

**ACTS AMENDMENT
(EXPERT EVIDENCE).**

No. 111 of 1976.

AN ACT to amend the Evidence Act, 1906-1975, the Supreme Court Act, 1935-1976, the District Court of Western Australia Act, 1969-1975, the Family Court Act, 1975-1976, the Workers' Compensation Act, 1912-1975, the Motor Vehicle (Third Party Insurance) Act, 1943-1975, the Arbitration Act, 1895-1970, and the Local Courts Act, 1904-1975.

[Assented to 25th November, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Acts Amendment (Expert Evidence) Act, 1976.* Short title.

PART I.—EVIDENCE ACT, 1906-1975.

Citation.

2. (1) In this Part the Evidence Act, 1906-1975 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Evidence Act, 1906-1976.

Section 32A added.

3. The principal Act is amended by adding immediately after section 32 a new section as follows—

Derogation of privilege in civil proceedings.

32A. (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) of this section, 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 forty of the Interpretation Act, 1918, 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 paragraph (c) of subsection (1) of this section, 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. .

PART II.—SUPREME COURT ACT, 1935-1976.

4. (1) In this Part the Supreme Court Act, 1935-1976 is referred to as the principal Act. Citation.

(2) The principal Act as amended by this Act may be cited as the Supreme Court Act, 1935-1976.

5. Subsection (1) of section 167 of the principal Act is amended by inserting after paragraph (n), a new paragraph as follows— Section 167
amended.

- (o) 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—

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

PART III.—DISTRICT COURT OF WESTERN AUSTRALIA
ACT, 1969-1975.

Citation.

6. (1) In this Part the District Court of Western Australia Act, 1969-1975 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the District Court of Western Australia Act, 1969-1976.

Section 88
amended.

7. Subsection (2) of section 88 of the principal Act is amended by deleting the passage "costs." at the end of the subsection and inserting in lieu thereof a passage as follows—

costs;

- (h) 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—

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

PART IV.—FAMILY COURT ACT, 1975-1976.

8. (1) In this Part the Family Court Act, 1975-1976 is referred to as the principal Act. Citation.

(2) The principal Act as amended by this Act may be cited as the Family Court Act, 1975-1976.

9. Subsection (3) of section 34 of the principal Act is amended by inserting after paragraph (o) new paragraphs as follows— Section 34
amended.

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

PART V.—WORKERS' COMPENSATION ACT, 1912-1975.

Citation.

10. (1) In this Part the Workers' Compensation Act, 1912-1975 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Workers' Compensation Act, 1912-1976.

Section 35 amended.

11. Subsection (1) of section 35 of the principal Act is amended by deleting the passage "provisions.", at the end of subparagraph (v) of paragraph (g), and inserting in lieu thereof a passage as follows—

provisions;

(vi) provisions for matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature and substance of 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 the expert evidence, and in relation thereto—

(I) provisions for the imposition of differing requirements depending on different classes of cases, different classes of matters, or other different circumstances; and

(II) provisions for conferring a discretionary authority.

PART VI.—MOTOR VEHICLE (THIRD PARTY INSURANCE) ACT, 1943-1975.

Citation.

12. (1) In this Part the Motor Vehicle (Third Party Insurance) Act, 1943-1975 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Motor Vehicle (Third Party Insurance) Act, 1943-1976.

13. Subsection (3) of section 33 of the principal Act is amended by inserting after the word "party", being the last word in the subsection, the passage " , but the time for the production of such a report shall be subject to Rules of Court applicable to such proceedings".

Section 33
amended.

PART VII.—ARBITRATION ACT, 1895-1970.

14. (1) In this Part the Arbitration Act, 1895-1970 is referred to as the principal Act.

Citation.

(2) The principal Act as amended by this Act may be cited as the Arbitration Act, 1895-1976.

15. The principal Act is amended by adding immediately after section 27 a section as follows—

Section 28
added.

28. Without limiting any other power to make Rules of Court, those Rules may, in respect of practice and procedure in matters that may be heard and determined pursuant to this Act, make provision—

Special
Rules of
Court.

(a) for prescribing matters relating to expert evidence, including the disclosure, by the furnishing 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—

(i) for the imposition of differing requirements depending on different classes of cases,

different classes of matters, or
other different circumstances;
and

- (ii) for the conferring of a discretionary authority.

PART VIII.—LOCAL COURTS ACT, 1904-1975.

Citation.

16. (1) In this Part the Local Courts Act, 1904-1975 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Local Courts Act, 1904-1976.

Section 158
amended.

17. Subsection (1) of section 158 of the principal Act is amended by deleting the passage "clerks.", at the end of the subsection and inserting in lieu thereof a passage as follows—

clerks;

- (e) matters relating to expert evidence, including the disclosure, by the furnishing 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—

- (i) differing requirements depending on different classes of cases, different classes of matters, or other different circumstances; and
- (ii) a discretionary authority. .