(Reprint No. 2)

SOUTH AUSTRALIA

EVIDENCE ACT, 1929

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at ***16 July 1992****.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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EVIDENCE ACT, 1929

being

Evidence Act, 1929, No. 1907 of 1929 [Assented to 30 October 1929]

as amended by

Evidence Act Amendment Act, 1933, No. 2110 of 1933 [Assented to 31 August 1933]
Evidence Act Amendment Act, 1940, No. 40 of 1940 [Assented to 28 November 1940]
Evidence Act Amendment Act, 1941, No. 27 of 1941 [Assented to 13 November 1941]
Evidence Act Amendment Act, 1945, No. 29 of 1945 [Assented to 3 January 1946]
Evidence Act Amendment Act, 1947, No. 5 of 1947 [Assented to 2 October 1947]
Evidence Act Amendment Act, 1949, No. 36 of 1949 [Assented to 24 November 1949]
Statute Law Revision Act, 1952, No. 42 of 1952 [Assented to 4 December 1952]
Evidence Act Amendment Act, 1955, No. 26 of 1955 [Assented to 1 December 1955]
Evidence Act Amendment Act, 1957, No. 36 of 1957 [Assented to 14 November 1957]
Evidence Act Amendment Act, 1960, No. 25 of 1960 [Assented to 27 October 1960]
Evidence Act Amendment Act, 1968, No. 46 of 1968 [Assented to 19 December 1968]
Evidence Act Amendment Act, 1969, No. 72 of 1969 [Assented to 11 December 1969][1]
Evidence Act Amendment Act, 1972, No. 53 of 1972 [Assented to 27 April 1972][2]
Local and District Criminal Courts Act Amendment Act, 1972, No. 54 of 1972 [Assented to 27 April 1972][3]
Evidence Act Amendment Act, 1974, No. 71 of 1974 [Assented to 17 October 1974][4]
Evidence Act Amendment Act, 1976, No. 84 of 1976 [Assented to 9 December 1976]
Evidence Act Amendment Act, 1978, No. 65 of 1978 [Assented to 28 September 1978]
Evidence Act Amendment Act, 1979, No. 9 of 1979 [Assented to 1 March 1979]
Evidence Act Amendment Act, 1982, No. 40 of 1982 [Assented to 22 April 1982][5]
Evidence Act Amendment Act, 1983, No. 47 of 1983 [Assented to 16 June 1983]
Evidence Act Amendment Act (No. 2), 1983, No. 55 of 1983 [Assented to 16 June 1983][6]
Evidence Act Amendment Act, 1984, No. 24 of 1984 [Assented to 10 May 1984]
Statutes Amendment (Oaths and Affirmations) Act, 1984, No. 56 of 1984 [Assented to 24 May 1984][7]
Evidence Act Amendment Act (No. 2), 1984, No. 90 of 1984 [Assented to 29 November 1984][8]
Evidence Act Amendment Act (No. 3), 1984, No. 107 of 1984 [Assented to 20 December 1984]
Evidence Act Amendment Act, 1985, No. 96 of 1985 [Assented to 1 November 1985][9]
Evidence Act Amendment Act, 1986, No. 107 of 1986 [Assented to 18 December 1986][10]
Evidence Act Amendment Act, 1988, No. 32 of 1988 [Assented to 21 April 1988][11]
Evidence Act Amendment Act (No. 2), 1988, No. 45 of 1988 [Assented to 5 May 1988]
Evidence Act Amendment Act, 1989, No. 43 of 1989 [Assented to 4 May 1989][12]
Evidence Act Amendment Act, 1990, No. 72 of 1990 [Assented to 20 December 1990]
Evidence Amendment Act 1991 No. 41 of 1991 [Assented to 31 October 1991][13]
Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991][14]
Statutes Amendment (Attorney-General's Portfolio) Act 1992 No. 26 of 1992 [Assented to 14 May 1992][15]

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[1] Came into operation 31 August 1970: *Gaz.* 20 August 1970, p. 701.
[2] Came into operation 1 February 1973: *Gaz.* 1 February 1973, p. 377.
[3] Came into operation 9 November 1972: *Gaz.* 9 November 1972, p. 2252
[4] Came into operation 28 November 1974: *Gaz.* 28 November 1974, p. 3372.
[5] Came into operation 6 May 1982: *Gaz.* 6 May 1982, p. 1438.
[6] Came into operation 1 August 1983: *Gaz.* 7 July 1983, p. 5.
[7] Came into operation 1 July 1984: *Gaz.* 28 June 1984, p. 1897.
[8] Came into operation 1 January 1985: *Gaz.* 13 December 1984, p. 1811.
[9] Came into operation 1 December 1985: *Gaz.* 7 November 1985, p. 1361.
[10] Came into operation 5 April 1987: *Gaz.* 26 February 1987, p. 434.
[11] Came into operation 1 May 1988: *Gaz.* 28 April 1988, p. 1066.
[12] Came into operation 15 May 1989: *Gaz.* 11 May 1989, p. 1250.
[13] Came into operation 16 July 1992: *Gaz.* 16 July 1992, p. 622.
[14] Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.
[15] Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

An Act to consolidate certain Acts relating to evidence.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Evidence Act, 1929*.

Arrangement of Act

2. This Act is divided as follows:—

Consolidation and repeal

3. This Act is a consolidation of certain provisions contained in the Acts mentioned in the first schedule, and the said Acts are hereby repealed to the extent expressed in the said schedule.

Interpretation

4. In this Act, unless some other intention is expressed, or implied by the context—

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"child" means a person under the age of 18 years:

"court" includes a tribunal, authority or person invested by law with judicial or quasi-judicial powers, or with authority to make any inquiry or to receive evidence:

"judge" includes the member or members of any court having authority to admit evidence:

"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:

"sexual offence" means—

(a) rape;

(b) indecent assault;

(c) any offence involving unlawful sexual intercourse or an act of gross indecency;

(d) incest;

(da) any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest;

or

(e) any attempt to commit, or assault with intent to commit, any of the foregoing offences:

"electric telegraph" means any system of telecommunication operated by the Australian Telecommunication Commission or any other authority approved by proclamation:

"telegraphic message" means any message or other communication transmitted, or intended for transmission, or purporting to have been transmitted, by electric telegraph:

"telegraph station" means a station established or used by the Australian Telecommunication Commission or other authority approved by proclamation for the receipt or transmission of telegraphic messages:

"young child" means a child of or under the age of 12 years.

Note: For definition of divisional penalties see Appendix 2.

Application of Act (*prima facie*) to all courts and enabling only

5. The provisions of this Act, unless an intention to the contrary is expressed, or appears or is implied by the context—

(a) apply to every proceeding before any court whatever; and

(b) are in addition to, and not in derogation of, any rules of evidence, or power, or right, or duty in relation to procedure or evidence, whether existing at common law, or provided for by any law, at any time, in force in the State.

PART II

WITNESSES

Oaths, affirmations, etc.

6. (1) An oath shall be administered and taken as follows:

(a) the person taking the oath shall hold a copy of the Bible (being a book that contains the New Testament, the Old Testament or both) in his hand and, after the oath has been tendered to him, shall say "I swear";

(b) in any other manner and form which the person taking the oath declares to be binding on his conscience;

or

(c) in any other manner or form authorized or permitted by law.

(2) Where an oath has been lawfully administered and taken, the fact that the person taking the oath had no religious belief, or that the oath was not taken so as to be binding on his conscience, shall not affect, at law, the validity or effect of the oath.

(3) A person shall be permitted to make an affirmation instead of an oath in all circumstances in which, and for all purposes for which, an oath is required or permitted by law.

(4) A person taking an affirmation shall say: "I, A.B., do solemnly and truly declare and affirm" and then shall proceed with the words of the appropriate oath, omitting any words of imprecation or calling to witness.

(5) Every affirmation has, at law, the same force and effect as an oath.

(6) No oath or affirmation is invalid by reason of a procedural or formal error or deficiency.

Oaths or affirmations taken before a court

7. (1) Every court has authority to administer an oath or an affirmation.

(2) Where an oath or affirmation is to be taken before a court, or in connection with proceedings before a court, it may be administered by—

(a) the court itself;

(b) an officer of the court;

(c) any person authorized by the court to administer the oath or affirmation;

or

(d) any other person authorized by law to administer the oath or affirmation.

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Evidence without formality

9. (1) Where in any proceedings (including proceedings in the nature of a preliminary examination) it appears to a judge that a person does not understand the obligation of an oath, he may permit that person to give evidence without an oath and without formality.

(2) Before the judge receives any such evidence he must explain or cause to be explained to the person by whom the evidence is to be given that he is required to be truthful in anything that he may say before the court.

(3) Where it appears to a judge that a person called as an interpreter does not understand the obligation of an oath, he may, if he is satisfied of the ability of that person duly to interpret the evidence that may be given, and of his impartiality, permit that person to act as an interpreter without the administration of an oath.

(4) A person who in giving evidence under this section wilfully makes any false statement shall be guilty of an offence and liable to be imprisoned for a term not exceeding two years.

(5) A justice to whom it appears that any person who desires to lay a complaint or information does not understand the obligation of an oath 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 the complaint or information in all respects as if the complainant or informant had deposed to the truth of the contents thereof upon oath.

(6) Unsworn evidence given under this section has such weight and credibility as ought to be given to evidence given without the sanction of an oath.

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Evidence of young children

12. (1) A young child who is to give evidence before a court is not obliged to submit to the obligation of an oath unless—

(a) the child is of or above the age of seven years;

and

(b) the judge is satisfied that the child understands the obligation of an oath.

(2) If a young child, who is not obliged to submit to the obligation of an oath, is to give evidence before a court and—

(a) the child appears to the judge to have reached a level of cognitive development that enables the child—

(i) to understand and respond rationally to questions;

and

(ii) to give an intelligible account of his or her experiences;

and

(b) the child promises to tell the truth and appears to understand the obligations entailed by that promise,

unsworn evidence of the child will be treated in the same way as evidence given on oath.

(3) In any case in which unsworn evidence of a young child is not assimilated under subsection (2) to evidence given on oath—

(a) the child's evidence will be evaluated in the light of the child's level of cognitive development;

and

(b) a person who has been accused of an offence and has denied the offence on oath cannot be convicted of the offence on the basis of the child's evidence unless it is corroborated in a material particular by other evidence implicating the accused.

(4) A young child who is called as a witness is, while giving evidence, entitled to have present in the court, and within reasonable proximity, a person of his or her choice to provide emotional support (but the person must not interfere in the proceedings).

(5) Unless the court otherwise allows, a witness or prospective witness in the proceedings cannot be chosen under subsection (4) to provide emotional support for a young child.

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Entitlement of a witness to be assisted by an interpreter

14. (1) Where—

(a) the native language of a witness who is to give oral evidence in any proceedings is not English;

and

(b) the witness is not reasonably fluent in English,

the witness is entitled to give that evidence through an interpreter.

(2) An affidavit or other written deposition in a language other than English shall be received in evidence in the same circumstances as an affidavit or other written deposition in English if it has annexed to it—

(a) a translation of its contents into English;

and

(b) an affidavit by the translator to the effect that the translation accurately reproduces in English the contents of the original.

Witness not disqualified by interest or crime

15. No person shall be excluded from giving evidence on the ground—

(a) that he has or may have an interest in the matter in question or in the event of the proceeding, or

(b) that he has previously been convicted of any crime or offence.

Parties, their wives and husbands competent and compellable in civil proceedings

16. In any proceeding not being a criminal 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.

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Accused persons competent to give evidence

18. (1) Every person charged with an offence shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person: Provided as follows:—

I. A person so charged shall not be called as a witness in pursuance of this Act except upon his own application:

II. The failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution:

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V. A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged:

VI. A person charged and called as a witness in pursuance of this Act 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—

(a) the evidence to be elicited by the question is admissible as tending to show that he is guilty or not guilty of the offence with which he is charged;

(b) 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

(ba) he forfeits the protection of this paragraph by virtue of subsection (2);

(c) he has given evidence against any other person charged with the same offence:

VII. Every person called as a witness in pursuance of this Act 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:

VIII. Nothing herein contained shall affect the provisions of section 110 of the *Justices Act, 1921*.

(2) A defendant forfeits the protection of paragraph VI of subsection (1) if—

(a) the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or a witness for the prosecution;

and

(b) the imputations are not such as would necessarily arise from a proper presentation of the defence.

(3) Notwithstanding the provisions of subsection (2), a defendant does not forfeit the protection of paragraph VI of subsection (1) by reason of imputations on the character of the prosecutor or a witness for the prosecution arising from evidence of the conduct of the prosecutor or witness—

(a) in the events or circumstances on which the charge is based;

(b) in the investigation of those events or circumstances, or in assembling evidence in support of the charge;

or

(c) in the course of the trial, or proceedings preliminary to the trial.

Abolition of right to make unsworn statement

18a. (1) A person charged with an offence is not entitled to make at the trial for the offence any unsworn statement of fact in defence of the charge.

(2) This section applies in relation to any trial commencing after the commencement of the *Evidence Act Amendment Act, 1985*, whether the charge was laid before or after the commencement of that Act.

(3) This section, as in force immediately before the commencement of the *Evidence Act Amendment Act, 1985*, applies in relation to any trial commenced before the commencement of that Act.

Accused if only witness to be called on close of case for prosecution

19. 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.

Evidence of accused not to give right of reply to prosecution

20. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

Provisions governing competence and compellability of close relatives of accused persons

21. (1) A close relative of a person charged with an offence shall be competent and compellable to give evidence for the defence and shall, subject to this section, be competent and compellable to give evidence for the prosecution.

(2) Where a person is charged with an offence and a close relative of the accused is a prospective witness against the accused in any proceedings related to the charge (including proceedings for the grant, variation or revocation of bail, or an appeal at which fresh evidence is to be taken) the prospective witness may apply to the court for an exemption from the obligation to give evidence against the accused in those proceedings.

(3) Where it appears to a court to which an application is made under subsection (2)—

(a) that, if the prospective witness were to give evidence, or evidence of a particular kind, against the accused, there would be a substantial risk of—

(i) serious harm to the relationship between the prospective witness and the accused;

or

(ii) serious harm of a material, emotional or psychological nature to the prospective witness;

and

(b) that, having regard to the nature and gravity of the alleged offence and the importance to the proceedings of the evidence that the prospective witness is in a position to give, there is insufficient justification for exposing the prospective witness to that risk,

the court may exempt the prospective witness, wholly or in part, from the obligation to give evidence against the accused in the proceedings before the court.

(4) Where a court is constituted of a judge and jury—

(a) an application for an exemption under this section shall be heard and determined by the judge in the absence of the jury;

and

(b) the fact that a prospective witness has applied for, or been granted or refused, an exemption under this section shall not be made the subject of any question put to a witness in the presence of the jury or of any comment to the jury by counsel or the presiding judge.

(5) The judge presiding at proceedings in which a close relative of an accused person is called as a witness against the accused shall satisfy himself that the prospective witness is aware of his right to apply for an exemption under this section.

(6) This section does not operate to make a person who has himself been charged with an offence compellable to give evidence in proceedings related to that charge.

(7) In this section—

"close relative" of an accused person means a spouse, parent or child:

"spouse" includes a putative spouse within the meaning of the *Family Relationships Act, 1975*.

Certain questions may be disallowed

22. In any proceeding in any court, whether civil or criminal, the judge may disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious and not relevant to any matter proper to be inquired into in the proceeding.

Rules as to relevancy

23. In deciding whether a question affecting the credibility of a witness is relevant, or ought to be allowed, the judge shall have regard to the following considerations:—

I. 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:

II. Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect only in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies:

III. 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.

Disallowance of certain questions in cross-examination

24. (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 considerations referred to in section 23.

Disallowance of scandalous and insulting questions

25. The court may forbid any question it regards as—

(a) indecent or scandalous, although the 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 the question may be proper in itself.

Proof of previous conviction of witness may be given

26. A witness may, subject to any other provisions of this Act, be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction.

How far a party may discredit his own witness

27. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but if the judge is of opinion that the witness is adverse, the party may—

(a) contradict the witness by other evidence; or

(b) by leave of the judge, prove that the witness has made, at any other time, a statement inconsistent with his present testimony: Provided that, before giving such last-mentioned proof, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made the statement.

Proof of contradictory statements of adverse witness

28. If any witness, upon cross-examination as to a former statement made by him, relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made the statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made the statement.

Cross-examination as to previous statements in writing

29. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without the writing being shown to him; but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that the judge, at any time during the trial, may require the production of the writing for his inspection; and may thereupon make such use of it, for the purposes of the trial, as he thinks fit.

PART III

MISCELLANEOUS RULES OF EVIDENCE

As to comparison of disputed writing

30. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court as evidence of the genuineness or otherwise of the writing in dispute.

Attesting witness need not be called in certain cases

31. 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 by admission or otherwise, as if there had been no attesting witness thereto.

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Discoveries in actions for libel

33. In any action for damages arising out of the publication of any alleged libel and upon any application for discovery, as to any matter relating to the fact of publication as alleged, the defendant shall not be entitled to object to answer upon the ground of tendency to criminate, but shall be compellable to make discovery, unless it appears that there is a reasonable probability of criminal proceedings being instituted against him: Provided always that such discovery shall not be made use of as evidence or otherwise in any other action or proceedings against the defendant.

Admissions by accused persons

34. A person 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: Provided that the admission shall be made by the accused either personally or by his counsel or solicitor in his presence, or, in the case of a body corporate, by its counsel or solicitor.

Proof of commission of offence

34a. Where a person has been convicted of an offence, and the commission of that offence is in issue or relevant to any issue in a civil proceeding, the conviction shall be evidence of the commission of that offence admissible against the person convicted or those who claim through or under him but not otherwise: Provided that a conviction other than upon information in the Supreme Court shall not be admissible unless it appears to the court that the admission is in the interests of justice.

Proof of adultery

34b. Where in any proceedings in the Supreme Court in its matrimonial causes jurisdiction a person has been found guilty of adultery, the decree or order of the court reciting or based upon that finding shall be admissible in any subsequent proceedings in the Supreme Court in its matrimonial causes jurisdiction as evidence of the adultery as against that person, notwithstanding that the parties to the proceedings in which the finding is tendered are not the same as in the proceedings in which the decree or order was made.

Admissibility of documentary evidence as to facts in issue

34c. (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 that

fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say—

(i) if the maker of the statement either—

(a) had personal knowledge of the matters dealt with by the statement; or

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

(ii) if the maker of the statement is called as a witness in the proceedings:

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

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

(a) notwithstanding that the maker of the statement is available but is not called as a witness;

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

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

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

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

Statement of victim of sexual offence who is a young child

34ca. (1) Subject to subsection (2), where the alleged victim of a sexual offence is a young child, the court may, in its discretion, admit evidence of the nature and contents of the complaint from a witness to whom the alleged victim complained of the offence if the court, after considering the nature of the complaint, the circumstances in which it was

made and any other relevant factors, is of the opinion that the evidence has sufficient probative value to justify its admission.

(2) Such evidence may not be admitted at the trial unless the alleged victim has been called, or is available to be called, as a witness.

Weight to be attached to evidence

34d. (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

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

Proof of instrument to validity of which attestation is necessary

34e. Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive: Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

Presumptions as to documents twenty years old

34f. In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

Interpretation and savings

34g. (1) In sections 34c to 34f (inclusive) of this Act—

"document" includes books, maps, plans, drawings and photographs:

"statement" includes any representation of fact, whether made in words or otherwise:

"proceedings" includes arbitrations and references, and "court" shall be construed accordingly.

(2) Nothing in sections 34c to 34f (inclusive) of this Act shall—

(a) prejudice the admissibility of any evidence which would apart from the provisions of those sections be admissible; or

(b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if those sections had not been enacted.

Evidence of access or non-access

34h. In any proceedings a husband or wife may give evidence proving or tending to prove that he or she did or did not have sexual relations with his or her spouse, notwithstanding that any such evidence would prove or tend to prove that any child born to the wife during marriage was illegitimate.

Evidence in sexual cases

34i. (1) In proceedings in which a person is charged with a sexual offence, no question shall be asked or evidence admitted—

(a) as to the sexual reputation of the alleged victim of the offence;

or

(b) except with the leave of the judge, as to the alleged victim's sexual activities before or after the events of and surrounding the alleged offence (other than recent sexual activities with the accused).

(2) In deciding whether leave should be granted under subsection (1)*(b)* the judge shall give effect to the principle that alleged victims of sexual offences should not be subjected to unnecessary distress, humiliation or embarrassment through the asking of questions or admission of evidence of the kind referred to in that subsection and shall not grant leave unless satisfied that the evidence in respect of which leave is sought—

(a) is of substantial probative value;

or

(b) would, in the circumstances, be likely materially to impair confidence in the reliability of the evidence of the alleged victim,

and that its admission is required in the interests of justice.

(3) Leave shall not be granted under subsection (1)*(b)* authorizing the asking of questions or the admission of evidence the purpose of which is only to raise inferences from some general disposition of the alleged victim.

(4) An application for leave under subsection (1)*(b)* shall be heard and determined in the absence of the jury (if any).

(5) In proceedings in which a person is charged with a sexual offence, the judge is not required by any rule of law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim of the offence.

(6) Subsection (5) does not affect the operation of any provision of this or any other Act requiring that the evidence of a witness be corroborated.

(7) In this section—

"evidence" includes an allegation or statement made by way of an unsworn statement:

"sexual activities" includes sexual experience or lack of sexual experience.

Special provision for taking evidence where witness is seriously ill

34j. (1) Where a person who may be in a position to give information in relation to an indictable offence is dangerously ill and, in the opinion of a medical practitioner, unlikely to recover from the illness, a magistrate or justice may take a statement from that person.

(2) The statement will be taken on oath unless the person who makes the statement is not liable to the obligation of an oath.

(3) Where a person is subsequently charged with an indictable offence to which the statement is relevant, the statement is admissible in evidence at the preliminary examination or trial of the charge if it is established—

(a) that the person from whom the statement was taken is dead or unable to give evidence because of illness or infirmity;

and

(b) that the prosecutor or defendant (as the case requires) had reasonable notice of the proposal to take evidence and a reasonable opportunity to attend and cross-examine the person.

Admissibility of depositions at trial

34k. (1) Where—

(a) a statement from a witness is filed or tendered for the purpose of the preliminary examination of a charge of an indictable offence or oral evidence is taken from a witness at a preliminary examination;

and

(b) the witness subsequently dies or becomes so ill or infirm that he or she cannot give evidence at the trial,

the record of the witness's evidence at the preliminary examination may, by leave of the court of trial, be read as evidence at the trial.

(2) Leave to admit evidence for the prosecution under this section will not be granted if the court considers that admission of the evidence without the opportunity of cross-examination would, in the circumstances of the case, be unfair to the defendant.

PART IV

PUBLIC ACTS AND DOCUMENTS

Judicial notice of legislative instruments

35. (1) A court must take judicial notice of a legislative instrument.

(2) In this section—

"legislative instrument" means—

(a) an Act of this State, or an Act or ordinance of any other State or a Territory of the Commonwealth;

(b) an Act of the Imperial Parliament that forms part of the law of this State or of any other State or a Territory of the Commonwealth;

(c) a regulation, rule, by-law or other form of subordinate legislation made under the law of this State or of any other State or a Territory of the Commonwealth;

(d) a proclamation, order or notice published in the *Gazette* or the corresponding official publication of some other State or a Territory of the Commonwealth.

Proof of votes and proceedings of Parliament

36. All documents purporting to be copies of the votes and proceedings or journals or minutes of either House of Parliament, or of papers presented to either House of Parliament, if purporting to be printed by the Government Printer, shall on their mere production be admitted as evidence thereof.

Evidentiary value of official publications

37. The *Gazette* or the corresponding official publication of some other State or a Territory of the Commonwealth is admissible in any legal proceedings as evidence of any legislative, judicial or administrative acts published or notified in it.

Proof of *Gazette*

37a. The mere production of a paper purporting to be the *Gazette* shall in all courts be evidence that the paper is the *Gazette* and was published on the day on which it bears date.

Proof of printing by Government Printer

37b. The mere production of a paper purporting to be printed by the Government Printer or by the authority of the Government of the State shall in all courts be evidence that the paper was printed by the Government Printer or by such authority.

Proof of Imperial orders-in-Council

37c. (1) In this section—

"Imperial order-in-Council" means—

(a) any letters patent or Imperial order-in-Council;

or

(b) any admiralty map or chart issued by, or under the authority of, the Government of Great Britain, or the United Kingdom.

(2) Evidence of the making and contents of an Imperial order-in-Council may be given by production of a document purporting to be certified by the Secretary to the Attorney-General as a true copy of the Imperial order-in-Council.

(3) A statement in a document produced in evidence under subsection (2) of this section as to the date of publication of the Imperial order-in-Council shall be evidence that the Imperial order-in-Council was published on that date.

Foreign and Colonial Acts of State, judgments, etc., provable by copies

38. (1) Evidence of any proclamation, treaty, or other act of State, of any foreign State, or in any part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom, may be given 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 foreign State or of the said part of His Majesty's Dominions.

(2) Evidence of any judgment, decree, order or other judicial proceeding of any court of justice in the United Kingdom or in any foreign State or part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom (including any affidavit, pleading, or other legal document filed or deposited in the court) may be given 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 such court; or

(c) 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.

(3) If any such document as aforesaid purports to be sealed or signed as aforesaid it shall be admissible without proof of the seal or of the signature as the case may be.

Public documents provable by examined or certified copy

39. (1) Whenever 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, and no Act exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence,

(a) if 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 such officer is hereby required to furnish such certified copy or extract to any person applying for the same at a reasonable time, upon payment of a reasonable sum for the same, not exceeding five cents for every folio of ninety words.

Proof of documents by examined or certified copies

40. Whenever any book, or other document, in the United Kingdom, or in any part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom, is provable (according to the law of England, or of the said part of His Majesty's Dominions) by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence if it—

(a) is proved to be an examined copy or extract; or

(b) purports to be signed and certified as a true copy or extract by some officer who shall further certify that he is the officer to whose custody the original is entrusted.

Certifying a false document a misdemeanour

41. If any officer authorized or required by this Act to furnish any certified copy or extract shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanour, and be liable, on conviction, to imprisonment with hard labour for any term not less than eighteen months or more than three years.

Proof of conviction or acquittal of an indictable offence

42. (1) The information, trial, and conviction, or acquittal of any person for an indictable offence may be proved by a certificate purporting to be under the hand of the Chief Clerk of the Supreme Court or the associate or other officer having the custody of the records of the court where such conviction, or acquittal took place, or of the deputy of such associate or other officer.

(2) The certificate may set forth the substance and effect of the record omitting the formal parts thereof.

(3) A conviction for any offence committed in any other State or any Territory of the Commonwealth may be proved by a like certificate.

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

(5) The mode of proof authorized by this section shall be in addition to and not to the exclusion of any other authorized mode of proof.

Proof of convictions and orders of courts of summary jurisdiction

43. (1) Any conviction, order of dismissal or other order made by a court of summary jurisdiction may be proved in any court whatever by the production of a copy of such conviction, order of dismissal or other order, purporting to be certified by the clerk of the court by which such conviction, order of dismissal or other order was made, or by the deputy of such clerk.

(2) No proof shall be required of the signature or official character of the person appearing to have signed any such copy as aforesaid.

(3) This section shall apply to any conviction, order of dismissal or other order made before or after the commencement of this Act.

(4) In this section the expression "court of summary jurisdiction" shall mean any court, by whatever name called, which in any State or Territory of the Commonwealth has jurisdiction to try offences summarily.

Proof of identity of person convicted in another State

43a. For the purpose of proving the identity of any person alleged to have been convicted in any other State, or any Territory of the Commonwealth, an affidavit substantially in the form of the Fourth Schedule shall be admissible in evidence in all courts and shall be *prima facie* evidence that the person whose finger-prints are exhibited thereto—

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

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

Registers of British vessels and certificates of registry admissible as *prima facie* evidence of their contents

44. (1) Every register of vessels kept under any of the Acts of the Imperial Parliament relating to the registry of British vessels, may be proved 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.

(2) Every such register, or such copy of a register, and also every certificate of registry granted under any of the said Acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence 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 matters contained or recited in or endorsed on such certificate of registry when the said certificate is produced.

Documents relating to transportation of persons or goods

45. (1) An apparently genuine document purporting to be a document of a prescribed nature and to relate to the transportation or shipment of any person or goods, from one place to another—

(a) shall be admissible in evidence on production without further proof;

and

(b) shall be evidence of any fact stated, or referred to, in the document, or to be inferred from the document, and where the document relates to the shipment of goods, shall be evidence that the ownership of goods referred to in the document is in the consignee named in the document or his assignee.

(2) Evidence of the description of any package or property, or of any inscription or mark upon any package or property shall be admissible (without production of the original inscription or mark) for the purpose of raising an inference as to the identity of the package or property with that referred to in a document admissible in evidence under this section.

(3) For the purpose of determining the evidentiary weight, if any, of a document admitted in evidence under this section, consideration shall be given to the source from which the document is produced, the safeguards (if any) that have been taken to ensure its accuracy and any other relevant matters.

(4) In this section—

"document of a prescribed nature" means—

(a) bill of lading, manifest, shipping receipt, consignment note, way-bill, delivery sheet, register or order, invoice, ticket, passenger list or register, and any document of a like nature;

or

(b) any reproduction of any such document by photographic, photostatic, lithographic or other like process:

"shipment" means carriage by any means by air, land or water.

Admission of business records in evidence

45a. (1) An apparently genuine document purporting to be a business record—

(a) shall be admissible in evidence without further proof;

and

(b) shall be evidence of any fact stated in the record, or any fact that may be inferred from the record (whether the inference arises wholly from the matter contained in the record, or from that matter in conjunction with other evidence).

(2) A document shall not be admitted in evidence under this section if the court is of the opinion—

(a) that the person by whom, or at whose direction, the document was prepared can and should be called by the party tendering the document to give evidence of the matters contained in the document;

(b) that the evidentiary weight of the document is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the document in evidence;

or

(c) that it would be otherwise contrary to the interests of justice to admit the document in evidence.

(3) For the purpose of determining the evidentiary weight, if any, of a document admitted in evidence under this section, consideration shall be given to the source from which the document is produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.

(4) In this section—

"business" means business, occupation, trade or calling and includes the business of any governmental or local governmental body or instrumentality:

"business record" means—

(a) any book of account or other document prepared or used in the ordinary course of a business for the purpose of recording any matter relating to the business;

or

(b) any reproduction of any such record by photographic, photostatic, lithographic or other like process.

Admission of certain documents in evidence

45b. (1) An apparently genuine document purporting to contain a statement of fact, or written, graphical or pictorial matter in which a statement of fact is implicit, or from which a statement of fact may be inferred shall, subject to this section, be admissible in evidence.

(2) A document shall not be admitted in evidence under this section where the court is not satisfied that the person by whom, or at whose direction, the document was prepared could, at the time of the preparation of the document have deposed of his own knowledge to the statement that is contained or implicit in, or may be inferred from, the contents of the document.

(3) A document shall not be admitted in evidence under this section if the court is of the opinion—

(a) that the person by whom, or at whose direction, the document was prepared can and should be called by the party tendering the document to give evidence of the matters contained in the document;

(b) that the evidentiary weight of the document is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the document in evidence;

or

(c) that it would be otherwise contrary to the interests of justice to admit the document in evidence.

(4) In determining whether to admit a document in evidence under this section, the Court may receive evidence by affidavit of any matter pertaining to the admission of that document in evidence.

(5) For the purpose of determining the evidentiary weight, if any, of a document admitted in evidence under this section, consideration shall be given to the source from which the document was produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.

(6) In this section—

"document" means—

(a) any original document;

or

(b) any reproduction of an original document by photographic, photostatic or lithographic or other like process.

Modification of best evidence rule

45c. (1) A document that accurately reproduces the contents of another document is admissible in evidence before a court in the same circumstances, and for the same purposes, as that other document (whether or not that other document still exists).

(2) In determining whether a particular document accurately reproduces the contents of another, a court is not bound by the rules of evidence and, in particular—

(a) the court may rely on its own knowledge of the nature and reliability of the processes by which the reproduction was made;

(b) the court may make findings based on the certificate of a person with knowledge and experience of the processes by which the reproduction was made;

(c) the court may make findings based on the certificate of a person who has compared the contents of both documents and found them to be identical;

(d) the court may act on any other basis it considers appropriate in the circumstances.

(3) This section applies to reproductions made—

(a) by an instantaneous process;

(b) by a process in which the contents of a document are recorded (by photographic, electronic or other means) and the reproduction is subsequently produced from that record;

or

(c) in any other way.

(4) Where a reproduction is made by an approved process, it will be presumed that it accurately reproduces the contents of the document purportedly reproduced unless the contrary is established.

(5) The above reference to an approved process is a reference to a process prescribed by regulation for the purposes of this subsection.

(6) Where a court admits or refuses to admit a document under this section, the court must, if so requested by a party to the proceedings, state the reason for its decision.

(7) A person who gives a certificate for the purposes of this section knowing it to be false is guilty of an indictable offence.

Penalty: Division 5 imprisonment.

PART V

BANKING RECORDS

Interpretation

46. In this Part—

"bank" means—

(a) a body corporate carrying on the business of banking in a State or Territory of the Commonwealth;

(b) a building society;

(c) a credit union;

or

(d) any other body that accepts money on deposit from the public:

"banking records" means—

(a) books of account, accounts, and accounting records (including working papers and other documents necessary to explain the methods and calculations by which accounts are made up);

(b) books, diaries, or other records used in the course of carrying on the business of a bank;

(c) cheques, bills of exchange, promissory notes, deposit slips, orders for the payment of money, invoices, receipts and vouchers;

and

(d) securities, and documents of title to securities,

in the possession or control of a bank:

"copy", in relation to a banking record made by microfilming or by a mechanical or electronic process, means a document produced from the record containing, in an intelligible form, the information stored in the record.

Admission of banking record in evidence

47. (1) Subject to subsection (2), a copy of a banking record is admissible in legal proceedings as evidence—

(a) of the record;

and

(b) of the transactions or matters to which the record relates.

(2) The copy shall not be admitted in evidence unless it is first proved—

(a) that the record was compiled in the ordinary course of business;

(b) that the record is in the custody or control of the bank;

and

(c) that reasonable steps have been taken to ensure that the copy is an accurate copy of the record, or accurately reproduces information stored in the record.

(3) Evidence may be given orally or by affidavit by an officer of the bank for the purpose of proving the matters referred to in subsection (2).

Evidence of non-existence of account may be given by affidavit

48. An affidavit made by an officer of a bank stating that a person named in the affidavit had at a time, or over a period, specified in the affidavit no account at the bank, or at a specified branch, is admissible in legal proceedings as evidence of the fact stated.

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Power to order inspection of banking records, etc.

49. (1) On the application of any party to a legal proceeding a judge may order that such party be at liberty to inspect and take copies of a banking record for any of the purposes of such proceedings.

(1a) Where—

(a) a Judge of the Supreme Court;

or

(b) a District Court Judge,

is satisfied on the application of a member of the police force or an officer of the Corporate Affairs Commission that it would be in the interests of the administration of justice to permit the applicant to inspect and take copies of banking records, the Judge may order that the applicant be at liberty to inspect and take copies of those banking records.

(2) An order under this section may be made either with or without summoning the bank or any other person, and shall be served on the bank three clear days before the same is to be obeyed, unless the judge otherwise directs. Any Sunday or public holiday shall be excluded from the computation of time under this section.

(3) Subject to subsection (4), where an order is made under subsection (1a), the applicant shall cause a copy of the order to be served personally or by post on the person subject to investigation within six months of the date of the order or such further period as may be allowed by a Judge.

Penalty: One thousand dollars.

(4) Service of a copy of an order is not required under subsection (3)—

(a) if evidence of the commission of an offence was obtained in pursuance of the order and, within the period allowed under subsection (3) for service of a copy of the order, the person subject to investigation is charged with that offence;

or

(b) if the whereabouts of the person on whom the copy is to be served is unknown and not ascertainable by reasonable inquiry.

(5) A reference in subsection (3) or (4) to the person subject to investigation shall be construed as a reference to the person to whose financial transactions the banking records subject to inspection in pursuance of an order under subsection (1a) relate.

(6) Copies of applications made under subsection (1a) shall be retained for a period of six years—

(a) in the case of applications made by members of the police force—by the Commissioner of Police;

and

(b) in the case of applications made by officers of the Corporate Affairs Commission—by the Corporate Affairs Commission.

(7) The Commissioner of Police shall in each calendar year report to the Minister responsible for the police force the number of applications made under subsection (1a) by members of the police force during the previous calendar year, and the Corporate Affairs Commission shall in each calendar year report to the Minister to whom it is responsible the number of applications made under subsection (1a) by officers of the Commission during the previous calendar year.

(8) A report under subsection (7) may be incorporated in any other annual report that the Commissioner of Police or the Corporate Affairs Commission (as the case may be) is required by or under statute to make to the Minister to whom the report under that subsection is to be submitted.

(9) A person who divulges, otherwise than in the course of his official duties, information obtained by him by virtue of an order under subsection (1a) shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

Bank not compellable to produce records except under order

50. A bank 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 banking record, the contents of which can be proved under this Act; or

(b) to appear as a witness to prove the matters, transactions, and accounts recorded in a banking record,

unless by order of a judge made for special cause.

Costs occasioned by default of bank

51. (1) Costs occasioned by a default or delay by a bank in complying with an order under this Part (not being an order under section 49(1a)) may be awarded by the judge against the bank.

(2) Any such order against a bank may be enforced as if the bank were a party to the proceedings in aid of which the application is made.

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PART VI

TELEGRAPHIC MESSAGES

Party may give notice of intention to adduce telegraphic message in evidence

53. (1) Any party to any legal proceedings 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 has been sent by electric telegraph from any station in the Commonwealth to any other station within the Commonwealth: Provided that 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 two days.

(2) Every such notice shall specify the names of the sender and receiver of the message, the subject matter thereof, and the date as nearly as may be.

And thereupon may produce message received with evidence that same received from telegraph station

54. When such a notice has been given the production of any telegraphic message described in the notice, and purporting to have been sent by any person, together with evidence that the same was duly 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 shall be addressed without any further proof of the identity of the sender; but the party against whom any such message shall be given in evidence shall be at liberty, nevertheless, to prove that the same was not in fact sent by the person by whom it purports to have been sent.

After notice, sending a message may be proved by production of copy message and evidence of payment of fees for transmission

55. In any legal proceedings, the production of any telegraphic message, or of a machine copy or press copy thereof, or a copy thereof verified on oath together with evidence that such message was duly taken to a telegraph station, and that the fees (if any) for the transmission thereof were duly 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 shall be given in evidence: Provided that the party adducing the same in evidence shall give notice to the other party of his intention so to do in such manner and at such time as the practice of the court requires with respect to a notice to produce documents at the trial or hearing.

Certain documents may be transmitted by electric telegraph under restriction

56. (1) The Governor, any Minister of the Crown, the President of the Legislative Council, the Speaker of the House of Assembly, a Judge of the Supreme Court, a Local Court Judge, or District Criminal Court Judge, the Judge in Insolvency, any special magistrate, and any principal officer of Government, or solicitor, may cause to be transmitted by electric telegraph the contents of any writ, warrant, rule, order, authority, or other communication requiring signature or seal subject to the provisions following, that is to say—

I. The original document shall be delivered at the telegraph station in the presence and under the inspection of some justice of the peace or notary public:

II. The person to whom the contents of any such document shall be so sent shall, forthwith and in the presence and under the supervision of a justice of the peace or notary public, 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 appears that a true copy of such document has been received by the person to whom it has been sent:

III. When it appears that such true copy has been so received, such first-mentioned justice, or notary public, shall endorse upon the original document a certificate that a true copy thereof has been sent, under the provisions of this Act, to the person to whom the same has been so sent; and shall forthwith, by electric telegraph, inform such person that such certificate has been so endorsed:

IV. The person so receiving such true copy shall, upon receiving information of such certificate, endorse upon the copy of the original document received by him a certificate that the same has been duly received, under the provisions of this Act, which certificate shall be signed by him and by the justice or notary public so supervising the receipt of such copy as hereinbefore provided.

(2) In this section "any principal officer of Government" includes the Auditor-General, the Under Secretary, the Under Treasurer, the Solicitor-General, the Crown Solicitor, the Director of Public Prosecutions and the secretary to any department presided over by a Minister of the Crown, the Clerk of the Legislative Council, the Clerk of the House of Assembly, the Surveyor-General, the Registrar-General, the Sheriff, the Master of the Supreme Court, the Commissioner of Police, inspectors of police, the Returning Officer for the State; and for the purposes of returns to writs of election, but not otherwise, also includes any returning officer or deputy returning officer of an electoral district.

Copies so transmitted to be as valid and effectual as originals

57. (1) Every copy so endorsed and certified as aforesaid 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 in evidence in any case in which the original would have been so admissible; and any person by whom such copy has been received, or who is thereby authorized, instructed, or commanded, or who is lawfully charged with any duty in respect thereof, shall have and become liable to the same rights and duties in respect thereof as if he had received the original document duly signed and sealed, or signed or sealed, as the case may be.

(2) In the case of any document 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.

Penalty for false certificate of sending message

58. Any justice or notary public who wilfully and falsely endorses 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 by telegraph wilfully and falsely informs any person to whom such has been so sent that a certificate under the provisions of this Act has been endorsed thereon, shall forfeit a sum not exceeding two hundred dollars, which may be sued for and recovered by the first person who shall, for his own benefit and without collusion, sue for the same.

Signing false certificate upon copy to be a felony

59. Any person by this Part of this Act required to sign a certificate upon any copy of a document that such copy has been duly received under the provisions of this Act, who shall wilfully sign such certificate, knowing the same to be false, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years.

PART VIA

COMPUTER EVIDENCE

Interpretation

59a. In this Part, unless the contrary intention appears—

"computer" means a device that is by electronic, electro-mechanical, mechanical or other means capable of recording and processing data according to mathematical and logical rules and of reproducing that data or mathematical or logical consequences thereof:

"computer output" or "output" means a statement or representation (whether in written, pictorial, graphical or other form) purporting to be a statement or representation of fact—

(a) produced by a computer;

or

(b) accurately translated from a statement or representation so produced:

"data" means a statement or representation of fact that has been transcribed by methods, the accuracy of which is verifiable, into the form appropriate to the computer into which it is, or is to be, introduced.

Admissibility of computer output

59b. (1) Subject to this section, computer output shall be admissible as evidence in any civil or criminal proceedings.

(2) The court must be satisfied—

(a) that the computer is correctly programmed and regularly used to produce output of the same kind as that tendered in evidence pursuant to this section;

(b) that the data from which the output is produced by the computer is systematically prepared upon the basis of information that would normally be acceptable in a court of law as evidence of the statements or representations contained in or constituted by the output;

(c) that, in the case of the output tendered in evidence, there is, upon the evidence before the court, no reasonable cause to suspect any departure from the system, or any error in the preparation of the data;

(d) that the computer has not, during a period extending from the time of the introduction of the data to that of the production of the output, been subject to a malfunction that might reasonably be expected to affect the accuracy of the output;

(e) that during that period there have been no alterations to the mechanism or processes of the computer that might reasonably be expected adversely to affect the accuracy of the output;

(f) that records have been kept by a responsible person in charge of the computer of alterations to the mechanism and processes of the computer during that period;

and

(g) that there is no reasonable cause to believe that the accuracy or validity of the output has been adversely affected by the use of any improper process or procedure or by inadequate safeguards in the use of the computer.

(3) Where two or more computers have been involved, in combination or succession, in the recording of data and the production of output derived therefrom and tendered in evidence under this section, the court must be satisfied that the requirements of subsection (2) of this section have been satisfied in relation to each computer so far as those requirements are relevant in relation to that computer to the accuracy or validity of the output, and that the use of more than one computer has not introduced any factor that might reasonably be expected adversely to affect the accuracy or validity of the output.

(4) A certificate under the hand of a person having prescribed qualifications in computer system analysis and operation or a person responsible for the management or operation of the computer system as to all or any of the matters referred to in subsection (2) or (3) of this section shall, subject to subsection (6) of this section, be accepted in any legal proceedings, in the absence of contrary evidence, as proof of the matters certified.

(5) An apparently genuine document purporting to be a record kept in accordance with subsection (2) of this section, or purporting to be a certificate under subsection (4) of this section shall, in any legal proceedings, be accepted as such in the absence of contrary evidence.

(6) The court may, if it thinks fit, require that oral evidence be given of any matters comprised in a certificate under this section, or that a person by whom such a certificate has been given attend for examination or cross-examination upon any of the matters comprised in the certificate.

Regulations

59c. The Governor may make such regulations as he deems necessary or expedient for the purposes of this Part, and without limiting the generality of the foregoing those regulations may—

(a) make any provision for the purposes of this Part with respect to the preparation, auditing or verification of data, or the methods by which it is prepared;

and

(b) prescribe the qualifications of a person by whom a certificate may be given, or a translation made, under this Part.

PART VIB

OBTAINING EVIDENCE FROM OUTSIDE A COURT'S TERRITORIAL JURISDICTION

Interpretation

59d. (1) In this Part—

"authorized South Australian court" means—

(a) the Supreme Court;

(b) a District Court;

(c) a local court;

(d) a court of summary jurisdiction;

(e) a court or tribunal declared by the Attorney-General, by notice in the *Gazette*, to be an authorized South Australian court for the purposes of this Part:

"foreign court" means a court established under the law of some country or state other than this State.

(2) This Part applies in respect of—

(a) civil proceedings originating in courts within or outside Australia;

(b) criminal proceedings originating in Australian courts.

Taking of evidence outside the State

59e. (1) Where, in the opinion of an authorized South Australian court, it is necessary or expedient that evidence relating to proceedings before it be taken outside the State, the court may—

(a) sit outside the State for the purpose of taking the evidence;

(b) issue a commission to an officer of the court or some other appropriate person to take the evidence;

or

(c) request a foreign court to take the evidence.

(2) Subject to any just exception—

(a) any depositions taken on commission or by a foreign court that takes evidence in pursuance of a request under this Part may be put in as evidence at the hearing of the proceedings to which they relate;

and

(b) any documents produced to a commissioner or a foreign court that takes evidence in pursuance of a request under this Part are admissible at the hearing of the proceedings to which they relate as if produced at the hearing.

(3) Any documents appearing to be depositions or documents so taken or produced, will, in the absence of evidence to the contrary, be accepted as such.

Power of South Australian Court to take evidence on request

59f. (1) Where a foreign court requests an authorized South Australian court to take evidence in this State for the purpose of proceedings before that foreign court the South Australian court may summon any person to appear before it for the purpose of giving evidence or for the purpose of producing documents.

(2) A witness summoned to appear before an authorized South Australian court under this section may be examined, cross-examined or re-examined before that court.

(3) Subject to this Part, the South Australian court in taking evidence under this section shall have the same powers as if the proceedings originated in that court.

(4) If, while any person is being examined before an authorized South Australian court, objection is taken to any question, or to answering any question, the ground of the objection and the answer (if any) to the question shall be set out in the deposition of that person.

(5) Subject to subsections (6) and (7), the validity of the ground of any such objection shall not be determined by the authorized South Australian court but by the foreign court at whose request the examination is being conducted.

(6) The authorized South Australian court may permit a witness to decline to answer a question where in the opinion of the court the answer to that question might incriminate him or where it would in the opinion of the court be unfair to the witness, or to any other person, that the answer should be given and recorded.

(7) A witness cannot be compelled to give evidence on a particular subject if he or she could not be compelled to give evidence on that subject in the foreign court from which the request to take evidence originated.

Depositions to be signed

59g. Where pursuant to this Part—

(a) a witness has given evidence before an authorized South Australian court, his deposition shall be signed by him and by the person presiding over the court;

or

(b) a document has been produced before an authorized South Australian court, the person presiding over the court shall attach to that document a certificate signed by him stating the name of the person by whom the document was produced.

Transmission of request

59h. Where an authorized South Australian court receives a request from a foreign court for the examination of a witness, or the production of documents, and it appears to the court that the witness or person by whom the evidence is to be given, or the documents produced, is not in South Australia and is not proceeding to South Australia, but is in, or proceeding to, some other country or State, the South Australian court—

(a) may transmit the request to a foreign court in that other country or State together with such information as it possesses concerning the whereabouts of that person;

and

(b) shall give notice to the foreign court from which it received the request of the fact that the request has been so transmitted.

Saving provision

59i. (1) Nothing in this Part limits the power of a court to require a witness to attend in person before the court.

(2) The provisions of this Part are supplementary to, and do not derogate from, the provisions of any other Act or law.

PART VII

GENERAL PROVISIONS

Court's power to dispense with formal proof

59j. (1) A court may at any stage of civil or criminal proceedings—

(a) dispense with compliance with the rules of evidence for proving any matter that is not genuinely in dispute;

or

(b) dispense with compliance with the rules of evidence where compliance might involve unreasonable expense or delay.

(2) In exercising its power under subsection (1) the court may, for example, dispense with proof of—

(a) a document or the execution of a document;

(b) handwriting;

(c) the identity of a party;

(d) the conferral of an authority to do a particular act.

(3) A court is not bound by the rules of evidence in informing itself on any matter relevant to the exercise of its discretion under this section.

Sufficiency of notice of action

60. In any action, suit, or other proceeding in any court of justice in which notice of action is required, such notice shall be deemed sufficient if, in the opinion of the judge, commissioner, stipendiary or special magistrate, or justice of the peace presiding, such notice shall have given the defendant reasonable notice of the cause of such action, and the sufficiency of such notice shall be a question of fact and not of law; and no notice of action shall be held insufficient merely for want of form.

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Proof of "public place" in certain cases

62. Whenever in any proceedings before justices, in respect of any offence, it is an essential ingredient of the offence that the place (where any fact or matter occurred or was done) should be a public place, an allegation, in the complaint or information, that the place (specified as that in which the fact or matter charged occurred or was done) was a public place, shall be *prima facie* evidence of that fact, but the court may, if it thinks fit, and at any stage of the proceedings, permit evidence to be called with respect to the said fact.

Proof of place being within municipality, etc.

62a. (1) In any complaint or information an allegation that any place is within a municipality, district council district, town or township, shall be *prima facie* evidence of the fact so alleged.

(2) In this section the word "place" shall include any place, public or private, however described in the complaint or information, including any street road or other thoroughfare, or part thereof, and any building or structure or part thereof.

Proof of foreign law

63. 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, and 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 for the purpose of ascertaining the laws in force in such country; but such courts shall not be bound to accept or act on the statements in any such books as evidence of such laws.

Evidence as to foreign law

63a. Where upon trial of any proceedings by judge and jury it is necessary to ascertain the law of any other country or state applicable to the proceedings, any question as to the effect of evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge.

Proof of matters of history, science, etc.

64. All courts may, in matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, calendars, maps, or charts as such courts consider to be of authority on the subjects to which they respectively relate: Provided that nothing herein contained shall be deemed to require any such court to accept or act upon any such evidence when tendered, unless it thinks fit.

Reference by court to books, official certificates, etc.

65. In any matter relating to—

(a) the ordinary course of the post between any place within the Commonwealth and any other place, whether within or without the Commonwealth, or to the public business and transactions of the Australian Postal Commission; or

(b) the territorial limits of the area controlled by any municipal or district council or other local governing body, or of any other area designated or proclaimed or appointed by or under any statute or to the inclusion in any such area or the exclusion therefrom of any particular place; or

(c) the distance between any two places in the State;

every court may refer to—

(i) any such published book, map, chart, or document as the court considers to be of authority upon the subject to which it relates; or

(ii) any certificate purporting to be signed by some person occupying any official position which, in the opinion of the court, qualifies him to certify to the fact in question:

Provided that nothing herein contained shall be deemed to require any such court to accept or act upon any such evidence when tendered unless it thinks fit.

Proof of age

65a. If—

(a) the age of a person is relevant to proceedings before a court;

(b) a document that appears to be a certified copy of, or extract from, a register of births kept under an Australian law, or under the law of the country in which the person was born, is produced to the court;

and

(c) the name of the person to whom the document relates is the name or a former name of the person whose age is to be established,

it will be presumed, in the absence of evidence to the contrary, that the person whose age is to be established is the person named in the document produced to the court and that the date of his or her birth is the date of birth shown in that document.

Taking of affidavits out of the State

66. (1) Any oath or affidavit required for the purpose of any court or matter in the State may be taken or made, in any place out of the State, before—

(a) a commissioner for taking affidavits in the Supreme Court empowered and authorized to act in that place; or

(b) a British diplomatic or consular agent exercising his function in that place; or

(b1) any person appointed to hold or act in any of the following offices of the Commonwealth in that place:—

(i) ambassador:

(ii) high commissioner:

(iii) minister:

(iv) head of mission:

(v) commissioner:

(vi) charge d'affaires:

(vii) counsellor or secretary at an embassy, high commissioner's office, legation or other post:

(viii) consul-general:

(ix) consul:

(x) vice-consul:

(xi) trade commissioner:

(xii) consular agent: or

(c) any person having authority to administer an oath in that place.

(2) Judicial and official notice may be taken—

(a) of the signature or seal of any such commissioner or agent or of any person appointed as aforesaid, or of any person having authority as aforesaid if he purports to have such authority, otherwise than by the law of a foreign country not under the dominion of His Majesty; and

(b) of the fact that any particular place is under the dominion of His Majesty.

(3) In the case of a person purporting to have such authority by the law of a foreign country not under the dominion of His Majesty, such authority may be verified by any of the persons mentioned in paragraphs *(a)*, *(b)* and *(b1)* of subsection (1) hereof, or by the certificate of the superior court of such place, and if such authority purports to be so verified the oath or affidavit may be admitted or received without further proof of the signature or seal, or of the judicial, official, or other character of such first mentioned person.

(4) In this section—

"oath" includes affirmation and declaration:

"affidavit" includes any statutory or other declaration, acknowledgment, or examination:

"diplomatic agent" means ambassador, envoy, minister, charge d'affaires, or secretary of embassy or legation:

"consular agent" means consul-general, consul, vice-consul, or consular agent, or acting consul-general, acting consul, acting vice-consul, or acting consular agent.

Taking of affidavits out of the State by sailors, soldiers and airmen

66a. (1) Any oath or affidavit required to be made by any member of a fighting force, for the purpose of any court or matter in the State, may be taken or made in any place out of the State before any officer of any naval, military or air force of any part of His Majesty's dominions who holds a rank not below the following, namely:—

(a) in the case of a naval officer, lieutenant:

(b) in the case of a military officer, captain:

(c) in the case of an officer of an air force, flight-lieutenant,

or before any person having authority to administer an oath in the State.

(2) An officer administering an oath or taking an affidavit by virtue of the powers conferred by this section shall state in the jurat or attestation to the oath or affidavit the following matters, namely:—

(a) the date on which the oath or affidavit is taken or sworn;

(b) the full name and rank of the officer.

(3) An apparently genuine signature purporting to be the signature of a person administering an oath or taking an affidavit, and purporting to be the signature of an officer of a naval, military or air force of any part of His Majesty's dominions who holds a rank not below that specified in subsection (1) of this section, may be deemed to be the signature of such an officer unless the contrary is shown.

* * * * * * * * * *

(5) In this section—

"affidavit" includes any statutory or other declaration, acknowledgment, or examination;

"His Majesty's dominions" includes the United Kingdom of Great Britain and Northern Ireland, and all self-governing dominions, dependencies, colonies, protectorates, protected states, and mandated territories of His Majesty;

"member of a fighting force" includes any man or woman who is a member of a naval, military or air force of any country, and any person who, as a representative or employee of any charitable, religious or other organization for promoting the welfare of members of any such force, is attached to any such force;

"oath" includes affirmation and declaration.

Extension of provisions relating to affidavits to attestation, etc., of other documents

67. (1) The provisions of section 66 and 66a shall, as far as applicable, extend to every attestation, verification, acknowledgment, or signature in relation to any document required, authorized, or permitted by or under any statute or by custom or otherwise to be attested, verified, acknowledged, or signed, and to the doing of all notarial acts as if such

provisions had been re-enacted in this section, excluding words relating to the administration of oaths and the taking of affidavits and substituting therefor words relating to attestation, verification, acknowledgment, or signature, as the case may be.

(1a) Notwithstanding the provisions of section 66 of this Act as affected by subsection (1) of this section, judicial and official notice may be taken of the signature or seal of a person who, in connection with any of the matters to which those provisions so extend, appears to have signed that signature or affixed that seal while acting in the capacity of a notary public under the law for the time being in force in any country state or territory that is declared by proclamation to be a place within the Commonwealth of Nations to which this subsection applies, whether or not his authority for so acting has been verified in accordance with the provisions of subsection (3) of section 66 as so extended.

(1b) A proclamation referred to in subsection (1a) of this section may be made, and may be varied or cancelled by subsequent proclamation, as the Governor thinks fit.

(2) "Notarial act" includes any act, matter, or thing which in South Australia or elsewhere a notary public can attest or verify or otherwise do by or under any Act of Parliament or custom or otherwise for the purpose of being used in the State.

(3) The provisions of this section apply to documents required, authorized, or permitted by or under *The Real Property Act, 1886*.

Admissibility of documents without proof of seal, etc.

67a. Every document admissible in evidence for any purpose in any court of justice in England or Wales without proof of the seal, or stamp, or signature authenticating the document, or of the judicial or official character of the person appearing to have signed it, shall be admissible in evidence for the like purpose in any court of the State or before any person acting judicially under any law of the State, without proof of the seal, or stamp, or signature authenticating the document, or of the judicial or official character of the person appearing to have signed it.

Taking of evidence in this State by foreign authorities

67ab. (1) Subject to subsection (2) of this section, a foreign authority may—

(a) take evidence;

and

(b) administer an oath to any witness for the purpose of taking evidence,

in this State.

(2) Where—

(a) the foreign authority is not a court constituted of a person who holds judicial office under the laws of the place in which the court is established;

or

(b) the evidence to be taken by the foreign authority relates to criminal proceedings,

it shall not be lawful for the foreign authority to take evidence, or to administer an oath, in this State without the authority of the Attorney-General.

(3) In this section—

"foreign authority" means—

(a) a court established under the law of a place outside this State;

(b) any body or person authorized under the law of a place outside this State to take evidence;

or

(c) any person commissioned or otherwise authorized by any such court, body or person to act on its behalf in taking evidence in this State.

Evidence before the Parliamentary Select Committee of Inquiry into Prostitution

67b. (1) Where a person in evidence, or in a submission, to the Select Committee makes a statement tending to incriminate himself of an offence, no proceedings in respect of that offence shall be commenced against him in respect of that offence except upon the authorization of the Attorney-General.

(2) Notwithstanding any law to the contrary no Minister or other person shall have power to give an authorization under subsection (1) of this section on behalf of or in place of the Attorney-General.

(3) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorize the commencement of proceedings in respect of an offence shall be accepted, in the absence of proof to the contrary, as proof of the authorization required by subsection (1) of this section.

(4) A person who, without the authority of the Select Committee, publishes—

(a) the name of any person who gives evidence, or makes a submission, to the Select Committee;

or

(b) any information or material tending to identify any person who gives evidence, or makes a submission, to the Select Committee,

shall be guilty of an offence and liable, upon summary conviction, to a penalty not exceeding five thousand dollars.

(5) In this section—

"the Select Committee" means the Parliamentary Select Committee of Inquiry into Prostitution.

PART VIII

PUBLICATION OF EVIDENCE

DIVISION I—PRELIMINARY

Interpretation

68. In this Part—

"court" includes—

(a) a justice conducting a preliminary examination;

(b) a coroner;

(c) any person acting judicially:

"court of summary jurisdiction" includes a justice conducting a preliminary examination:

"evidence" includes any statement made before a court whether or not the statement constitutes evidence for the purposes of the proceedings before the court:

"interim suppression order" means a suppression order under section 69a(3):

"news media" means those who carry on the business of publishing information by newspaper, radio or television:

"primary court", in relation to an appeal, means the court by which the decision or order subject to appeal was made:

"suppression order" means an order—

(a) forbidding the publication of specified evidence or of any account or report of specified evidence;

or

(b) forbidding the publication of the name of—

(i) a party or witness;

or

(ii) a person alluded to in the course of proceedings before the court,

and of any other material tending to identify any such person.

DIVISION II—ORDERS FOR CLEARING COURT OR SUPPRESSING PUBLICATION OF EVIDENCE, ETC.

Order for clearing the court

69. (1) Where a court considers it desirable in the interests of the administration of justice, or in order to prevent hardship or embarrassment to any person, to exercise the powers conferred by this section, it may order specified persons, or all persons except those specified, to absent themselves from the place in which the court is being held during the whole or any part of the proceedings before the court.

(1a) Where the alleged victim of a sexual offence is a child and is to give evidence in proceedings related to the offence, an order must be made under subsection (1) requiring all persons except—

(a) those whose presence is required for the purposes of the proceedings;

(b) a person who is present at the request or with the consent of the child to provide emotional support for the child;

and

(c) any other person who, in the opinion of the court, should be allowed to be present,

to absent themselves from the place in which the court is being held while the child is giving evidence.

(2) The court may, on the application of a person against whom an order under subsection (1) operates, make available to him a transcript of evidence, and a record of proceedings, taken before the court during the operation of the order.

(3) Where a court refuses an application under subsection (2), the applicant may appeal against the refusal.

Suppression orders

69a. (1) Where a court is satisfied that a suppression order should be made—

(a) to prevent prejudice to the proper administration of justice;

or

(b) to prevent undue hardship—

(i) to an alleged victim of crime;

or

(ii) to a witness or potential witness in civil or criminal proceedings who is not a party to those proceedings,

the court may, subject to this section, make such an order.

(2) Where the question of making a suppression order (other than an interim suppression order) is under consideration by a court—

(a) the public interest in publication of information related to court proceedings, and the consequential right of the news media to publish such information, must be recognized as considerations of substantial weight;

and

(b) the court may only make the order if satisfied that the prejudice to the proper administration of justice, or the undue hardship, that would occur if the order were not made should be accorded greater weight than the considerations referred to above.

(3) Where an application is made to a court for a suppression order, the court may, without inquiring into the merits of the application, make such an order (an "interim suppression order") to have effect, subject to revocation by the court, until the application is determined; but if such an order is made the court must determine the application as a matter of urgency and, wherever practicable, within 72 hours after making the interim suppression order.

(4) A suppression order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.

(5) Where an application is made to a court for a suppression order—

(a) any of the following persons, namely:

(i) the applicant for the suppression order;

(ii) a party to the proceedings in which the suppression order is sought;

(iii) a representative of a newspaper or a radio or television station;

(iv) any person who has, in the opinion of the court, a proper interest in the question of whether a suppression order should be made,

is entitled to make submissions to the court on the application and may, by leave of the court, call or give evidence in support of those submissions;

(b) the court may (but is not obliged to) delay determining the application to make possible or facilitate non-party intervention in the proceedings under paragraph *(a)*(iii) or (iv).

(6) A suppression order may be varied or revoked by the court by which it was made, on the application of any of the persons entitled to make submissions by virtue of subsection (5)*(a)*.

(7) On an application for the making, variation or revocation of a suppression order—

(a) a matter of fact is sufficiently proved if proved on the balance of probabilities;

(b) if there appears to be no serious dispute as to a particular matter of fact, the court (having regard to the desirability of dealing expeditiously with the application) may—

(i) dispense with the taking of evidence on that matter;

and

(ii) accept the relevant fact as proved.

(8) An appeal lies against—

(a) a suppression order or a decision by a court not to make a suppression order;

(b) the variation or revocation of a suppression order or a decision by a court not to vary or revoke a suppression order.

(9) Any of the following persons is entitled to institute, or to be heard on, an appeal:

(a) where an application for a suppression order was made to the primary court—the applicant;

(b) a party to the proceedings in which the order or decision subject to appeal was made;

(c) a representative of a newspaper or a radio or television station;

(d) a person who had, in the opinion of the primary court, a proper interest in the question of whether a suppression order should be made;

or

(e) a person who did not appear before the primary court but has, in the opinion of the appellate court, a proper interest in the subject matter of the appeal or proposed appeal,

but a person who did not appear before the primary court may only bring an appeal, or be heard on an appeal, by leave of the appellate court (which will be granted if the appellate court is satisfied that that person's failure to appear before the primary court is not attributable to a lack of proper diligence).

(10) Where a court makes a suppression order (other than an interim suppression order), the court must—

(a) immediately forward to the Registrar a copy of the order;

and

(b) within 30 days forward to the Attorney-General a report setting out—

(i) the terms of the order;

(ii) the name of any person whose name is suppressed from publication;

(iii) a transcript or other record of any evidence suppressed from publication;

and

(iv) full particulars of the reasons for which the order was made.

(11) Where a court varies or revokes a suppression order (other than an interim suppression order), the court must forward to the Registrar a written notification of the variation or revocation.

(12) The Registrar will establish and maintain a register of all suppression orders (other than interim suppression orders).

(13) The register will be made available for inspection by members of the public free of charge during ordinary office hours.

(14) In this section—

"the Registrar" means a person to whom the functions of the Registrar under this section are assigned by the Attorney-General.

Appeals

69b. (1) An appeal under this Division lies to—

(a) the court to which appeals lie against final judgments or orders of the primary court;

and

(b) where there is no such court—the Supreme Court constituted of a single judge,

and where the appeal lies in accordance with the above principles to some court other than the Full Court, a further appeal lies to the Full Court from a judgment or order of the primary appellate court.

(2) An appeal under this Division shall be heard and determined as expeditiously as possible.

(3) Upon an appeal under this Division, the appellate court—

(a) may confirm, vary or revoke the order or decision subject to the appeal;

(b) may make any order or decision under this Division that could have been made in the first instance;

and

(c) may make orders for costs and orders dealing with any other incidental or ancillary matters.

(4) Except as provided in this Division, no appeal lies against a decision or order of a court made under this Division.

Disobedience to orders under this Division

70. (1) Where a person disobeys an order under this Division, he shall—

(a) if the court by which the order was made has power to punish for contempt—be guilty of a contempt of that court and punishable accordingly;

and

(b) whether or not that court has power to punish for contempt—be guilty of a summary offence punishable by a fine not exceeding two thousand dollars or imprisonment for a term not exceeding six months.

(2) A person shall not, in respect of the same act or default, be proceeded against under this section both for a contempt of court and a summary offence.

(3) Where a court of summary jurisdiction makes an order under this Division and the order is disobeyed in the face of the court, the court may proceed immediately to convict the person guilty of that disobedience on its own view of the matter and, if it imposes a sentence of imprisonment, to issue a warrant of commitment to enforce the sentence.

Attorney-General to provide annual report

71. (1) The Attorney-General shall, on or before the thirty-first day of October in each year, prepare a report relating to the preceding financial year specifying—

(a) the total number of orders made under this Division or a corresponding previous enactment;

(b) the number of such orders made by each of the various courts;

and

(c) a summary of the reasons assigned by the courts for making such orders.

(2) The Attorney-General shall, as soon as practicable after the report is prepared, cause a copy of the report to be laid before each House of Parliament.

DIVISION III—SEXUAL CASES

Restriction on reporting proceedings relating to sexual offences

71a. (1) A person shall not, before the relevant date, publish by newspaper, radio or television—

(a) any evidence given before a magistrate or justice in a preliminary investigation of a charge relating to a sexual offence;

or

(b) any report upon any such preliminary investigation,

unless the accused person consents to the publication.

Penalty: Two thousand dollars.

(2) A person shall not, before the relevant date, publish by newspaper, radio or television any statement or representation—

(a) by which the identity of a person who has been, or is about to be, charged with a sexual offence is revealed;

or

(b) from which the identity of a person who has been, or is about to be, charged with a sexual offence, might reasonably be inferred,

unless the accused person consents to the publication.

Penalty: Two thousand dollars.

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(4) A person shall not publish by newspaper, radio or television any statement or representation—

(a) by which the identity of a person alleged in any legal proceedings to be the victim of a sexual offence is revealed;

or

(b) from which the identity of a person alleged in any legal proceedings to be the victim of a sexual offence might reasonably be inferred,

unless the judge authorizes, or the alleged victim consents to, the publication (but no such authorization or consent can be given where the alleged victim is a child).

Penalty: Two thousand dollars.

(5) In this section—

* * * * * * * * * *

"newspaper" means any newspaper, journal, magazine or other publication that is published daily or at periodic intervals:

"the relevant date" means the date on which—

(a) the accused person is committed for trial or sentence;

or

(b) the charge is dismissed or the proceedings lapse by reason of the death of the accused, for want of prosecution, or for any other reason.

DIVISION IV—CASES GENERALLY

Publishers required to report result of certain proceedings

71b. (1) Where—

(a) a report of proceedings taken against a person for an offence is published by newspaper, radio or television;

(b) the report identifies the person against whom the proceedings have been taken or contains information tending to identify that person;

(c) the report is published before the result of the proceedings is known;

(d) those proceedings do not result in conviction of the person to whom the report relates of the offence with which he was charged,

the person by whom the publication is made shall, as soon as practicable after the determination of the proceedings, publish a fair and accurate report of the result of the proceedings with reasonable prominence having regard to the prominence given to the earlier report.

(2) A person required under subsection (1) to publish a report of the result of proceedings may apply to the Supreme Court for directions in relation to the manner in which he should comply with that subsection.

Penalty: Two thousand dollars.

(3) Where—

(a) a report of proceedings taken against a person for an offence is published by newspaper, radio or television;

(b) the report identifies the person against whom the proceedings have been taken or contains information tending to identify that person;

(c) the report is published after the result of the proceedings is known;

(d) those proceedings did not result in conviction of the person to whom the report relates of the offence with which he was charged,

the person by whom the publication is made shall include prominently in the report a statement of the result of the proceedings.

Penalty: Two thousand dollars.

(4) In this section—

"proceedings" includes, in relation to an offence, the laying of a charge of the offence.

DIVISION V—PROCEEDINGS

Proceedings for offences

72. All proceedings in respect of offences against this Part of this Act shall be disposed of summarily.

PART IX

MISCELLANEOUS

Regulations

73. The Governor may make such regulations as are necessary or expedient for the purposes of, or as are contemplated by, this Act.

SCHEDULES

FIRST SCHEDULE

Number and Year	Title of Act	Extent of Repeal
Imperial 6 & 7 Vic. c. 85 (adopted by Ordinance 17 of 1846)	An Act for Improving the Law of Evidence	The whole as the same is adopted and subsisting pursuant to Ordinance 17 of 1846.
3 of 1848	Ordinance to Facilitate the Admission of the unsworn Testimony of the Aboriginal Inhabitants of South Australia and the parts adjacent	The whole.
4 of 1849	Ordinance to amend Ordinance 3 of 1848	The whole.
2 of 1852	An Act to amend the Law of Evidence	The whole.
24 of 1855-6	*The Supreme Court Procedure Act, 1855*	Sections 16 to 21 inclusive.
13 of 1866-7	An Act for amending the Law of Evidence and Practice on Criminal trials	Sections 3 to 8 inclusive.
3 of 1867	*Matrimonial Causes Act, 1867*	Section 57.
10 of 1869-70	*Evidence Further Amendment Act, 1869*	The whole.
9 of 1872	An Act for Shortening and Explaining the Language used in Acts of Parliament, and for other purposes	The whole as unrepealed by 1215 of 1915.
3 of 1873	*The Telegraphic Messages Act, 1873*	The whole.
38 of 1876	*The Criminal Law Consolidation Act, 1876*	Sections 377 and 378.
162 of 1879	*The Bankers Books Evidence Act, 1879*	The whole.
435 of 1888	*Evidence Further Amendment Act, 1888*	The whole.
1056 of 1911	*The Oaths and Affirmations Act, 1911*	The whole.
1287 of 1917	*Evidence Publication Act, 1917*	The whole.
1669 of 1925	*Evidence Amendment Act, 1925*	The whole.

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FOURTH SCHEDULE

South Australia

[In the Court]

The King *v.* .....

[or In the matter of a Complaint by .....

against .....

or as the case may be]

I, ... of .....

a fingerprint expert attached to the Police Department of the State [or Territory] of .....

..... 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 said card are identical with those on a fingerprint card portion of the records of the said Department, being the fingerprints of one ..... *(alias)* .....

2. According to the said records, which I believe to be accurate, the said .....
..... has been convicted in the said State [or Territory] 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 the said 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 said card marked "A".

SWORN at .....
this ..... day of .....
19 .....

Before me

.....
A person having authority to take affidavits in the State [or Territory] in which the affidavit is sworn.

APPENDIX 1

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 3 of The Public General Acts of South Australia 1837-1975 at page 790.

Legislative history since 3 February 1976 (entries in bold type indicate amendments since the last reprint):

Section 2:	amended by 40, 1982, s. 3
Section 4:	definition of "bank" and "banker" repealed by 40, 1982, s. 4 definition of "banker's book" repealed by 40, 1982, s. 4 definition of "child" inserted by 32, 1988, s. 3(a) definition of "court" substituted by 56, 1984, s. 3(a) definition of "electric telegraph" amended by 9, 1979, s. 2 definition of "sexual offence" inserted by 84, 1976, s. 2; **amended by 26, 1992, s. 7** definition of "telegraph station" amended by 9, 1979, s. 2 definition of "young child" inserted by 32, 1988, s. 3(b)
Sections 6 and 7:	substituted by 56, 1984, s. 3(b)
Section 8:	repealed by 56, 1984, s. 3(b)
Section 9(6):	inserted by 32, 1988, s. 4
Section 12:	substituted by 32, 1988, s. 5
Section 13:	repealed by 32, 1988, s. 5
Section 14:	inserted by 107, 1986, s. 3
Section 18:	amended by 47, 1983, s. 2(a)-(d); redesignated to read as s. 18(1) by 47, 1983, s. 2(e)
Section 18(1):	amended by 55, 1983, s. 3(a), (b)
Section 18(1)III and IV:	repealed by 55, 1983, s. 3(c)
Section 18(2) and (3):	inserted by 47, 1983, s. 2(e)
Section 18a:	inserted by 47, 1983, s. 3; substituted by 96, 1985, s. 3
Section 21:	substituted by 55, 1983, s. 4
Section 32:	repealed by 9, 1979, s. 3
Section 34ca:	inserted by 32, 1988, s. 6
Section 34i:	inserted by 84, 1976, s. 3; amended by 47, 1983, s. 4; substituted by 90, 1984, s. 3
Sections 34j and 34k:	**inserted by 41, 1991, s. 3**
Section 35:	substituted by 72, 1990, s. 2
Section 37:	amended by 9, 1979, s. 4; substituted by 72, 1990, s. 3
Section 37c:	inserted by 9, 1979, s. 5
Section 45a(2):	amended by 9, 1979, s. 6
Section 45b(3):	amended by 9, 1979, s. 7
Section 45c:	inserted by 24, 1984, s. 2; substituted by 72, 1990, s. 4
Heading preceding section 46:	amended by 40, 1982, s. 5
Sections 46 - 48:	substituted by 40, 1982, s. 6
Section 48a and 48b:	repealed by 40, 1982, s. 6
Section 49(1):	amended by 40, 1982, s. 7(a)
Section 49(1a):	inserted by 40, 1982, s. 7(b)
Section 49(2):	amended by 40, 1982, s. 7(c)
Section 49(3) - (9):	inserted by 40, 1982, s. 7(d)
Section 50:	amended by 40, 1982, s. 8
Section 51(1):	substituted by 40, 1982, s. 9
Section 52:	repealed by 40, 1982, s. 10
Section 56(2):	**amended by 49, 1991, Sched. 2**
Section 59b(1):	amended by 9, 1979, s. 8
Heading preceding section 59d:	substituted by 45, 1988, s. 2
Section 59d:	substituted by 45, 1988, s. 3
Section 59d(2):	substituted by 72, 1990, s. 5
Section 59e:	substituted by 45, 1988, s. 4
Section 59f(1):	amended by 45, 1988, s. 5
Section 59f(5):	amended by 45, 1988, s. 5; 72, 1990, s. 6(a)
Section 59f(7):	inserted by 72, 1990, s. 6(b)
Section 59h:	amended by 45, 1988, s. 6
Section 59j:	**inserted by 26, 1992, s. 8**
Section 61:	repealed by 9, 1979, s. 9
Section 65:	amended by 9, 1979, s. 10
Section 65a:	inserted by 32, 1988, s. 7
Section 67ab:	inserted by 9, 1979, s. 11
Section 67b:	inserted by 65, 1978, s. 2
Heading preceding section 68:	inserted by 107, 1984, s. 2
Section 68:	substituted by 47, 1983, s. 5 definition of "court of summary jurisdiction" inserted by 107, 1984, s. 3(a) definition of "interim suppression order" inserted by 107, 1984, s. 3(b) definition of "news media" inserted by 43, 1989, s. 3(a) definition of "primary court" inserted by 107, 1984, s. 3(b) definition of "suppression order" inserted by 107, 1984, s. 3(b); substituted by 43, 1989, s. 3(b)
Heading preceding section 69:	inserted by 107, 1984, s. 4
Section 69:	substituted by 9, 1979, s. 12; 107, 1984, s. 4
Section 69(1a):	inserted by 32, 1988, s. 8
Section 69a:	inserted by 107, 1984, s. 4; substituted by 43, 1989, s. 4
Section 69a(1):	amended by 72, 1990, s. 7
Section 69b:	inserted by 107, 1984, s. 4
Section 69b(1):	amended by 43, 1989, s. 5(a)
Section 69b(3):	amended by 43, 1989, s. 5(b), (c)
Section 70:	substituted by 107, 1984, s. 4

Section 71:	amended by 9, 1979, s. 13; 40, 1982, s. 11; substituted by 107, 1984, s. 4
Heading preceding section 71a:	inserted by 107, 1984, s. 5
Section 71a:	inserted by 84, 1976, s. 4
Section 71a(1) and (2):	amended by 40, 1982, s. 12
Section 71a(3):	amended by 40, 1982, s. 12; repealed by 107, 1984, s. 6(a)
Section 71a(4):	amended by 40, 1982, s. 12; 32, 1988, s. 9
Section 71a(5):	definition of "acquittal" repealed by 107, 1984, s. 6(b)
Heading preceding section 71b:	inserted by 107, 1984, s. 7
Section 71b:	inserted by 107, 1984, s. 7
Heading preceding section 72:	inserted by 107, 1984, s. 8
	Part IX comprising s. 73 and heading inserted by 72, 1990, s. 8
Third schedule:	repealed by 55, 1983, s. 5

APPENDIX 2

Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	$60 000
2	10 years	$40 000
3	7 years	$30 000
4	4 years	$15 000
5	2 years	$8 000
6	1 year	$4 000
7	6 months	$2 000
8	3 months	$1 000
9	—	$500
10	—	$200
11	—	$100
12	—	$50

Note: This appendix is provided for convenience of reference only.