

# More Knowledge



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SUBJECT	REPRODUCTIONS AS EVIDENCE
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The Evidence act Division 3 Sections 106-115 covers the Admissibility of reproductions of business documents destroyed or unavailable:-

[Section 106 in summary says:-](#)

“(1) Subject to this part, a document that purports to be a copy of an original document made or used in the course of a business shall, upon proof that it is a reproduction made in good faith and that the original document has been destroyed or lost, whether wholly or in part, or that it is not reasonably practicable to produce the original document or to secure its production, be admissible in evidence in any legal proceeding to extent to which the contents of the original document of which it purports to be a copy would have been admissible and it shall, subject to proof of the same matter, be sufficient answer to legal process issued by a Court, requiring production of a document to the Court, for the person, required by that process to produce the document, to produce such a reproduction of the document.

(2) Without prejudice to any other mode of proof an affidavit purporting to have been made by a person at or about the time he made a machine-copy of or photographed a document:-

Stating his full name, address and occupation;

Identifying or describing the document and indicating whether the document is itself a reproduction;

Stating the day upon which he made the machine copy or photograph, the condition of the document at the time which respect to legibility and the extent of any damage thereto;

describing the machine or process by which he made the machine copy or photograph.

stating that the making of the machine-copy or photograph was properly carried out by the use of apparatus or materials in good working condition which the object of making a machine-copy, or as the case made be, a transparency of the document; and

Stating that the machine-copy or photograph is a machine copy or photograph made in good faith.

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



## 5.1 MICROFILM (REPRODUCTIONS FROM TRANSPARENCIES) AS EVIDENCE

Where a document is normally required to be retained for longer than THREE(3) YEARS it is sufficient compliance with such a requirement to preserve, in lieu of any such documents over three(3) years old, a transparency thereof made by using an approved machine together with the (2) affidavits:-

- (1) One relating to the transparency being a transparency under Section 107 (3) ; and
- (2) one relating to proof of the destruction under Section 112.

Transparencies (i.e. Microfilm and micrographics) of destroyed original documents, whose age would be greater than three year are admissible as evidence. Their reproductions must be made on "Approved machines", gazetted by the Minister and accompanied by an affidavit stating:

- (1) The reproduction was made from a transparency;
- (2) such of the information required by Section 115 of the Act Applies.

One affidavit is sufficient for series film (i.e. film contained in rolls) containing Serialised documents, i.e. invoices, dispatch docket etc

Documents that are or have been identified by a distinctive identification mark, i.e. file number, account number, or registration number.

Documents that purport from their contents to relate to the same subject matter.

provided the affidavit is part of that series of film, and it carried the following:-

- (1) serial numbers of the first and last document, or
- (2) The distinctive identification marks; or
- (3) identifies a person or persons to whom the subject matter relates.

Thus an affidavit made whilst the original documents are being filmed , and filmed as part of that film, can save time and problems should a reproduction from that film be required as evidence at a later date. this particularly assists when several and differing machines are being used in both photography and reproductions.

However, if the documents are destroyed the following also applies.

- (1)The transparency must be in existence for a reproduction to be admissible
- (2)The document reproduced must be certified to have been in existence for a period of at least twelve months after the document was made. (this provision does not apply to Banks, and registered Life Insurance Companies and bodies of the State and Federal Government.)

When documents have been destroyed proof of destruction made by affidavit stating, inter-alia

That he destroyed or caused the destruction of the documents, or

Can't find the document after reasonable search,

The document was used in his employers business,



That he had made transparencies of the series of documents including the affidavits by photographic them in their proper order.

It is essential therefore if one is contemplating the use of micrographics for the storage of documentary evidence that one considers the following.

Have you purchased "approved machines, or is the bureau using approved machines. (History has shown that almost all major manufacturers machines have always been approved.)

Have you checked your legal advisors for the correct wording of the various "Affidavits". A bureau service will have samples of these.

Have you made provision to ensure that a transparency will be in existence. i.e. have you made a security copy.

## 5.2 ADMISSIBILITY OF STATEMENTS PRODUCED BY COMPUTER.

Until the enactment of the Evidence Act of 1977 there was no great deal of provision for the admission of Computer Output as admissible evidence, however, in the process of upgrading the Evidence(Reproductions) Act into the Evidence Act, provision was made in Part VI, Section 95 for the Admissibility of Statements produced by Computer".

The word computer is defined in the Act in Section 95(7) purely for the purposes of that section, as "any device for storing and processing information, the word "Document" is defined, and in this case the definition of a "Record" used by the Records Management Association of Australia was incorporated in the Act. As this definition includes "(g) Any other record of information whatever" we can surmise that the computer printout, be a printer, display unit, computer output to Microfilm (COM), or imaging system will be covered in the definition as another record of information.

Section 95 is relatively mechanical in its terms. The conditions enumerated in Subsection 2, together with the other matter referred to in Sub Section 1 may be proved by a "Certificate" by the virtue of Subsection 4, which certificate must 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)". Whether, in any given case, it may be necessary to adduce further evidence beyond the terms of the certificate contemplated by Sub Section 4, will depend on the particular fact situation then prevailing. It should not be assumed, however that the certificate under Subsections 4 will be sufficient to enable a statement contained in a document produced by a computer to be admitted into evidence.

It is generally considered that COM is the Output of a Computer and is therefore covered by section 95 of the act and not Division 3. The requirement for the affidavits (which would be impossible to incorporate) required on rolls film therefore does not exist.

It could be surmised that such COM derived microfilm is admissible either under the general provision of Section 92 of the Act which deals with the admissibility of Civil Proceedings of Document or else Section 95 of the Act which deals with the admissibility of statements produced by computers.