



ANNO DECIMO TERTIO

## GEORGI VI REGIS.

A.D. 1949.

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### No. 36 of 1949.

#### An Act to amend the Evidence Act, 1929-1947.

[Assented to 24th November, 1949.]

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

1. (1) This Act may be cited as the "Evidence Act Amendment Act, 1949". Short titles.

(2) The Evidence Act, 1929-1947, as amended by this Act, may be cited as the "Evidence Act, 1929-1949".

(3) The Evidence Act, 1929-1947, is hereinafter called "the principal Act".

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

3. The following sections are enacted and inserted in the principal Act after section 34b thereof :— Enactment of ss. 34c-34h of principal Act—

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— Admissibility of documentary evidence as to facts in issue.

(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 recognised 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.

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.

Weight to be attached to evidence.

(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.

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.

Proof of instrument to validity of which attestation is necessary.

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

Presumptions as to documents twenty years old.

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.

Enactment of s. 67a of principal Act—

4. The following section is enacted and inserted in the principal Act after section 67 thereof :—

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.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. W. M. NORRIE, Governor.