

No. 4 of 1971

## AN ORDINANCE

### Relating to Evidence.

**I** THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1970*.

Dated this eighteenth day of February, 1971.

PAUL HASLUCK  
Governor-General.

By His Excellency's Command,

T. E. F. HUGHES  
Attorney-General, acting for and on behalf  
of the Minister of State for the Interior.

### EVIDENCE ORDINANCE 1971

#### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Evidence Ordinance 1971*.<sup>\*</sup> Short title.
2. This Ordinance shall be administered by the Attorney-General. Administration.
3. This Ordinance shall come into operation on the twenty-ninth day of March, One thousand nine hundred and seventy-one. Commencement.
4. This Ordinance is divided into Parts, as follows:— Parts.
  - Part I.—Preliminary (Sections 1-7).
  - Part II.—Judicial Notice in relation to Laws in force in the Territory (Sections 8-10).
  - Part III.—Proof of Official Documents and Certificates (Sections 11-15).
  - Part IV.—Proof of Attestation of Documents (Sections 16-20).
  - Part V.—Bankers' Books (Sections 21-27).
  - Part VI.—Admissibility of Statements in Documents (Sections 28-38).
  - Part VII.—Admissibility of Documents Produced by Computers (Sections 39-45).

<sup>\*</sup> Notified in the *Commonwealth Gazette* on 25 February 1971; disallowed by the Senate on 19 August 1971; continued in force by *Australian Capital Territory Evidence (Temporary Provisions) Act 1971* (see footnote on p. xi).

- Part VIII.—Proof of Foreign Laws and Documents (Sections 46-51).  
 Part IX.—Witnesses and Evidence in Proceedings Generally (Sections 52-65).  
 Part X.—Evidence in Criminal Proceedings (Sections 66-76).  
 Part XI.—Admissibility of Convictions in Civil Proceedings (Sections 77-81).  
 Part XII.—Publication of Evidence (Sections 82-85).  
 Part XIII.—Miscellaneous (Sections 86-98).

Certain laws to cease to be in force.

5. The Evidence Act, 1898, the Royal Commissioners Evidence Act, 1901 and the Witnesses Examination Act, 1900 of the State of New South Wales cease to be in force in the Territory.

Definitions.

6. In this Ordinance, unless the contrary intention appears—
- “Australia” includes the Territories of the Commonwealth;
- “banker’s book” includes a ledger, day book, cash book, account book, diary and any other document used in the ordinary course of the business of a bank;
- “court” includes any tribunal or person having authority under a law in force in the Territory or by consent of parties to receive evidence;
- “diplomatic or consular representative” means a person appointed to hold or act in any of the following offices:—
- (a) ambassador;
  - (b) high commissioner;
  - (c) minister;
  - (d) head of a mission;
  - (e) commissioner;
  - (f) chargé d’affaires;
  - (g) counsellor, secretary or attaché at an embassy, high commissioner’s office, legation or other post;
  - (h) consul-general;
  - (i) consul;
  - (j) vice-consul;
  - (k) pro-consul;
  - (l) trade commissioner; and
  - (m) consular agent;
- “document” includes—
- (a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
  - (b) a sound recording;

“ judge ” means the member or members of a court;

“ proceeding ” means a matter or inquiry, whether civil or criminal, heard or conducted by a court in which evidence is, or may be, received

“ statement ” includes any representation of fact, whether made in words or by other means.

7. Unless the contrary intention appears in this Ordinance, the provisions of this Ordinance apply to every proceeding. Application of Ordinance.

## PART II.—JUDICIAL NOTICE IN RELATION TO LAWS IN FORCE IN THE TERRITORY.

8. Judicial notice shall be taken by a court of—

Judicial notice of making, &c. of Ordinances.

- (a) the date on which an Ordinance was made by the Governor-General;
- (b) the date on which an Ordinance was notified in the *Gazette*; and
- (c) the date on which an Ordinance or a part of an Ordinance came into operation.

9.—(1.) Judicial notice shall be taken by a court of—

Judicial notice of making, &c., of Regulations and Proclamations.

- (a) the date on which regulations were made;
- (b) the date on which regulations were notified in the *Gazette*; and
- (c) the date on which regulations or a part of regulations came into operation.

(2.) Judicial notice shall be taken by a court of a proclamation by the Governor-General made in pursuance of an Ordinance or of a continued State law.

(3.) In this section, “ regulations ” means regulations, rules or by-laws made under an Ordinance or a continued State law by an authority authorized to make such regulations, rules or by-laws.

10.—(1.) Where, by any law in force in the Territory, an instrument, or a copy of an instrument, is required to be published in the *Gazette*, a copy of, or extract from, the *Gazette* purporting to contain the instrument or a copy of the instrument is evidence—

Instruments required to be published in the *Gazette*.

- (a) of the making of the instrument;
- (b) of the terms of the instrument;

- (c) if the instrument recites that steps or conditions preliminary to the making of the order have been taken or fulfilled, of the taking of those steps or of the fulfillment of those conditions; and
- (d) of the publication of the instrument or a copy of the instrument, as the case may be, in the *Gazette*.

(2.) Where an instrument, or a copy of an instrument, has been published in the *Gazette*, the instrument shall, in the absence of proof to the contrary, be deemed not to have been revoked.

(3.) For the purposes of this section, an instrument shall be taken to be an extract from the *Gazette* if it purports to be such an extract and to have been printed by the Government Printer.

(4.) In this section, "instrument" includes an order, by-law, notice or direction, but does not include a proclamation by the Governor-General made in pursuance of an Ordinance or of a continued State law.

### PART III.—PROOF OF OFFICIAL DOCUMENTS AND CERTIFICATES.

Public documents.

11. Where a document is of such a nature that it is admissible in evidence on its production from proper custody, evidence of any of the contents of the document may, subject to any other law in force in the Territory, be given in a proceeding by the production of—

- (a) an examined copy of, or extract from, the document; or
- (b) a copy of, or extract from the document that purports to be certified as a true copy or extract by a person described in the certificate as having the custody of the document.

Proof of certain certificates, &c.

12. Where, by a law in force in the Territory—

- (a) a certificate;
- (b) an official or public document;
- (c) a document of a corporation; or
- (d) a copy of, or extract from, a document, register or book,

is admissible in evidence in a proceeding to prove a matter or fact, a paper purporting to be the certificate, document, copy or extract shall, unless the contrary is proved, be taken to be that certificate, document, copy or extract.

Proof of birth, death or marriage.

13. A document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Australia or elsewhere is evidence in a proceeding of the facts in the document.

**14.—(1.)** The probate of a will or letters of administration with a will annexed are evidence of the due execution of the will.

Evidentiary effect of probate, &c.

(2.) The copy of a will annexed to a probate or to letters of administration is evidence of the contents of the will.

(3.) The probate of a will is evidence of the death of the testator and, if the probate states the date of death of the testator, of the date of his death.

(4.) Letters of administration of the estate of a deceased person are evidence of the death of the person and, if the letters of administration state the date of death of the person, of the date of his death.

(5.) In this section—

- (a) a reference to probate shall be read as a reference to probate, and to an exemplification of probate, whether granted within or outside the Territory; and
- (b) a reference to letters of administration shall be read as a reference to letters of administration, to an exemplification of letters of administration, whether granted within or outside the Territory and to an order to collect and administer granted to the Curator of the Estates of Deceased Persons.

**15.—(1.)** In this section—

“document” means—

- (a) a document that, under a law in force in the Territory has been lodged with, registered by, or issued by, a Department of State of the Commonwealth, an authority established by or under such a law or by an officer of the Commonwealth;
- (b) a document that, under a law in force in a State has been lodged with, registered by, or issued by, a Department of State of that State, an authority established by or under that law or by an officer of that State; or
- (c) a document that, under a law in force in another Territory of the Commonwealth has been lodged with, registered by, or issued by, a Department of State of the Commonwealth, an authority established by or under that law or by an officer of the Commonwealth or that other Territory;

Admissibility of machine copies and reproductions of official documents.

“machine copy” in relation to a document, means a copy, other than a reproduction, of the document made by a photographic or other machine, whether the copy is enlarged or not;

“reproduction”, in relation to a document, means a print, whether enlarged or not, made from a transparent photograph of the document;

“ the appropriate officer ” means—

- (a) in relation to a document lodged with, registered by, or issued by, a Department of State of the Commonwealth or of a State or by an authority established by or under a law in force in the Territory, a State or another Territory of the Commonwealth—the officer having the custody of the official records of the Department or the authority; and
- (b) in relation to a document lodged with, registered by, or issued by, an officer of the Commonwealth, a State or another Territory—that officer.

(3.) Where a document would be admissible in evidence in a proceeding, a machine copy or a reproduction of the document is admissible as evidence of the document if—

- (a) the machine copy or the reproduction of the document bears, or has annexed to it, a certificate purporting to have been signed by the appropriate officer certifying—
  - (i) in the case of a machine copy—that the machine copy of the document was made while the document was in the control or custody of the Department of State, the authority or the officer; or
  - (ii) in the case of a reproduction—that the reproduction is a print made from a transparent photograph of the document taken while the document was in the control or custody of the Department of State, the authority of the officer; or
- (b) the machine copy or reproduction of the document bears, or has annexed to it, a copy of such a certificate made at the same time as the machine copy or print of the document was made.

(4.) This section applies whether or not evidence is given that the document a machine copy or a reproduction of which is produced is or is not still in existence.

#### PART IV.—PROOF OF ATTESTATION OF DOCUMENTS.

Proof of  
attestation  
of documents.

16.—(1.) A document not being a document to the validity of which attestation is required may, if its execution has been attested, be proved in evidence in a proceeding, notwithstanding the attestation, in any manner in which such a document, if not attested, may be proved.

(2.) A document (not being a will or a codicil to a will) to the validity of which attestation is required which purports to have been attested may be proved in a proceeding by evidence that the signature of the person by whom the document purports to have been executed is

the signature of that person and by evidence that the signature of the person or of one of the persons by whom the document purports to have been attested is the signature of the person whose signature it purports to be.

(3.) The last preceding sub-section does not prevent the proof of a document by an attesting witness.

**17.—(1.)** This section applies to a document (other than a will or a codicil to a will) to the validity of which attestation is required.

Proof of attestation not required where document attested outside the Territory.

(2.) If a document to which this section applies purports to have been executed at a place in Australia and to have been attested by—

- (a) a person before whom a statutory declaration under the *Statutory Declarations Act 1959-1966* may be made; or
- (b) a person whose name is on the roll of barristers and solicitors of the High Court or the roll of barristers, solicitors, barristers and solicitors or legal practitioners of the Supreme Court of a State or Territory of the Commonwealth,

the signature of the person by whom the document purports to have been attested shall, in the absence of proof to the contrary, be deemed to be, for the purposes of section (2.) of the last preceding section, the signature of the person whose signature it purports to be and evidence that the signature is his signature and that he is such a person is not, for the purposes of that sub-section, required in a proceeding.

(3.) If a document to which this section applies purports to have been executed in a Commonwealth country or part of a Commonwealth country and to have been attested by a person who is a judge, notary public, the mayor or chief officer of a municipal or local government corporation or a governor, government resident or chief secretary in, or in that part of that country, or is a justice of the peace for that country or for that part of that country, the signature of the person by whom the instrument purports to have been attested shall be deemed, for the purposes of sub-section (2.) of the last preceding section, to be the signature of the person whose signature it purports to be and evidence that the signature is his signature and that he is such a person is not, for the purposes of that sub-section, required in a proceeding.

(4.) If a document to which this section applies purports to have been executed in a country outside Australia and to have been attested by a person who is an Australian or British diplomatic or consular representative in that country, the signature of the person by whom the document purports to have been attested shall be deemed, for the purposes of sub-section (2.) of the last preceding section, to be the signature of the person whose signature it purports to be and evidence that the signature is his signature and that he is such a person is not, for the purposes of that sub-section, required in a proceeding.

Proof of attestation not required where declaration of due attestation made before official outside the Territory.

**18.—(1.)** This section applies to a document (other than a will or a codicil to a will)—

- (a) to the validity of which attestation is required; and
- (b) which purports to have been executed outside Australia and to have been attested by a person other than a person referred to in the last preceding section.

(2.) If—

- (a) there is endorsed on, or annexed to, a document to which this section applies a declaration by the person by whom it purports to have been attested that the document was duly executed and attested as it purports to have been executed and attested; and
- (b) the declaration referred to in the last preceding paragraph purports to have been made before, and attested by, a person who is an Australian or British diplomatic or consular officer in the country in which the document purports to have been executed and attested,

the signature of the person by whom the document purports to have been attested shall be deemed, for the purposes of sub-section (2.) of section 16 of this Ordinance, to be the signature of the person whose signature it purports to be, the signature of the person before whom the declaration is made shall be deemed to be the signature of the person whose signature it purports to be and evidence that the signature of either of those persons is his signature and that the person before whom the declaration is made is an Australian or British Consular officer in the country is not, for the purposes of that sub-section, required in a proceeding.

Capacity of attesting witnesses.

**19. Where—**

- (a) it is proved that the signature of a person by whom a document purports to have been attested is the signature of that person; or
- (b) the signature of a person by whom a document purports to have been attested is to be deemed to be the signature of that person,

and the person, in attesting the document has described himself as having a specified description or as having attested the document in a specified capacity, that person shall, unless the contrary is proved, be deemed to have, at the time of the attestation, been a person of that description or to have attested the document in that capacity, as the case may be.

Proof that person is a Justice of the Peace not necessary.

**20.** The words "Justice of the Peace" or the letters "J.P." appearing after a signature on a document are evidence that the person whose signature it purports to be is a justice of the peace and, if the place at which the signature of that person purports to have been attached or appended is specified in the document (whether that place is within or outside the Territory), that person shall, unless the contrary is proved, be deemed to be a justice of the peace for the State, Territory, Commonwealth country or part of the Commonwealth country in which that place is situated.

## PART V.—BANKERS' BOOKS.

**21.** Subject to this Part, a copy of an entry in a banker's book is admissible in a proceeding as evidence of the entry, and of the matters, transactions and accounts recorded in the entry.

Proof of entries in bankers' books by means of copies.

**22.—(1.)** A copy of an entry in a banker's book is not admissible under this Part in a proceeding unless it is proved that—

Proof that entry made in a banker's book.

- (a) the book was, at the time at which the entry was made, one of the ordinary books of the bank;
- (b) the entry was made in the ordinary course of business;
- (c) the book is in the custody or control of the bank; and
- (d) the copy has been compared with the original entry and found to be a true copy.

(2.) The matters referred to in the last preceding sub-section shall be proved by the evidence of an officer of the bank given orally or by affidavit.

**23.** In a proceeding to which a bank is not a party, neither the bank nor an officer of the bank is compellable, unless the court or judge otherwise orders—

Banker not compellable to produce books except under order of court.

- (a) to produce a book the entries in which may be proved under this Part; or
- (b) to attend for the purpose of giving evidence of the matters, transactions and accounts recorded in such a book.

**24.—(1.)** On the application of a party to a proceeding, the court or judge may, by order, direct a bank or the manager of a bank or of a branch of a bank, whether within or outside the Territory, to permit the party to inspect, and take copies of, the books specified in the order.

Inspection of banker's books.

(2.) An application for an order under the last preceding sub-section shall not be served on the bank against which the order is sought unless the court or judge directs that the application be so served.

(3.) A bank on which an order under sub-section (1.) of this section is served is not obliged to comply with the order until the expiration of a period of three days after the date on which the order is so served.

(4.) The period referred to in the last preceding sub-section shall be reckoned exclusive of a Saturday, a Sunday or a day that is a public or bank holiday.

**25.—(1.)** Where it is necessary, for the purposes of a proceeding, to prove—

Proof of bank account, amount of credit, &c.

- (a) that a person did or did not, at a given time, have an account at a bank;

(b) that a person did or did not, at a given time, have funds standing to his credit at a bank; or

(c) the state of an account at a bank,

evidence of the fact may be given orally or by affidavit by an officer of the bank who has examined the books of the bank.

(2.) Evidence given under the last preceding sub-section is admissible notwithstanding that the books of the bank are not produced.

Costs.

**26.—(1.)** The costs of—

(a) an application to a court or judge under or for the purposes of this Part; or

(b) anything done or to be done under an order of a court or judge made under or for the purposes of this Part,

are in the discretion of the court or judge, and the court or judge may order those costs or any part of those costs to be paid to a party by the bank if those costs or any part of those costs have been occasioned by default or delay on the part of the bank.

(2.) An order under the last preceding sub-section may be enforced against a bank as if it were a judgment of the court for the payment of money by the bank to the party.

Certain orders to be made only by Supreme Court.

**27.** In the application of section 23 and 24 of this Ordinance and the last preceding section to and in relation to a proceeding other than a proceeding in the Supreme Court or in the Court of Petty Sessions—

(a) a reference to the court shall be read as a reference to the Supreme Court; and

(b) a reference to the judge shall be read as a reference to the Judge of the Supreme Court.

#### PART VI.—ADMISSIBILITY OF STATEMENTS IN DOCUMENTS.

Documentary evidence of facts in issue where maker of document is called as a witness.

**28.—(1.)** Where direct oral evidence of a fact or of an opinion would be admissible in a proceeding, a statement made by a person in a document tending to establish the fact or expressing the opinion, as the case may be, is, subject to this Part, admissible as evidence of the fact or the opinion in the proceeding if—

(a) in the case of a statement tending to establish a fact, the maker of the statement had personal knowledge of the matters dealt with by the statement or, in the case of a statement expressing an opinion, the person expressing the opinion is qualified to give evidence of his opinion;

(b) the maker of the statement is called as a witness in the proceeding; and

(c) the court is satisfied that the statement was made at a time when the facts stated in the document were fresh in the memory of the witness or, in the case of a statement expressing an opinion, the facts on which the opinion was based were fresh in the mind of the person expressing the opinion.

(2.) The last preceding sub-section applies whether the statement is or is not consistent with the evidence given by the maker of the statement but, where—

- (a) the statement is tendered by the party by whom the witness is being called; and
- (b) the statement is inconsistent with the evidence given by the witness in the proceeding,

the statement is admissible in evidence only with the leave of the court.

(3.) A statement referred to in this section shall not, without the leave of the court, be tendered in evidence by the party by whom the witness has been called except at the conclusion of the examination-in-chief of the witness and before the witness is cross-examined.

**29.—(1.)** Where direct oral evidence of a fact would be admissible in a proceeding, a statement made by a person in a document tending to establish that fact is, subject to this Part, admissible as evidence of that fact in the proceeding if the maker of the statement had personal knowledge of the matters dealt with in the statement and if—

Documentary  
evidence of  
facts in issue.

- (a) the maker of the statement is dead;
- (b) the maker of the statement is outside Australia and it is not reasonably practicable to secure his attendance;
- (c) the maker of the statement is unfit by reason of old age or his bodily or mental condition to appear as a witness; or
- (d) the maker of the statement cannot with reasonable diligence be found.

(2.) Where direct oral evidence of a fact would be admissible in a proceeding, a statement made by a person in a document tending to establish that fact is, subject to this Part, admissible as evidence of that fact if the document was made—

- (a) by a person acting under a duty to make the statement;
- (b) in the course of, and as a record or part of a record relating to, any business; or
- (c) in the course of, or as a record or part of a record relating to, the administration of, or the performance of the functions of, a government department,

from information supplied (whether directly or indirectly) by a person who had, or might reasonably be supposed to have had, personal knowledge of the matters dealt with in the information supplied by him and if—

- (d) the person who supplied the information is dead;
- (e) the person who supplied the information is outside Australia and it is not reasonably practicable to secure his attendance as a witness;
- (f) the person who supplied the information is unfit by reason of old age or of his bodily or mental condition to appear as a witness;

- (g) the person who supplied the information cannot with reasonable diligence be identified or found; or
- (h) the person who supplied the information cannot reasonably be expected, having regard to the time that has elapsed since he supplied the information and to all other relevant circumstances, to recollect the matters dealt with in the information supplied by him.

(3.) Where, in a civil proceeding, direct oral evidence of a fact would be admissible, a statement made by a person in a document tending to establish that fact is (whether or not it would be admissible under the preceding provisions of this section) admissible in such a proceeding as evidence of that fact if—

- (a) the maker of the statement had personal knowledge of the matters dealt with in the statement; and
- (b) the court or judge is satisfied that undue delay or expense would be caused by requiring the attendance as a witness of the maker of the statement.

(4.) In this section—

- (a) a reference to a person acting under a duty shall be read as including a reference to a person acting in the course of any trade, business, profession or other calling or occupation in which the person is or was engaged or employed and to a person acting for the purposes of any paid or unpaid office held by him; and
- (b) a reference to a government department shall be read as including a reference to a Department of State of the Commonwealth or of a State and to an authority established by or under an Act, an Ordinance, a State Act or a law in force in another Territory.

**30.—(1.)** Where direct oral evidence of an opinion would be admissible in a proceeding, an opinion expressed in a document made by a person expressing the opinion or by another person on his direction is, subject to this Part, admissible as evidence of the opinion in the proceeding if—

- (a) the person expressing the opinion would, if he had been called as a witness in the proceeding, have been qualified to give evidence of the opinion;
- (b) the court is satisfied that the facts on which the opinion was based sufficiently appear from—
  - (i) the form or contents of the document; or
  - (ii) the circumstances in which the document expressing the opinion was made,
 and that those facts are facts in respect of which evidence is given in the proceedings; and
- (c) the person expressing the opinion—
  - (i) is dead;

Documentary  
evidence of  
opinions.

- (ii) is outside Australia and it is not reasonably practicable to secure his attendance;
- (iii) is unfit by reason of old age or his bodily or mental condition to appear as a witness; or
- (iv) cannot with reasonable diligence be found.

(2.) Where, in a civil proceeding, direct oral evidence of an opinion would be admissible, a statement in a document expressing that opinion is (whether or not it would be admissible under the last preceding sub-section) evidence of that opinion if—

- (a) the conditions referred to in paragraphs (a) and (b) of the last preceding sub-section are satisfied; and
- (b) the court or judge is satisfied that undue delay or expense would be caused by requiring the attendance as a witness of the person expressing the opinion.

**31.** Nothing in this Part renders admissible as evidence in a criminal proceeding a statement in a document made at a time when that proceeding was pending or at a time when it might reasonably have been contemplated that criminal proceedings would be instituted.

Certain statements not admissible in criminal proceedings.

**32.** In estimating the weight (if any) to be given to a statement admitted in evidence under this Part, a court shall have regard to all the circumstances from which an inference can reasonably be drawn as to the correctness or otherwise of the statement including—

Weight to be given to statements admitted under this Part.

- (a) in the case of a statement tending to establish a fact—
  - (i) the time when the statement was made in relation to the occurrence or existence of the fact which the statement is tendered to prove; and
  - (ii) the question whether or not the maker of the statement or any person by or through whom the information was supplied to the maker of the statement had any incentive to conceal or misrepresent facts; and
- (b) in the case of a statement expressing an opinion—
  - (i) the time when the statement expressing the opinion was made in relation to the time when the facts on which the opinion was based were fresh in the mind of the person expressing the opinion; and
  - (ii) the question whether or not the person expressing the opinion had any incentive to misrepresent his opinion.

**33.** For the purpose of any rule of evidence or of any practice or of the provision of a State Act in its application to the Territory, or of an Ordinance, requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated—

Statement not to corroborate evidence of its maker.

- (a) a statement admitted in evidence under section 28 of this Ordinance shall not be treated as corroboration of the evidence given by that person; and

- (b) a statement that is admissible in evidence in a proceeding under sub-section (2.) of section 29 of this Ordinance by reason of the fact that the person who supplied the information contained in the statement is a person referred to in paragraph (h) of that sub-section shall not, if that person gives evidence in the proceeding, be treated as corroboration of the evidence given by that person.

Proof of statement by production of copy of document.

**34.** For the purposes of this Part, proof that a statement has been made in a document may be given on production of the document or may, with the leave of the court, be given by the production of a copy of the document proved to be a true copy of the document or of a copy of the document certified or authenticated in such manner as the court approves.

When document deemed to have been made by a person.

**35.** For the purposes of this Part, a statement in a document shall be deemed to have been made by a person if the document or the material part of the document was written, made or produced by him with his own hand or was signed or initialled by him or otherwise recognized by him as his statement.

Court may refuse to admit document in evidence.

**36.—(1.)** The court may, for the purpose of deciding whether a document tendered in evidence should or should not be admitted in evidence in pursuance of this Part, draw any reasonable inference from the circumstances in which the statement was made and from the form or contents of the document in which the statement is contained.

(2.) In a criminal proceeding, the judge may refuse to admit in evidence in pursuance of this Part a document tendered in evidence if he has reason to doubt its reliability or is satisfied that it would be unfair to the person charged to admit the document in evidence.

Court may act on medical certificate.

**37.** The court may, in deciding, for the purposes of this Part, whether a person is or is not fit to attend as a witness, accept an opinion in a document purporting to be a certificate by a medical practitioner.

Statement of wages to be evidence of amount paid.

**38.—(1.)** Subject to this section, a document that states that—

(a) during a period specified in the document, a person was employed by the person by whom, or on whose behalf, the document is signed; and

(b) in respect of that period or a specified part of that period, the first-mentioned person was paid, as wages or salary, an amount specified in the document,

is evidence in a proceeding that, in respect of that period or the specified part of that period, the first-mentioned person received wages or salary, as the case may be, in the amount specified in the document.

(2.) For the purpose of this section, a document that purports to be signed by, or on behalf of, a person shall, unless the contrary is proved, be deemed to be so signed.

(3.) Except with the leave of the court, a document shall not be tendered in evidence under this section unless the party tendering the document has given to each of the other parties to the proceeding not less than seven days' notice in writing of his intention to tender the document.

**PART VII.—ADMISSIBILITY OF DOCUMENTS PRODUCED BY COMPUTERS.**

**39.—(1.)** A reference in this Part to a computer shall be read as a Computers. reference to—

- (a) a device that stores information;
- (b) a device that processes information; or
- (c) a device that stores and processes information.

(2.) Where the function of storing or processing information was performed by two or more computers whether—

- (a) by a combination of computers;
- (b) by different computers operating in succession;
- (c) by different combinations of computers operating in succession; or
- (d) by the successive operation of one or more computers and one or more combinations of computers,

all those computers shall be regarded, for the purposes of this Part, as constituting a single computer.

**40.—(1.)** For the purposes of this Part—

- (a) information shall be taken to be supplied to a computer if it is supplied to the computer in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) where, in the course of activities of a kind referred to in paragraph (a) of section 42 of this Ordinance, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if supplied to that computer, shall be taken to have been supplied to it in the course of those activities; and
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Information  
supplied to  
computers.

(2.) In this Part, a reference to information being derived from other information shall be read as a reference to information derived from other information whether by calculation, comparison or by any other process.

Appropriate  
rules of court.

**41.** In this Part, a reference to the appropriate rules of court shall be read as a reference—

- (a) in the case of a proceeding in the Supreme Court—to the Rules of the Supreme Court; or
- (b) in the case of a proceeding in the Court of Petty Sessions—to the rules of court in force under the *Court of Petty Sessions Ordinance* 1930-1970.

Admissibility  
of statements  
produced by  
computers.

**42.** In a proceeding (other than a criminal proceeding) in the Supreme Court or in the Court of Petty Sessions, a statement contained in a document produced by a computer is, subject to this Part and to the appropriate rules of court, admissible as evidence of any facts stated in the document of which direct oral evidence would be admissible if—

- (a) the document was produced by the computer during a period in which the computer was used to store or process information relating to activities carried on, whether for profit or not—
  - (i) by a person;
  - (ii) by a body, association or institution, whether corporate or not;
  - (iii) a Department of State of the Commonwealth or of a State; or
  - (iv) an authority established by or under an Act, an Ordinance, a State Act or a law in force in another Territory;
- (b) information of the kind contained in the statement or of the kind from which the information contained in the statement is derived was in that period regularly supplied to the computer in the ordinary course of the carrying on of those activities;
- (c) the computer was, throughout the material part of that period operating properly or, if it was not, that any respect in which it was not operating properly or was out of operation during part of that period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the carrying on of those activities.

Court may  
refuse to admit  
document in  
evidence.

**43.—(1.)** The Court may, if it has reason to doubt the accuracy or authenticity of a document sought to be tendered in evidence under this Part, or of the facts stated in such a document, refuse to admit the document in evidence.

**(2.)** For the purpose of deciding whether to admit or refuse to admit the document, the Court may draw any reasonable inference from the circumstances in which the information contained in the statement was obtained or the information from which the statements contained

in the document was derived was obtained and from any other circumstances, including the form and contents of the document and of the information.

**44.** In estimating the weight, if any, to be given to a statement admitted in evidence under this Part, the Court shall have regard to all the circumstances from which an inference can reasonably be drawn as to the correctness or otherwise of the statement, including—

Weight to be given to statements admitted under this Part.

- (a) the relationship in time between—
  - (i) the time when the information which the statement reproduces or from which it is derived was supplied to the relevant computer or was recorded for the purpose of being supplied to the relevant computer; and
  - (ii) the occurrence or existence of the facts which the statement is tendered to prove; and
- (b) the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent facts.

**45.** Where, but for this section, a document produced by a computer would be inadmissible in evidence by reason of a failure to comply with the provisions of appropriate rules of court, the Court may, if it thinks that it is just to do so, admit the statement in evidence notwithstanding the failure to comply with those provisions.

Court may admit statement notwithstanding failure to comply with rules of court.

#### PART VIII.—PROOF OF FOREIGN LAWS AND DOCUMENTS.

**46.** In this Part, a reference to a statute shall be read as including a reference to an instrument of a legislative nature made, granted or issued under a statute.

Interpretation.

**47.—(1.)** Evidence of a statute, proclamation, treaty or act of state of an overseas country may be given in a proceeding by the production of—

Proof of written laws of overseas countries.

- (a) a book or pamphlet purporting to be published by the authority of the government of that country or by the government or official printer of that country, or in a book or publication that appears to the court to be a reliable source of information, containing the statute, proclamation, treaty or act of state;
- (b) a book or pamphlet that is proved to the satisfaction of the court to be admissible in the courts in that country as evidence of the statutes, proclamations, treaties or acts of state of that country contained in that book;
- (c) a copy of the statute, proclamation, treaty or act of state that is proved to be an examined copy; or

- (d) a document that purports to be a copy of the statute, proclamation, treaty or act of state if there is endorsed on or annexed to the copy so produced a certificate by the person having custody of the original that the copy is a true copy of the document of which it purports to be a copy.

Proof of law reports of overseas countries.

**48.** A book containing reports of one or more of the courts in an overseas country is evidence in a proceeding of the unwritten or common law of that country if the book purports to be published by the authority of that court or those courts or by the person or authority responsible for the publication of those reports or for the administration of justice in that country.

Proof of judicial proceedings of an overseas country.

**49.** Evidence of an instrument that is a judgment, decree, rule, order or other judicial proceeding of a court in an overseas country (including an affidavit, pleading or other legal document filed or deposited in such a court) may be given in a proceeding by the production of—

- (a) a copy that is proved to be an examined copy of the instrument; or
- (b) a document that purports to be a copy of the instrument if there is endorsed on or annexed to the copy so produced a certificate by the person having custody of the original instrument that it is a true copy of the instrument of which it purports to be a copy.

Proof of public books and documents of overseas countries.

**50.** Where it is proved that—

- (a) a book or document of an overseas country is of such a public nature as to be admissible in evidence in the courts in that country on its mere production from proper custody;
- (b) a book or document is, under the law of a Commonwealth country, admissible in evidence in the courts in that country by the production of a copy of the book or document; or
- (c) a copy of a document kept at an office for the registration of companies in a Commonwealth country is admissible in evidence in the courts in that country,

evidence of the book or document or of an extract from that book or document may be given in a proceeding by the production of—

- (d) a copy of the book or document or an extract, from the book or document that is proved to be an examined copy of the book, document or extract; or
- (e) of a document that purports to be a copy of the book, document or extract if there is endorsed on or annexed to the copy so produced a certificate by the person having custody of the original book or document that the document is a true copy of the book, document or extract of which it purports to be a copy.

**51.** The production of a document purporting to be a certificate referred to in section 47, 49 or 50 of this Ordinance is evidence in a proceeding that the person by whom the certificate purports to be signed is the person who has custody of the original book, document or instrument referred to in the certificate without further proof of that fact.

Certificates under section 47, 49 or 50.

**PART IX.—WITNESSES AND EVIDENCE IN PROCEEDINGS GENERALLY.**

**52.—(1.)** A person who is present at the hearing of a proceeding may, subject to this Ordinance and any other law in force in the Territory, be ordered to give evidence and to produce documents notwithstanding that a subpoena or other process requiring the person to attend for that purpose has not been duly served upon him.

Person may be examined without subpoena or other process.

**(2.)** A person who is ordered in pursuance of the last preceding sub-section to give evidence or to produce documents is subject to the same penalties and liabilities as if he had been duly served with a subpoena or other process requiring him to give evidence or produce documents.

**53.** A person is not disqualified to give evidence in a proceeding by reason that—

Witness not disqualified by interest or crime.

- (a)** he has, or may have, an interest in the result of the proceeding; or
- (b)** he has been convicted of an offence.

**54.—(1.)** Each of the parties to a proceeding (not being a criminal proceeding) and a person on whose behalf such a proceeding is prosecuted or defended is a competent and compellable witness in the proceeding.

Parties as witnesses in civil proceedings.

**(2.)** The wife or husband of a party to a proceeding (not being a criminal proceeding) and the wife or husband of a person on whose behalf such a proceeding is prosecuted or defended is a competent and compellable witness in the proceeding and is compellable to disclose communications made between them during the marriage.

**55.** Either party to a marriage may, in a proceeding, give evidence tending to prove that the parties to the marriage did not have sexual relations with each other at a particular time, but is not compellable to give such evidence if it would show, or tend to show, that a child born to the wife during the marriage was illegitimate.

Evidence of non-access.

**56.—(1.)** Where evidence with regard to the character of a person is admissible in a proceeding, a witness may, in the proceeding, give evidence of the general reputation of the person and of the witness's own knowledge of the habits, disposition and conduct of the person.

Evidence as to character.

**(2.)** A witness shall not be permitted to state that he would not believe another person on his oath.

Incriminating questions.

57.—(1.) Subject to this Ordinance and to any other law in force in the Territory, a person is not bound to answer a question or interrogatory in a proceeding if the answer to the question or interrogatory would incriminate, or would tend to incriminate, the person or his spouse or would tend to expose the person or his spouse to proceedings for an offence against a law in force in Australia.

(2.) Where, in a proceeding, a person called as a witness or required to answer an interrogatory declines to answer a question or interrogatory under the last preceding sub-section, the court may, if it is satisfied that, in the interests of justice, the person should be compelled to answer the question or interrogatory, inform the person—

- (a) that, if he answers the question or interrogatory and all other questions or interrogatories that may be put to him, the court will give him a certificate under this section; and
- (b) of the effect of such a certificate.

(3.) Where, in relation to a proceeding, a person has been informed by the court of the matters referred to in paragraphs (a) and (b) of the last preceding sub-section, that person is not thereafter entitled to refuse to answer a question or interrogatory put to him in that proceeding.

(4.) Where, after being informed by the court of the matters referred to in paragraphs (a) and (b) of sub-section (2.) of this section, a person answers all questions and interrogatories put to him in the proceeding, the court shall give to the person a certificate that his evidence in the proceeding was given under this section.

(5.) Where a person is given a certificate under this section, a statement made by the person in answer to a question or interrogatory put to him in the proceeding in which that certificate was given to him is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence arising out of falsity of the statement.

Disallowance of certain questions.

58. Where any question put to a witness in cross-examination is not relevant to the subject-matter of the proceeding, except in so far as the truth of the matter suggested by the question could affect the credit of the witness by injuring his character, the court has a discretion to disallow the question if, in its opinion, the subject-matter of the question is so remote in time or is of such a nature that an admission of its truth would not materially affect the credibility of the witness.

Scandalous and insulting questions.

59.—(1.) A court may disallow a question which, in the opinion of the court, is indecent or scandalous unless the question relates to a fact in issue in the proceeding or to matters necessary to be known in order to determine an issue of fact in the proceeding.

(2.) A court may disallow a question which, in the opinion of the court, is intended only to insult or annoy or is needlessly offensive in form.

**60.—(1.)** The party by whom a witness is called is not entitled to impeach the credit of the witness by general evidence of bad character.

How far a party may discredit his own witness.

(2.) On the application of the party by whom a witness has been called, the court may grant leave to the party—

- (a) to prove that the witness has, at another time, made a statement inconsistent with his evidence; or
- (b) to cross-examine the witness as to whether he has, at any time, made a statement inconsistent with his evidence.

(3.) The court may grant an application under the last preceding sub-section whether or not it is alleged or proved that the witness is adverse to the party by whom he was called.

(4.) A party is not entitled to prove that a witness has made a statement inconsistent with his evidence unless the witness has been informed of sufficient of the circumstances of the making of the statement to identify the occasion on which the statement was made and has been asked whether he made the statement.

**61.—(1.)** Subject to the next succeeding sub-section, where a witness, upon cross-examination concerning a statement alleged to have been made by him relating to the subject-matter of the proceedings and inconsistent with his evidence, does not admit that he made the statement, evidence of the making of the statement is admissible.

Proof of prior inconsistent statement of witnesses.

(2.) Evidence of the making by a witness of a statement referred to in the last preceding sub-section is not admissible unless the witness has been informed of sufficient of the circumstances of the making of the statement to identify the occasion on which the statement was made and has been asked whether he made the statement.

**62.—(1.)** Subject to the next succeeding sub-section, a witness may be cross-examined as to—

Cross examination as to previous statements.

- (a) a statement made by the witness in writing or made by the witness and reduced into writing whether by the witness or another person; or
- (b) evidence given by the witness before a court,

without the statement, or the deposition or transcript containing the evidence, being shown to him.

(2.) Proof of the making of a statement or of the giving of the evidence referred to in the last preceding sub-section shall not be given for the purpose of contradicting the witness unless the attention of the witness has been directed towards those parts of the statement or evidence that are to be used to contradict him.

(3.) Notwithstanding the last preceding sub-section, a court may at any time during the hearing of a proceeding direct that the writing containing a statement or the deposition or transcript containing the evidence referred to in sub-section (1.) of this section be produced to the court, and the court may make such use in the proceeding of the writing, deposition or transcript as the court thinks fit.

Deaf and dumb witnesses.

**63.** A witness who is unable to speak or to hear, or who is both unable to speak and unable to hear, may, in a proceeding, give evidence by writing his answers to questions put to him, by signs or by any other means whereby he is able to make his evidence intelligible.

Unsworn evidence of young children.

**64.—(1.)** Where the evidence of a child who has not attained the age of fourteen years is required in a proceeding, the court may receive that evidence without administering an oath or requiring an affirmation or declaration and, subject to the next succeeding sub-section, without any formality.

(2.) The court shall, before receiving evidence in pursuance of the last preceding sub-section, explain, or cause it to be explained, to the child that he is required to tell truthfully what he knows about the matter to which his evidence relates.

(3.) Evidence admitted in pursuance of sub-section (1.) of this section on the trial of a person charged with an offence shall be disregarded unless it is corroborated by other evidence implicating that person.

Dying declarations.

**65.** A statement made orally by a person before his death relating to the circumstances resulting in his death is admissible in evidence in a proceeding if—

- (a) at the time when the person made the statement, he knew or believed, or may be reasonably supposed by the court to have known or believed, that his death was imminent, whether or not he entertained, at that time, any hope of recovery;
- (b) at the time at which the person made the statement, he would have been a competent witness in a proceeding; and
- (c) the person making the statement could, if he had not died, have given direct oral evidence in the proceeding of the matters in the statement.

#### PART X.—EVIDENCE IN CRIMINAL PROCEEDINGS.

Competency and compellability of witnesses in criminal proceedings.

**66.—(1.)** In a criminal proceeding, the person charged and the husband and wife of the person charged are competent witnesses but, except as provided by sub-section (3.) of this section, are not compellable witnesses.

(2.) Nothing in the last preceding sub-section makes the person charged with an offence liable to be called as a witness on behalf of the prosecution.

(3.) In a criminal proceeding in which a person is charged—

- (a) with an offence against a provision in Part III. of the Crimes Act, 1900 of the State of New South Wales in its application to the Territory, as amended by Ordinances of the Territory, being an offence against a person under the age of sixteen years; or
- (b) with an offence against sub-section (1.), or paragraph (a) or (d) of sub-section (2.) of section 98, of the *Child Welfare Ordinance 1957-1969* or with an offence against section 99 of that Ordinance,

the husband or wife of the person charged is a compellable witness in the proceeding.

67. In a criminal proceeding, the person charged with the offence may, if advised to do so by his counsel or solicitor, make any admissions with regard to matters of fact, and give any consent, that a party to a civil proceeding may make or give.

Admission by accused person.

68.—(1.) Subject to the next succeeding sub-section, a confession or admission made by a person charged in a criminal proceeding is not admissible in evidence against that person unless it was made voluntarily by that person.

Admissibility of confessions or admissions.

(2.) A confession or admission tendered in evidence against the person charged in a criminal proceeding shall not be rejected only on the ground that a promise, threat or other inducement (not being the exercise of violence, force or other form of compulsion) has been held out to or exercised upon the person making the confession or admission, if the judge is satisfied that the means by which the confession or admission was obtained were not in fact likely to cause an untrue admission of guilt to be made.

(3.) The judge has, in a criminal proceeding, a discretion to reject a confession or admission (whether or not it is a confession or admission to which the last preceding sub-section applies) made by the person charged if, having regard to the circumstances in which, or the means by which, the confession or admission was obtained, the judge is satisfied that it would be unfair to the person charged to admit the confession or admission in evidence.

69. Subject to the next succeeding section, a person charged in a criminal proceeding, if he gives evidence in the proceeding, may be asked, and is bound to answer, a question notwithstanding that the answer to the question may tend to incriminate him in relation to the offence to which the proceeding relates.

Incriminating questions.

70.—(1.) Except as provided by this section, a person charged in a criminal proceeding shall not, if he gives evidence in the proceeding, be asked a question tending to show that he has committed or has been convicted of or has been charged with an offence (other than the offence

Questions regarding prior convictions, &c.

to which the proceeding relates), that he has otherwise engaged in improper conduct or that he has a bad reputation, if the question is asked merely for the purpose—

- (a) of showing that the person charged is guilty of the offence to which the proceeding relates by reason of his disposition towards wrongdoing, his tendency to commit crime or his bad character; or
  - (b) of attacking the credibility of the person charged.
- (2.) Where, in a criminal proceeding—
- (a) the person charged has, personally or by his counsel or solicitor, asked questions of a witness for the prosecution with a view to establishing his own good character;
  - (b) the person charged has given or called evidence of his own good character;
  - (c) the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or a witness for the prosecution; or
  - (d) the person charged has given evidence against another person tried jointly with him for the offence with which he is charged,

the person charged, if he gives evidence, may, with the permission of the judge, be asked and is bound to answer a question of a kind referred to in the last preceding sub-section.

Evidence as to character of accused.

**71.** Where evidence as to the character of a person charged with an offence is admitted in a criminal proceeding, the court may take that evidence into account in relation to the question whether the person is guilty of the offence with which he is charged.

Depositions of persons dangerously ill.

**72.—(1.)** In this section, “trial” means—

- (a) a proceeding before the Supreme Court in respect of an indictable offence; or
- (b) a proceeding under the *Court of Petty Sessions Ordinance 1930-1970* in respect of an indictable offence.

(2.) Where a Magistrate is satisfied that—

- (a) a person is or may be able to give evidence relating to an indictable offence or on behalf of a person charged with such an offence;
- (b) that the first-mentioned person is dangerously ill and is not likely to recover from the illness; and
- (c) by reason of his illness the first-mentioned person is or may be unable to give evidence at the trial of a person who has been, or may be, charged with an indictable offence,

the Magistrate may take the evidence of the first-mentioned person in the Territory or elsewhere in Australia.

(3.) Before taking the evidence of a person under this section, the Magistrate shall—

- (a) if a person has been charged with the commission of an indictable offence to which the evidence relates; or
- (b) if it appears to the Magistrate that a person may be charged with an indictable offence to which the evidence relates,

cause notice to be given to the person charged or who may be charged, and, if the evidence is evidence on behalf of the person charged and it is practicable to do so, also cause notice to be given to the Deputy Crown Solicitor, of the fact that he proposes to take the evidence of the first-mentioned person under this section and of the time and place at which he proposes to take that evidence.

(4.) The person to whom notice is given under the last preceding sub-section is entitled, and, if notice is given to the Deputy Crown Solicitor, he or a person authorized by him, is entitled, to be present personally or by his counsel or solicitor while the evidence is being taken and to cross-examine the person giving the evidence.

(5.) The Magistrate before whom the evidence is taken—

- (a) shall cause the evidence (including evidence given under cross-examination) to be recorded;
- (b) shall, if the person whose evidence is taken is able to write, cause that person to sign the evidence; and
- (c) shall endorse on or annex to that evidence a statement setting out the reasons for taking the evidence, the date and time and the place where it was taken and of the names of the persons present at the taking of the evidence.

(6.) If, on the trial of a person charged with an offence to which the evidence contained in a record made under this section relates, the court is satisfied that—

- (a) the person by whom the evidence was given is dead, or is, by reason of illness, unable to attend the trial; and
- (b) that the person charged or his counsel or solicitor was present when the evidence was taken or, if the person charged or his counsel or solicitor was not then present, that reasonable notice of the time and place fixed for the taking of the evidence was given to the person charged with the offence or to his counsel or solicitor,

the record of the evidence is, to the extent that the evidence would have been admissible at the trial if given orally, admissible in evidence.

(7.) The record of the evidence taken in pursuance of this section shall, if a person is charged with an indictable offence to which the evidence relates, be deemed to form part of the depositions taken on the proceedings against that person for that offence in the Court of Petty Sessions.

Evidence of  
dead or absent  
persons in  
trials before  
the Supreme  
Court.

73.—(1.) On the trial before the Supreme Court of a person who has been committed for trial, whether for the offence in respect of which he was committed for trial or for an offence founded on evidence disclosed in the course of the preliminary examination, it is proved that—

- (a) a witness whose depositions were taken in the course of the committal proceedings is dead, is so ill as not to be able to travel or give evidence or is absent from Australia;
- (b) the depositions of the witness were taken in the presence of the accused person; and
- (c) the accused person or his counsel or solicitor had full opportunity of cross-examining the witness,

any of the statements in the depositions that would, if the witness who made the deposition had given evidence on the trial have been admissible, are admissible as evidence on the trial.

(2.) In this section, a reference to the depositions of a witness shall be read as a reference—

- (a) if a record of the depositions was made in accordance with sub-section (1.) of section 60 of the *Court of Petty Sessions Ordinance 1930-1970*—to a transcript of the record certified in accordance with sub-section (5.) of that section; or
- (b) if the depositions were taken down in writing and signed in accordance with sub-section (2.) of that section—to the depositions as so taken down and signed.

Comment on  
failure to  
give evidence.

74.—(1.) On the trial of an indictable offence, the failure of the person charged or his spouse to give evidence shall not be made the subject of comment by counsel for the Crown.

(2.) Where—

- (a) two or more persons are being tried together for an indictable offence; and
- (b) comment is made by or on behalf of any of those persons on the failure of any of those persons or of the spouse of any of those persons to give evidence,

the judge may make such observations to the jury in regard to the comment or the failure to give evidence as he thinks fit.

Certificate of  
scientific  
examination  
admissible in  
certain cases.

75.—(1.) A certificate in writing signed by a person who has made a scientific examination of an article or body setting out—

- (a) his scientific qualifications;
- (b) that he has made the examination; and

- (c) the facts that he has ascertained and the conclusions to which he has arrived,

is admissible in evidence—

- (d) on the hearing of a proceeding before the Court of Petty Sessions for an indictable offence; and  
 (e) on an inquest or inquiry held under the *Coroners Ordinance* 1966-1967.

(2.) Nothing in the last preceding sub-section prevents the Court of Petty Sessions or the coroner from requiring the person by whom such a certificate has been given to attend and give evidence before the Court or the coroner.

(3.) Where a certificate referred to in sub-section (1.) of this section is tendered in a proceeding before the Court of Petty Sessions, the Court shall not dispose of the case summarily except with the consent of the person charged.

76. Nothing in this Ordinance derogates from the court's discretion to exclude evidence in a criminal proceeding if the court is satisfied that it would be unfair to the person charged to admit that evidence.

General discretion to reject evidence.

#### PART XI.—ADMISSIBILITY OF CONVICTIONS IN CIVIL PROCEEDINGS.

77.—(1.) In this section, "civil proceeding" does not include an action for libel or slander.

Proof of convictions in proceedings other than actions for libel and slander.

(2.) The fact that a person has been convicted of an offence by a court is admissible in evidence for the purposes of proving, where to do so is relevant to an issue in a civil proceeding, that the person committed that offence, and, where a person is, in a civil proceeding, proved to have been convicted of an offence by a court, he shall, unless the contrary is proved, be taken to have committed that offence.

(3.) This section applies—

- (a) whether or not a person was convicted upon a plea of guilty; and  
 (b) whether or not the person convicted is a party to the civil proceeding.

78. In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue, proof that, at the time when that issue falls to be determined, that person stands convicted by a court of that offence is conclusive evidence that the person committed that offence.

Convictions as evidence in actions for libel or slander.

79. Without prejudice to the reception of any other evidence for the purpose of identifying the facts on which a conviction was based, the statements in any document which is, under section 94

Evidence identifying facts upon which conviction was based.

of this Ordinance, admissible in evidence, are admissible in evidence in a civil proceeding (including an action for libel or slander) for the purposes of identifying the facts upon which the conviction specified in that document was based.

Operation of other laws not affected by this Part.

**80.** Nothing in this Part derogates from the operation of any other law in force in the Territory under which a conviction or finding of fact in a criminal proceeding is, for the purposes of any other proceeding, made evidence or conclusive evidence of any fact.

Interpretation.

**81.** In this Part—

(a) a reference to a court—

(i) shall be read as a reference to a court in a State or Territory of the Commonwealth; and

(ii) shall not be read as including a reference to a court-martial; and

(b) a reference to a conviction shall not be read as including—

(i) a reference to a conviction that has been set aside or quashed; or

(ii) if the person convicted of an offence has been granted a pardon in respect of that offence, as including a reference to such a conviction.

#### PART XII.—PUBLICATION OF EVIDENCE.

Application of Part.

**82.** This Part applies to a proceeding in the Supreme Court and in the Court of Petty Sessions and to an inquest or inquiry under the *Coroners Ordinance* 1956-1967.

Prohibition of publication of evidence, &c.

**83.—(1.)** Where it appears to a court that—

(a) the publication of evidence, given or intended to be given, in a proceeding before that court, is likely to prejudice the administration of justice; or

(b) in the interests of the administration of justice, it is desirable that the name of a party to, or a witness, or intended witness, in such a proceeding be not published,

the court may, at any time during or after the hearing of the proceeding, make an order—

(c) forbidding the publication of the evidence or a specified part of the evidence, or of a report of the evidence, either absolutely or subject to such conditions as the court specifies or for such period as is specified; or

(d) forbidding the publication of the name of such a party or witness.

(2.) Where a court makes an order under the last preceding subsection, the court may, if it thinks fit, also direct that persons specified by the court, or all persons except persons so specified, shall remain outside the court-room for such period as the court specifies.

**84.—(1.)** A person who contravenes, or fails to comply with, an order or direction under the last preceding section is guilty of an offence and is punishable, upon conviction, by a fine not exceeding Two hundred dollars or imprisonment for a term not exceeding six months, or both.

Penalty for non-compliance with order under section 83.

(2.) For the purpose of the last preceding section and this section, the publication of a reference or allusion to a party to, or a witness in, a proceeding shall, if the reference or allusion is such as to disclose the identity of the party or witness, be deemed to be a publication of the name of the party or witness.

**85.** Where a court disallows a question to which section 58 or 59 of this Ordinance applies, a person shall not, without the leave of the court, publish the question or any answer given to the question.

Certain questions not to be published.

Penalty: Two hundred dollars or imprisonment for six months, or both.

#### PART XIII.—MISCELLANEOUS.

**86.** Any presumption that would, immediately before the commencement of this Ordinance, have been made in a proceeding in relation to a document proved or purporting to be not less than thirty years old shall, after the commencement of this Ordinance, be made in relation to a document of the same kind proved or purporting to be not less than twenty years old.

Documents twenty years old.

**87.** Where a document has been copied by means of a photographic or other machine which produces a facsimile copy of the document, the copy is, upon proof to the satisfaction of a court that the copy was taken or made from the original document by means of the machine, admissible in evidence to the same extent that the original document would be admissible in evidence without—

Machine copies.

- (a) proof that the copy was compared with the original; and
- (b) notice to produce the original document having been given.

**88.** Where a document has been tendered or produced before a court, the court may, whether or not the document is admitted in evidence, direct that the document shall be impounded and kept in the custody of an officer of the court or of another person for such period and subject to such conditions as the court thinks fit.

Impounding documents.

**89.** An affidavit made by the person by whom a notice to produce a document or article has been served stating the time and manner of service and having annexed to it a copy of the notice is evidence of the service of the notice and of the time when it was served.

Proof of service on notice to produce.

**90.** An averment or recital, in an information for an indictable offence presented to the Supreme Court, that the offence is prosecuted in the name of a person appointed by the Governor-General to prosecute in that behalf is evidence that the person named in the information has been duly appointed by the Governor-General to prosecute in that behalf.

Proof of authority to institute proceedings for indictable offences.

Certified copies  
of transcript  
of Supreme  
Court  
proceedings.

91.—(1.) Where a record is made of evidence given in a proceeding before the Supreme Court, the Registrar of the Supreme Court has custody of the record.

(2.) The Registrar shall give such directions as are necessary to ensure that, as and when required, a transcript of the record of evidence given in a proceeding in the Supreme Court is prepared, and, for the purpose of enabling the transcript to be prepared, the record shall be produced out of the custody of the Registrar.

(3.) Where a transcript is prepared in accordance with the directions of the Registrar given under the last preceding sub-section, the person who prepared the transcript or under whose supervision the transcript was prepared shall certify on the transcript, by writing under his hand, that the transcript is a true transcript of the record of the proceedings produced out of the custody of the Registrar.

(4.) Where—

(a) a record of evidence given in a proceeding in the Supreme Court has been made by means of sound recording apparatus;

(b) the sound recording is produced out of the custody of the Registrar; and

(c) the sound recording contains a record of comments that purport—

(i) to have been made at the same time as the sound recording produced out of the custody of the Registrar was made; and

(ii) to have been made for the purpose of identifying the proceeding or the voices recorded by the sound recording or any other matter or thing so recorded,

the sound recording is evidence of the identity of the proceedings, of the voices or of the other matter or thing, as the case may be.

(5.) Subject to sub-section (7.) of this section, the Registrar shall, upon application made to him by a person, furnish to that person a copy of the whole or any part of a transcript prepared in accordance with this section and may certify, by writing under his hand, that the copy is a true copy of the transcript or the part of the transcript, as the case may be.

(6.) Where—

(a) a document purports to be a transcript, made in accordance with this section, of evidence given by a person in a proceeding in the Supreme Court; and

(b) the document bears a certificate that purports to be a certificate given in accordance with the last preceding sub-section,

any statement in the document is admissible in evidence in another proceeding to the same extent that the statement would, if given orally, be admissible in that other proceeding if the person—

(c) is dead;

- (d) is outside Australia and it is not reasonably practicable to secure his attendance;
- (e) if unfit by reason of old age or his bodily or mental condition to appear as a witness; or
- (f) cannot with reasonable diligence be found.

(7.) Nothing in sub-section (5.) of this section requires the Registrar to furnish a copy of a transcript to a person, not being a party to the proceeding to which the transcript relates, unless the person applying for the copy satisfies the Registrar or a Judge of the Supreme Court that he has good reason for so applying.

**92.** Where, in a proceeding, there is a question as to the territorial limits or situation of an area or place, or the distance between two places, a court may admit in evidence—

Maps, charts,  
&c.

- (a) a published book, map, chart or document that appears to the court to be a reliable source of information in relation to the question; or
- (b) a certificate purporting to be signed by a person occupying, or performing the duties of, an office which, in the opinion of the court, qualifies him to express an opinion in relation to the question.

**93.—(1.)** Where, in a proceeding, evidence is given that a letter was posted (postage being prepaid) at a specified time, on a specified day, at a specified place and addressed to a specified address, the letter shall, unless the contrary is proved, be deemed to have been delivered to that address at the time at which the letter would have been delivered in the ordinary course of post.

Evidence when  
letter delivered  
in ordinary  
course of post.

(2.) A certificate under the hand of a person occupying, or performing the duties of, an office under the *Post and Telegraph Act* 1901-1970 of Director of Posts and Telegraphs, or of a person authorized in writing by such a person to give certificates under this sub-section, stating that a letter posted (postage being prepaid) at a specified time, on a specified day, at a specified place and addressed to a specified address would, in the ordinary course of post, have been delivered at that address on a specified day is evidence of the fact stated.

(3.) For the purposes of the last preceding sub-section, a document purporting to be a certificate referred to in that sub-section shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

**94.—(1.)** In a proceeding, a certificate of the conviction of a person for a specified offence by a federal court, a court of a State or Territory of the Commonwealth or a court of a Commonwealth country, being a certificate purporting to be signed by the Registrar or other proper

Proof of  
convictions.

officer of that court, is evidence of the fact of the conviction and of any particulars of the offence or of the conviction, including the date on which the offence was committed, and of any sentence of imprisonment or other penalty imposed, that are included in the certificate.

(2.) In a proceeding, a certificate purporting to be signed by the Registrar or other proper officer of a court referred to in the last preceding sub-section that a person charged with an offence specified in the certificate was acquitted of the offence, or that the charge was dismissed, by that court is evidence of the facts stated in the certificate.

(3.) An affidavit in accordance with the Form set out in the Schedule to this Ordinance, being an affidavit made by an officer of the Police Force of a State or of another Territory of the Commonwealth who states in the affidavit that he is a finger-print expert for that Police Force, is, for the purpose of proving before a court the identity of a person alleged to have been convicted in that State or Territory of an offence, evidence in a proceeding that the person whose finger-prints are shown on a finger-print card referred to in the affidavit and marked by the officer for identification—

- (a) is the person referred to in a certificate of conviction or certified copy of a conviction annexed to the affidavit as having been convicted of an offence;
- (b) was convicted of that offence; and
- (c) was convicted of any other offence of which he is stated in the affidavit to have been convicted.

Abolition of certain privileges.

**95.**—(1.) A person is not entitled, for the purposes of a civil proceeding, to refuse to answer a question or to produce a document or thing on the ground that to do so would expose him to a forfeiture.

(2.) A person is not entitled to refuse to produce a document for the purposes of a legal proceeding on the ground that the document relates to the title of the person to land.

(3.) A party to a civil proceeding is not entitled to refuse to produce a document for the purposes of that proceeding on the ground that the document relates solely to the party's own case and in no way tends to impeach that case or support the case of any opposing party.

Comparison of disputed writing.

**96.** Where, in a proceeding, any writing or signature is in dispute, the writing or signature may be compared with other writing or another signature proved to the satisfaction of the court to be the writing or signature of the person alleged to have written the writing or signature in dispute and the writing or signature so proved and the evidence of witnesses respecting the writing or signature so proved shall be evidence of the genuineness or otherwise of the writing or signature in dispute.

Witnesses failing to attend when required to do so by subpoena or recognizance.

**97.**—(1.) Where a person duly bound, by recognizance or served with a subpoena to attend as a witness in a proceeding before the Supreme Court fails to attend, or remain in attendance, before the

