

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 3 March, 1976.*

New South Wales



ANNO VICESIMO QUINTO

ELIZABETHÆ II REGINÆ

Act No. , 1976.

An Act to amend the Evidence Act, 1898, to make business records admissible as evidence in all proceedings.

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:—

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

5

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.

5 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.

10 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.

15 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 :—

20 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)—

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

(b) Section 3 (2)—

Omit “or”.

(c) Section 3 (2)—

10 After “1966,” , insert “or the Evidence (Amend-
ment) Act, 1976,”.

SCHEDULE 2.

Sec. 4.

AMENDMENTS TO PART IIA OF THE PRINCIPAL ACT.

(1) Section 14B (1)—

15 Omit “without a jury”.

(2) Section 14B (2)—

Omit “without a jury”.

(3) Section 14B (6), (7)—

After section 14B (5), insert :—

20 (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
25 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.

- 5 (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.

10

SCHEDULE 3.

Sec. 4.

REPEAL OF PART IIB OF THE PRINCIPAL ACT.

Part IIB—

Omit the Part.

SCHEDULE 4.

Sec. 4.

- 15 INSERTION OF PART IIC INTO THE PRINCIPAL ACT.

Part IIC—

Before Part III, insert :—

PART IIC.

Admissibility of Business Records.

- 20 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—
- 25 (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
- 5 (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
10 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.

15 “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 state-
ment was made—

- 20 (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;
 - 25 (iii) a person retained for the purposes
of the business; or
 - (iv) a person associated with the busi-
ness in the course of another
business; and

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

5 (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

10 (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—

15 (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.

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

(a) he made that statement; or

25 (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.

Admissi-
bility
generally.

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

(2) In subsection (1), "fact" includes opinion.

5 (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;

10 (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

15 (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
20 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—

25 (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—

30 (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.

- 5 (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.

- 10 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.

- 15 (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.

- 20 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.

- 25 (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—

- 5 (i) that he is dead or is unfit by reason of his
bodily or mental condition to attend as a
witness;
- 10 (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;
- 15 (iv) that his identity being known, all reasonable
steps have been taken to find him and he
cannot be found;
- 20 (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.

- 25 (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.

- 30 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

Dispute as
to happening
of event.

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
5 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
10 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
15 an inference can reasonably be drawn as to the accuracy or
otherwise of the statement, including—

Weight of
evidence:
s. 14CE.

- (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—
 - 20 (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
25 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
- 30 (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.

14CJ. In estimating the weight, if any, to be attached to
5 evidence admissible under section 14CH, regard shall be had
to all the circumstances from which an inference can reason-
ably 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
10 in question.

Weight of
evidence:
s. 14CH.

14CK. (1) This section applies where—

Credibility
of the
maker of a
statement.

- (a) a person makes a statement;
- 15 (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
20 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 incon-
sistent with another statement made at any time by him.

25 (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
5 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
10 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
15 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-
20 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
25 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.

- 5 (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
- 10 (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.
- 15 (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.
- 20 (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
- 25 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
- 30 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
5 of a document or a copy of part of a document may be authen-
ticated 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
10 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
15 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
20 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 docu-
ment 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 prac-
25 tice 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.

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

Rejection of
evidence in
criminal
proceed-
ings.

14CT. A court may make orders concerning the admissibil-
ity of any statement or evidence under this Part at any stage
of a legal proceeding.

Time for
order.

10 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
15 this Part and, without limiting the generality of the foregoing,
for or with respect to—

Rules and
regulations.

20 (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);

25 (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.

- 5 (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
10 related to any such statement or evidence he
proposes to tender;
- 15 (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;
- 20 (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
25 a party desires to inspect for the purpose of the
application of this Part to the proceeding;
- 30 (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 declara-
tion for cross-examination by any party who desires
to cross-examine him; and
- 35 (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
5 make rules or regulations under any other Act.

14cv. (1) Where there is any authority having for the Power to
time being power to make rules or regulations regulating the make rules
practice and procedure of any court, that authority shall have or
power to make rules or regulations, not inconsistent with this regulations.
10 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.

15 (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
20 regulations may be made by an authority referred to in
subsection (1).

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

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976

No. , 1976.

A BILL

To amend the Evidence Act, 1898, to make business records admissible as evidence in all proceedings.

[MR MADDISON—25 *February*, 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:—

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

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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.

5 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.

10 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.

15 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 :—

20 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)—

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

(b) Section 3 (2)—

Omit “or”.

(c) Section 3 (2)—

10 After “1966,” , insert “or the Evidence (Amend-
ment) Act, 1976,”.

SCHEDULE 2.

Sec. 4.

AMENDMENTS TO PART IIA OF THE PRINCIPAL ACT.

(1) Section 14B (1)—

15 Omit “without a jury”.

(2) Section 14B (2)—

Omit “without a jury”.

(3) Section 14B (6), (7)—

After section 14B (5), insert :—

20 (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
25 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.

- 5 (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.

10

SCHEDULE 3.

Sec. 4.

REPEAL OF PART IIB OF THE PRINCIPAL ACT.

Part IIB—

Omit the Part.

15

SCHEDULE 4.

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INSERTION OF PART IIC INTO THE PRINCIPAL ACT.

Part IIC—

Before Part III, insert : —

PART IIC.

Admissibility of Business Records.

- 20 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—
- 25 (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.

- 5 (ii) for profit or not; or
(iii) in New South Wales or elsewhere;
and

- 10 (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,
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or logical procedures.

- 15 “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 state-
ment was made—

- 20 (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;
25 (iii) a person retained for the purposes
of the business; or
(iv) a person associated with the busi-
ness in the course of another
business; and

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

- 5 (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,
10 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—

- 15 (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
20 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
25 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.

Admissi-
bility
generally.

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

(2) In subsection (1), "fact" includes opinion.

5 (3) This section makes a statement admissible
notwithstanding—

(a) the rules against hearsay;

(b) the rules against secondary evidence of the contents
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10 (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

15 (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
20 not be in existence at the time when the question of admissi-
bility arises.

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

(6) The statement must—

25 (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—

30 (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.

- 5 (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.

- 10 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.

- 20 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.

- 25 (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—

- 5 (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
10 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
15 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
20 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.

25 (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.

14CH. (1) Where in any legal proceeding the happening
30 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
Dispute as to happening of event.

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
5 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
10 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
15 an inference can reasonably be drawn as to the accuracy or
otherwise of the statement, including—

Weight of
evidence:
s. 14CE.

(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—

20 (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
25 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

30 (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.

14CJ. In estimating the weight, if any, to be attached to
5 evidence admissible under section 14CH, regard shall be had Weight of
evidence:
s. 14CH.
to all the circumstances from which an inference can reason-
ably 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
10 in question.

14CK. (1) This section applies where—

- (a) a person makes a statement;
15 (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.

Credibility
of the
maker of a
statement.

(2) Evidence is admissible which, had the person
referred to in subsection (1) been called as a witness, would
20 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 incon-
sistent with another statement made at any time by him.

25 (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
5 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
10 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
15 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-
20 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.
25

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

5 (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

10 (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.

15 (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.

20 (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 pro-
duced or be made available to the court or to other parties
for examination or testing and, in default, may reject the
25 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
30 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
5 of a document or a copy of part of a document may be authen-
ticated in such manner as may be prescribed or as the court
approves.

14CP. (1) Where a party to a legal proceeding in a court
tenders any evidence under this Part, and it appears to the
10 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
15 may reject the evidence or, if it has been received, exclude it.

(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
20 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 docu-
ment be withheld from the jury during its deliberations.

14CR. For the purposes of any Act or rule of law or prac-
25 tice 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.

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

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

Rejection of
evidence in
criminal
proceed-
ings.

14CT. A court may make orders concerning the admissibil-
ity of any statement or evidence under this Part at any stage
of a legal proceeding.

Time for
order.

10 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
15 this Part and, without limiting the generality of the foregoing,
for or with respect to—

Rules and
regulations.

20 (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);

25 (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.

- 5 (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
10 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
15 inspection any document which a party desires to
inspect for the purpose of the application of this
Part to the proceeding;
- 20 (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
25 the proceeding for inspection any document which
a party desires to inspect for the purpose of the
application of this Part to the proceeding;
- 30 (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 declara-
tion for cross-examination by any party who desires
to cross-examine him; and
- 35 (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
5 make rules or regulations under any other Act.

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
10 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.

15 (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
20 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
25 proceedings in or before that court.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976

Appendix (continued)

20. 1974-1975

1. 1974-1975

(a) 1974-1975

2. 1974-1975

3. 1974-1975

4. 1974-1975

5. 1974-1975

6. 1974-1975

EVIDENCE (AMENDMENT) BILL, 1976

EXPLANATORY NOTE

THE object of this Bill is to make business records admissible as evidence in legal proceedings in certain circumstances notwithstanding the rules against hearsay, the rules against secondary evidence of the contents of a document and the existence of certain other matters.

The Bill, inter alia, contains 4 schedules.

Schedule 1 makes amendments to Part I of the Evidence Act, 1898, of a minor nature consequential upon the amendments made to that Act by Schedules 2, 3 and 4.

Schedule 2 amends Part IIA of the Evidence Act, 1898, relating to the admissibility of documentary evidence as to facts in issue in civil proceedings so that that Part—

- (a) will apply to civil proceedings either with or without a jury; and
- (b) will enable a court in civil proceedings with a jury to—
 - (i) reject certain statements; and
 - (ii) direct that certain statements be withheld from the jury during its deliberations.

Schedule 3 omits Part IIB of the Evidence Act, 1898, relating to admissibility of documentary evidence as to facts in issue in criminal proceedings.

Schedule 4 inserts a new Part IIC into the Evidence Act, 1898, relating to the admissibility of business records in civil and criminal proceedings and containing the following provisions:—

Proposed section 14CD. Interpretation.

Proposed section 14CE provides that where a fact or expert opinion is relevant in any legal proceedings, a statement, in any form, of the fact or opinion is admissible as evidence of the fact or opinion if the statement is in a record of a business and was made in the course of or for the purposes of the business and—

- (a) was made by a person engaged in the business who had personal knowledge of the fact or was an expert qualified to express the opinion; or
- (b) contains information which reproduces or is derived from information in one or more statements each made by persons engaged in the business who had personal knowledge of the facts or who were qualified to express any expert opinion involved or from information supplied by recording or measuring machines.

Proposed section 14CF prohibits the admissibility of certain statements.

Proposed section 14CG imposes certain restrictions on the admissibility of statements in criminal proceedings.

Proposed section 14CH provides that where in the course of a business a system is followed to keep a record of all events of a particular kind, the absence of a record of such an event is evidence that it did not happen.

Proposed section 14CI specifies the matters to which regard shall be had in estimating the weight of a statement admitted under proposed section 14CE.

Proposed section 14CJ specifies the matters to which regard shall be had in estimating the weight of evidence admitted under proposed section 14CH.

Proposed section 14CK provides for the admission of evidence relating to the credibility of a person who makes a statement admitted under proposed section 14CE.

Proposed section 14CL specifies the matters from which a court may draw inferences when deciding questions of admissibility under the proposed Part.

Proposed section 14CM provides for the giving of ancillary evidence.

Proposed section 14CN provides for the proof of statements in documents by means of copies or visual or aural reproduction.

Proposed section 14CO provides for a document to be authenticated in a prescribed manner or as a court approves.

Proposed section 14CP provides for the rejection or exclusion of evidence tendered under the proposed Part if its weight is slight, if it will unduly prolong the hearing, if it is unfair or if it is misleading.

Proposed section 14CQ enables a court to direct that a document be withheld from a jury during its deliberations.

Proposed section 14CR provides that a statement in a business record is not to be treated as corroborating the evidence of a person who supplied information contained in the statement.

Proposed section 14CS is a savings provision.

Proposed section 14CT empowers a court to make orders concerning the admissibility of evidence under the proposed Part.

Proposed section 14CU provides for the making of regulations.

Proposed section 14CV extends the regulation making power of certain authorities for the purpose of giving effect to the proposed Part.

PROOF

No. , 1976.

A BILL

To amend the Evidence Act, 1898, to make business records admissible as evidence in all proceedings.

[MR MADDISON—25 February, 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:—

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

5 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.

10 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.

15 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 :—

20 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)—

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

(b) Section 3 (2)—

Omit “or”.

(c) Section 3 (2)—

10.4.202 After “1966,” , insert “or the Evidence (Amend-
ment) Act, 1976,”.

SCHEDULE 2.

Sec. 4.

AMENDMENTS TO PART IIA OF THE PRINCIPAL ACT.

(1) Section 14B (1)—

15 Omit “without a jury”.

(2) Section 14B (2)—

Omit “without a jury”.

(3) Section 14B (6), (7)—

After section 14B (5), insert :—

20 (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
25 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.

- 5 (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.

10

SCHEDULE 3.

Sec. 4.

REPEAL OF PART IIB OF THE PRINCIPAL ACT.

Part IIB—

Omit the Part.

SCHEDULE 4.

Sec. 4.

- 15 INSERTION OF PART IIC INTO THE PRINCIPAL ACT.

Part IIC—

Before Part III, insert :—

PART IIC.

Admissibility of Business Records.

- 20 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—
25 (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
- 5 (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
10 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.

15 “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 state-
ment was made—

- 20 (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;
 - 25 (iii) a person retained for the purposes
of the business; or
 - (iv) a person associated with the busi-
ness in the course of another
business; and

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

- 5 (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
- 10 (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—

- 15 (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.

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

- (a) he made that statement; or
- 25 (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.

Admissi-
bility
generally.

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

(2) In subsection (1), "fact" includes opinion.

5 (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;

10 (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

15 (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
20 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—

25 (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—

30 (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.

- 5 (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.

- 10 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, 15 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 20 tendered in a criminal legal proceeding for admission under section 14CE and the statement tendered—

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

- 25 (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—

- 5 (i) that he is dead or is unfit by reason of his
bodily or mental condition to attend as a
witness;
- 10 (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;
- 15 (iv) that his identity being known, all reasonable
steps have been taken to find him and he
cannot be found;
- 20 (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.

- 25 (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.

14CH. (1) Where in any legal proceeding the happening
30 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

Dispute as
to happening
of event.

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
5 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
10 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
15 an inference can reasonably be drawn as to the accuracy or
otherwise of the statement, including—

Weight of
evidence:
s. 14CE.

(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—

20 (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
25 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

30 (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.

14CJ. In estimating the weight, if any, to be attached to
5 evidence admissible under section 14CH, regard shall be had
to all the circumstances from which an inference can reason-
ably 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
10 in question.

Weight of
evidence:
s. 14CH.

14CK. (1) This section applies where—

Credibility
of the
maker of a
statement.

(a) a person makes a statement;

15 (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.

20 (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 incon-
sistent with another statement made at any time by him.

25 (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
5 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
10 statement is contained as from other matters from which
inferences may lawfully be drawn.

Inferences
concerning
admissi-
bility.

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
15 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 notwithstand-
ing that the document is not produced and that its non-
20 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
25 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.

5 (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

10 (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.

15 (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.

20 (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 pro-
duced or be made available to the court or to other parties
for examination or testing and, in default, may reject the
25 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
30 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
5 of a document or a copy of part of a document may be authen-
ticated in such manner as may be prescribed or as the court
approves.

14CP. (1) Where a party to a legal proceeding in a court
tenders any evidence under this Part, and it appears to the
10 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
15 may reject the evidence or, if it has been received, exclude it.

(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
20 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 docu-
ment be withheld from the jury during its deliberations.

14CR. For the purposes of any Act or rule of law or prac-
25 tice 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.

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

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.

Rejection of evidence in criminal proceedings.

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

Time for order.

10 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—

Rules and regulations.

20 (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);

25 (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;

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

- 5 (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
10 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
15 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,
20 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
25 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
30 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 declara-
tion for cross-examination by any party who desires
to cross-examine him; and
- 35 (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
5 make rules or regulations under any other Act.

14cv. (1) Where there is any authority having for the ^{Power to} time being power to make rules or regulations regulating the ^{make rules} practice and procedure of any court, that authority shall have ^{or} power to make rules or regulations, not inconsistent with this ^{regulations.}
10 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.

15 (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
20 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
25 proceedings in or before that court.

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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:—

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

2.

Evidence (Amendment).

Principal
Act.

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

Schedules.

3. This Act contains the following 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.

Amendment
of Act No.
11, 1898.

4. The Principal Act is amended in the manner set forth
in Schedules 1–4.

Sec. 4.

SCHEDULE 1.

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 (Amend-
ment) Act, 1976,”.

SCHEDULE 2.

Sec. 4.

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.

Sec. 4.**SCHEDULE 3.****REPEAL OF PART IIB OF THE PRINCIPAL ACT.****Part IIB—**

Omit the Part.

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

Before Part III, insert : —

PART IIC.*Admissibility of Business Records.*

**Interpreta-
tion:
Pt. IIC.**

14CD. (1) In this Part—

“Business” includes—

- (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.

Admissi-
bility
generally.

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.

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.

Restric-
tions on
admissibil-
ity under
s. 14CE:
general.

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.

(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.

Restric-
tions on
admissibil-
ity under
s. 14CE:
criminal
proceed-
ings.

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

- (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.

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

Dispute as to happening of event.

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.

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

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—

- (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.

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.

Weight of
evidence:
s. 14CH.

14CK. (1) This section applies where—

Credibility
of the
maker of a
statement.

- (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.

Inferences
concerning
admissi-
bility.

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.

Ancillary
evidence.

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.

(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.

Production
of
document,
etc.

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;

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.*Authen-
tication.

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.

Rejection
for
unfairness,
etc.

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.

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

With-
holding
statement
from jury.

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.

Corrobor-
ation.

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.

SCHEDULE

*Evidence (Amendment).***SCHEDULE 4—continued.****INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.**

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.

Rejection of evidence in criminal proceedings.

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

Time for order.

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—

Rules and regulations.

- (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;

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.

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. Power to
make rules
or
regulations.

(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.

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THE HISTORY OF THE
OF

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 18 March, 1976.*

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:—

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

2.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

J. H. BROWN,
Chairman of Committees of the Legislative Assembly.

Evidence (Amendment).

Principal
Act.

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

Schedules.

3. This Act contains the following 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.

Amendment
of Act No.
11, 1898.

4. The Principal Act is amended in the manner set forth in Schedules 1–4.

Sec. 4.

SCHEDULE 1.

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 (Amend-
ment) Act, 1976,”.

SCHEDULE 2.

Sec. 4.

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.

Sec. 4.

SCHEDULE 3.

REPEAL OF PART IIB OF THE PRINCIPAL ACT.

Part IIB—

Omit the Part.

Sec. 4.

SCHEDULE 4.

INSERTION OF PART IIC INTO THE PRINCIPAL ACT.

Part IIC—

Before Part III, insert : —

PART IIC.

Admissibility of Business Records.

Interpreta-
tion:
Pt. IIC.

14CD. (1) In this Part—

“Business” includes—

(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 state-
ment 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 busi-
ness 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.

Admissi-
bility
generally.

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.

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.

**Restric-
tions on
admissibil-
ity under
s. 14CE:
general.**

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.

(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.

**Restric-
tions on
admissibil-
ity under
s. 14CE:
criminal
proceed-
ings.**

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

- (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.

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 Dispute as to happening of event.

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.

Weight of
evidence:
s. 14CE.

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—

- (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.

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.

Weight of
evidence:
s. 14cH.

14cK. (1) This section applies where—

Credibility
of the
maker of a
statement.

- (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.

Inferences
concerning
admissi-
bility.

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.

Ancillary
evidence.

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.

(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.

Production
of
document,
etc.

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;

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.*Authen-
tication.

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.

Rejection
for
unfairness,
etc.

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.

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

With-
holding
statement
from jury.

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.

Corrobor-
ation.

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.

SCHEDULE

Evidence (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IIC INTO THE PRINCIPAL ACT—
continued.

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.

Rejection of evidence in criminal proceedings.

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

Time for order.

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—

Rules and regulations.

- (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.

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.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 31st March, 1976.*

