

New South Wales



ANNO VICESIMO QUINTO

ELIZABETHÆ II REGINÆ

Act No. 13, 1976.

An Act to amend the Evidence Act, 1898, to make business records admissible as evidence in all proceedings.
[Assented to, 31st March, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the "Evidence (Amendment) Act, 1976".

2.

Evidence (Amendment).

2. The Evidence Act, 1898, is referred to in this Act as the Principal Act. Principal Act.

3. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART IIA OF THE PRINCIPAL ACT.

SCHEDULE 3.—REPEAL OF PART IIB OF THE PRINCIPAL ACT.

SCHEDULE 4.—INSERTION OF PART IIC INTO THE PRINCIPAL ACT.

4. The Principal Act is amended in the manner set forth in Schedules 1-4. Amendment of Act No. 11, 1898.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

(1) (a) Section 1—

Omit the matter relating to Part IIB.

(b) Section 1—

Before the matter relating to Part III, insert :—

PART IIC.—*Admissibility of Business Records*—ss. 14CD-14cv.

SCHEDULE

Evidence (Amendment).

SCHEDULE 1—*continued.*
**AMENDMENTS TO PART I OF THE PRINCIPAL ACT—
*continued.***

(2) (a) Section 3 (1)—

Omit “and other account books”, insert instead “account books and other accounting records”.

(b) Section 3 (2)—

Omit “or”.

(c) Section 3 (2)—

After “1966,” , insert “or the Evidence (Amendment) Act, 1976,”.

Sec. 4.
SCHEDULE 2.
AMENDMENTS TO PART IIA OF THE PRINCIPAL ACT.

(1) Section 14B (1)—

Omit “without a jury”.

(2) Section 14B (2)—

Omit “without a jury”.

(3) Section 14B (6), (7)—

After section 14B (5), insert :—

(6) In any civil proceedings with a jury, the court may reject a statement notwithstanding that it is admissible as evidence under this section if it appears to the court that the weight of the statement is too slight to justify its admission, or that the utility of the statement is outweighed by a probability that its admission will be unfair or mislead the jury.

SCHEDULE

Evidence (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IIA OF THE PRINCIPAL ACT—
continued.

(7) If, in any civil proceedings with a jury, it appears to the court that the jury might give a statement admitted as evidence under this section undue weight if it had that statement with it during its deliberations, the court may direct that the statement be withheld from the jury during its deliberations.

SCHEDULE 3.

Sec. 4

REPEAL OF PART IIB OF THE PRINCIPAL ACT.

Part IIB—

Omit the Part.

SCHEDULE 4.

Sec. 4.

INSERTION OF PART IIC INTO THE PRINCIPAL ACT.

Part IIC—

Before Part III, insert :—

PART IIC.

Admissibility of Business Records.

14CD. (1) In this Part—

“Business” includes—

Interpreta-
tion:
Pt. IIC.

(a) any business, profession, occupation, calling, trade or undertaking whether engaged in or carried on—

(i) by the Crown in right of the State or any other right, or a person;

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

- (ii) for profit or not; or
 - (iii) in New South Wales or elsewhere;
and
- (b) public administration of the Commonwealth, including a Territory of the Commonwealth, a State or any country, carried on in New South Wales or elsewhere.

“Derived” means derived, by the use of a computer or otherwise, by calculation, comparison, selection, sorting, consolidation or by accounting, statistical or logical procedures.

“Document” includes any record of information.

“Qualified person”, in relation to a statement made in the course of or for the purposes of a business, means a person who, at the time when the statement was made—

- (a) was—
 - (i) an owner of the business or a person carrying on the business;
 - (ii) a servant or agent employed or engaged in the business;
 - (iii) a person retained for the purposes of the business; or
 - (iv) a person associated with the business in the course of another business; and

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

- (b) (i) where the statement is not admissible in evidence unless made by an expert on the subject matter of the statement, was such an expert; or
- (ii) in any other case, had, or may reasonably be supposed to have had, personal knowledge of the fact stated.

“Statement” includes any representation of fact whether made in words or otherwise.

(2) For the purposes of this Part, a statement in a document is made by a person if—

- (a) it is written, made, dictated or otherwise produced by him; or
- (b) it is recognised by him as his statement by signing, initialling or otherwise.

(3) For the purposes of this Part, a person is concerned in the making of a statement if—

- (a) he made that statement; or
- (b) he made a statement containing information which the statement the admissibility of which is in question reproduces or from which the statement in question is derived, wholly or in part.

14CE. (1) Subject to this Part, where in a legal proceeding evidence of a fact is admissible, a statement in a document of the fact is admissible as evidence of the fact, if the requirements of subsections (4), (5) and (6) are satisfied.

Admissibility generally.

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

(2) In subsection (1), “fact” includes opinion.

(3) This section makes a statement admissible notwithstanding—

- (a) the rules against hearsay;
- (b) the rules against secondary evidence of the contents of a document;
- (c) that any person concerned in the making of the statement is a witness in the legal proceeding, whether or not he gives testimony consistent or inconsistent with the statement ; or
- (d) that the statement is in such a form that it would not be admissible if given as oral testimony,

but does not make admissible a statement which is otherwise inadmissible.

(4) The statement must be in a document which forms part of a record of a business, but the business need not be in existence at the time when the question of admissibility arises.

(5) The statement must have been made in the course of or for the purposes of the business.

(6) The statement must—

- (a) be made by a qualified person ; or
- (b) reproduce or be derived from one or other or both of the following descriptions of information—
 - (i) information in one or more statements, each made by a qualified person in the course of or for the purposes of the business ;

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

- (ii) information from one or more devices designed for, and used for the purposes of the business in or for, recording, measuring, counting or identifying information, not being information based on information supplied by any person.

14CF. (1) Notwithstanding section 14CE, a statement made or obtained for the purpose of, or in contemplation of, a legal proceeding or any other legal proceeding arising out of the same or substantially the same facts is not admissible.

Restrictions on admissibility under s. 14CE: general.

(2) Where a person proposes to tender, or tenders, a statement in evidence under section 14CE, the court may require that any other document related to the statement be produced and, in default, may reject the statement or, if it has been received, exclude it.

14CG. (1) Subsection (2) applies where a statement is tendered in a criminal legal proceeding for admission under section 14CE and the statement tendered—

Restrictions on admissibility under s. 14CE: criminal proceedings.

- (a) is a statement made by a person; or
(b) reproduces or is derived from information in a statement made by a person.

(2) The statement is not admissible under section 14CE unless, as to each person concerned in the making of the statement tendered—

- (a) the tendering party calls him as a witness in the proceeding if any opposing party so requires; or

SCHEDULE

Evidence (Amendment).

 SCHEDULE 4—*continued.*

 INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

(b) it appears to the court—

- (i) that he is dead or is unfit by reason of his bodily or mental condition to attend as a witness;
- (ii) that he is outside New South Wales and it is not reasonably practicable to secure his attendance;
- (iii) that all reasonable steps have been taken to identify him and he cannot be identified;
- (iv) that his identity being known, all reasonable steps have been taken to find him and he cannot be found;
- (v) that, having regard to the time which has elapsed since he supplied the information and to all the circumstances, he cannot reasonably be expected to have any recollection of the matters dealt with in the statement; or
- (vi) that, having regard to all the circumstances of the case, undue delay or expense would be caused by calling him as a witness.

(3) A statement made in connection with a criminal legal proceeding or with any investigation relating or leading to a criminal legal proceeding is not admissible under section 14CE.

Dispute as to happening of event. 14CH. (1) Where in any legal proceeding the happening of an event of any description is in question, and in the course of a business a system has been followed to make and keep a

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

record of the happening of all events of that description, oral or other evidence to establish that there is no record of the happening of the event in question is admissible to prove that the event did not happen.

(2) Where evidence is, or is proposed to be, tendered under this section, the court may require that the whole or part of the record concerned be produced and, in default, may reject the evidence or, if it has been received, exclude it.

14CI. In estimating the weight, if any, to be attached to a statement tendered for admission or admitted under section 14CE, regard shall be had to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the statement, including—

Weight of
evidence:
s. 14CB.

- (a) in the case of a statement made by a person or a statement wholly or in part reproducing or derived from a statement made by a person—
 - (i) the recency or otherwise at the time when he made his statement of any relevant matter dealt with in his statement; and
 - (ii) the presence or absence of any incentive for him to conceal or misrepresent any relevant matter in his statement;
- (b) in the case of a statement wholly or in part reproducing or derived from information from one or more devices, the reliability of the device or devices; and
- (c) in the case of a statement reproducing or derived from any information, the reliability of the means of reproduction or of derivation.

SCHEDULE

Evidence (Amendment).

 SCHEDULE 4—*continued.*

 INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

**Weight of
evidence:
s. 14CH.**

14CJ. In estimating the weight, if any, to be attached to evidence admissible under section 14CH, regard shall be had to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the evidence including whether any person concerned with the system had any incentive to omit recording the happening of the event in question.

**Credibility
of the
maker of a
statement.**

14CK. (1) This section applies where—

- (a) a person makes a statement;
- (b) that statement, or a statement wholly or in part reproducing or derived from information in that statement, is tendered for admission or is admitted under section 14CE; and
- (c) that person is not called as a witness.

(2) Evidence is admissible which, had the person referred to in subsection (1) been called as a witness, would be admissible for the purpose of destroying or supporting his credibility.

(3) Evidence is admissible to show that a statement made by the person referred to in subsection (1) is inconsistent with another statement made at any time by him.

(4) Notwithstanding any other provision of this section, evidence is not admissible of any matter of which, had the person referred to in subsection (1) been called as a

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

witness and denied the matter in cross-examination, evidence would not be admissible if adduced by the cross-examining party.

14CL. The court may, for the purpose of deciding questions of admissibility under this Part, draw inferences as well from the form or content of the document in which the statement is contained as from other matters from which inferences may lawfully be drawn. Inferences concerning admissibility.

14CM. (1) Evidence relevant to the matters mentioned in section 14CE, 14CG or 14CH may, if given by a person who had, at the relevant time or afterwards, a responsible position in relation to the making or keeping of the records concerned, be given on information and belief. Ancillary evidence.

(2) Evidence given under subsection (1) may include evidence of the contents of a document notwithstanding that the document is not produced and that its non-production is not accounted for.

14CN. (1) For the purposes of section 14CE—
(a) a statement in a document may, as may be prescribed or by leave of the court, be proved by the production of a copy of the document, or of the material part of the document; Production of document, etc.

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

- (b) a statement in a document which is designed to be used to reproduce the statement in the form of a visible display or of sound may be proved by reproducing the statement in that form in the presence of the court; and
- (c) a statement in a record of information made by the use of a computer may be proved by the production of a document produced by the use of a computer containing the statement in a form which can be understood by sight.

(2) For the purposes of section 14CH, the absence of a record of the happening of an event in a record of information made by the use of a computer may be proved by the production of a document produced by the use of a computer containing a statement based on the absence of such a record.

(3) Where a person proposes to prove, or proves, a statement in a document otherwise than by producing the document, the court may require that the document be produced or be made available to the court or to other parties for examination or testing and, in default, may reject the statement or, if it is in evidence, exclude it.

(4) Where a person proposes to prove, or proves, a statement by reproducing the statement in the form of a visible display or of sound, the court may direct a record of the statement to be produced and, in default, may reject the statement or, if it is in evidence, exclude it.

(5) For the purposes of this section, “computer” means any device for storing or processing information.

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

14CO. For the purposes of this Part, a document, a copy of a document or a copy of part of a document may be authenticated in such manner as may be prescribed or as the court approves. Authen-
tication.

14CP. (1) Where a party to a legal proceeding in a court tenders any evidence under this Part, and it appears to the court that the weight of the evidence is too slight to justify its admission, or that the utility of the evidence is outweighed by a probability that its admission will unduly prolong the proceeding, or that the evidence may be unfair to any other party, or (where there is a jury) mislead the jury, the court may reject the evidence or, if it has been received, exclude it. Rejection
for
unfairness,
etc.

(2) This section does not affect the admissibility of any evidence otherwise than by virtue of this Part.

14CQ. Where in a legal proceeding there is a jury, and a statement in a document is admitted in evidence under this Part, and it appears to the court that if the jury were to have the document with it during its deliberations it might give the statement undue weight, the court may direct that the document be withheld from the jury during its deliberations. With-
holding
statement
from jury.

14CR. For the purposes of any Act or rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement admissible under section 14CE shall not be treated as corroboration of evidence given by a qualified person who was concerned in the making of the statement. Corrobor-
ation.

SCHEDULE

Evidence (Amendment).

 SCHEDULE 4—*continued.*

 INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

Rejection of evidence in criminal proceedings. 14CS. This Part does not affect the power of a court in a criminal legal proceeding to reject evidence which, if admitted, would operate unfairly against the defendant.

Time for order. 14CT. A court may make orders concerning the admissibility of any statement or evidence under this Part at any stage of a legal proceeding.

Rules and regulations. 14CU. (1) The Governor may make regulations, and rules may be made, as prescribed in section 14CV, not inconsistent with this Part, for or with respect to any matter which by this Part is required or permitted to be prescribed or which is necessary or convenient for carrying out or giving effect to this Part and, without limiting the generality of the foregoing, for or with respect to—

- (a) the giving by a party, who proposes to tender any statement under section 14CE or evidence under section 14CH, to the court or to other parties of notice of his intention to do so and of particulars of the statement or evidence (including copies of any statement or document);
- (b) the giving by a party, who has received notice from another party of his intention to tender any statement under section 14CE or evidence under section 14CH, to the court or to other parties of notice of his intention to dispute the statement or evidence and of particulars of the grounds on which he intends to dispute the statement or evidence;

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

- (c) the production by a party, who proposes to tender any statement under section 14CE or evidence under section 14CH, or who proposes to adduce evidence in answer to any such statement or evidence, to the court or to other parties for inspection of any document he proposes to tender or any document related to any such statement or evidence he proposes to tender;
- (d) the making by a court of orders requiring a person not a party to a proceeding in the court to produce to the court, or to parties to the proceeding, for inspection any document which a party desires to inspect for the purpose of the application of this Part to the proceeding;
- (e) the making by the Supreme Court or the District Court of orders in respect of proceedings in a court, other than the Supreme Court or the District Court, requiring a person not a party to a proceeding in such a court to produce to the court or to the Supreme Court or District Court or to parties to the proceeding for inspection any document which a party desires to inspect for the purpose of the application of this Part to the proceeding;
- (f) the proof of any of the matters mentioned in section 14CE, 14CG or 14CH by affidavit or statutory declaration provided that any such rule or regulation shall, if it is not otherwise so provided, provide for the attendance at the proceeding of the deponent or maker of any such affidavit or statutory declaration for cross-examination by any party who desires to cross-examine him; and
- (g) the making by a court of orders under this Part at any stage of a legal proceeding.

SCHEDULE

Evidence (Amendment).

 SCHEDULE 4—*continued.*

 INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

(2) Subsection (1) does not affect any power to make rules or regulations under any other Act.

Power to
make rules
or
regulations.

14cv. (1) Where there is any authority having for the time being power to make rules or regulations regulating the practice and procedure of any court, that authority shall have power to make rules or regulations, not inconsistent with this Part, for the purpose of regulating any proceedings in or before that court, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) For the purposes of a legal proceeding before an arbitrator, rules for giving effect to this Part may be made under the Supreme Court Act, 1970.

(3) Subsection (2) does not apply to a legal proceeding before an arbitrator in respect of which rules or regulations may be made by an authority referred to in subsection (1).

(4) In the case of a court to which neither subsection (1) nor subsection (2) applies, the Governor may make regulations under this section for the purpose of proceedings in or before that court.
