
EVIDENCE ACT (No. 2) 1976

ANALYSIS

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**EVIDENCE (No. 2)**

No. 65 of 1976

AN ACT to amend the Evidence Act 1910.

[11 November 1976]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Evidence Act (No. 2) 1976*. Short title and citation.

(2) The *Evidence Act 1910*, as subsequently amended, is in this Act referred to as the Principal Act.

Certified copies
of instruments
under the *Real
Property Act
1862 prima
facie* evidence.

2 Section 60 of the Principal Act is repealed.

3 After section 68 of the Principal Act the following Division is inserted:—

*“ Division VA—Reproductions of documents
“ Subdivision I—Preliminary*

Interpretation.
Cf. No. 44 of
1967 (N.S.W.),
s. 2.

“ 68A In this Division, unless the contrary intention appears—

‘ affidavit ’ includes statutory declaration;

‘ approved official ’ has the meaning assigned to that expression by section 68B;

‘ business ’ has the meaning assigned to that expression by section 40A (5);

‘ certificate ’ includes a photograph of a certificate;

‘ document ’ includes part of a document;

‘ machine copy ’, in relation to a document, means a copy of the document—

(a) made by a machine wherein, or made by a process whereby, a latent image of the contents of the document is produced from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film; or

(b) made by the electrostatic process known as Xerography or any similar process;

‘ original document ’ includes a copy of an original document (whether it is a sealed or stamped copy or not) that is admissible in evidence;

‘ reproduction ’, in relation to a document, means a machine copy of the document or a print made from a transparency of the document, and ‘ reproduce ’ has a corresponding meaning;

‘ transparency ’, in relation to a document, means—

(a) a developed negative or positive photograph of that document (in this definition referred to as ‘ an original photograph ’) made, on a transparent base, by means of light reflected from, or transmitted through, the document;

- (b) a copy of an original photograph made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with the original photograph; or
- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series.

“ Subdivision II—Reproduction of official documents

“ 68B—(1) A document that purports to be a copy of an original document is, without further proof, admissible in evidence in a legal proceeding as if it were the original document of which it purports to be a copy, if it bears or is accompanied by a certificate, purporting to have been signed by an approved official or by some other officer acting on his behalf, that it is a reproduction of an original document that was in the proper custody of the approved official—

Certified reproductions of certain official documents, &c., admissible without further proof, &c. *Ibid.*, s. 3 (1)-(3).

- (a) where the reproduction is a machine copy, at the time when the machine copy was made; or
- (b) where the reproduction is a print made from a transparency, at the time when the transparency was made.

“(2) Where an approved official is served with legal process to produce a document in a court or before a person acting judicially, it is sufficient answer to that process if the official to whom the process is addressed sends by prepaid post or causes to be delivered to the Registrar or proper officer of the court or person concerned a reproduction of the document bearing or accompanied by such a certificate as is referred to in subsection (1).

“(3) In this section—

‘ approved official ’ means—

- (a) the Registrar-General, the Recorder of Titles, the Registrar of Deeds, the Government Statistician, the Principal Archivist, or the Manager of the Department of Film Production;

- (b) where an original document to which this section relates is a document filed in a court or the official record of a legal proceeding, the Registrar or other proper officer of the court which the document was before or before which the legal proceeding took place; or
- (c) any other official declared by the Attorney-General, by order, to be an approved official for the purposes of this section;

‘in the proper custody’, in relation to an original document, means—

- (a) where the document is deposited in the Archives Office under section 13 of the *Archives Act* 1965, in the custody of the Principal Archivist; or
- (b) in any other case, in the custody or under the control of the appropriate approved official.

Non-application of Subdivision III. *Ibid.*, s. 3 (4).

“68C Subdivision III does not apply to or in respect of a reproduction of a document referred to in this Subdivision.

“*Subdivision III—Reproduction of business documents*

Admissibility of reproductions of business documents that are destroyed, lost, or unavailable. *Ibid.*, s. 4.

“68D—(1) Subject to this Division, a document that purports to be a copy of an original document made or used in the course of a business is, upon proof that it is a reproduction made in good faith and—

- (a) that the original document has been destroyed or lost, whether wholly or in part; or
- (b) that it is not reasonably practicable to produce the original document or to secure its production,

admissible in evidence in any legal proceeding to the extent to which the contents of the original document of which it purports to be a copy would have been admissible.

“(2) Subject to proof of the same matters as are referred to in subsection (1), where a person is served with legal process to produce a document made or used in the course of a business, in a court or before a person acting judicially, it is sufficient answer to that process if the person to whom the process is addressed produces a document that purports to be a copy of the original document.

“(3) Without prejudice to any other mode of proof, an affidavit purporting to have been made by a person at or about the time he made a machine copy of, or photographed, a document—

- (a) stating his full name, address, and occupation;
- (b) identifying or describing the document and indicating whether the document is itself a reproduction;
- (c) stating the day on which he made the machine copy or photograph, the condition of the document at that time with respect to its legibility, and the extent of any damage thereto;
- (d) describing the machine or process by which he made the machine copy or photograph;
- (e) stating that the making of the machine copy or photograph was properly carried out in the ordinary course of business by the use of apparatus and materials in good working order and condition; and
- (f) stating that the machine copy or photograph is a machine copy or photograph made in good faith,

is evidence, whether that person is available to be called as a witness or not, that the machine copy or transparency of the document referred to in the affidavit is a machine copy or transparency made in good faith, and is, in the case of a machine copy, a reproduction of the document or can, in the case of a transparency, be used to produce such a reproduction.

“68E—(1) Subject to this Division, but in addition to, and without derogating from, the provisions of section 68D (1) and (2), a print made from a transparency of an original document (being a document made or used in the course of a business) is admissible in evidence in a legal proceeding to the extent to which the contents of the original document would have been admissible, whether the document is still in existence or not, on proof that the transparency was made in good faith and the print is a print of the image on the transparency.

Evidentiary provisions relating to prints made from transparencies of original documents. *Ibid.*, s. 5 (3) and (4).

“(2) Subject to this section and without prejudice to any other mode of proof, a certificate purporting to have been made by a person at the time at which he photographed a document—

- (a) stating his name, address, and occupation;

- (b) identifying or describing the document;
- (c) stating the day on which the document was photographed;
and
- (d) bearing his signature,

is evidence, whether that person is available to be called as a witness or not, that the transparency is a photographic copy of the document referred to in the certificate and that it was made in good faith.

“(3) Where a person photographs more than one document on any one day, he is required to make only one certificate for the purposes of subsection (2) in relation to those documents.

“(4) A person who makes a certificate for the purposes of subsection (2) that relates to more than one document shall photograph the certificate both when he commences to photograph the documents and when he has finished photographing them.

Affidavits of makers of prints from transparencies to be evidence. Ibid., s. 6.

“68F Without prejudice to any other mode of proof, an affidavit purporting to have been made by a person at or about the time he made a print from a transparency of a document—

- (a) stating his full name, address, and occupation;
- (b) identifying the transparency;
- (c) stating the day on which the print was made, the condition of the transparency, and the extent of any damage thereto;
- (d) describing the process or procedure by which he made the print;
- (e) stating that the printing was properly carried out by the use of equipment and materials in good working order and condition with the object of reproducing the whole of the image on the transparency; and
- (f) stating that the print was made in good faith,

is evidence, whether that person is available to be called as a witness or not, that the print was made in good faith and reproduces the whole of the image on the transparency.

Proof where documents processed by independent processors. Ibid., s. 7.

“68G Where a person who has the possession, custody, or control of a document—

- (a) delivers the document, or causes it to be delivered, to another person (in this section referred to as ‘the processor’) whose business is, or includes, the reproduction or photographing of documents for other persons; and

(b) subsequently receives from the processor—

- (i) a machine copy or transparency of the document;
and
- (ii) an affidavit by the processor under section 68D or
a certificate by him under section 68E,

an affidavit made by the first-mentioned person at or about that time giving particulars of his possession, custody, or control of the document, its delivery to the processor, and his receipt of the document and the machine copy or transparency from the processor, is admissible in evidence of the facts stated therein, whether the first-mentioned person is available to be called as a witness or not.

“ 68H A reproduction made from a transparency shall not be admitted as evidence pursuant to this Subdivision in any legal proceeding, unless the court or person acting judicially is satisfied that the transparency is in existence at the time of the legal proceeding.

Reproduction
not to be
admitted as
evidence unless
transparency in
existence.
Ibid., s. 8.

“ 68J A statement by a person in an affidavit made for the purposes of this Subdivision—

- (a) that he destroyed or caused the destruction of a document;
- (b) that after due search and inquiry a document cannot be found;
- (c) that, for the reasons specified in the affidavit, it is not reasonably practicable to produce a document or secure its production; or
- (d) that a document was made or was used in the course of his or his employer's business,

is evidence of the fact or facts stated, whether that person is available to be called as a witness or not.

Proof of
destruction of
documents, &c.
Ibid., s. 10.

“ 68K—(1) This section applies to and in respect of transparencies of a series of documents that—

- (a) bear or have been given serial numbers;
- (b) bear or have been marked with the same kind of distinctive identification mark; or
- (c) purport from their contents to relate to the same subject-matter, to the same person or persons, or to a matter between persons,

where the documents are photographed on a continuous length of film or, where the documents are marked in accordance with paragraph (a) or paragraph (b), on separate films.

One certificate
sufficient in
certain
circumstances.
Ibid., s. 11.

“(2) For the purposes of subsection (1), ‘continuous length of film’ means a film with no joins or splices throughout its length.

“(3) A certificate made pursuant to section 68E shall be deemed to be a certificate in respect of all or any of the transparencies of a series of documents to which this section applies if it is photographed as part of the series and, in lieu of identifying or describing each individual document photographed, it states the general nature of the documents in the series and—

- (a) the serial numbers of the first and last document in the series;
- (b) the distinctive identification mark; or
- (c) the person or persons, or the matter between persons, to which the documents refer,

as the case may require.

“(4) Notwithstanding anything contained in this Division, a print that purports to be made from a transparency of a certificate referred to in subsection (3) is admissible in evidence in a legal proceeding as if it were the certificate from which the transparency was made, if—

- (a) it is produced or tendered with a print made from a transparency of a document in the series to which the certificate relates; and
- (b) an affidavit under section 68F relating to both prints is also produced or tendered.

Admissibility
of copies of
affidavits and
certain
certificates.
Ibid., s. 12.

“ 68L A copy of—

- (a) an affidavit relating to the reproduction of a document; or
- (b) a certificate made pursuant to section 68E and to which section 68K (3) does not apply,

is, unless the court or person acting judicially otherwise orders, admissible in evidence in a legal proceeding as if it were the affidavit or certificate of which it is a copy.

Discovery,
inspection, and
production
where
documents
destroyed or
lost.
Ibid., s. 13.

“ 68M—(1) This section applies to—

- (a) a transparency of a destroyed or lost document, where a print made from the transparency would, subject to compliance with the conditions prescribed by this Division, be admissible in evidence in a legal proceeding; and

- (b) an affidavit or a certificate that would be evidence or, where, in the case of a certificate, the certificate is itself in the form of a transparency, that could be the means of providing evidence, pursuant to this Act, of compliance with those conditions in so far as they relate to the making of the transparency and the destruction or loss of the document.

“(2) Where a person has the possession, custody, or control of a transparency and an affidavit or a certificate to which this section applies and, but for the destruction or loss of the document from which the transparency was made, would be required by any law, order of court, practice, or usage—

- (a) to give discovery of the document;
 - (b) to produce the document for inspection;
 - (c) to permit the making of a copy of the document or the taking of extracts therefrom; or
 - (d) to supply a copy of the document,
- that law, order, practice, or usage shall, subject to this section, be deemed to extend to the transparency and affidavit or certificate.

“(3) For the purposes of this section—

- (a) the obligation imposed by this section in respect of a requirement referred to in subsection (2) (b) shall be deemed to include an obligation—

- (i) to provide proper facilities for reading the image on the transparency, and, where, in the case of a certificate, it is itself in the form of a transparency, the image on the transparency of the certificate; or

- (ii) to produce for inspection a print made from the transparency and, where, in the case of a certificate, it is itself in the form of a transparency, a print made from the transparency of the certificate, together, in each case, with an affidavit that would be evidence under section 68F, that the print was made in good faith and reproduces the image on the transparency; and

- (b) the obligation imposed by this section in respect of a requirement referred to in subsection (2) (d) shall be deemed not to include an obligation to supply a copy of any transparency but to include an obligation to supply the

print and affidavit or certificate, or, as the case may require, the prints, certificate, and affidavit, referred to in paragraph (a) (ii).

“(4) Where any person has the possession, custody, or control of a transparency and an affidavit or a certificate to which this section applies and is required by legal process issued by a court to produce to the court the document from which the transparency was made, that legal process shall be deemed to require the production by him of—

- (a) a print, made in good faith, that reproduces the image on the transparency; and
- (b) the affidavit or certificate or, where, in the case of a certificate, the certificate is itself in the form of a transparency, a print, made in good faith, that reproduces the image on the transparency of the certificate.

“(5) A reference in this section to an ‘ affidavit ’ or ‘ certificate ’ includes a reference to a copy thereof.

“ *Subdivision IV—General provisions*

“ 68N—(1) Subject to this section, where a print made from a transparency is tendered in evidence in a legal proceeding pursuant to the provisions of this Division and—

- (a) the court or person acting judicially is not satisfied that the print is a legible copy of the original document; or
 - (b) a party to the legal proceeding questions the authenticity of the print and applies for an order under this section,
- the court or a person acting judicially may reject the print tendered and order that a further print be made from a transparency of the original document.

“(2) A further print made in compliance with an order—

- (a) under subsection (1) (a) shall be made at the cost of the party who tendered the rejected print; or
- (b) under subsection (1) (b) shall be made in the presence of a person appointed for the purpose by the court or person acting judicially and at the cost of the party who applied for the order.

“(3) Where a print to which Subdivision II relates is rejected under this section, a print made in compliance with an order under subsection (1) shall be made in the same premises as the rejected print or, where that is not practicable, in accordance with directions given by the court or person acting judicially.

“ 68P—(1) A reproduction of a document or a print made from a transparency shall be deemed to be a copy of a document notwithstanding—

Colours and tones of reproductions.
Ibid., s. 15.

- (a) that, in the process by which the reproduction or transparency was made, the colours or tones appearing in the original document are altered or reversed in the reproduction or transparency; or
- (b) that any number or mark of identification added for the purposes of section 68K appears in the reproduction or transparency.

“(2) A document may be certified under Subdivision II to be a reproduction of an original document, notwithstanding that—

- (a) any writing or representation describing or identifying colours in the original document appears in the reproduction; or
- (b) any colours appearing in the reproduction were added after it was made and before certification.

“ 68Q—(1) Where a reproduction of a document is admissible in evidence pursuant to this Division, it is admissible without a notice to produce the document of which it is a reproduction.

Notice to produce and proof of comparison not required.
Ibid., s. 16.

“(2) Where a reproduction of a document is tendered as evidence pursuant to this Division, no proof is required that the reproduction was compared with the original document.

“ 68R Any presumption that may be made with respect to a document over 30 years old may be made with respect to a reproduction of that document admitted in evidence under this Division in all respects as if the reproduction were the document.

Presumptions as to old documents.
Ibid., s. 17.

“ 68S Where a reproduction that is made of a document in another State or in a Territory of the Commonwealth would be admissible in evidence in that State or Territory under a law of that State or Territory—

Reproductions made in other States, &c.
Ibid., s. 18.

- (a) that corresponds with this Division; or

(b) that the Attorney-General, by order, declares to correspond with this Division,

the reproduction is admissible in evidence in a legal proceeding in this State in the same circumstances, to the same extent, and for the like purpose as it would be admissible in evidence in a legal proceeding in that State or Territory under the law of that State or Territory.

Judicial notice.
Ibid., s. 19.

“ 68T Where any Act or law requires a court or person acting judicially to take judicial notice of the seal or signature of a court or person appearing on a document and a reproduction of that document is, pursuant to this Division, admitted in evidence in a legal proceeding, the court or person acting judicially shall take judicial notice of the image of the seal or signature on the reproduction to the same extent as it would be required to take judicial notice of the seal or signature on the document.

Court may
reject
reproductions.
Ibid., s. 20.

“ 68U Notwithstanding anything contained in this Division, a court or person acting judicially may refuse to admit in evidence a reproduction tendered pursuant to this Division if it or he considers it expedient in the interests of justice to do so as a result of any reasonable inference drawn by the court or person acting judicially from the nature of the reproduction, the machine or process by which it was made or, in the case of a print from a transparency, by which the transparency was made, and any other circumstances.

Weight of
evidence.
Ibid., s. 21.

“ 68V In estimating the weight of evidence to be attached to a reproduction admitted in evidence pursuant to this Division, regard shall be had to the fact that, if the person making an affidavit or a certificate pursuant to this Division is not called as a witness, there has been no opportunity to cross-examine him, and to all the circumstances from which any inference can reasonably be drawn as to—

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

“ 68w—(1) Where any Act or law or duty or obligation that requires an approved official to preserve or keep a document to which Subdivision II applies does not provide for a copy of the document to be preserved or kept in lieu of that document, it is a sufficient compliance with that requirement if the official—

Transparencies, &c., may be preserved in lieu of documents. *Ibid.*, s. 9.

- (a) preserves or keeps a transparency thereof in lieu of the document; and
- (b) complies with the provisions of the *Archives Act* 1965 with respect to the destruction or disposal of the document.

“(2) Where any Act passed before or after the commencement of this Division requires a document to which Subdivision III applies to be preserved or kept for any period, not being less than 3 years, it is sufficient compliance with that requirement—

- (a) to preserve or keep in lieu of that document—
 - (i) a transparency of the document, being a transparency; and
 - (ii) an affidavit or a certificate relating to the transparency, being an affidavit or a certificate, to which section 68G applies; and
- (b) in the case of a document that is a State record, if the head of the department concerned complies with the provisions of the *Archives Act* 1965 with respect to the destruction or disposal of the document.

“(3) In subsection (2) (b), ‘State record’ and ‘head of the department’ have the meanings respectively assigned to those expressions by the *Archives Act* 1965.

“ 68x The provisions of this Division shall be construed as in aid of, and not in derogation from, any other law or any practice or usage with respect to the production to a court or person acting judicially or to the admissibility in evidence in a legal proceeding of reproductions of documents.

Provisions of Division in aid of other similar laws. *Ibid.*, s. 22.

“ 68y Notwithstanding the provisions of this Division, where stamp duty under the *Stamp Duties Act* 1931 is payable on a document, a reproduction of the document is not admissible in evidence under this Division unless the reproduction of the document shows or establishes to the satisfaction of the court or person acting judicially that it has been stamped and is admissible in accordance with section 28 of the *Stamp Duties Act* 1931.

Stamp duty. *Ibid.*, s. 23.

Power of
Attorney-
General to
exclude
provisions of
Division.
Ibid., s. 24.

“ 68z The Attorney-General may by order exclude the operation of this Division or any Subdivision thereof in respect of any particular document or particular class of document.

Regulations.

“ 68ZA—(1) The Governor may make regulations for the purposes of this Division.

“(2) Without prejudice to the generality of subsection (1), the regulations may make provision for or with respect to—

- (a) the manner of executing documents that are intended to be placed in the proper custody of approved officials; and
- (b) the material used to effect the execution of those documents.”.