

Admissibility in Evidence of Reproductions

Terms of Reference

In 1971, the Committee was asked to consider and report on whether and in what circumstances “reproductions” (such as photocopies and microfilm) of existing documents should be admitted into evidence, and the methods by which reproductions can be produced. This reference required a review of the provisions of the *Evidence Act 1906 (WA)* (“the Act”) governing the admissibility in evidence of reproductions.

Background of Reference

Where documentary evidence is admissible it is usually necessary to tender the original document in evidence. At common law, a copy of a document is generally not admissible unless the original is proved to have been lost or destroyed. However, a copy of a document may be tendered under one of three exceptions to the Act.¹

In 1980, the Australian Law Reform Commission (ALRC) was in the process of carrying out a general review of the law of evidence in federal courts and territories, including a review of the law relating to the admissibility of reproductions. The Commission² and the ALRC agreed to cooperate and exchange information about reproductions on an informal basis. As part of this process, the ALRC sent the Commission a series of draft papers dealing with the admissibility of reproductions and sought its comment. In 1982, the Commission received the ALRC’s *Secondary Evidence of Documents*³ research paper which dealt with the question of admissibility of reproductions. The Commission evaluated the implications raised by the research paper in light of its recommendations in Project No 27(I). The Commission also met with representatives of a company that marketed reproduction equipment to discuss microfilming techniques and proposals for reform.

Reference Withdrawn

As the ALRC had received a comprehensive reference on evidence in federal and territory courts,⁴ the Commission decided that further work on this project would be an unnecessary duplication. The reference was withdrawn in 1983. The Commission undertook to examine this aspect of the ALRC’s final report when it was submitted.⁵

1 *Evidence Act 1906 (WA)* ss 73B–73D.

2 The Committee was formally reconstituted as a Commission on 19 January 1973.

3 Australian Law Reform Commission, *Secondary Evidence of Documents* Research Paper No 4 (1982).

4 See Australian Law Reform Commission, *Evidence*, Report No 38 (1987).

5 For comments relating to the Commission’s consideration of ALRC Report No 38, see Law Reform Commission of Western Australia, *Review of the Criminal and Civil Justice System*, Project No 92 (1999) paras 20.13–20.15, 35.1–35.3, 35.11–35.12.