

Chapter 48.

Evidence Act 1975.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 48.

Evidence Act 1975.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Evidence Act 1975,

Being an Act to consolidate, revise and amend in minor ways certain laws relating to evidence and related matters.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears–

“**bank**” means a person, partnership or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand, and includes a government savings bank established under a law;

“**business**” includes public administration and a business, profession, occupation, trade, undertaking or calling of any kind;

“**court**” includes a court, Judge, magistrate or arbitrator, and a person acting judicially;

“**document**” includes a book, plan, paper, parchment or other material on which there is any writing that is marked with letters or marks denoting words or any other signs capable of carrying a definite meaning to persons conversant with them, and includes a part of a document;

“**Gazette**” means the National Gazette, the *Papua New Guinea Local Government Gazette* or the *Papua New Guinea Police Gazette*, and includes–

- (a) in relation to the former Australian Territory known as “Papua New Guinea”, the *Papua New Guinea Government Gazette*, the

Papua New Guinea Local Government Gazette and the *Papua New Guinea Police Gazette*; and

- (b) in relation to the former Territory of Papua and New Guinea, the *Territory of Papua and New Guinea Government Gazette*, the *Papua and New Guinea Local Government Gazette* and the *Papua and New Guinea Police Gazette*; and
- (c) in relation to the former Territory of Papua-New Guinea, the *Territory of Papua-New Guinea Government Gazette*; and
- (d) in relation to the former Territory of Papua, the *Territory of Papua Government Gazette*; and
- (e) in relation to the former Territory of New Guinea, the *New Guinea Gazette*; and
- (f) in relation to the British Military Administration or Occupation of the Colony or of the former Colony of German New Guinea, or of the Territory of New Guinea, the *Rabaul Gazette* or the *Government Gazette* of that administration or occupation; and
- (g) in relation to the former Possession of British New Guinea, the *British New Guinea Government Gazette*; and
- (h) in relation to the former British Protected Territory in or of New Guinea, the *Queensland Gazette* so far as it contains official material relating to the administration of Her Majesty's Special Commissioner for the Protectorate; and
 - (i) in relation to Australia, the *Australian Government Gazette* or the *Commonwealth of Australia Gazette*; and
- (j) in relation to the United Kingdom, the *London Gazette*, the *Edinburgh Gazette* or the *Dublin Gazette*,

as the case requires;

“Government Printer” includes a person appointed as the printer—

- (a) to the Government of the United Kingdom; or
- (b) to the Government of Australia; or
- (c) to a Government of a State of Australia; or
- (d) for a Territory of Australia; or
- (e) for a pre-Independence Territory in Papua New Guinea,

and a printer purporting to be the printer authorized to print the statutes, ordinances, acts of State or other public Acts of the legislatures of Papua New Guinea, the United Kingdom, Australia, a State or Territory of Australia or a pre-Independence Territory in Papua New Guinea;

“High Commissioner of Papua New Guinea” means the High Commissioner of Papua New Guinea appointed under the *Papua New Guinea Act 1949-1975*, as in force from time to time;

“legal proceedings” includes any civil, criminal or mixed proceedings and an inquiry in which evidence is or may be given before a court;

“National Statistician” means the National Statistician appointed under the *Statistical Services Act 1980*;

“person acting judicially” includes a Judge, magistrate, justice or arbitrator and any other person having, by law or by consent of the parties, authority to hear, receive and examine evidence, and an officer having in the discharge of his duties authority to examine evidence;

“pre-Independence Territory in Papua New Guinea” means—

- (a) the administrative union, under the *Papua and New Guinea Act 1949* of Australia, as in force from time to time, of the former Territory of Papua and the former Territory of New Guinea; or
- (b) the former Territory of Papua-New Guinea; or
- (c) the former Territory of Papua; or
- (d) the former Territory of New Guinea; or
- (e) the Colony, or the former Colony, of German New Guinea, or the Territory of New Guinea, under British Military Administration or Occupation; or
- (f) the former Possession of British New Guinea; or
- (g) the former British Protected Territory in or of New Guinea, by whatever name known;

“the regulations” means any regulations made under this Act;

“Territory of Australia” means a Territory of Australia referred to in Section 122 of the Constitution of the Commonwealth of Australia, other than a pre-Independence Territory in Papua New Guinea;

“this Act” includes the regulations.

2. EXISTING RULES.

Except to the extent of any inconsistency, the provisions of this Act are in addition to and not in derogation of any powers, rights or rules of evidence given or prescribed by any other law.

PART II. – JUDICIAL NOTICE.**3. AUSTRALIA, STATES, TERRITORIES ETC.**

A court shall take judicial notice of–

- (a) the pre-Independence Territories in Papua New Guinea; and
- (b) Australia, and the States and Territories of Australia,

and their extent, from time to time.

4. CERTAIN NATIONAL SEALS.

All courts shall take judicial notice of the impression of–

- (a) the National Seal; and
- (b) the Great Seal of Australia; and
- (c) the seal of a State of Australia,

without evidence of its having been impressed or any other evidence relating to it, and shall presume that it was properly impressed.

5. ACTS OF PARLIAMENT, ETC.

A court shall take judicial notice of an Act or Ordinance of–

- (a) Papua New Guinea; and
- (b) Australia; and
- (c) a State of Australia; and
- (d) a pre-Independence Territory in Papua New Guinea; and
- (e) a Territory of Australia,

whenever made.

6. REGULATIONS, ETC.

A court shall take judicial notice of–

- (a) a regulation, rule of court, by-law, commission, determination, proclamation or order made by–
 - (i) the Head of State; or
 - (ii) a Minister; or
 - (iii) a Lieutenant-Governor or Administrator of a pre-Independence Territory in Papua New Guinea; or
 - (iv) a High Commissioner of Papua New Guinea; or
 - (v) a Minister of the former House of Assembly,

made or purporting to be made by virtue of an Act or Ordinance; and

- (b) a regulation, rule of court, by-law, commission, determination, proclamation or order made by the Governor-General of Australia or by or under the authority of a Minister of Australia; and
- (c) an act, matter or thing of which publication in a Gazette is or was at any time directed by or under an Act or Ordinance, or an Act of Australia, when so published.

7. CERTAIN OFFICERS, ETC.

A court shall take judicial notice of the accession to office, name, title, function, seal and signature of any person who holds or has held in the country, or in Australia or a State or Territory of Australia, or in a pre-Independence Territory in Papua New Guinea—

- (a) the office of Head of State, Governor-General, Governor, Lieutenant-Governor, High Commissioner of Papua New Guinea, Administrator, Prime Minister, Chief Minister, Minister or Judge; or
- (b) another public office if the fact of appointment to that office is notified in a Gazette; or
- (c) an office to which the Head of State, acting on advice, by notice in the National Gazette, declares this section to apply.

8. IMAGES OF SEALS, SIGNATURES, ETC.

Where—

- (a) a law requires a court to take judicial notice of the seal or signature of a court or person appearing on a document; and
- (b) a reproduction of the document is admitted in evidence under this Act in any legal proceedings,

the court shall take judicial notice of the image of the seal or signature on the reproduction to the same extent as it would be required to take judicial notice of the seal or signature on the document.

PART III. – EVIDENCE.***Division 1.******General Rules.*****9. WITNESS INTERESTED OR CONVICTED OF OFFENCE.**

A person shall not be excused from giving evidence in any legal proceedings on the ground that–

- (a) he has or may have an interest in the matter in question; or
- (b) he has or may have an interest in the result of the proceedings; or
- (c) he has previously been convicted of any offence.

10. PERSONS PRESENT WITHOUT SUBPOENA.

Where a person is present at any legal proceedings in which he might have been compellable to give evidence and to produce documents by virtue of a subpoena or other summons or order duly issued and served for the purpose, he is compellable to give evidence and to produce documents then in his possession and power in the same manner, and in case of refusal is subject to the same penalties and liabilities, as if he had been duly subpoenaed or summoned for the purpose.

11. SPOUSES AS WITNESSES IN CIVIL PROCEEDINGS.

(1) Subject to this Act, in any civil legal proceedings–

- (a) the parties to the proceedings; and
- (b) the persons on whose behalf the proceedings are brought or defended; and
- (c) the husbands and wives of the parties or persons on whose behalf the proceedings are brought,

are competent and compellable to give evidence on behalf of any of the parties to the proceedings.

(2) Nothing in Subsection (1) makes a person compellable to answer a question tending to criminate himself.

12. ACCUSED AS WITNESS.

A person charged with an offence is a competent but not a compellable witness for himself in any legal proceedings in connection with the offence with which he is charged.

13. SPOUSE OF ACCUSED AS WITNESS.

(1) The wife or husband of a person charged with an offence is a competent witness in any legal proceedings in connection with the offence.

(2) Notwithstanding Subsection (1), the wife or husband of a person charged with an offence shall not be called as a witness in any legal proceedings in connection with the offence without the consent of the person, except—

- (a) where the wife or husband, as the case may be, is compellable to give evidence; or
- (b) where the husband or the wife is charged with being a party to an offence against the other.

(3) Notwithstanding Subsections (1) and (2), the wife or husband of a person charged with bigamy may be called as witness for the prosecution or for the defence without the consent of the accused.

14. ACCUSED AS WITNESS FOR PROSECUTION.

(1) A person charged with an offence shall not be called as a witness by the prosecution in any legal proceedings in connection with the offence.

(2) Notwithstanding Subsection (1), where a person charged with an offence is a witness he may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence.

15. ACCUSED AS WITNESS AS TO PRIOR CONVICTIONS, ETC.

A person charged with an offence and called as a witness by virtue of this Act shall not be asked or required to answer a question tending to show that—

- (a) he has committed, or been convicted or been charged with any other offence; or
- (b) he is of bad character,

unless—

- (c) proof that he has committed or been convicted of the other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or
- (d) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establishing his own good character, or has given evidence of his own good character; or
- (e) the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
- (f) he has given evidence against any other person charged with the same offence.

16. GIVING OF EVIDENCE FROM WITNESS BOX.

A person charged with an offence and called as a witness, shall, unless otherwise ordered by the court, give his evidence from the witness box.

17. DEAF AND DUMB WITNESSES.

(1) In any legal proceedings, a witness who is unable to speak or hear is not incompetent but may give evidence in writing or by signs or in any other manner in which he can make it intelligible, and a person who is able to convey to the court what the witness requires to communicate must be sworn as an interpreter.

(2) For the purposes of Subsection (1)–

(a) evidence in writing must be written; and

(b) a sign or other kind of communication must be made,

in the presence, sight and hearing of the court and of any party to the proceedings, or any representative of a party to the proceedings, who is present at the hearing of the proceedings.

18. COMMUNICATIONS DURING MARRIAGE.

(1) Subject to Subsection (2), a husband is not compellable in any legal proceedings to disclose a communication made to him by his wife during the marriage, and a wife is not compellable in any legal proceedings to disclose a communication made to her by her husband during the marriage.

(2) In legal proceedings in the National Court in its divorce and matrimonial causes jurisdiction, Subsection (1) does not apply in relation to a husband and a wife who are both parties to the proceedings.

19. COMMUNICATIONS TO CLERGYMEN AND MEDICAL PRACTITIONERS.

(1) A clergyman of a church or religious denomination must not divulge in any legal proceedings a confession made to him in his professional capacity, except with the consent of the person who made the confession.

(2) A medical practitioner must not, without the consent of his patient, divulge in any civil legal proceedings (unless the sanity of the patient is the matter in dispute) a communication made to him, in his professional capacity, by the patient, if it was necessary to enable him to prescribe or act for the patient.

(3) Nothing in this section protects a communication made for a criminal purpose, or prejudices the right to give in evidence a statement or representation made to or by a medical practitioner in or about the effecting by a person of insurance on the life of himself or any other person.

20. DYING DECLARATIONS.

A statement made orally by a person before his death relating to the circumstances resulting in his death is admissible in any legal proceedings if–

(a) at the time when the person made the statement he believed, or may be reasonably supposed by the court to have believed, that his death was imminent, whether or not–

- (i) he entertained at that time any hope of recovery; or
- (ii) he thought that legal proceedings might eventuate; and
- (b) at the time when the person made the statement he would have been a competent witness in the legal proceedings; and
- (c) the person making the statement could, if he had not died, have given direct oral evidence in the proceedings of the matter in the statement.

21. DISCREDITING OF WITNESS.

A party producing a witness may not impeach his credit by general evidence of bad character, but may contradict him by other evidence.

22. CONTRADICTORY STATEMENTS OF WITNESS.

A witness—

- (a) on his examination in chief; or
- (b) under cross-examination,

may be asked in any legal proceedings whether he has made a statement relative to the subject matter of the proceedings that was inconsistent with his present testimony (the circumstances of the alleged statement being referred to sufficiently to designate the particular occasion), and if he does not admit that he made the statement proof may be given that he did in fact make it.

23. CROSS-EXAMINATION AS TO PREVIOUS STATEMENTS.

(1) A witness may be cross-examined as to previous statements made by him in writing or reduced to writing relating to the subject matter of the proceedings without the writing being shown to him, but if it is intended to contradict the witness by the writing his attention shall, before the contradictory proof is given, be called to those parts of the writing that are to be used for the purpose of contradicting him.

(2) The court may at any time during the proceedings require the writing to be produced for its inspection, and may make such use of the writing for the purposes of the proceedings as it thinks fit.

24. DEPOSITIONS AS EVIDENCE FOR DEFENCE.

(1) Subject to Subsection (2), the deposition of any witness called and examined before a magistrate by and on behalf of any accused person who is committed for trial may, if the accused person so requires, be read as evidence in his defence at the trial where—

- (a) the witness is dead or so ill as not to be able to travel; or
- (b) the magistrate who committed the accused or held him to bail has certified before the committal or holding to bail that the evidence of the

witness is material and that he believes that the witness is willing to attend the trial but is unable to bear the expense of attendance.

(2) No deposition may be read on the ground referred to in Subsection (1)(b) if the witness has, in due time before the trial, been subpoenaed by the prosecution.

25. PROOF OF PREVIOUS CONVICTION OF WITNESS.

A witness may be questioned as to whether he has been convicted of an offence, and if on being so questioned, he denies or does not admit the fact, or refuses to answer, the cross-examining party may prove the conviction.

26. CROSS-EXAMINATION AS TO CREDIT.

(1) If a question put, on cross-examination, to a witness in any legal proceedings relates to a matter not relevant to the proceedings except so far as it affects the credit of the witness by injuring his character, the court—

- (a) shall decide whether or not the witness shall be compelled to answer it; and
- (b) may, if it thinks fit, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion under Subsection (1), the court shall have regard to the following considerations:—

- (a) such a question is proper if it is of such a nature that the truth of the imputation conveyed by it would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (b) such a question is improper if the imputation that it conveys relates to a matter so remote in time or of such a character that the truth of the imputation would not affect, or would affect only in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (c) such a question is improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

(3) This section does not make a witness compellable to give evidence on a matter that he is, by law, privileged from disclosing.

27. INDECENT OR SCANDALOUS QUESTIONS.

A court shall not allow any questions that it regards as—

- (a) indecent or scandalous, even if the question may have some bearing on the case before the court, unless the question relates to—
 - (i) facts in issue; or
 - (ii) matters necessary to be known in order to determine whether or not the facts in issue existed; or

- (b) intended to insult or annoy, or needlessly offensive in form, even if the question is otherwise proper in itself.

28. CONFESSIONS INDUCED BY THREATS.

A confession that is tendered in evidence in any criminal proceeding shall not be received in evidence if it has been induced by a threat or promise by a person in authority, and a confession made after any such threat or promise shall be deemed to have been induced by it unless the contrary is shown.

29. EVIDENCE IN ACTIONS FOR BREACH OF PROMISE.

A plaintiff in an action for breach of promise of marriage shall not recover a verdict unless his testimony is corroborated by some other material evidence of the promise.

30. EVIDENCE IN ACTIONS FOR SEDUCTION.

(1) In an action to recover damages for seduction brought by a parent of the woman seduced, or by a person standing to her in the place of a parent, it is not necessary to allege or to prove that she was in the service of the plaintiff, or that the plaintiff sustained loss of service by reason of the seduction.

(2) The plaintiff in an action referred to in Subsection (1) shall not recover a verdict unless the evidence of the woman seduced is corroborated by some other material evidence of seduction.

31. COMPARISON OF DISPUTED HAND-WRITINGS.

A comparison of a disputed hand-writing with a sample of hand-writing proved, to the satisfaction of the court, to be genuine may be made by witnesses, and the hand-writings and the testimony of the witnesses respecting them may be submitted to the court as evidence of the genuineness or otherwise of the hand-writing in dispute.

32. PROOF BY ATTESTING WITNESSES.

(1) It is not necessary to prove by the attesting witness an instrument, the validity of which attestation is not required, and such an instrument may be proved as if there had been no attesting witness to it.

(2) A deed may be proved and given in evidence in a District Court, Local Court or Warden's Court in the same manner as a document that does not require attestation.

Division 2.**Evidence by Affidavit.****33. INTERPRETATION OF DIVISION 2.**

In this Division, “tribunal to which this Division applies” means the Supreme Court, the National Court, a District Court or a Judge.

34. EVIDENCE BY AFFIDAVIT.

(1) Subject to this section, in any legal proceedings before a tribunal to which this Division applies the tribunal may at any time order that—

- (a) a particular fact or facts may be proved by affidavit; or
- (b) the affidavit of a witness may be read in the proceedings on such conditions as the tribunal thinks reasonable; or
- (c) a witness whose attendance ought to be dispensed with be examined by interrogatories or before an examiner named by the tribunal.

(2) Where it appears to the tribunal that a party to, or a person interested in, the proceedings *bona fide* and reasonably requires the production of a witness for cross-examination and that the witness can be produced, an order shall not be made under Subsection (1) authorizing his evidence to be given by affidavit.

(3) Nothing in an order under Subsection (1) affects the power of the tribunal to refuse to admit evidence tendered in accordance with any such order if, in the interests of justice, the tribunal thinks it proper to do so.

35. AFFIDAVIT EVIDENCE ON NOTICE.

(1) Where a party to or a person interested in any legal proceedings before a tribunal to which this Division applies desires to use in the proceedings an affidavit by a witness concerning particular facts as to which no order under Section 34 has been made he may, not less than five clear days before the hearing, give notice, accompanied by a copy of the affidavit, to the party or person (if any) against whom it is to be used that he desires to do so.

(2) Unless a party to or a person interested in the proceedings gives notice, not less than two clear days before the hearing, to the party or the person who gave notice under Subsection (1) that he objects to the use of the affidavit, he shall be taken to have consented to the use of the affidavit, and the affidavit may be used in the proceedings unless the tribunal otherwise orders.

(3) On application of a party or person interested, or of its own motion, the tribunal may order that a subpoena be issued requiring a person who has made or intends to make an affidavit to attend before the tribunal to give evidence on oath or for cross-examination, or both.

36. CROSS-EXAMINATION OF DEPONENTS.

When a party to or a person interested in any legal proceedings before a tribunal to which this Division applies desires to cross-examine a person who has made an affidavit used or intended to be used in the proceedings—

- (a) he may serve on the party or person using or intending to use the affidavit a notice requiring the production of the deponent for cross-examination at the hearing; and
- (b) if the party or person served with the notice does not produce the deponent at the hearing, he is not entitled to use or to rely on the affidavit as evidence without leave of the tribunal; and
- (c) a subpoena may be issued on the application of the party or person served with the notice for the purpose of summoning the deponent to attend for cross-examination.

37. EVIDENCE OF SCIENTIFIC EXAMINATION.

(1) An affidavit made by a medical practitioner who has made a medical, pathological or other scientific examination of a thing setting out—

- (a) his qualifications; and
- (b) that he has made the examination; and
- (c) the facts that he has ascertained and the conclusions at which he has arrived as a result of the examination,

is admissible in evidence in any legal proceedings in a court.

(2) Without affecting the admissibility of an affidavit made under Subsection (1), that subsection does not prevent a court, where it is satisfied, on application, that the justice of the case warrants its doing so, from—

- (a) requiring the medical practitioner who made the affidavit to attend and give evidence before the court if he is in the country and can be brought before the court without depriving the community or any part of the community of any essential service; or
- (b) arranging for the taking of his evidence orally by way of commission or in any other manner.

(3) Where—

- (a) a person is charged with an indictable offence; and
- (b) evidence is given on affidavit under Subsection (1); and
- (c) the deponent does not give evidence in person,

the court shall not dispose of the matter summarily except with the consent of the accused.

Division 3.***Special Measures for vulnerable and intimidated witnesses.*****37A. INTERPRETATION.**

¹For the purposes of this Division –

“**child**” means a person under the age of 18 years;

“**complainant**” means a person against whom an offence is alleged to have been committed;

“**crime of violence**” means any offence against Division V.1 (Assault and Violence to the Person), Division V.3 (Homicide), Division V.4 (Offences Endangering Life or Health) and V.5 (Assaults) of the Criminal Code;

“**sexual offence**” means any offence against Division IV.2 (Offences Against Sexual Immorality), and Division IV.2A (Sexual Offences Against Children), Division IV.2B (Commercial Sexual Exploitation of Children) and Division V.7 (Sexual Offences and Abduction) of the Criminal Code.

37B. SPECIAL MEASURES ORDER.

²(1) An order under Subsection (2) shall be made where a witness in a criminal proceeding is –

- (a) under the age of 18 years at the time of the hearing; or
- (b) the complainant in a proceeding relating to a sexual offence; or
- (c) the complainant in a proceeding relating to a crime of violence.

(2) If, in the opinion of the Court, the quality of a witnesses evidence would likely to be diminished by reason of fear of distress in connection with testifying in the proceedings, the Court shall, subject to Subsection (3) and (4), order that one or more of the following special measures be used for the giving of evidence by that witness: –

- (a) the use of a screen or other arrangement to prevent the witness from seeing the accused;
- (b) the presence of a support person of the witness’ choosing seated with the witness when he or she is giving evidence;
- (c) dispensing with the wearing of wigs and robes while the witness is giving evidence;
- (d) planned seating arrangements for people who have an interest in the proceedings, including the level at which they are seated and the people in the witness’ line of vision;

¹ Section 37A of Part III Inserted by No. 14 of 2002, s. 1.

² Section 37B of Part III Inserted by No. 14 of 2002, s. 1.

- (e) the adjournment of the proceedings or any part of the proceedings to other premises;
- (f) the exclusion from the court, while the witness is giving evidence, of all or any persons without an interest in the proceedings;
- (g) the examination of the witness through an intermediary, who shall communicate and explain –
 - (i) to the witness, the questions put to the witness, in a language appropriate to the witness' age and development; and
 - (ii) to the court, the answers given by the witness in reply;
- (h) permitting the evidence to be given from a place other than the courtroom by means of closed-circuit television or other facilities that enable communication between that place and the courtroom.

(3) In determining what special measures are appropriate, the Court shall consider –

- (a) the availability of any necessary equipment or facilities; and
- (b) the age of the witness; and
- (c) the opinion of the witness; and
- (d) which of the special measures would be likely to maximize as far as practicable the quality of the witness' evidence.

(4) A judge need not make an order under Subsection (1) where he determines that to do so is contrary to the interest of justice.

(5) In determining whether the use of special measures is contrary to the interests of justice, the judge shall consider –

- (a) the nature and alleged circumstances of the offence to which the proceedings relate; and
- (b) the right of the accused to a fair trial; and
- (c) whether the quality of the evidence given by the witness is likely to be diminished by reasons of fear or distress on the part of the witness in connection with testifying in the proceedings; and
- (d) any behaviour towards the witness on the part of the accused, or members of the family or associates of the accused; and
- (e) whether the use of special measures would cause unnecessary delay in the proceedings.

(6) The use of special measures does not in any way affect the weight to be given to any evidence in a criminal proceeding.

37C. VIDEO-TAPED EVIDENCE.

³(1) Where a witness is under 18 years or a complainant in a proceeding related to a sexual offence, the Court may make an order permitting a video-recording of an interview of the witness to be admitted as the evidence in chief of the witness, provided that, at the proceedings the witness –

- (a) identifies himself or herself and attests to the truthfulness of the contents of the recording; and
- (b) is available for cross-examination and re-examination.

(2) An order shall not be made under Subsection (1) if the court is of the opinion, having regard to all the circumstances of the case, that it is not in the interest of justice that the evidence be so admitted.

(3) In considering whether a recording should be admitted under this section the court must consider whether any prejudice to the accused which might result from the evidence being admitted is outweighed by the desirability of admitting the recorded interview.

37D. GIVING EVIDENCE AT PRE-TRIAL HEARING.

⁴(1) Where a witness is under the age of 18 years, the Court may make an order that the child's evidence be taken at a pre-trial hearing.

(2) A judge who hears an application under Subsection (1) may make such order as the judge thinks fit which is to include –

- (a) directions, with or without conditions as to the persons who may be present at the pre-trial hearing; or
- (b) directions, with or without conditions as to the persons or classes of persons, who are authorized to have possession of the video-taped recording of the evidence; or
- (c) directions with or without conditions, as to the giving up of possession and as to the playing, copying or ensure of the recording.

(3) An order under Subsection (1) may be varied or revoked by –

- (a) the judge who made the order; or
- (b) a judge who has jurisdiction co-extensive with the judge under Paragraph (a).

(4) At a pre-trial hearing ordered under Subsection (1) –

- (a) no person other than a person authorized by the judge under Subsection (1) is to be present at the hearing; and
- (b) subject to the control of the presiding judge, the witness is to give his evidence and be examined and cross-examined; and

³ Section 37C of Part III Inserted by No. 14 of 2002, s. 1.

⁴ Section 37D of Part III Inserted by No. 14 of 2002, s. 1.

- (c) except as provided by this section, the usual rules of evidence apply; and
- (d) the proceedings are to be recorded on video-tape; and
- (e) the accused is to be in a room separate from the room in which the hearing is held but is to be capable of observing the proceedings by means of a closed circuit television system.

(5) The child's evidence at the trial is to be given by the presentation to the Court of the recording made under Subsection (4), and the child need not be present at the trial.

(6) A presentation to a Court of video-taped evidence under this section is admissible as if the evidence were given orally in the proceedings in accordance with the usual rules and practice of that Court.

37E. ACCUSED NOT TO CROSS-EXAMINE COMPLAINANT PERSONALLY.

⁵(1) Where a witness is under the age of 18 years or a complainant in a proceeding relate to a sexual offence, the accused shall not personally examine or cross-examine the witness.

(2) Where it appears to the court that this section applies, it may –

- (a) invite the accused to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and
- (b) require the accused to notify the court, by the end of such period as it may specify, whether a legal representative is to act for him for that purpose.

(3) If by the end of the period specified in Subsection (2) –

- (a) the accused has notified the court that no legal representative is to act for him for the purpose of cross-examining the witness; or
- (b) no notification has been received by the court and it appears to the court that no legal representative is to so act,

the court shall –

- (c) order that any question to the witness be stated to the judge, and the judge shall repeat the question accurately to the witness; or
- (d) appoint an intermediary and order that any question to the witness be stated by putting the question to the intermediary, and the intermediary shall repeat the question accurately to the witness.

37F. PRE-TRIAL HEARINGS TO CONSIDER WHAT ORDERS SHOULD BE MADE.

⁶(1) In any proceeding in which –

⁵ Section 37E of Part III Inserted by No. 14 of 2002, s. 1.

⁶ Section 37F of Part III Inserted by No. 14 of 2002, s. 1.

- (a) the giving of evidence by a person; or
- (b) a matter affecting a person as a witness,

is likely to require the making of an order or the giving of directions under Section 37B, 37C, 37D or 37E, the party who is to call that person as a witness is to apply for a pre-trial hearing for the purpose of having all such matters dealt with before the trial.

(2) In Subsection (1), “pre-trial hearing” in relation to a Court means a hearing provided for by rules of that Court for the purposes of this section.

37G. REPUTATION EVIDENCE.

⁷In a proceeding with respect to a sexual offence, evidence of the sexual reputation, of the Complainant whether general or specific, is not admissible.

37H. EVIDENCE OF COMPLAINANT’S SEXUAL CONDUCT.

⁸(1) In a proceeding in respect of any sexual offence –

- (a) the complainant shall not be cross-examined as to his sexual activities; and
- (b) no evidence shall be admitted as to the sexual activities of the complainant, except with the leave of the court.

(2) The court shall not grant leave under this section unless the judge determines, in accordance with the procedures set out in Subsection (5), that the evidence –

- (a) is of a specified instance of sexual activity; or
- (b) is relevant to an issue at trial; or
- (c) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

(3) In determining whether evidence is admissible under Subsection (2), the judge shall take into account –

- (a) the interests of justice, including the right of the accused to make full answer and defence; and
- (b) society’s interest in encouraging the reporting of sexual offences; and
- (c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case; and
- (d) the need to remove from the fact-finding process any discriminatory belief or bias; and

⁷ Section 37G of Part III Inserted by No. 14 of 2002, s. 1.

⁸ Section 37H of Part III Inserted by No. 14 of 2002, s. 1.

- (e) the potential prejudice to the complainant's personal dignity and right of privacy; and
- (f) any other factor the judge considers relevant.

(4) Evidence that the complainant has engaged in sexual activity, whether with the accused or any other persons, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant –

- (a) is more likely to have consented to the sexual activity that forms the subject matter of the charge; or
- (b) is less worthy of belief.

(5) An application for leave under this section –

- (a) must be made in writing and set out –
 - (i) detailed particulars of the evidence that the accused seeks to adduce; and
 - (ii) the relevance of that evidence to an issue at trial; and
- (b) must be heard in the absence of members of the public.

(6) The complainant cannot be compelled to give evidence in an application for leave under this section.

(7) If the court grants leave under this section, the judge must state in writing the reasons for doing so.

37I. DISCLOSURE OF WITNESS' ADDRESS AND TELEPHONE NUMBER.

⁹(1) A witness in criminal proceedings is not required to disclose the address, telephone number or place of employment unless –

- (a) the address, telephone number or place of employment is a materially relevant part of the evidence; or
- (b) the court makes an order requiring the disclosure.

(2) The court may make such an order only if it is satisfied that disclosure is not likely to present a risk to the welfare or safety of any person, or that the interests of justice outweigh any such risk.

(3) An address or telephone number that is not required to be disclosed and that is contained in a written statement may be deleted from the statement, or rendered illegible, before the statement is produced in court or given to the accused person.

⁹ Section 37I of Part III Inserted by No. 14 of 2002, s. 1.

PART IV. – PROOF AND EVIDENCE IN CERTAIN CASES.

Division 1.

Statutes and Executive Acts, etc.

38. GOVERNMENT PRINTERS' COPIES OF ACTS AS *PRIMA FACIE* EVIDENCE.

(1) A document or paper purporting to be a copy of an Act or Ordinance at any time made by–

- (a) the Parliament; or
- (b) the former House of Assembly or Legislative Council; or
- (c) any other legislature of a pre-Independence Territory in Papua New Guinea; or
- (d) the United Kingdom; or
- (e) Australia; or
- (f) a State or Territory of Australia,

and purporting to be printed by the Government Printer shall *prima facie* be deemed to be a correct copy of the Act or Ordinance without any further proof.

(2) The date that appears on a document or paper specified in Subsection (1) as the day on which an Act or Ordinance was certified under Section 110 of the Constitution, received assent or was proclaimed to commence shall be received for all purposes as evidence of the date of the certification, assent or commencement.

39. STATUTES PUBLISHED BY AUTHORITY.

A book purporting to have been printed or published under the authority of the Government of, or by the Government Printer of–

- (a) Papua New Guinea; or
- (b) Australia; or
- (c) a State or Territory of Australia; or
- (d) a pre-Independence Territory in Papua New Guinea; or
- (e) any other country,

and purporting to contain Statutes, Acts, Ordinances or other written laws in force in the place concerned shall be admitted and received by all courts as *prima facie* evidence of those laws.

40. PROCLAMATIONS, COMMISSIONS, ORDERS AND REGULATIONS.

Evidence of a proclamation, commission, order or regulation issued or made by the Head of State, the Governor-General of Australia, the High Commissioner of

Papua New Guinea or by or under the authority of a Minister or of a Minister of Australia, may be given in all courts—

- (a) by the production of a Gazette purporting to contain it; or
- (b) by the production of a document purporting to be a copy of it, and purporting to be printed by the Government Printer, or by the authority of the Government, or of the Government of Australia, as the case may be; or
- (c) by the production (in the case of a proclamation, commission, order or regulation issued or made by the Head of State) of a document purporting to be certified by the Secretary to the National Executive Council as a true copy of it or an extract from it; or
- (d) by the production (in the case of a proclamation, commission, order or regulation issued or made by the Governor-General of Australia or the High Commissioner of Papua New Guinea in Council) of a document purporting to be certified by the Secretary to the Australian Executive Council or the Secretary to the former Executive Council of Papua New Guinea, as the case may be, as a true copy of it or extract from it; or
- (e) by the production (in the case of any proclamation, commission, order or regulation issued or made by or under the authority of a Minister or a Minister of Australia) of a document purporting to be certified by a Minister or a Minister of Australia, as the case may be, as a true copy of it or extract from it.

41. ROYAL PROCLAMATIONS, ETC.

Prima facie evidence of a Royal proclamation, order of Her Majesty's Privy Council, order, regulation, despatch or instrument made or issued at any time by Her Majesty or by Her Majesty's Privy Council or by or under the authority of any of Her Majesty's Secretaries of State or any Department of Her Majesty's Government in the United Kingdom may be given in any court by the production of a copy of the *London Gazette*, the National Gazette or a Gazette of a pre-Independence Territory in Papua New Guinea purporting to contain a reprint or copy of the proclamation, order of the Privy Council, order, regulation, despatch or instrument.

42. PROCLAMATIONS AND ACTS OF STATE OF AUSTRALIAN STATES AND TERRITORIES.

Evidence of a proclamation or other act of State of a State or Territory of Australia may be given in a court by the production of a copy—

- (a) proved to be an examined copy of it; or
- (b) purporting to be sealed with the seal of that State or Territory.

43. ACTS OF STATE, ETC., OF OTHER COUNTRIES.

(1) A proclamation, treaty or other act of State of a place other than Papua New Guinea may be proved in a court by an examined copy or by a copy sealed with the seal of the place to which the original document belongs.

(2) A copy purporting to be sealed in accordance with Subsection (1) shall be admitted in evidence in every case where the original document could have been admitted without proof of the seal.

Division 2.***Judicial Proceedings.*****44. JUDICIAL PROCEEDINGS.**

Evidence of—

- (a) a judgement, decree, rule, order or other judicial proceeding of—
 - (i) a court of Papua New Guinea, the High Court or a Federal Court of Australia or a court of a State or Territory of Australia; or
 - (ii) a Judge, justice or magistrate of any such court; or
- (b) an affidavit, pleading or legal document filed or deposited in any such court,

may be given in a court by the production of a document purporting to be a copy of it, and—

- (c) proved to be an examined copy of it; or
- (d) purporting to be sealed with the seal of the court; or
- (e) purporting to be certified as a true copy by a registrar or chief officer of the court.

45. CONVICTIONS.

(1) The conviction by a court of a person for an offence may be proved by—

- (a) producing a certificate containing the substance of the conviction purporting to be signed by the officer having the custody of the records of the court; and
- (b) showing that the person whose conviction is sought to be proved is identical with the person named in the certificate.

(2) It is not necessary to prove the signature of the officer referred to in Subsection (1) or his official position, or the truth of a statement made by him.

46. CONVICTIONS OUTSIDE THE COUNTRY.

(1) An affidavit in the form in Schedule 1, and purporting to be made by—

- (a) a commissioned officer of the Police Force; or

- (b) an officer of the Police Force of a State or Territory of Australia, is admissible before a court—
 - (c) as evidence of the fact that the officer is a fingerprint expert; and
 - (d) for the purposes of proving the identity of a person alleged to have been convicted of an offence before a court in the State or Territory, and of the conviction.
- (2) An affidavit referred to in Subsection (1) is evidence that the person a copy of whose fingerprints is exhibited to the affidavit—
- (a) is the person who, in a document exhibited to the affidavit and purporting to be a certificate of conviction or a certified copy of a certificate of conviction, is referred to as having been convicted; and
 - (b) has been convicted of the offence specified in the affidavit.

47. USE OF CONVICTIONS.

(1) In any civil proceedings the fact that a person has been convicted of an offence by or before a court in the country or by a court-martial in the country or elsewhere is, subject to Subsection (3), admissible in evidence for the purpose of proving that he committed the offence, whether he was so convicted on a plea of guilty or otherwise and whether or not he is a party to the proceedings, but no conviction other than a subsisting one is admissible in evidence under this section.

(2) The fact of a conviction is not admissible in any civil proceedings merely to prove that the person convicted has a propensity to behave in a particular manner.

(3) In any civil proceedings in which a person is proved to have been convicted of an offence by or before a court in the country or by a court-martial in the country or elsewhere—

- (a) he shall be taken to have committed the offence unless the contrary is proved; and
- (b) without prejudice to the reception of any other evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document that is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted, is admissible in evidence for that purpose.

(4) Where in any civil proceedings the contents of a document are admissible in evidence under Subsection (3), a copy of the document, or of the material part of the document, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of the document, is admissible in evidence, and shall be taken to be a true copy of the document or the part of the document unless the contrary is shown.

(5) This section does not prejudice the operation of an enactment by which a conviction or a finding of fact in any criminal proceedings is made conclusive evidence, for the purposes of any other proceedings, of a fact.

Division 3.

Certain Public and Official Acts and Documents.

48. VOTES AND PROCEEDINGS IN PARLIAMENTS.

All documents purporting to be copies of the Votes and Proceedings or Journals or Minutes of the Parliament or of the former House of Assembly or of either House of the Parliament of Australia, or of papers presented to the Parliament or the former House of Assembly or to either House of the Parliament of Australia, and purporting to be printed by the Government Printer, shall be admitted as evidence of them in a court.

49. ACTS DONE BY HEAD OF STATE, GOVERNOR-GENERAL, HIGH COMMISSIONER, ETC.

Where by a law the Head of State, the Governor-General, the Governor-General of Australia, the High Commissioner of Papua New Guinea in Council, the High Commissioner of Papua New Guinea, a Minister or a Minister of Australia is authorized or empowered to do any act, production of the National Gazette or of a Gazette of a pre-Independence Territory in Papua New Guinea purporting to contain a copy or notification of any such act is in all courts evidence of the act having been duly done.

50. PUBLIC DOCUMENTS ADMISSIBLE IN COURTS IN AUSTRALIA.

A public document that, by any law of Australia or of a State or Territory of Australia, is admissible in evidence for any purpose in a court in Australia without proof of—

- (a) the seal, stamp or signature authenticating it; or
- (b) the judicial or official character of the person appearing to have signed it,

is admissible in evidence to the same extent and for the same purposes in a court without such proof.

51. OTHER PUBLIC DOCUMENTS.

Where a book or other document of—

- (a) the United Kingdom; or
- (b) a British possession; or
- (c) a member state of the Commonwealth of Nations; or
- (d) Australia; or

- (e) a State or Territory of Australia,

is of such a public nature as to be admissible in the place concerned, on its production from the proper custody, a copy of it or extract from it is admissible in evidence in a court if—

- (f) it is proved to be an examined copy or extract; or
 (g) it purports to be signed and certified as a true copy or extract by an officer of the place concerned, who certifies that he is the officer to whose custody the original is entrusted.

Division 4.

Other Acts and Things.

52. GAZETTES.

The production of a paper purporting to be a Gazette is in all courts evidence that the paper is the Gazette and was published on the day on which it is dated.

53. PRINTING BY GOVERNMENT PRINTER.

The production of a paper purporting to be printed by the Government Printer or by the authority of the Government or of the Government of Australia is in a court evidence that the paper was printed by the Government Printer or by such authority.

54. EVIDENCE WHERE PROOF OF SEAL, SIGNATURE, ETC., DISPENSED WITH.

Where by this Act, an Act of the Parliament of the United Kingdom, an Act of the Parliament of Australia or of a State of Australia, or an Ordinance of a Territory of Australia at any time in force—

- (a) a certificate; or
 (b) an official or public document; or
 (c) a document or proceeding of a corporation; or
 (d) a copy of or extract from a document, by-law or entry in a register or other book or of or from any other proceeding,

is admissible in evidence in any legal proceedings in Papua New Guinea or in the United Kingdom, Australia, the State or the Territory, as the case may be, it shall be admitted in evidence in a court if it purports to be—

- (e) certified; or
 (f) sealed or impressed with a stamp; or
 (g) sealed and signed; or
 (h) signed alone; or
 (i) impressed with a stamp and signed,

as directed by the Act or Ordinance without proof of—

- (j) the seal or stamp, where a seal or stamp is necessary; or
- (k) the signature; or
- (l) the official character of the person appearing to have signed it,

without further proof.

55. SECONDARY EVIDENCE OF REGISTERED DEED OR DOCUMENT, ETC.

Secondary evidence of a deed or document filed, entered, registered, recorded or enrolled under an Act, in the Supreme Court or the National Court, or in the office of the Registrar-General or any other public office, may be given by the production of an office copy of the deed or document if reasonable notice in writing has been given to the adverse party by the party producing the deed or document.

56. PROBATE AND LETTERS OF ADMINISTRATION.

(1) In this section, “**probate of a will or codicil or letters of administration with the will or codicil annexed**” includes—

- (a) an exemplification of probate or of letters of administration; and
- (b) a document accepted as sufficient in place of such an exemplification by the National Court.

(2) The probate of a will or codicil, or letters of administration with the will or codicil annexed, is evidence of the original will or codicil on all questions concerning real and personal estate in the same manner as if the original were produced and proved in due course of law.

(3) A probate of a will or codicil, or letters of administration with the will or codicil annexed, is *prima facie* evidence of the death, and of the date of death, of the testator or intestate.

57. CERTIFICATES RELATING TO BIRTHS, DEATHS AND MARRIAGES.

A certificate relating to the birth, marriage or death of any person in—

- (a) the country; or
- (b) a state or Territory of Australia; or
- (c) the United Kingdom; or
- (d) a member state of the Commonwealth of Nations,

if it purports to be issued by the officer authorized by the law of the place concerned is evidence of the matters stated without proof of the seal or stamp or signature or of the official character of the person appearing to have signed it.

58. INCORPORATION OF COMPANY.

(1) A document that purports to be a certificate of incorporation of a company, business group or land group in the country or in Australia or a State or Territory of Australia, and that purports to be—

- (a) signed by—
 - (i) the Registrar or an Assistant or Deputy Registrar of Companies; or
 - (ii) the Commissioner or an Assistant or Deputy Commissioner for Corporate Affairs; or
 - (iii) the Registrar of Business Groups; or
 - (iv) the Registrar of Land Groups; or

(b) issued under the seal of the Corporate Affairs Commission, of the place concerned shall be admitted by a court as evidence of—

- (c) the incorporation or registration of the company in that place; and
- (d) the date on which the company, business group or land group, as the case may be, was so incorporated or registered.

(2) The production of a copy of or extract from a document kept and registered at the office for the registration of companies, business groups or land groups in the country, or of companies in Australia or a State or Territory of Australia, and that purports to be—

- (a) signed by—
 - (i) the Registrar or an Assistant or Deputy Registrar of Companies; or
 - (ii) the Commissioner or an Assistant or Deputy Commissioner for Corporate Affairs; or
 - (iii) the Registrar of Business Groups; or
 - (iv) the Registrar of Land Groups; or

(b) issued under the seal of the Corporate Affairs Commission, of the place concerned shall be admitted by a court in which the original document is admissible in evidence and for the same purposes and to the same extent.

59. OFFICIAL STATISTICS.

(1) A document purporting to be published by the National Statistician and to contain statistics or abstracts of statistics compiled and tabulated by the National Statistician by virtue of the *Statistical Services Act 1980* is evidence in a court that the statistics or abstracts were so compiled and tabulated.

(2) The production of a document purporting to be published by the Australian Statistician and to contain statistics or abstracts of statistics compiled and tabulated

by him by virtue of the *Census and Statistics Act* 1905-1973 of Australia, or any corresponding law of Australia from time to time in force, is evidence in a court that the statistics or abstracts were so compiled and tabulated.

60. BY-LAWS, ETC.

Where, by—

- (a) an Act; or
- (b) an Act of Australia or of a State of Australia; or
- (c) an Ordinance of a Territory of Australia,

power to make by-laws, rules, regulations or orders is conferred on a person or body, a printed paper purporting to be or to contain such by-laws, rules, regulations or orders and to be printed by the Government Printer or by the authority of the Government, or of the Government of Australia or of the State or Territory, is evidence in a court that the by-laws, rules, regulations or orders, in the words printed in the paper—

- (d) were duly made by that person or body; and
- (e) were approved, certified to and confirmed as required by law and all things necessary to give validity to them have been duly done; and
- (f) are in force.

61. BUSINESS RECORDS.

(1) In this section, “**writing**” includes a photographic reproduction or photostatic reproduction of a document.

(2) Subject to Subsection (3), a writing purporting to be a memorandum or record of an act, matter or event is admissible in evidence in a court as proof of the facts stated in it if it appears to the court that—

- (a) the memorandum or record was made in the regular course of a business at or about the time of the doing or occurrence of the act, matter or event; and
- (b) the source of information, and the method and time of the preparation of the memorandum or record, were such as to indicate its trustworthiness.

(3) Subsection (2) does not require a court to admit in evidence a writing if it appears to the court that the interests of justice would not be served by its admission.

(4) For the purposes of this section, a court, in considering whether a writing should be admitted in evidence, shall have regard to all relevant circumstances, including—

- (a) the source from which the writing is produced; and

- (b) the circumstances of its receipt and custody by the person producing it or by any person from whom it has been obtained for the purpose of producing it in evidence.

(5) In the exercise of the discretion of a court under this section, the court is not obliged to receive formal testimony but may inform itself in any way that it thinks fit and in particular by the affidavit, oath, affirmation or certificate of a person who professes to have knowledge of any of the matters to which the writing relates or of the circumstances relating to its preparation.

62. RACIAL ORIGIN.

In any criminal proceedings, if the court does not consider that there is evidence or sufficient evidence to determine the question of the racial origin of a person the court, having seen the person, may itself determine the question.

63. AGE.

In any legal proceedings, if the court does not consider that there is evidence or sufficient evidence to determine the age of a person the court, having seen the person, may itself determine the question.

Division 5.

Computerized information.

64. INTERPRETATION OF DIVISION 5.

(1) In this Division, “**computer**” means, subject to Subsection (2), a device for storing and processing information.

(2) Where during a period the function of storing or processing information for the purposes of activities regularly carried on over the period, whether for profit or not, was regularly performed by computers, all the computers used for that purpose during the period shall be treated, for the purposes of this Division, as constituting a single computer, and references in this Division to a computer shall be construed accordingly.

(3) For the purposes of this Division—

- (a) a reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process; and
- (b) information shall be taken to be supplied to a computer if it is supplied in any appropriate form and whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment; and
- (c) where, in the course of activities carried on by a person or body, information is supplied with a view to its being stored or processed for the purposes of the activities by a computer operated otherwise than in

the course of the activities, the information, if duly supplied to the computer, shall be taken to be supplied to it in the course of the activities; and

- (d) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

65. ADMISSIBILITY OF COMPUTERIZED INFORMATION.

(1) In any legal proceedings a statement contained in a document produced by a computer is admissible as evidence of any fact, stated in the document, of which direct oral evidence would be admissible, if it is shown to the satisfaction of the court that—

- (a) the document containing the statement was produced by the computer in the course of a period during which the computer was used regularly to store or process information for the purposes of activities regularly carried on over that period, whether for profit or not; and
- (b) during the period there was regularly supplied to the computer, in the ordinary course of those activities, information of the kind contained in the statement or of the kind from which the information so contained was derived; and
- (c) throughout the material part of the period the computer was operating properly or, if not, that any defect in its operation during that part of the period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(2) For the purpose of deciding whether or not a statement is admissible in evidence under this section, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances (including, in the case of a statement contained in a document, the form and contents of that document).

66. PROOF OF COMPUTER STATEMENTS.

(1) Where in any legal proceedings a statement contained in a document is proposed to be given in evidence under this Division it may be proved by the production of the document or (whether or not the document is still in existence) by the production of a copy of the document, or of the material part of the document, authenticated in such manner as the court approves.

(2) Where in any legal proceedings it is desired to give a statement in evidence under this Division, a certificate—

- (a) identifying the document containing the statement and describing the manner in which it was produced; or
- (b) giving such particulars of any device involved in the production of the document as are appropriate for the purpose of showing that the document was produced by a computer; or
- (c) dealing with any of the matters referred to in Section 64(3),

and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), is evidence of any matter stated in the certificate.

(3) For the purposes of Subsection (2) it is sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

67. WEIGHT TO BE ATTACHED TO COMPUTER STATEMENTS.

In estimating the weight (if any) to be attached to a statement admissible in evidence under this Division, regard shall be had—

- (a) to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the statement; and
- (b) to the question, whether or not the information that the information contained in the statement reproduces or is derived from—
 - (i) was supplied to the computer; or
 - (ii) was recorded for the purpose of being supplied to it,

contemporaneously with the occurrence or existence of the facts dealt with in the information; and

- (c) to the question, whether or not any person concerned with—
 - (i) the supply of information to the computer; or
 - (ii) the operation of the computer or of equipment by means of which the document containing the statement was produced by it,

had any incentive to conceal or misrepresent the facts.

Division 6.

Photographic and Machine Reproductions.

Subdivision A. – Preliminary.

68. INTERPRETATION OF DIVISION 6.

In this Division, unless the contrary intention appears—

“approved photo-copying machine” means a photographic copying machine of a make, model or type approved under Section 86;

“machine-copy” in relation to a document, means a copy of the document made by a machine in which, or by a process by which, an image of the contents of the document is reproduced from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film;

“negative”, in relation to a document, means a transparent negative photograph used or intended to be used as a medium for reproducing the contents of the document, and includes a transparent photograph made from surface contact with the original negative photograph;

“reproduction”, in relation to a document, means a machine-copy of the document or a print made from a negative of the document.

69. CHANGES IN COLOUR OR TONE.

A reproduction of a document may be taken to be a reproduction of the document notwithstanding that—

- (a) the colour or tone of any writing or representation on the document is reversed or altered in the reproduction; or
- (b) in the case of a reproduction certified under Section 70, a colour appearing in the document or a representation that was not reproduced by reason of its colour was added to the reproduction before the reproduction was certified.

Subdivision B. – General.

70. CERTIFIED REPRODUCTIONS OF PUBLIC DOCUMENTS, ETC.

(1) If a reproduction of a document that is or at any time was in the custody or under the control of the Registrar-General, the Registrar of Titles or the National Statistician, or any other prescribed officer, bears a certificate purporting to be signed by the Registrar-General, a Deputy Registrar-General, the Registrar of Titles, a Deputy Registrar of Titles, the National Statistician or the prescribed officer, as the case may be, that it is a reproduction of the document, the reproduction is admissible in evidence without further proof as if it were the document of which it is certified to be a reproduction.

(2) If a reproduction of a document that is or at any time was filed in a court, or of the official record of any proceedings in a court, bears a certificate purporting to be signed by the registrar or other proper officer of the court that it is a reproduction of the document or record, the reproduction is admissible in evidence without further proof as if it were the document or record of which it is certified to be a reproduction.

71. CERTIFIED REPRODUCTIONS IN ANSWER TO PROCESS TO PRODUCE.

Where the Registrar-General, the Registrar of Titles, the National Statistician, the registrar or other proper officer of a court, or any other prescribed officer, is

served with legal process to produce a document or record referred to in Section 70 before a court, it is a sufficient answer to the process if the person to whom the process is addressed sends by prepaid post, or causes to be delivered to the registrar or other proper officer of the court, a reproduction of the document or record certified in accordance with that section.

72. REPRODUCTIONS OF BUSINESS DOCUMENTS DESTROYED, LOST OR UNAVAILABLE.

Subject to this Division, a reproduction of a document, being a document made or used in the course of a business, is admissible in any legal proceedings as evidence of the document on proof that it is a reproduction made in good faith of the document and that—

- (a) the document has been destroyed or lost, wholly or in part; or
- (b) it is not reasonably practicable to produce the document or to secure its production.

73. AFFIDAVIT OR DECLARATION OF MAKER OF COPY, ETC.

Without prejudice to any other method of proof, an affidavit or declaration purporting to have been made by a person at or about the time when he made a machine-copy or negative of a document—

- (a) stating his full name, address and occupation and his functions or duties (if any) in relation to making machine-copies or negatives of documents; and
- (b) identifying or describing the document; and
- (c) stating—
 - (i) the day on which he made the machine-copy or negative; and
 - (ii) the condition of the document at that time with respect to legibility; and
 - (iii) the extent of any damage to the document; and
- (d) stating the person or body—
 - (i) from whose custody or control the document was produced for copying or photographing; or
 - (ii) on whose behalf or in the course of whose business the document was copied or photographed; and
- (e) describing the machine or process by which he made the machine-copy or negative; and
- (f) stating that the processing was properly carried out in the ordinary course of business by the use of apparatus and materials in good working order and condition with the object of reproducing the document,

is evidence, whether or not the person is available to be called as a witness, that the machine-copy or negative was made in good faith and is, or can be used to produce, as the case may be, a reproduction of the document.

74. DOCUMENT PROCESSED BY INDEPENDENT PROCESSOR.

(1) In this section, “**processor**” means a person whose business is or includes the reproduction or photographing of documents for other persons.

(2) Where a person having the custody or control of a document—

- (a) delivers or causes it to be delivered to a processor; and
- (b) subsequently receives a machine-copy or negative of the document from the processor together with an affidavit or statutory declaration made by the processor as to the making of the machine-copy or negative,

an affidavit or statutory declaration made by the first-mentioned person at or about the time of receipt as to—

- (c) his custody or control of the document; and
- (d) its delivery to and return by the processor; and
- (e) his subsequent disposal of it and of the machine-copy or negative,

is admissible as evidence of the facts stated in it whether or not the person is available to be called as a witness.

75. AFFIDAVIT OR DECLARATION OF MAKER OF PRINT FROM PHOTOGRAPHIC NEGATIVE, ETC.

Without prejudice to any other method of proof, an affidavit or statutory declaration purporting to have been made by a person at or about the time when he made a print from a negative of a document—

- (a) stating his full name, address and occupation and his functions or duties (if any) in relation to making such prints; and
- (b) identifying the negative; and
- (c) stating—
 - (i) the day on which the print was made; and
 - (ii) the condition of the negative; and
 - (iii) the extent of any damage to the negative; and
- (d) stating the person or body—
 - (i) from whose custody or control the negative was produced for the making of a print; or
 - (ii) on whose behalf in or in the course of whose business the print was made; and
- (e) describing the process or procedure by which he made the print; and

- (f) stating that the printing was properly carried out by the use of apparatus and materials in good working order and condition with the object of reproducing the whole of the image on the negative,

is evidence, whether or not the person is available to be called as a witness, that the print reproduces the whole of the image on the negative.

76. PROOF OF DESTRUCTION OF DOCUMENT, ETC.

A statement by any person in an affidavit or statutory declaration made for the purposes of this Division that—

- (a) he destroyed or caused the destruction of a document; or
- (b) a negative is or was at the material time in the custody or control of a person or body referred to in Section 89; or
- (c) a document came into existence or was used in the course of his or his employer's business,

is evidence of the facts stated.

77. ADMISSION OF CERTIFIED COPY OF AFFIDAVIT, ETC.

Unless the court otherwise orders, a copy of an affidavit or statutory declaration made for the purposes of this Division and duly certified to be a true copy—

- (a) in the case of an affidavit or declaration in the custody of a corporation—by the chairman, secretary, public officer or other chief officer, or by a director or manager, of the corporation; or
- (b) in any other case—by a justice or a commissioner for declarations,

is admissible in evidence in the place of the original affidavit or declaration.

78. SUFFICIENCY OF AFFIDAVIT OR DECLARATION IN CERTAIN CASES.

(1) Where documents are numbered in numerical order and photographed in the order in which they are numbered so as to be recorded on a continuous length of film as a series of negatives—

- (a) one affidavit or statutory declaration may be made for the purposes of this Division relating to all the negatives on the length of film; and
- (b) it is a sufficient identification or description of the documents if the affidavit or declaration states the general nature of the documents in the series and the serial numbers of the first and last documents recorded on the film.

(2) Where documents bear a distinctive identification mark and are so photographed that the film produced records only the images of documents bearing that mark—

- (a) one affidavit or statutory declaration may be made for the purposes of this Division relating to all the documents recorded on that film; and
- (b) it is a sufficient identification or description of the documents if the affidavit or declaration states the general nature of the documents recorded on the film and describes the common identification mark.

(3) Where documents purport from their contents to relate to the same subject-matter, to the same person or persons, or to a matter between persons, it is a sufficient identification or description of the documents if the affidavit or statutory declaration—

- (a) states the general nature of the documents; and
- (b) describes them as the documents relating to the subject-matter, the person or persons or the matter between the persons, as the case may be.

(4) For the purposes of Subsection (3), where one of the images appearing on a length of film is the image of a statement signed by the person who photographed the documents recorded on the film the statement shall be deemed, in the absence of anything in the statement to the contrary, to relate to all the images on the length of film.

79. REQUIREMENT AS TO NEGATIVES.

(1) Subject to Subsection (2) and to Section 89, a reproduction made through the medium of a negative is not admissible as evidence under this Division in any legal proceedings unless the court is satisfied that—

- (a) the negative is in existence at the time of the proceedings; and
- (b) the document reproduced was—
 - (i) in existence for a period of not less than 12 months after the document was made; or
 - (ii) was delivered or sent by the party tendering the reproduction to the other party, or one of the other parties, to the proceedings.

(2) Subsection (1) does not apply with respect to a reproduction referred to in Section 70.

80. NOTICE TO PRODUCE.

A reproduction of a document may be admitted in evidence in a court without notice to produce the original document.

81. PROOF OF COMPARISON.

Where a reproduction is tendered as evidence, no proof is required that the reproduction was compared with the original document.

82. PRESUMPTIONS AS TO ANCIENT DOCUMENT.

Any presumption that may be made in respect of a document over 20 years old may be made in respect of a reproduction of the document that is admitted in evidence under this Division in all respects as if the reproduction were the document.

83. REPRODUCTION MADE IN AUSTRALIA.

Where a reproduction is made of a document in a State or Territory of Australia that would be admissible in evidence in the State or Territory under a law of the State or Territory corresponding with this Division, the reproduction is admissible in evidence in a court in the same circumstances, to the same extent and for like purposes as it would be admissible in evidence in the State or Territory.

84. ADMISSIBILITY GENERALLY.

(1) For the purpose of deciding whether or not a reproduction of a document is admissible under this Division as evidence of the document, a court may draw any reasonable inference from—

- (a) the nature of the reproduction; or
- (b) the machine or process used in making the reproduction or the negative from which it was produced; or
- (c) any other circumstances,

and may reject the reproduction, notwithstanding anything in this Division, if it appears inexpedient in the interest of justice that the reproduction should be admitted in evidence.

(2) In estimating the weight to be attached to a reproduction made admissible as evidence by this Division, regard shall be had—

- (a) to the fact that if the person making an affidavit or declaration is not called as a witness there has been no opportunity to cross-examine him; and
- (b) to all the circumstances from which any reasonable inference can be drawn as to—
 - (i) the necessity for making the reproduction or negative, or for destroying or parting with the document; and
 - (ii) the accuracy or otherwise of the reproduction; and
 - (iii) any incentive to tamper with the document or to misrepresent the reproduction.

85. ORDER FOR FURTHER REPRODUCTION.

Where a reproduction made through the medium of a negative is admitted as evidence under this Division in any legal proceedings, the court may at any time

order a further reproduction to be made from the negative in the presence of a person appointed for the purpose by the court.

Subdivision C. – Use of Approved Photo-copying Machines.

86. APPROVAL OF PHOTO-COPYING MACHINES.

(1) For the purposes of this Division, the Head of State, acting on advice, may, by notice in the National Gazette, approve for the microfilming of documents in the ordinary course of business a make, model or type of photographic copying machine if he is satisfied that the machine automatically photographs documents passed through it in normal operating conditions at a speed that will prevent interference by the operator with the course of copying a document.

(2) An approval under Subsection (1) may be given subject to a condition that the approved machine be used only with materials or types of materials specified in the notice in relation to the machine.

87. ADMISSION OF REPRODUCTION FROM APPROVED MACHINES.

In addition to and without derogating the provisions of Section 86, a reproduction made of a document, being a document made or used in the course of a business, from a negative made by an approved photo-copying machine is, subject to this Division, admissible in any legal proceedings as evidence of the document, whether or not the document is still in existence, on proof that the negative was made in good faith by means of such a machine and that the print reproduces the image on the negative.

88. AFFIDAVIT OF MAKER OF PHOTO-COPY.

Without prejudice to any other method of proof, an affidavit or statutory declaration purporting to have been made by a person at or about the time when he photographed a document by means of an approved photo-copying machine—

- (a) stating his full name, address and occupation and his functions or duties (if any) in relation to copying documents; and
- (b) identifying or describing the document; and
- (c) stating—
 - (i) the day on which the document was photographed; and
 - (ii) the condition of the document at that time with respect to legibility; and
 - (iii) the extent of any damage to the document; and
- (d) stating the person or body—
 - (i) from whose custody or control the document was produced for photographing; or

- (ii) on whose behalf or in the course of whose business the document was photographed; and
- (e) identifying the make, model or type of the machine; and
- (f) stating that the photographing was properly carried out in the ordinary course of business by the use of apparatus and materials in good working order and condition,

is evidence, whether or not he is available to be called as a witness, that the negative referred to in the affidavit or declaration was made in good faith by means of an approved photo-copying machine and bears an image of the document.

89. ADMISSION OF REPRODUCTIONS OF CERTAIN GOVERNMENT, INSURANCE AND BANKING DOCUMENTS.

Section 79(1)(b) does not apply with respect to a reproduction made from a negative made by an approved photo-copying machine where at the time when the print was made the negative was in the custody or control of—

- (a) the Head of State, the High Commissioner of Papua New Guinea, the Government, a Minister or an officer; or
- (b) a Minister of Australia or of a State of Australia, or an officer in a government department under the direct control of any such Minister; or
- (c) any officer, board, commission, trust or other body established or constituted by or under a law for any public purpose; or
- (d) a bank—
 - (i) as defined in Section 3 of the *Banks and Financial Institutions Act 2000*; or
 - (ii) as defined in Section 5 of the *Banking Act 1959-1974* of Australia, or any corresponding law of Australia from time to time in force,
 - or a statutory corporation authorized to carry on any banking business in Papua New Guinea or in a State or Territory of Australia; or
- (e) a public company within the meaning of the *Companies Act 1997* (including a corporation that is a public company under the law of a State or Territory of Australia and is registered as a foreign company in Papua New Guinea under that Act), that is registered under the *Life Insurance Act 1945-1973* of Australia or any corresponding law of Australia from time to time in force, in the case of a document that relates to the life insurance business of the company.

90. PRESERVATION OF NEGATIVE IN PLACE OF ORIGINAL DOCUMENT.

Unless the application of this section is expressly excluded, where a law requires a document to be preserved or kept for any purpose for a longer period of time than three years it is a sufficient compliance with the requirement to preserve or keep, in place of a document over three years old, a negative of it made by means of an approved photo-copying machine, together with an affidavit or declaration in accordance with Section 73 referring to the negative.

PART V. – SPECIAL PROVISIONS RELATING TO BANKERS' BOOKS.**91. ENTRIES IN BANKERS' BOOKS.**

Subject to this Part, a copy of an entry in a banker's book is, in all legal proceedings, *prima facie* evidence of the entry and of the matters, transactions and accounts recorded in the book.

92. DOCUMENTS PURPORTING TO BE COPIES OF ENTRIES.

A copy of an entry in a banker's book is not admissible in evidence under this Part unless an officer of the bank testifies orally or by affidavit that—

- (a) he has compared the copy with the original entry; and
- (b) the copy is a correct copy of an entry that was made in the usual and ordinary course of business in a book that, at the time when the entry was made, was one of the ordinary books of the bank; and
- (c) the book is in the custody or control of the bank.

93. PRODUCTION OF BOOKS BY BANKERS.

In any legal proceedings to which the bank is not a party, a banker or an officer of a bank is not compellable—

- (a) to produce a banker's book the contents of which can be proved under this Part; or
- (b) to appear as a witness to prove the matters, transactions, or accounts recorded in such a book,

unless otherwise ordered by the court or a Judge.

94. INSPECTION OF BANKERS' BOOKS.

(1) On the application of any party to any legal proceedings, the court or a Judge may order—

- (a) that the party be at liberty to inspect and take copies of entries in the books of a bank for any of the purposes of the proceedings; and
- (b) that, on payment of the prescribed charge, the bank prepare and deliver to the party copies of such entries as are required for evidence in the proceedings.

(2) An order under Subsection (1) shall be served on the bank at least three clear days before it is to be obeyed, unless the court or Judge directs otherwise.

(3) The costs of an application to a court or Judge under this section, and the costs of anything done or to be done under an order of a court or Judge made under this section, are in the discretion of the court or Judge.

(4) Where costs referred to in Subsection (3) have been occasioned by a default or delay on the part of the bank, the court or Judge may order that the costs, or any part of them, be paid to any party by the bank.

(5) An order under Subsection (4) against a bank may be enforced as if the bank were a party to the proceedings.

PART VI. – MISCELLANEOUS.

95. RULES OF COURT, ETC.

For the avoidance of doubt, it is declared that where a person or authority is empowered by or under a law to make regulations, Rules of Court or any other form of subordinate enactment for regulating practice and procedure before a court, the power extends to the making of regulations, rules or other subordinate enactments prescribing all matters that are necessary or convenient to be prescribed for carrying out and giving effect to this Act.

96. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act

SCHEDULE 1 – AFFIDAVIT OF FINGERPRINT EXPERT.

Sec. 46.

I, . . . , of . . . , make oath and say:–

1. I am an officer of the Police Force of . . . with the rank of . . . and I am a fingerprint expert in that force.
2. I have examined the fingerprint card now produced and shown to me and marked with the letter “A”.
3. The fingerprints on the card are identical with those appearing on a fingerprint card in the record of the . . . Police Department being the fingerprints of . . . (in this Affidavit called “**the subject person**”).
4. According to those records, which I believe to be accurate, the subject person was convicted in . . . of the following offence(s):– (*description of offence(s), date(s) of conviction and court(s) in which the subject person was convicted*).
5. From an examination of those records, I believe that the person referred to in the document(s) now produced and shown to me and marked . . . as having been convicted of the offence(s) stated in it/them is identical with the person whose fingerprints are shown on the card marked “A”.

SWORN on (*Signature and description of J.P. or other person authorized to take affidavits*).

SWORN on (*Signature and description of J.P. or other person authorized to take affidavits*).