

NORTHERN TERRITORY OF AUSTRALIA

EVIDENCE (BUSINESS RECORDS) INTERIM ARRANGEMENTS ACT

As in force at 24 March 1993

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 24 March 1993. Any amendments that commence after that date are not included.

EVIDENCE (BUSINESS RECORDS) INTERIM ARRANGEMENTS ACT

An Act to make business records admissible as evidence in all proceedings, and for related purposes

1 Short title

This Act may be cited as the *Evidence (Business Records) Interim Arrangements Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Incorporation with *Evidence Act*

This Act shall be incorporated and read as one with the *Evidence Act*.

4 Interpretation

In this Act, unless the contrary intention appears:

business includes:

- (a) a business, profession, occupation, calling, trade or undertaking whether engaged in or carried on:
 - (i) by the Crown in right of the Territory or in any of its other capacities, or a person;
 - (ii) for profit or not; or
 - (iii) in the Territory or elsewhere; and
- (b) public administration of the Territory, the Commonwealth, including another Territory of the Commonwealth, a State or a country, carried on in the Territory 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.

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
 - (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 facts stated.
- (2) For the purposes of this Act, a statement in a document is made by a person if it is:
- (a) written, made, dictated or otherwise produced by him; or
 - (b) recognized by him as his statement by signing, initialling or otherwise.
- (3) For the purposes of this Act, a person is concerned in the making of a statement if he made:
- (a) that statement; or
 - (b) a statement containing information which the statement the admissibility of which is in question reproduces or from which the statement in question is wholly or in part derived.

5 Admissibility generally

- (1) Subject to this Act, where in a legal proceeding evidence of a fact or of an opinion is admissible, a statement of the fact or opinion in a document is admissible as evidence of the fact or opinion if:
- (a) the document forms part of a record of a business, whether or not the business existed at the time when the question of admissibility arises;
 - (b) the statement was made in the course of or for the purposes of the business; and
 - (c) the statement was:
 - (i) made by a qualified person; or
 - (ii) reproduced or derived from information:
 - (A) in one or more statements, each made by a qualified person in the course of or for the purposes of the business; or
 - (B) 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 a person,or both.
- (2) 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 a 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.

6 Restrictions on admissibility under section 5 – general

- (1) Notwithstanding section 5, 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 5, 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.

7 Restrictions on admissibility under section 5 – criminal proceedings

- (1) Subsection (2) applies where a statement is tendered in a criminal legal proceeding for admission under section 5 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) A statement is not admissible under section 5 unless, in relation to each person concerned in the making of the statement tendered:
 - (a) the tendering party calls the person as a witness in the proceeding if an opposing party so requires; or
 - (b) it appears to the Court that:
 - (i) the person is dead or is unfit by reason of his bodily or mental condition to attend as a witness;
 - (ii) the person is outside the Territory and it is not reasonably practicable to secure his attendance;
 - (iii) all reasonable steps have been taken to identify the person and he cannot be identified;
 - (iv) the person's identity being known, all reasonable steps have been taken to find him and he cannot be found;
 - (v) having regard to the time which has elapsed since the person supplied the information and to all the circumstances, he cannot reasonably be expected to have a recollection of the matters dealt with in the statement; or

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- (vi) having regard to all the circumstances, undue delay or expense would be caused by calling the person as a witness.
- (3) A statement made in connection with a criminal legal proceeding or with an investigation relating or leading to a criminal legal proceeding is not admissible under section 5.

8 Dispute in relation to happening of event

- (1) Where in a legal proceeding the happening of an event is in question, and in the course of a business a system has been followed to make and keep a 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.

9 Weight of evidence – section 5

In estimating the weight, if any, to be attached to a statement tendered for admission or admitted under section 5, 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 a relevant matter dealt with in his statement; and
 - (ii) the presence or absence of an incentive for him to conceal or misrepresent a 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 information, the reliability of the means of reproduction or of derivation.

10 Weight of evidence – section 8

In estimating the weight, if any, to be attached to evidence admissible under section 8, 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 a person concerned with the system had an incentive to omit recording the happening of the event in question.

11 Credibility of maker of statement

- (1) This section applies where:
 - (a) a person makes a statement;
 - (b) that statement, or a statement wholly or in part reproducing or derived from information in that statement, is tendered for admission or is admitted under section 5; 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 anything contained elsewhere in this section, evidence is not admissible of a matter of which, had the person referred to in subsection (1) been called as a witness and denied the matter in cross-examination, evidence would not be admissible if adduced by the cross-examining party.

12 Inferences concerning admissibility

The Court may, for the purpose of deciding questions of admissibility under this Act, 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.

13 Ancillary evidence

- (1) Evidence relevant to the matters mentioned in section 5, 7 or 8 may, if given by a person who had, at the relevant time or afterwards, a responsible position in relation to the making of the records concerned, be given on information and belief.

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- (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.

14 Production of documents, &c.

- (1) In this section **computer** means a device for storing or processing information.
- (2) For the purposes of section 5 a statement in:
- (a) a document may, as 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;
 - (b) 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 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.
- (3) For the purposes of section 8, 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.
- (4) 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.
- (5) 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.

15 Authentication

For the purposes of this Act, a document, a copy of a document or a copy of part of a document may be authenticated in the prescribed manner or as the Court approves.

16 Rejection for unfairness, &c.

(1) Where a party to a legal proceeding in a Court tenders evidence under this Act and it appears to the Court that:

- (a) the weight of the evidence is too slight to justify its admission;
- (b) the utility of the evidence is outweighed by a probability that its admission will unduly prolong the proceeding; or
- (c) the evidence may be unfair to another 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 evidence otherwise than by virtue of this Act.

17 Withholding statement from jury

Where in a legal proceeding there is a jury, and a statement in a document is admitted in evidence under this Act, 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.

18 Corroboration

For the purposes of a law in force in the Territory 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 5 shall not be treated as corroboration of evidence given by a qualified person who was concerned in the making of the statement.

19 Rejection of evidence in criminal proceedings

This Act 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.

20 Time for order

A Court may make orders concerning the admissibility of a statement or evidence under this Act at any stage of a legal proceeding.

21 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may make provisions for or in relation to:
 - (a) the giving by a party, who proposes to tender a statement under section 5 or evidence under section 8, to the Court or to other parties of notice of his intention to do so and of particulars of the statement of evidence (including copies of a statement or document);
 - (b) the giving by a party, who has received notice from another party of his intention to tender a statement under section 5 or evidence under section 8, 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;
 - (c) the production by a party, who proposes to tender a statement under section 5 or evidence under section 8, or who proposes to adduce evidence in answer to such a statement or evidence, to the Court or to other parties for inspection of a document he proposes to tender or a document related to such a 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 a document which a party desires to inspect for the purpose of the application of this Act to the proceeding;
 - (e) the making by the Supreme Court of orders in respect of proceedings in a Court, other than the Supreme 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 to parties to the proceeding for inspection a document which a party desires to inspect for the purpose of the application of this Act to the proceeding;
 - (f) the proof of a matter mentioned in section 5, 7 or 8 by affidavit or statutory declaration provided that such regulation shall, if it is not otherwise so provided, provide for the attendance at the

proceeding of the deponent or maker of such affidavit or statutory declaration for cross-examination by a party who desires to cross-examine him; and

- (g) the making by a Court of orders under this Act at any stage of a legal proceeding.

22 Power to make rules

Where there is an authority having for the time being power to make rules regulating the practice and procedure of a Court, that authority shall have power to make rules, not inconsistent with this Act, for the purpose of regulating a proceeding in or before that Court, for or in relation to a matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Evidence (Business Records) Interim Arrangements Act 1984 (Act No. 44, 1984)

Assent date	25 September 1984
Commenced	19 December 1984 (<i>Gaz</i> G50, 19 December 1984, p 10)

Statue Law Revision Act 1990 (Act No. 33, 1990)

Assent date	11 June 1990
Commenced	11 June 1990

3 LIST OF AMENDMENTS

s 4 amd No. 33, 1990, s 9