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SOUTH  AUSTRALIA

TENTH REPORT

of the

LAW REFORM COMMITTEE

of

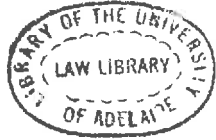
SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

**EVIDENCE ACT—NEW PART VIA
COMPUTER EVIDENCE**

1969



The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19th September, 1968. The Members are:

THE HONOURABLE MR. JUSTICE ZELLING, C.B.E., *Chairman*.
S. J. JACOBS, Q.C.
K. P. LYNCH.
D. ST.L. KELLY.

The Secretary of the Committee is Mr. H. G. Edwards, c/o Adelaide Magistrates' Court Department, Adelaide, South Australia.

**TENTH REPORT OF THE LAW REFORM COMMITTEE OF
SOUTH AUSTRALIA**

To:

The Honourable R. R. Millhouse, M.P.,
Attorney-General for South Australia.

Sir,

Your Committee has now considered the question of the admissibility of computer evidence referred by you to us and has the honour to report as follows:—

1. Your Committee has considered the question whether the law of evidence should be amended in order to provide for the admissibility of documentary evidence produced by computers. In considering this question, the Committee had the benefit of the assistance of Professor J. A. Ovenstone and Mr. D. W. Simmons, of the Computing Centre of the University of Adelaide, which assistance we are pleased to acknowledge.

2. As a result of our deliberations we have concluded that, provided that adequate safeguards are provided to ensure the detection of any malfunction of the computer and any falsification of the data stored in the computer or of the information produced by it, documentary evidence produced by computers should be admissible as evidence in any civil proceedings in any case where the data stored in the computer is systematically prepared upon the basis of information that would normally be admissible as evidence of the statements contained in the documents produced by the computer.

3. A great amount of documentation is already, and will in the future increasingly be, stored in computers whose effect is, if properly used, to record, collate and process (but not falsify) the input and to store it until such time as it may be required. If the data from which the information produced by a computer were itself preserved, then there would be less urgent need for the alteration to the law that we are suggesting, since, in many cases, the documents from which the computer is fed with data would themselves be admissible in evidence under one of the statutory exceptions which already exist to the hearsay evidence rule or which have already been proposed to you as highly desirable amendments to that rule.

4. However, the documents from which the computer is fed with data are often only preserved for brief periods, so that more and more reliance will have to be placed, by Government, university, business and the courts, upon computer produced information rather than the data from which that information is produced.

5. We have consequently carefully considered what safeguards are necessary to prevent accidental and deliberate falsification of the data fed into, or of the information produced by, computers. We believe that all reasonable safeguards for this purpose have been inserted in the

draft Bill to amend the Evidence Act which we attach to our Report, which we approve as implementing our proposals and which we recommend to you for legislative attention. It has much the same effect as section 5 of the Civil Defence Act (U.K.), 1968, although we have added certain additional safeguards which, upon consultation, we deemed advisable.

We have the honour to be

HOWARD ZELLING.

S. J. JACOBS.

K. P. LYNCH.

D. ST.L. KELLY.

Law Reform Committee of South Australia.

[Prepared by the Parliamentary Draftsman]

1970

A Bill for an Act to amend the Evidence Act, 1929-1969.

BE IT ENACTED by the Governor of the state of South Australia, with the advice and consent of the Parliament thereof, as follows:—

1. (1) This Act may be cited as the "Evidence Act Amendment Act, 1970".

(2) The Evidence Act, 1929-1969, as amended by this Act, may be cited as the "Evidence Act, 1929-1970".

(3) The Evidence Act, 1929-1969, is hereinafter referred to as "the principal Act".

2. The following new Part comprising the following new sections is enacted and inserted in the principal Act immediately after section 59 thereof:—

PART VIA

COMPUTER EVIDENCE

59a. In this Part, unless the contrary intention appears—

"computer" means a device that is by electronic, electro-mechanical, mechanical or other means capable of recording and processing data according to mathematical and logical rules and of reproducing that data or mathematical or logical consequences thereof;

"computer output" or "output" means a statement or representation (whether in written pictorial graphic or other form) purporting to be a statement or representation of fact—

(a) produced by a computer;

or

(b) translated from a statement or representation so produced by a person having prescribed qualifications in the operation of computers;

"data" means a statement of fact that has been reduced into a prescribed form for introduction into a computer.

59b. (1) Subject to this section, computer output shall be admissible as evidence in any civil proceedings.

(2) The Court must be satisfied—

(a) that the computer is correctly programmed and regularly used to produce output of the same kind as that tendered in evidence pursuant to this section;

(b) that the data from which the output is produced by the computer is systematically prepared upon the basis of information that would normally be acceptable in a court of law as evidence of the statements or representations contained in or constituted by the output;

(c) that, in the case of the output tendered in evidence, there is, upon the evidence before the court, no reasonable cause to suspect any departure from the system, or any error in the preparation of the data;

Short titles.

Enactment of
new Part
VIA of
principal
Act.

Interpretation.

Admissibility
of computer
output.

- (d) that the computer has not, during a period extending from the time of the introduction of the data to that of the production of the output, been subject to a malfunction that might reasonably be expected to affect the accuracy of the output;
- (e) that during that period there have been no alterations to the mechanism or processes of the computer that might reasonably be expected adversely to affect the accuracy of the output;
- (f) that records have been kept by a responsible person in charge of the computer of alterations to the mechanism and processes of the computer during that period; and
- (g) that there is no reasonable cause to believe that the accuracy or validity has been adversely affected by the use of any improper process or procedure or by inadequate safeguards in the use of the computer.

(3) Where two or more computers have been involved, in combination or succession, in the recording of data and the production of output derived therefrom and tendered in evidence under this section, the court must be satisfied that the requirements of subsection (2) of this section have been satisfied in relation to each computer so far as those requirements are relevant in relation to that computer to the accuracy or validity of the output, and that the use of more than one computer has not introduced any factor that might reasonably be expected adversely to affect the accuracy or validity of the output.

(4) A certificate under the hand of a person having prescribed qualifications in computer system analysis and operation as to all or any of the matters referred to in subsection (2) or (3) of this section shall, in the absence of contrary evidence, be taken, in any legal proceedings, as proof of the matters certified.

(5) An apparently genuine document purporting to be a record kept in accordance with subsection (2) of this section, or purporting to be a certificate under subsection (4) of this section shall, in any legal proceedings, be accepted as such in the absence of contrary evidence.

59c. The Governor may make such regulations as he deems necessary or expedient for the purposes of this Part and without limiting the generality of the foregoing those regulations may—

- (a) prescribe the form into which any statement or representation to be introduced into the computer must be reduced; and
- (b) prescribe the qualifications of a person by whom a certificate may be given under this Part.