



**EVIDENCE AMENDMENT (ANALYSTS' CERTIFICATES)
ACT 1991**

No. 27 of 1991

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AN ACT to amend the *Evidence Act 1910*

[Royal Assent 25 October 1991]

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:—

Short title

1—This Act may be cited as the *Evidence Amendment (Analysts' Certificates) Act 1991*.

Commencement

2—This Act shall commence on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Evidence Act 1910** is referred to as the Principal Act.

Section 60 inserted

4—After section 59 of the Principal Act, the following section is inserted:—

Certificate of analyst to be evidence

60—(1) In any summary proceedings, a document purporting to be a certificate signed by an analyst and relating to any analysis is evidence of the facts stated in that document—

- (a) if the party to the proceedings who tenders the document has served the other party to the proceedings with a copy of that document not less than 14 days before the hearing; and
- (b) unless a party who has been so served with a copy of that document has given notice—
 - (i) in writing; and
 - (ii) not less than 7 days before the hearing; and
 - (iii) to the party who has tendered that document—

that the analyst or a person who, under the supervision of the analyst, was involved with the analysis is required to be called as a witness.

(2) In this section—

“analysis” means any analysis, examination, test or other thing done by, or under the supervision of, an analyst;

* 1 Geo. V No. 20. For this Act, as amended to 1st June 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 52 of 1981, Nos. 60 and 75 of 1982, No. 29 of 1984, Nos. 5, 21 and 51 of 1985, No. 34 of 1986, Nos. 55 and 77 of 1987 and Nos. 4 and 25 of 1988.

“analyst” means—

- (a) the Government Analyst; or
- (b) an analyst appointed for the purposes of any Act; or
- (c) a person appointed, authorised or otherwise determined for the purposes of any Act to analyse, examine or test any substance.

Consequential amendments

5—The Acts specified in Schedule 1 are amended as set out in that Schedule.

SCHEDULE 1**Section 5****CONSEQUENTIAL AMENDMENTS OF OTHER ACTS***Dairy Produce Act 1932 (23 Geo. V No. 37)—*

Section 18—

- (a) In subsection (2), omit “appointed” and substitute “authorized”;
- (b) In subsection (2), after “examine”, insert “, or arrange for and supervise the examination of,”;
- (c) Omit subsection (3).

Dangerous Goods Act 1976 (No. 24 of 1976)—

Section 16—

- (a) In paragraph (b), insert “a document purporting to be” before “the certificate”;
- (b) In paragraph (b), insert “or any person who, under the supervision of the Government Analyst, was involved with the analysis to which the certificate relates” after “Government Analyst” (where lastly occurring).
- (c) In paragraph (b), omit “cross-examination.” and substitute “cross-examination; and”;
- (d) After paragraph (b), add the following paragraph:—
 - (c) Section 60 of the *Evidence Act 1910* does not apply.

Environment Protection Act 1973 (No. 34 of 1973)—

Section 42—

- (a) In subsection (2), omit “A certificate of his analysis of anything given by an analyst” and substitute “A document purporting to be a certificate of an analyst relating to an analysis done by, or under the supervision of, the analyst”;
- (b) In subsection (3), omit “certificate” and substitute “document”;
- (c) In subsection (3), after “analyst”, insert “or any person who, under the supervision of the analyst, was involved with the analysis to which the certificate relates”.

(d) After subsection (3), add the following subsection:—

(4) Section 60 of the *Evidence Act 1910* does not apply in relation to a prosecution under this Act.

Fertilizers Act 1950 (No. 43 of 1950)—

(1) Section 26 (2)—

After “analysis by”, insert “, or under the supervision of,”.

(2) Section 28 (1)—

After “analyse”, insert “, or arrange for and supervise the analysis of,”.

(3) Section 33—

(a) In subsection (1), after “production of”, insert “a document purporting to be”;

(b) In subsection (1), after “analysed”, insert “, or supervised the analysis of,”;

(c) In subsection (1), after “analyst” (second occurring), insert “or any person who, under the supervision of the analyst, was involved with the analysis”;

(d) After subsection (1), insert the following subsection:—

(1A) Section 60 of the *Evidence Act 1910* does not apply in relation to any proceedings under this Act.

Industrial Safety, Health, and Welfare Act 1977 (No. 60 of 1977)—

Section 12—

(a) In subsection (5), omit “by him”;

(b) In subsection (6) (b), omit “by him”.

Pesticides Act 1968 (No. 86 of 1968)—

(1) Section 31—

(a) In subsection (1), after “analysed by”, insert “, or under the supervision of,”;

(b) In subsection (2), after “carry out”, insert “, or arrange for and supervise the carrying out of,”.

(2) Section 32—

(a) In subsection (1), after “carried out by”, insert “, or under the supervision of,”;

(b) In subsection (1), omit “certificate” (second and third occurring) and substitute “document”;

- (c) In subsection (3), omit "certificate" (wherever occurring) and substitute "document";
- (d) In subsection (3), after "signed," insert "or another person who, under the supervision of the first-mentioned person, was involved with the analysis,";
- (e) In subsection (4), omit "certificate" and substitute "document";
- (f) In subsection (4), after "analyst", insert "or a person who, under the supervision of the analyst, was involved with the analysis";
- (g) After subsection (5), add the following subsection:—
 - (6) Section 60 of the *Evidence Act 1910* does not apply in relation to any proceedings for an offence under this Act.

Poisons Act 1971 (No. 81 of 1971)—

(1) Section 25 (1)—

After "carry out", insert ", or arrange for and supervise the carrying out of,".

(2) Section 25 (1A)—

After "carry out", insert ", or arrange for and supervise the carrying out of,".

(3) Section 71—

Omit all the words following "examined" and substitute the following words:—

by, or under the supervision of, an analyst—

- (a) a document purporting to be a certificate of the result of the analysis or examination is not admissible in evidence in those proceedings unless a copy of the document has been served on the defendant not less than 7 days before the hearing of those proceedings; and
- (b) section 60 of the *Evidence Act 1910* does not apply in relation to those proceedings.

(4) Section 78 (1)—

- (a) In paragraph (a), after "production of", insert "a document purporting to be";
- (b) In paragraph (a), omit "certificate" (second occurring) and substitute "document";

- (c) In paragraph (a), omit “analyst or” and substitute “analyst, a person who, under the supervision of the analyst, was involved with the analysis or the”;
- (d) In paragraph (b), omit “requirement.” and substitute “requirement; and”;
- (e) After paragraph (b), add the following paragraph:—
 - (c) section 60 of the *Evidence Act 1910* does not apply.

Public Health Act 1962 (No. 75 of 1962)—

(1) Section 67 (4)—

Omit “by him” and substitute “by, or under the supervision of, the analyst”.

(2) Section 78A—

- (a) In subsection (1), omit “carry out” and substitute “carry out, or arrange for and supervise the carrying out of,”;
- (b) In subsection (2), omit “an analyst or inspector has analysed or examined” and substitute “an inspector has examined, or an analyst has analysed or supervised the analysis of,”.

(3) Section 79 (2)—

- (a) In paragraph (a), omit “carried out by him” and substitute “carried out by or under the supervision of the analyst, or by the inspector”;
- (b) In paragraph (a), omit “requires the analyst or” and substitute “requires the analyst, a person who, under the supervision of the analyst, was involved with the analysis or examination or the”;
- (c) In paragraph (b), omit “requirement.” and substitute “requirement; and”;
- (d) After paragraph (b), add the following paragraph:—
 - (c) section 60 of the *Evidence Act 1910* does not apply.

(4) Section 80—

Omit “he has followed the prescribed method in his analysis” and substitute “the prescribed method was followed in the performance of the analysis”.

(5) Section 107—

After “analysed”, insert “, or supervised the analysis of,”.

Road Safety (Alcohol and Drugs) Act 1970 (No. 77 of 1970)—

(1) Section 28—

(a) In paragraph (a), omit “out by” and substitute “out by, or under the supervision of,”;

(b) Omit “he carried out”;

(c) After “the analysis”, insert “was carried out”.

(2) Section 29—

(a) In subsection (2), after “made”, insert “, or any person who, under the supervision of that first-mentioned person, was involved with the analysis to which the certificate or record relates”;

(b) In subsection (2A), after “made”, insert “, or any person who, under the supervision of that first-mentioned person, was involved with the analysis to which the certificate or record relates”.

(3) Section 29A—

After section 29, insert the following section in Division 1 of Part III:—

Section 60 of the *Evidence Act 1910* not to apply

29A—Section 60 of the *Evidence Act 1910* does not apply in relation to any certificate or record referred to in this Division.