

Legislative Council—No 75

As received from the House of Assembly and read a first time, 27 October 2015

South Australia

**Evidence (Records and Documents) Amendment
Bill 2015**

A BILL FOR

An Act to amend the *Evidence Act 1929*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Evidence (Records and Documents) Amendment Act 2015*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Evidence Act 1929*

4—Substitution of heading to Part 4

Heading to Part 4—delete the heading and substitute:

Part 4—Documents and other records

5—Insertion of heading to Division 1

Before section 35 insert:

Division 1—Public Acts and documents

6—Insertion of heading to Division 2

Before section 42 insert:

10 Division 2—Proof of convictions, acquittals, etc

7—Insertion of heading to Division 3

Before section 44 insert:

Division 3—Documents relating to ships or transport

8—Repeal of sections 45A to 45C

15 Sections 45A to 45C (inclusive)—delete the sections

9—Substitution of heading to Part 5

Heading to Part 5—delete the heading and substitute:

Division 4—Banking records

10—Amendment of section 46—Interpretation

20 Section 46—delete "In this Part" and substitute:

In this Division

11—Insertion of Part 4 Divisions 5 to 7

After section 51 insert:

Division 5—Other documents and records

25 52—Admission of certain documents in evidence

- (1) An apparently genuine document purporting to contain a statement of fact, or written, graphical or pictorial matter in which a statement of fact is implicit, or from which a statement of fact may be inferred is, subject to this section, admissible in evidence.

- 5
- (2) A document must not be admitted in evidence under subsection (1) if the court is not satisfied that the person by whom, or at whose direction, the document was prepared could, at the time of the preparation of the document have deposed of his or her own knowledge to the statement that is contained or implicit in, or may be inferred from, the contents of the document.
- (3) A document must not be admitted in evidence under subsection (1) if the court is of the opinion—
- 10
- (a) that the person by whom, or at whose direction, the document was prepared can and should be called by the party tendering the document to give evidence of the matters contained in the document; or
- (b) that the evidentiary weight of the document is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the document in evidence; or
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- (c) that it would be otherwise contrary to the interests of justice to admit the document in evidence.
- (4) In determining whether to admit a document in evidence under this section, the court may receive evidence by affidavit of any matter pertaining to the admission of that document in evidence.
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- (5) For the purpose of determining the evidentiary weight (if any) of a document admitted in evidence under this section, consideration must be given to the source from which the document was produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.
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53—Admission of business records in evidence

- (1) An apparently genuine document purporting to be a business record—
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- (a) is admissible in evidence without further proof; and
- (b) is evidence of a fact stated in the record, or any fact that may be inferred from the record (whether the inference arises wholly from the matter contained in the record, or from that matter in conjunction with other evidence).
- (2) A document must not be admitted in evidence under subsection (1) if the court is of the opinion—
- 35
- (a) that the person by whom, or at whose direction, the document was prepared can and should be called by the party tendering the document to give evidence of the matters contained in the document; or
- 40
- (b) that the evidentiary weight of the document is slight and is outweighed by the prejudice that might result to any of the parties from the admission of the document in evidence; or
- (c) that it would be otherwise contrary to the interests of justice to admit the document in evidence.

(3) For the purpose of determining the evidentiary weight (if any) of a document admitted in evidence under subsection (1), consideration must be given to the source from which the document is produced, the safeguards (if any) that have been taken to ensure its accuracy, and any other relevant matters.

(4) In this section—

business means business, occupation, trade or calling and includes the business of any governmental or local governmental body or instrumentality;

business record means—

- (a) any book of account or other document prepared or used in the ordinary course of a business for the purpose of recording any matter relating to the business; or
- (b) any reproduction of any such record by photographic, photostatic, lithographic or other like process.

Division 6—Matters relating to communications

54—Electronic communications

(1) If an apparently genuine document purports to contain a record of an electronic communication (other than one referred to in section 55), it will be presumed in the absence of evidence to the contrary, that the communication—

- (a) was sent or made in the form of electronic communication that appears from the document to have been the form by which it was sent or made; and
- (b) was sent or made by or on behalf of the person by or on whose behalf it appears from the document to have been sent or made; and
- (c) was sent or made on the day on which, at the time at which and from the place from which it appears from the document to have been sent or made; and
- (d) was received at the destination to which it appears from the document to have been sent; and
- (e) if it appears from the document that the sending of the communication concluded at a particular time—was received at that destination at that time.

(2) A provision of subsection (1) does not apply in proceedings if—

- (a) the proceedings relate to a contract; and
- (b) all parties to the proceedings are parties to the contract; and
- (c) the provision is inconsistent with a term of the contract.

(3) A document referred to in subsection (1) may be admitted in proceedings as evidence of any of the following representations contained in the document:

- (a) the identity of the person from whom or on whose behalf the electronic communication was sent;
- (b) the date on which or the time at which the communication was sent;
- (c) the destination of the communication or the identity of the person to whom the communication was addressed.

(4) In this section—

electronic communication has the same meaning as in the *Electronic Transactions Act 2000*.

55—Telegrams and lettergrams

(1) If a document purporting to contain a record of a message is transmitted by means of a lettergram or telegram, it will be presumed, in the absence of evidence to the contrary, that the message was received by the person to whom the message is addressed no later than 24 hours after the message was delivered to a post office for transmission as a lettergram or telegram.

(2) This section does not apply in proceedings if—

- (a) the proceedings relate to a contract; and
- (b) all parties to the proceedings are parties to the contract; and
- (c) subsection (1) is inconsistent with a term of the contract.

Division 7—Miscellaneous

56—Evidence produced by processes, machines and other devices

(1) This section applies to a document or thing—

- (a) that is produced wholly or partly by a device or process; and
- (b) that is tendered by a party to proceedings who asserts that, in producing the document or thing, the device or process has produced a particular outcome.

(2) If a device or process is 1 that, or is of a kind that, if properly used, will ordinarily produce that outcome, it will be presumed, in the absence of evidence to the contrary, that, in producing the document or thing on the occasion in question, the device or process produced that outcome.

Example—

It would not be necessary to call evidence to prove that a photocopier normally produced complete copies of documents and that it was working properly when it was used to photocopy a particular document.

57—Modification of best evidence rule

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- (1) A document that reproduces the contents of another document is admissible in evidence before a court in the same circumstances, and for the same purposes, as that other document (whether or not that other document still exists).
- (2) This section applies to a reproduction made—
- (a) by an instantaneous process; or
- (b) by a process in which the contents of a document—
- 10 (i) recorded by photographic, electronic or other means; or
- (ii) stored on a data storage device,
- are reproduced, whether in the same form or in some other form; or
- (c) in any other way.
- 15 (3) If a court admits or refuses to admit a document under this section, the court must, if so requested by a party to the proceedings, state the reason for its decision.
- (4) In determining whether a particular document accurately reproduces the contents of another, a court is not bound by the rules of evidence and, in particular, the court may rely on its own knowledge of the nature and reliability of the processes by which the reproduction was made.
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Example—

25 A photograph displaying the contents of an image on a computer screen, or a transcript of sounds or words captured on an audio recording, may be admissible as a reproduction of the contents of the image or recording (as the case may be).

12—Repeal of Part 6 and Part 6A

Part 6 and Part 6A—delete the Parts