

WESTERN AUSTRALIA

EVIDENCE ACT 1906

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NOTES

WESTERN AUSTRALIA

EVIDENCE ACT 1906

AN ACT to consolidate and amend the Statute Law of Evidence.

Short title

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

Repeal

2. [Section 2 omitted under the *Reprints Act 1984* s. 7 (4) (f).]

Interpretation

3. 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” or “banker” means—

- (a) any person, persons, partnership, or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer, or at sight or on demand, and
- (b) any Government Savings Bank established under any law in force for the time being;

expressions relating to "bankers' books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank;

"colony" includes province;

"the Commonwealth" means the Commonwealth of Australia;

"Court" includes the High Court of Australia, the Supreme Court of Western Australia, the Family Court of Western Australia, any Local Court, Magistrate's Court, Police Court, Warden's Court, and any Court of summary jurisdiction²;

"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 stipendiary magistrate, and also any Justice or Justices of the Peace 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;

“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.]

Application of Act

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

This Act not to derogate from existing powers

5. 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

Witnesses interested or convicted of offence

6. 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.

Evidence of party, or of wife or husband of party in civil cases

7. In any civil proceeding the parties thereto and the persons on whose behalf such proceeding is brought or defended, and the husbands and wives 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.

Witnesses in criminal cases

8. (1) Except as in this Act it is otherwise provided, every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, 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) If the wife or husband of a person so charged shall be called as a witness on behalf of the prosecution under the provisions of this section, it shall be the duty of the Judge to inform such wife or husband that she or he is not compellable to give evidence if she or he is unwilling to do so:
- (c) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged 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 (e) (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.*]

Evidence of wife or husband in certain criminal cases

9. (1) The wife or husband of a person charged with an offence under any enactment mentioned in Part I of the Second Schedule shall be a competent and compellable witness, either for the prosecution or defence, at every stage of the proceedings, and without the consent of the person charged.

(2) The wife of a person charged with an offence under any enactment mentioned in Part II of the Second Schedule shall be a competent and compellable witness, either for the prosecution or defence, at every stage of the proceedings, and without the consent of the person charged.

(3) The husband of a person charged with an offence under the enactment mentioned in Part III of the Second Schedule shall be a competent and compellable witness, either for the prosecution or defence, at every stage of the proceedings, and without the consent of the person charged.

(4) Upon the prosecution of a husband on the complaint of his wife for an offence committed with respect to her property, and upon the prosecution of a wife on the complaint of her husband for an offence committed with respect to his property, the wife or husband, as the case may be, shall be a competent and compellable witness, either for the prosecution or defence, at every stage of the proceedings, and without the consent of the person charged.

In this subsection the term "property", used with respect to a wife, means her separate property.

(5) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

Witnesses in proceedings by indictment to enforce civil rights

10. On the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river, or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

Power to compel answer to incriminating question

11. (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

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 (2a) Where in a proceeding a person is given a certificate or will under subsection (2) in respect of any evidence, a statement shall made by him, as part of that evidence, in answer to a witness question or interrogatory is not admissible in evidence in required criminal proceedings against the person other than on a prosecution for perjury committed in the proceeding. ". by any

Judge may restrict publication of evidence where certificate given.

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 11A. (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.

subsection (2).
 and touching any such person 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) This section shall not apply to proceedings before any Justice or Justices of the Peace other than a stipendiary magistrate.

Certificate may be pleaded in bar to prosecution

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^{EXAMINED}
13. If any person ~~called~~ ^{examined} as a witness or ~~interrogated~~ under section ~~11~~ or 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.

Customs prosecutions

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

Persons may be examined without a subpoena

15. 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.

Witnesses failing to attend trial

16. (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
- (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.

Procedure

17. (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***Communications during marriage**

18. 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 during the marriage, and a wife shall not be compellable in any proceeding to disclose any communication made to her by 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.]

*Spouses Competent to Give Evidence as to Non-Access***Evidence of non-access**

19. 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

How far a party may discredit his own witness

20. 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.

Cross-examination as to previous inconsistent statement or deposition

21. 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.]

Proof of contradictory statements of witness

22. 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.

Proof of previous conviction of witness

23. (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
Protection of Witnesses

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Questions tending to criminate

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

Cross-examination as to credit

25. (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.

Indecent or scandalous questions

26. 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.

Prohibited questions not to be published

27. (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

Evidence of authority

28. (1) The averment or recital in an indictment that the prosecution is instituted by the direction of the Attorney General or of any other Crown Law officer, or at the request of the Government of any State, shall be sufficient evidence of the fact, until the contrary is shown.

(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 Her Majesty 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.

Intention to defraud

29. 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.

Proof by attesting witness

30. 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.

Comparison of disputed hand-writing

31. 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.

Admissions in criminal cases

32. 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.

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), 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

Evidence on trial for treason

33. On the trial of a person charged with treason, evidence shall not be admitted of any overt act not alleged in the indictment.

Evidence on charge of treason, etc.

34. A person charged with treason, or concealment of treason, or with any treasonable crime as defined by sections 37, 38, and 39 of *The Criminal Code* shall not be convicted, except on his own plea of guilty, or on the evidence in open Court of 2 witnesses at least to one overt act of the kind of treason alleged, or the evidence of one witness to one overt act and one other witness to another overt act of the same kind of treason.

But this section shall not apply to cases in which the overt act of treason alleged is the killing of the Sovereign or a direct attempt to endanger the life or injure the person of the Sovereign.

Evidence on charge of perjury

35. A person shall not be convicted of committing perjury or of counselling or procuring the commission of perjury upon the uncorroborated testimony of one witness.

Evidence on trial for perjury and subornation

36. 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 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.

Interpretation

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

“complainant” in relation to proceedings for a sexual assault offence means a person upon or in respect of whom it is alleged that a sexual assault 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 assault offence;

“sexual assault offence” means the offence of—

- (a) indecent assault contrary to section 324B of *The Criminal Code*;
- (b) indecent assault in circumstances of aggravation contrary to section 324C of *The Criminal Code*;
- (c) sexual assault contrary to section 324D of *The Criminal Code*;
- (d) aggravated sexual assault contrary to section 324E of *The Criminal Code*;
- (e) attempting to commit any of the offences referred to in paragraphs (a) to (d);
- (f) conspiracy to commit any of the offences referred to in paragraphs (a) to (d); and
- (g) counselling or procuring the commission of any of the offences referred to in paragraphs (a) to (d).

(2) In this section and in sections 36B, 36BA and 36BC, proceedings for a sexual assault offence means proceedings in which a person stands charged with a sexual assault 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: Ss. 36A and 36B repealed and ss. 36A, 36B, 36BA, 36BC, 36BD and 36BE substituted by No. 74 of 1985 s. 15.]

Evidence as to sexual reputation of complainant

36B. In proceedings for a sexual assault 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: Ss. 36A and 36B repealed and ss. 36A, 36B, 36BA, 36BC, 36BD and 36BE substituted by No. 74 of 1985 s. 15.]

Evidence as to sexual disposition of complainant

36BA. In proceedings for a sexual assault 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: Ss. 36A and 36B repealed and ss. 36A, 36B, 36BA, 36BC, 36BD and 36BE substituted by No. 74 of 1985 s. 15.]

Evidence as to sexual experience of complainant

36BC. (1) In proceedings for a sexual assault 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: Ss. 36A and 36B repealed and ss. 36A, 36B, 36BA, 36BC, 36BD and 36BE substituted by No. 74 of 1985 s. 15.]

Warning by Court as to lack of complaint

36BD. Where on the trial of a person for a sexual assault 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: Ss. 36A and 36B repealed and ss. 36A, 36B, 36BA, 36BC, 36BD and 36BE substituted by No. 74 of 1985 s. 15.]

No requirement for warning as to conviction on uncorroborated evidence

36BE. (1) On the trial of a person for a sexual assault offence or an offence under Chapter XXII of *The Criminal Code*—

- (a) the judge is not required by any rule of law or practice to give in relation to any offence of which the person is liable to be convicted on the charge for the offence a warning to the jury to the effect that it is unsafe to convict the person on the uncorroborated evidence of the person upon whom the offence is alleged to have been committed; and
- (b) the judge shall not give a warning to the jury of the kind described in paragraph (a) unless satisfied that such a warning is justified in the circumstances.

(2) Nothing in subsection (1) affects the operation of any law that provides that a person cannot be convicted of an offence upon the uncorroborated testimony of one witness or upon the evidence of a child whose evidence is admitted under section 101.

[Section 36BE: Ss. 36A and 36B repealed and ss. 36A, 36B, 36BA, 36BC, 36BD and 36BE substituted by No. 74 of 1985 s. 15.]

Names of complainants not to be published

36C. (1) Subject to subsection (5) after a person is accused of a sexual assault 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 assault offence if—

- (a) a complaint is made under the *Justices Act 1902*, alleging that the person has committed a sexual assault offence;
- (b) the person appears before a Court charged with a sexual assault offence; or
- (c) a Court before which the person is appearing commits him for trial on a new charge alleging a sexual assault offence,

and references in this section to an accusation alleging a sexual assault 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 assault offence or an accusation alleging a sexual assault 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 assault 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.]

Evidence in certain offences against morality—Third Schedule

37. A person shall not be convicted of any of the offences against morality defined in the Third Schedule upon the uncorroborated testimony of one witness.

Evidence of relationship on charge of incest

38. On the trial of a person charged with an offence of which carnal knowledge, or an attempt to have carnal knowledge, of a woman or girl, is an element, and of which blood relationship or relationships established by the *Artificial Conception Act 1985* is also an element—

- (1) it shall be sufficient to prove that the woman or girl on whose person or by whom the offence is alleged to have been committed is reputed to be the daughter or other lineal descendant, or sister or halfsister of the person charged, or of the person with whom the offence is alleged to have been committed, as the case may be, and it shall not be necessary to prove that such woman or girl, or any person being her parent or ancestor, and being a descendant of the person charged, or of the person with whom the offence is alleged to have been committed, as the case may be, was born in lawful wedlock;
- (2) the accused person shall be, until the contrary is proved, presumed to have had knowledge at the time of the alleged offence of the relationship existing between the woman or girl on whose person or by whom the offence is alleged to have been committed and the person charged, or the person with whom the offence is alleged to have been committed, as the case may be.

[Section 38 amended by No. 14 of 1985 s. 8.]

[39. Section 39 repealed by No. 108 of 1982 s. 29.]

Averment of prosecution sufficient

40. 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.

Evidence on charges of offences against Customs laws

41. 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.

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

41A. (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.]

Evidence on trial for defamation

42. 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. *Section 43 repealed by No. 10 of 1960 s. 2.*]

Evidence on certain charges of stealing money

44. (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.

Evidence on charges relating to seals and stamps

45. 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.

Evidence in cases of receiving stolen property

46. 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.

Evidence of sunrise and sunset

46A. 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.]

Proof of conviction, acquittal and identity

47. (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.]

Actions for breach of promise

48. The plaintiff in an action for breach of promise of marriage shall not recover a verdict unless his or her testimony is corroborated by some other material evidence in support of such promise.

Actions for seduction

49. 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.

Corroboration in cases of bastardy

50. No order against any person alleged to be the father of a bastard child shall be made by any Justices, or confirmed on appeal, unless the evidence of the mother of such bastard child is corroborated in some material particular, to the satisfaction of the Court.

*Evidence of Witnesses in Prison***Prisoner required to give evidence may be brought up on order**

51. 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, at the request of a Crown Law officer, the Sheriff of Western Australia, or the Director of the Department of Corrections 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.

Expense of bringing up prisoner

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

53. (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.

Judicial notice of the seal of the Commonwealth and States

54. 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.

Judicial notice of official seals

55. 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.

Certain signatures to be judicially noticed

56. 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, Registrar General, Assistant or Deputy Registrar General, 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*¹, 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.]

Proof of Certain Documents

Royal proclamations, Orders of the Privy Council, etc.

57. (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.]

Proclamations, orders in council, etc.

58. (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.

Proof of proclamation etc. under *Customs Act 1901*

59. 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.

Proof of proclamations and acts of State

60. 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.

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

61. 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 Head 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.

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

62. 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.

Manner of proving acts of State of any other country

63. (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.

Proclamations etc., receivable although not proved by sealed copies

64. 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.

Certain public documents how provable

65. (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).]

Certain photographs may be admissible in evidence without proof

65A. (1) A photograph that is certified by an officer of the Library Board of Western Australia, 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.]

Votes and proceedings of Parliament

66. 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.

Proof of seal, signature and official character dispensed with

67. 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.

Register of British vessels, etc., admissible as evidence

68. (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 indorsed on such certificate of registry when the said certificate is produced.

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

Copy of register of newspaper proprietors

69. 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.

Proof of registers

69A. 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—

- (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.]

Statutes of any country published by authority

70. 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.

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

71. 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.

Standard works of general literature

72. 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.

Document may be impounded

73. 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.*]

Interpretation

73A. 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;

“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.]

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

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, Commissioner for Corporate Affairs 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, 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 General, 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.]

Admissibility of reproductions 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.

(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.

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

Approved machines

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.

(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.]

Proof where document processed by independent processor**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,

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.]

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

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—

- (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.]

Proof of destruction of documents, 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 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.]

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.

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

One affidavit or statutory declaration sufficient in certain circumstances

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.

(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.]

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

73K. (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) 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 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 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 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*, (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.

(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.]

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 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.]

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.

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

Presumptions as to ancient documents

73N. 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.]

Reproductions made in other States, etc.

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.

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

Judicial notice

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 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.]

Power to preserve microfilm instead of document after 3 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 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. 10.]

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.

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

Estimating weight to be attached to evidence

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—

- (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.]

Reproduction of document admissible subject to Stamp Act 1921

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—

- (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.

(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.]

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 proclamation⁵.

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

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

Proof of certain matters

Proof of Gazette

74. 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.

Proof of printing by Government Printer

75. 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.

Documents printed under authority of Stationery Office

76. 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.

Proof of act done by Governor or Minister

77. 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.

By-laws and regulations

78. Where by any Act of the Commonwealth or of any State, power to make by-laws or regulations is conferred upon any person or body, and any printed paper purporting to be such 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 by-laws or regulations in the words printed in such paper were duly made by such person or body; and
- (b) that such 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.

Proof of incorporation of any company

79. (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*) 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* the *Companies Act 1961*, or any corresponding previous enactment.

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

Proof of document requiring attestation

79A. 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.]

Interpretation

79B. In sections 79C and 79D—

- (a) “document” includes books, maps, plans, drawings and photographs, and any device by means of which information is recorded or stored;
- (b) “statement” includes any representation of fact or opinion whether made in words or otherwise;
- (c) “proceedings” includes arbitrations and references; and “court” shall be construed accordingly.

[Section 79B inserted by No. 69 of 1967 s. 2.]

Admissibility of certain documentary evidence as to facts in issue

79C. (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish the fact shall, on production of the document, be admissible as evidence of that fact—

- (a) if the maker of the statement either—
 - (i) had personal knowledge of the matters dealt with by the statement; or
 - (ii) made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied whether directly or indirectly by persons who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the information they supplied; and
- (b) if the maker of the statement is called as a witness.

(2) The condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is out of the State and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to identify or find him have been made without success, or where no party to the proceedings who would have the right to cross-examine him requires him to be called as a witness.

(3) The court may at any stage of the proceedings order that the statement shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence, notwithstanding—

- (a) that the statement is tendered by the party calling the maker of the statement;
- (b) that the maker of the statement is available but is not called as a witness;
- (c) that the original document is lost or mislaid or destroyed, or is not produced, if in lieu of it there is produced a copy of it or of the material part of it certified to be a true copy in such a manner as may be specified in the order or as the court may approve, as the case may be.

(4) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner and the court may in its discretion reject the statement notwith-

standing that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

[Section 79C inserted by No. 69 of 1967 s. 2.]

Weight to be attached to documentary evidence

79D. (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 to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(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 section 79C shall not be treated as corroboration of evidence given by the maker of the statement.

[Section 79D inserted by No. 69 of 1967 s. 2.]

Admissibility of certain trade or business records

79E. (1) In any criminal proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if—

- (a) the document is, or forms part of, a record relating to any trade or business and compiled, in the course of that trade or business, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and
- (b) the person who supplied the information recorded in the statement in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information he supplied.

(2) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is

fit to attend as a witness, act on a certificate purporting to be a certificate of a fully registered medical practitioner and the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(3) In estimating the weight, if any, to be attached to a statement admissible as evidence by virtue of 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 statement, and, in particular, to the question whether or not the person who supplied the information recorded in the statement did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person, or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

(4) In this section "statement" includes any representation of fact, whether made in words or otherwise, "document" includes books, maps, plans, drawings and photographs, and any device by means of which information is recorded or stored and "business" includes any public transport, public utility or similar undertaking carried on by the Crown or a statutory body and also includes any municipality.

[Section 79E inserted by No. 69 of 1967 s. 2.]

Proof of Judicial Proceedings

Proof of judicial proceedings

80. 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.

Faith and credit to be given to documents properly authenticated

81. 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

Notice to admit telegraphic messages may be given in civil proceedings

82. (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.

Proof of message

83. 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.

Proof of sending a message

84. 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.

Certain documents may be transmitted by electric telegraph

85. 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 indorse 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 indorsed, and such last-mentioned person shall forthwith indorse 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.

Copies so transmitted to be as valid as originals

86. (1) Every copy so indorsed, 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.

Original document may be inspected

87. 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 indorsed 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.]

Penalty for false certificates

88. Any Justice of the Peace or public notary who shall wilfully and falsely indorse 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 indorsed 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***Entry in a banker's book**

89. Subject to the provisions of this Act, a copy of any entry in a banker's book shall be evidence of such entry and of the matters, transactions, and accounts therein recorded.

Proof that book is a banker's book

90. (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; and
- (c) that the book is in the custody or control of the bank.

(2) Such proof may be given by a partner or officer of the bank, and may be given either orally or by affidavit.

Verification of copy

91. (1) A copy of an entry in a banker's book shall not be received in evidence unless it is further proved that the copy has been examined with the original entry and is correct.

(2) Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by affidavit.

Legal proceedings

92. 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.]

Application of sections 89 to 92 to banks

92A. 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.]

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

93. A banker or 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.

Inspection of banker's books

94. (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.

Costs

95. (1) The costs of—

- (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.

Powers of Judge extended to magistrates, etc.

96. A Judge of the District Court of Western Australia, a Judge of the Family 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.]

Mode of taking Evidence

Sworn evidence

97. (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 substituted by No. 142 of 1976 s. 2.]

Witness may be sworn in Scotch form

98. 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." "

Method of administering oath to persons making an affidavit

98A. 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.]

Affirmation in lieu of oath

99. (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.]

Oath not affected by want of religious belief

100. 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.

Where an oath or affirmation may not be used

100A. (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,

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.

[Section 100A inserted by No. 142 of 1976 s. 4.]

Evidence of children not upon oath

101. (1) In any civil or criminal proceeding, or in any inquiry or examination in any Court, or before any person acting judicially, where any child who has not attained the age of 12 years is tendered as a witness and does not in the opinion of the Court, or person acting judicially, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if in the opinion of the Court, or person acting judicially, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2) No person shall be convicted of any crime or misdemeanour on the testimony of a child who gives evidence under the provisions of this section unless the testimony of such child is corroborated by other evidence in some material particular.

(3) Any witness whose evidence has been admitted under this section shall be liable to indictment and punishment for perjury in all respects as if he or she had been sworn.

[Section 101 amended by No. 142 of 1976 s. 5.]

Interpretation on oath or affirmation, or on declaration

102. (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 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.]

Interpretation otherwise than on oath, or affirmation

103. (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 substituted by No. 142 of 1976 s. 7.]

Who may administer oaths

104. (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 Mines, 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.

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

104A. (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.]

Voluntary oaths unlawful

105. Subject to the provisions of section 106A, it is unlawful for any Justice of the Peace or other person to administer, or cause or allow to be administered, or to receive or cause or allow to be received, any oath, affirmation in lieu of oath, or affidavit touching any matter or thing whereof such justice or other person has not jurisdiction or cognizance by some law in force for the time being:

But nothing herein contained shall be construed to extend to any oath, affirmation, or affidavit before any Justice of the Peace or other person in any matter or thing touching any legal proceeding, or any proceeding before either House of the Parliament, or any committee thereof, nor to any oath, affirmation, or affidavit which may be required by any Act of the Parliament of the Commonwealth, or of any State, nor to any oath, affirmation, or affidavit which may be required by the laws of any part of Her Majesty's dominions or any foreign country to give validity to instruments in writing designed to be used there.

[Section 105 amended by No. 34 of 1930 s. 3.]

Statutory declarations

106. 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*.

Declared at _____ this _____ day
of _____ 19____, before me, C.D., Justice of the Peace [*or as
the case may be*].

[**106A.** Section 106A repealed by No. 41 of 1971 s. 2.]

*Depositions***Depositions under the *Justices Act 1902***

107. 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 the deposition purports to be signed by the Justice of the Peace by or before whom it purports to have been taken, unless it is proved that the deposition was not in fact signed by the Justice by whom it purports to be signed.

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.

Depositions of persons dangerously ill

108. (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.

[Sections 109 to 118 see note 7.]

Allowances to Witnesses and Interpreters in Specified Proceedings

Regulations for fees to witnesses and interpreters in specified proceedings

119. (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 municipality within the meaning of the *Local Government Act 1960* 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 a Children’s Court established under the *Child Welfare Act 1947*.

(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

(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;

and

(b) witnesses and interpreters at inquests held under the *Coroners Act 1920*.

(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 municipality within the meaning of the *Local Government Act 1960*, 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 paid out of Consolidated Revenue.

[Section 119 inserted by No. 61 of 1975 s. 2.]

THE FIRST SCHEDULE

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

Section 9.

THE SECOND SCHEDULE

Session and Number	Title	Enactments referred to
	PART I	
9 Vict., No. 2.....	An Ordinance to provide for the maintenance and relief of destitute wives and children, and other destitute persons, and to make the property of husbands and near relatives, to whose assistance they have a natural claim, in certain circumstances, available for support	Sections 2, 3, 7, and 12
1 and 2 Edw. VII, No. 14 ^a	<i>The Criminal Code</i>	Sections 186, 191, 192, 193, 194, and Chapters XXXIA and XXXII

Session and Number	Title	Enactments referred to
	PART II	
1 and 2 Edw. VII, No. 14 ⁶	<i>The Criminal Code</i>	Sections 185, 187, 188 and 197
	PART III	
1 and 2 Edw. VII, No. 14 ⁶	<i>The Criminal Code</i>	Section 198

[*The Second Schedule amended by No. 74 of 1985 s. 17.*]

Section 37.

THE THIRD SCHEDULE

Offence	Section of <i>Criminal Code</i> ⁶
Defilement of girl under thirteen	185
Defilement of girl under sixteen or idiot.....	188
Procuration.....	191
Procuring defilement of woman by threats, or fraud, or administering drugs..	192

Section 57.

THE FOURTH SCHEDULE

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

Section 61.

THE FIFTH SCHEDULE

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.....	The Minister for Lands, the Under Secretary for Lands, or the Surveyor General
The Treasurer's Department.....	The Treasurer, the Under Treasurer, or the Auditor General
The Education Department.....	The Minister of Education, or the Inspector Gen- eral of Schools
The Agricultural Department.....	The Minister for Agriculture, the Director of Agriculture, or the Secretary to the Depart- ment 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.....	The Minister for Mines, or the Under Secretary for Mines
The Railway Department	The Minister for Railways, the Commissioner of Railways, or the Secretary to the Com- missioner of Railways
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 Com- missioner 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.*]

SIXTH SCHEDULE

S.47 (1a).

Western Australia

EVIDENCE ACT 1906

((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.)

(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 convictions 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

A person having authority to take affidavits in

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

NOTES

¹ This reprint is a compilation as at 14 August 1986 of the *Evidence Act 1906*⁷ and includes all amendments contained in the Acts referred to in the following Table.

Table of Acts

Act	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>	8 of 1925	24 September 1925	24 September 1925	

TABLE OF ACTS—continued

Act	Number and year	Assent	Commencement	Miscellaneous
<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> Amendments in section 3	73 of 1948	4 March 1949	1 January 1950 (see <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	
<i>Evidence Act Amendment Act 1963</i>	54 of 1963	17 December 1963	1 July 1964 (see <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</i> Amendments in Section 4	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see s. 2(2))	
<i>Evidence Act Amendment Act 1966</i>	20 of 1966	17 October 1966	Balance on assent 1 February 1967 (see <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 <i>Gazette</i> 20 May 1977 p. 1489)	
<i>Acts Amendment (Expert Evidence) Act 1976</i> Amendments in sections 2 and 3	111 of 1976	25 November 1976	25 November 1976	
<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 <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</i> Amendments in sections 49, 50 and 51	67 of 1979	21 November 1979	11 February 1980 (see <i>Gazette</i> 8 February 1980 p. 383)	
<i>Companies (Consequential Amendments) Act 1982</i> Amendments in section 28	10 of 1982	14 May 1982	1 July 1982	

TABLE OF ACTS—*continued*

Act	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Betting and Gaming) Act 1982</i> Amendments in sections 28 and 29	108 of 1982	7 December 1982	13 December 1982 (see <i>Gazette</i> 13 December 1982 p. 4968)	
<i>Artificial Conception Act 1985</i> Amendments in section 8	14 of 1985	12 April 1985	1 July 1985 (see <i>Gazette</i> 28 June 1985 p. 2291)	Section 4 application
<i>Acts Amendment (Sexual Assaults) Act 1985</i> Amendments in sections 14, 15 and 16	74 of 1985	20 November 1985	1 April 1986 (see <i>Gazette</i> 28 February 1986 p. 605)	

² Also includes the District Court of Western Australia: see the *District Court of Western Australia Act 1969* (No. 84 of 1969) section 5 (3).

³ Now the *Interpretation Act 1984*.

⁴ see Orders published in *Gazettes* on 1 March 1963 pp. 749-50; 23 January 1970, p. 139; 17 October 1975, p. 3864.

⁵ Documents or class of documents excepted see *Gazette* 20 January 1967, p. 89.

⁶ Now No. 28 of 1913.

⁷ As at 14 August 1986 the *Evidence Act Amendment Act 1974* (No. 18 of 1974) was not in operation.