministry of Justice) Act 1993, Part 9</i>	31 of 1993	15 December 1993	Deemed operative 1 July 1993 (see section 2)	Section 68: savings; section 69: transitional ²⁰
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994	
<i>Criminal Law Amendment Act 1994, section 13(4)</i>	82 of 1994	23 December 1994	20 January 1995 (see section 2(2))	
<i>Stamp Amendment Act 1995, section 9</i>	41 of 1995	24 October 1995	24 October 1995	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Coroners Act 1996</i> , section 61	2 of 1996	24 May 1996	7 April 1997 (see section 2 and <i>Gazette</i> 18 March 1997 p.1529)	
<i>Local Government (Consequential Amendments) Act 1996</i> , section 4	14 of 1996	28 June 1996	1 July 1996 (see section 2(1))	
<i>Financial Legislation Amendment Act 1996</i> , section 64	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	
<i>Mental Health (Consequential Provisions) Act 1996</i> , Part 7	69 of 1996	13 November 1996	13 November 1997 (see section 2)	
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> , section 57	57 of 1997	15 December 1997	15 December 1997 (see section 2)	
<i>Acts Amendment (Abortion) Act 1998</i> , section 6	15 of 1998	26 May 1998	26 May 1998 (see section 2)	Section 6(2) savings ²¹
<i>Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998</i> , section 12	40 of 1998	30 October 1998	14 April 1999 (see section 2 and <i>Gazette</i> 9 April 1999 p.1433.)	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Video and Audio Links) Act 1998, Part 3</i>	48 of 1998	19 November 1998	18 January 1999 (see section 2 and <i>Gazette</i> 15 January 1999 p.109)	Section 3 transitional ¹²
<i>Surveillance Devices Act 1998, section 46</i>	56 of 1998	11 January 1999	22 November 1999 (see section 2 and <i>Gazette</i> 22 November 1999 p.5843.)	
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999, section 78</i>	26 of 1999	29 June 1999	1 July 1999 (see section 2(1) and <i>Gazette</i> 30 June 1999 p.2905)	

N.B. The *Evidence Act 1906* was affected by the *Declarations and Attestations Act 1913* (No. 12 of 1913).

² Section 4(2) of the *Evidence Amendment Act 1990* (No. 47 of 1990) reads as follows —

“

- (2) Subsection (2a) inserted in section 11 of the principal Act by subsection (1) applies to a certificate given under subsection (2) of that section in respect of evidence given on or after the day on which this section comes into operation.

”

³ Repealed by *Interpretation Act 1984* (No. 12 of 1984).

⁴ Under section 31(1)(f) of the *Acts Amendment (Public Service) Act 1987* (No. 113 of 1987) references to “Permanent Head” may be construed as references to “chief executive officer”.

⁵ Now the Library and Information Service of Western Australia.

⁶ Superseded by the *Companies (Applications of Laws) Act 1981* (No. 119 of 1981) which has since been superseded by the Corporations Law.

⁷ Now the *Life Insurance Act 1995* of the Commonwealth.

⁸ Documents or class of documents excepted. See *Gazette* 20 January 1967 p.89.

⁹ In respect of matters arising after 1 January 1991 the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990* (No. 105 of 1990).

¹⁰ Superseded by the Corporations Law

¹¹ Now known as the Department of Minerals and Energy
¹² Section 3 of the *Acts Amendment (Video and Audio Links) Act 1998* (No. 48 of 1998) reads as follows —

“

3. Power to use certain technology

- (1) Nothing in the amended provisions is to be taken as preventing the use by a court or other person acting judicially of a video link or audio link (as those terms are defined in section 121 of the *Evidence Act 1906*) in any case where the court or person thinks fit and where the use of the video link or audio link would not be contrary to law.
- (2) In subsection (1) —
- “**amended provisions**” means —
- (a) *The Criminal Code*;
 - (b) the *Evidence Act 1906*;
 - (c) the *Justices Act 1902*; and
 - (d) the *Sentencing Act 1995*,
- as amended by this Act

”.

¹³ Now Department of Land Administration.

¹⁴ Now Treasury Department.

¹⁵ See Agriculture Western Australia.

¹⁶ Now Western Australian Government Railways Commission (“Westrail”).

¹⁷ Section 5 of the *Evidence Amendment Act 1989* (No. 34 of 1989) reads as follows —

“

5. Repeals

- (1) The following Acts of the Parliament of the United Kingdom are repealed in so far as they are part of the law of Western Australia —
- The Foreign Tribunals Evidence Act 1856*;
 - The Evidence by Commission Act 1859*;
 - The Evidence by Commission Act 1885*.
- (2) Nothing in this section affects —
- (a) any application to any court or judge which is pending at the commencement of this Act;

- (b) any certificate given for the purposes of such an application;
- (c) any power to make an order on such an application; or
- (d) the operation or enforcement of any order made on such an application.

”

¹⁸ Section 3 of the *Acts Amendment (Evidence) Act 1991* (No. 48 of 1991) reads as follows —

“

3. Amendments not to apply to certain proceedings

- (1) In subsection (2) “**prescribed proceedings**” means —
 - (a) any proceedings instituted before the commencement of this Act;
 - (b) any appeal arising out of, or review of, any proceedings mentioned in paragraph (a); and
 - (c) any rehearing of, or new trial in respect of, any proceedings mentioned in paragraph (a).
- (2) Prescribed proceedings shall be heard, dealt with and determined as if this Act had not been enacted.

”

¹⁹ Section 13 of the *Acts Amendment (Evidence of Children and Others) Act 1992* (No. 36 of 1992) reads as follows —

“

13. Transitional provisions

- (1) The following proceedings are to be determined as if this Act had not come into operation —
 - (a) a proceeding on an existing complaint and an indictment arising therefrom and any appeal in respect of any such proceeding;
 - (b) a proceeding on an existing indictment under section 579 of *The Criminal Code* and any appeal in respect of any such proceeding;
 - (c) any other proceeding within the meaning in section 106A of the principal Act that is an existing proceeding.
- (2) In subsection (1) “**existing**” in relation to a complaint or indictment means made or presented before the day on which this Act comes into operation, and in relation to any other proceeding means commenced before that day.

”
20 Part 19 (sections 68 and 69) of the *Acts Amendment (Ministry of Justice) Act 1993* (No. 31 of 1993) reads as follows —

“

PART 19 — SAVINGS AND TRANSITIONAL

68. Savings

If this Act is not passed until after 1 July 1993, anything done after that day but before this Act is passed that would have been in accordance with law if this Act had not come into operation but as a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

69. Transitional

Unless the contrary intention appears, a reference, however expressed, in any law or document to the former Department of Corrective Services or Crown Law Department, the chief executive officer of either of those departments, or an office or organizational unit within either of those departments, is to be read as a reference to the Ministry of Justice, the chief executive officer of the Ministry of Justice, or the corresponding office or unit within the Ministry of Justice, as is appropriate.

”

21 Section 6(2) of the *Acts Amendment (Abortion) Act 1998* (No. 15 of 1998) reads as follows —

“

- (2) In relation to an offence committed before the commencement of this Act, the *Evidence Act 1906* applies as if subsection (1) had not been enacted.

”

22 Section 4 of the *Artificial Conception Act 1985* (No. 14 of 1985) reads as follows —

“

4. Application

- (1) The provisions of this Act apply —
- (a) in respect of a fertilization procedure carried out before or after the commencement of this Act either within or outside Western Australia; and

- (b) in respect of a child born before or after the commencement of this Act either within or outside Western Australia.
- (2) Nothing in this Act affects the vesting of property in possession or in interest before the commencement of this Act.

”

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
a broadcast	36C(4)
Act.....	3
affected child.....	106A
an approved machine	73D(1)
audio link	120(1)
Australasian colony.....	3
Australia.....	109(1), 115, 120(1)
authority	104A(5)
bank.....	3
bankers' books	3
broadcast	106MB(3)
business	73A
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corroboration warning.....	50(1)
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Gazette	3
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judicial authority	109(1)
legal proceeding	3
machine-copy.....	73A
negative	73A
officer of the Library Board of Western Australia	65A(2)
participating jurisdiction	120(1)
periodical	42
person acting judicially	3
photograph	3
pre-trial hearing.....	106S(2)
prisoner	3
privilege	32A(2)
Privy Council	57(4)

Defined Terms

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