

EVIDENCE.

No. 20 of 1966.

AN ACT to amend the Evidence Act, 1906-1964.

[Assented to 17th October, 1966.]

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. (1) This Act may be cited as the *Evidence Act Amendment Act, 1966*.

(2) In this Act the Evidence Act, 1906-1964, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Evidence Act, 1906-1966.

Short title
and citation.
Vol. 10
Reprinted
Acts.
Approved
for reprint
13th June,
1956 as
amended by
Acts Nos.
10 of 1960,
12 of 1962,
54 of 1963 and
11 of 1964.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Heading and
S. 73A
added.

3. The principal Act is amended by adding after section seventy-three a heading and section as follows:—

Reproduction of Documents.

Interpre-
tation.

73A. In sections seventy-three B to seventy-three V, 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;

“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 seventy-three A to seventy-three V of this Act. .

4. The principal Act is amended by adding a section as follows:—

S. 73B
added.

73B. (1) If a reproduction of a document that is or at any time was in the custody or under the control of the Registrar-General, the Registrar of Titles, Registrar of Companies or the Government Statist bears a certificate that purports to be signed by the Registrar-General, the Registrar of Titles, an Assistant Registrar of Titles, Registrar of Companies, 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.

Certified reproductions of certain public documents, etc., admissible without further proof.
Vide s. 56 (b).

(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 Master, 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-General, the Registrar of Titles, Registrar of Companies, the Government Statist or the Master, 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 Master,

Power of certain officers to send certified reproductions in answer to process to produce document

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) of this section as the case requires. .

S. 73C
added.

5. The principal Act is amended by adding a section as follows:—

Admissibility
of reproduc-
tions of
business
documents
destroyed,
lost or
unavailable.

73C. (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.

Affidavit or
declaration
of maker of
copy, etc.,
to be
evidence.

(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
- (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. .

6. The principal Act is amended by adding a section as follows—

S. 73D added.

73D. (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.

Power of Attorney General to approve machines for certain purposes.

(2) An approval given by the Attorney General under subsection (1) of this section—

(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 seventy-three C of this Act, 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

Reproductions from approved machines admissible without proof of destruction of document.

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.

Affidavit of
maker of
microfilm,
etc., to be
evidence.

(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. .

7. The principal Act is amended by adding a section as follows—

S. 73E
added.

73E. 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 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,

Proof where document processed by independent processor.

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. .

8. The principal Act is amended by adding a section as follows—

S. 73F
added.

73F. 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—

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

- (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. .

S. 73G
added.

9. The principal Act is amended by adding a section as follows—

Proof of
destruction
of docu-
ments, etc.

73G. 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 subsection (3) of section seventy-three K of this Act; 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.

S. 73H
added.

10. The principal Act is amended by adding a section as follows—

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

73H. 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. .

11. The principal Act is amended by adding a section as follows—

S. 73J added.

73J. (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.

Where series of documents copied one affidavit or statutory declaration sufficient.

(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

One affidavit or declaration sufficient where documents bear common identification mark.

the general nature of the documents recorded on the film and describes the common identification mark.

One affidavit or declaration sufficient where documents are with respect to same subject matter, etc.

(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. .

S. 73K added.

12. The principal Act is amended by adding a section as follows—

Reproductions not to be admitted in evidence unless negative in existence, etc.

73K. (1) Except as provided in subsections (2) and (3) of this section, 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 two years after the document was made; or
 - (ii) was 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 seventy-three B of this Act.

Subsection (1) not to apply to reproductions certified by Registrar General, etc.

(3) The provisions of paragraph (b) of subsection (1) of this section do not apply with respect to a reproduction made from a negative made by an approved machine within the meaning of section seventy-three D of this Act where at the time the print was made the negative was in the custody or control of—

Paragraph (b) of subsection (1) not to apply to certain Government, insurance and banking documents.

- (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 the council of a municipality) 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;
- (c) a bank as defined in section five 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 authorised 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, (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 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.

Further reproduction may be ordered by court.

(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. .

S. 73L added.

13. The principal Act is amended by adding a section as follows—

Changes in colour or tone.

73L. 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 subsection (1) of section seventy-three B of this Act, 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. .

S. 73M added.

14. The principal Act is amended by adding a section as follows—

Notice to produce not required.

73M. (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. .

Proof of comparison not required.

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

S. 73N added.

73N. A presumption that may be made in respect of a document over thirty 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.

Presumptions as to ancient documents.

16. The principal Act is amended by adding a section as follows—

S. 73P added.

73P. 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.

Reproductions made in other States, etc.

17. The principal Act is amended by adding a section as follows—

S. 73Q added.

73Q. 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 acting judicially, the court or person acting judicially shall take judicial notice of the image of the

Judicial notice.

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. .

S. 73R
added.

18. The principal Act is amended by adding a section as follows—

Power to
preserve
microfilm
instead of
document
after three
years.

73R. 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 three years it is sufficient compliance with such requirement to preserve or keep instead of the document that is over three years old, a negative thereof made by means of an approved machine within the meaning of section seventy-three D of this Act together with an affidavit or statutory declaration in accordance with subsection (4) of that section, that refers to the negative. .

S. 73S
added.

19. The principal Act is amended by adding a section as follows —

Factors
determining
admissibility.

73S. 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. .

20. The principal Act is amended by adding a section as follows—

S. 73T
added.

73T. 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—

Estimating
weight to be
attached to
evidence.

- (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. .

21. The principal Act is amended by adding a section as follows—

S. 73U
added.

73U. (1) Notwithstanding the provisions of this Division, where a document is chargeable with stamp duty under the Stamp Act, 1921, a reproduction of the document is not admissible under this Division in any proceedings before a court or person acting judicially unless—

Reproduc-
tion of
document
admissible
subject to
Stamp Act,
1921.

- (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 accord-

ance with that Act are complied with with respect to the reproduction as though it were the document.

(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. .

S. 62
added.

22. The principal Act is amended by adding a section as follows—

Power of
Governor
to except
documents.

73V. (1) The Governor may by proclamation except from the provisions of this Division any document or class of documents specified in the proclamation.

(2) The Governor may by subsequent proclamation revoke or vary any proclamation made under subsection (1) of this section. .
