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# ELIZABETHAE II REGINAE

A.D. 1990

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No. 72 of 1990

An Act to amend the Evidence Act, 1929.

[Assented to 20 December 1990]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Evidence Act Amendment Act, 1990*.
- (2) The *Evidence Act, 1929*, is referred to in this Act as “the principal Act”.

## Substitution of s. 35

2. Section 35 of the principal Act is repealed and the following section is substituted:

### 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.

## Substitution of s. 37

3. Section 37 of the principal Act is repealed and the following section is substituted:

### 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.

## Substitution of s. 45c

4. Section 45c of the principal Act is repealed and the following section is substituted:

**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.

**Interpretation**

5. Section 59d of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) This Part applies in respect of—

- (a) civil proceedings originating in courts within or outside Australia;
- (b) criminal proceedings originating in Australian courts.

**Power of South Australian Court to take evidence on request**

6. Section 59f of the principal Act is amended—

- (a) by striking out from subsection (5) “Subject to subsection (6) of this section” and substituting “Subject to subsections (6) and (7)”;

and

(b) by inserting after subsection (6) the following subsection:

(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.

#### **Suppression orders**

7. Section 69a of the principal Act is amended by striking out from subparagraph (i) of paragraph (b) of subsection (1) "a" and substituting "an alleged".

#### **Insertion of Part IX**

8. The following Part is inserted after Part VIII of the principal Act:

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.

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

D. B. DUNSTAN, Governor