

Queensland



ANNO TRICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE



No. 8 of 1988

An Act to provide with respect to taking evidence on
commission and for related purposes

[ASSENTED TO 7TH APRIL, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Evidence on Commission Act 1988*.

2. Arrangement of Act. This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1-2);

PART II—EXAMINATION OF WITNESSES ABROAD
(ss. 3-10).

PART II—EXAMINATION OF WITNESSES ABROAD

3. Definitions. (1) In this Part—

“Australia” includes the Territories of the Commonwealth (internal and external) for the government of which as a Territory provision is made by an Act of the Commonwealth;

“court” includes the Supreme Court, a District Court and a Magistrates Court under whatever Act constituted;

“criminal proceeding” includes a proceeding with a view to the conviction of an offender upon indictment and a proceeding with a view to the summary conviction of an offender upon a charge of an indictable offence.

(2) For the purposes of this Act, a proceeding shall be taken to arise out of or in connexion with another proceeding or an examination or investigation if any of the facts or circumstances relevant to that proceeding were relevant to the other proceeding or the examination or investigation.

4. Order made in proceeding. (1) In any civil or criminal proceeding before a court, the court may, on the application of any party to the proceeding, in its discretion and if it appears in the interests of justice to do so, make in relation to a person outside Australia an order—

(a) for the examination of the person on oath or affirmation at any place outside Australia before a judge or, as the case may be, a magistrate of the court, an officer of the court or such other person as the court may appoint;

(b) for the issue of a commission for the examination of the person on oath or affirmation at any place outside Australia;
or

(c) for the issue of a letter of request to the judicial or administrative authorities of a foreign country, as may be appropriate having regard to the law of that country, to take or cause to be taken the evidence of the person.

(2) In determining whether it is in the interests of justice to make an order under subsection (1) in relation to the taking of evidence of

a person, the matters to which the court shall have regard include the following:—

- (a) whether the person is willing or able to come to Queensland to give evidence in the proceeding;
- (b) whether the person will be able to give evidence material to any issue to be tried in the proceeding;
- (c) whether, having regard to the interests of the parties to the proceeding, justice will be better served by granting or refusing the order.

(3) Where a court makes an order under subsection (1) of the kind referred to in paragraph (a) or (b) thereof, the court may, in its discretion, at the time of making the order or at a subsequent time, give such directions as it thinks just relating to the procedure to be followed in and in relation to the examination, including directions as to the time, place and manner of the examination, and to any other matter that the court thinks relevant.

(4) Where a court makes, in relation to a proceeding, an order under subsection (1) of the kind referred to in paragraph (c) thereof, the court may, in its discretion, include in the order a request as to any matter relating to the taking of that evidence, including any of the following matters:—

- (a) the examination, cross-examination or re-examination of the person, whether the evidence of the person is given orally, upon affidavit or otherwise;
- (b) the attendance of the legal representative of each party to the proceeding and the participation of those persons in the examination in appropriate circumstances;
- (c) any prescribed matter.

5. Order made for purposes of proceeding or investigation. (1) For the purposes of—

- (a) an examination of witnesses in relation to an indictable offence being conducted by a justice with a view to the committal of any person for trial or sentence;

or

- (b) an investigation concerning the commission of an indictable offence being conducted by a member of the police force,

a Magistrates Court constituted under the *Justices Act 1886-1987* by a stipendiary magistrate may, in its discretion and if it appears in the interests of justice to do so, make, in relation to a person outside Australia, an order of a kind referred to in paragraph (c) of section 4 (1).

Such order may be made upon the application of the complainant or defendant in the case of a proceeding referred to in paragraph (a) or a member of the police force authorized in that behalf by the Director of Prosecutions in the case of an investigation referred to in paragraph (b).

(2) The provisions of section 4 (2) and (4) apply in relation to an application for an order under subsection (1).

(3) A court shall not make an order under subsection (1) for the purposes of an investigation referred to in paragraph (b) of that subsection unless it appears likely that a charge of an indictable offence will be laid if the order is made and will not be laid if the order is not made.

6. Procedure upon application for orders. (1) An application for an order under section 4 or for an order under section 5 for the purposes of a proceeding being an examination of witnesses in relation to an indictable offence—

(a) need not be served on any person unless the court to which it is made otherwise orders;

and

(b) may be heard and dealt with *ex parte*.

(2) An application for an order under section 5 for the purposes of an investigation concerning the commission of an indictable offence—

(a) shall not be served on any person;

and

(b) shall be heard and determined *ex parte*,

and all persons, other than the applicant, his legal or other representative, witnesses (if any) called for the applicant and persons acting in aid of the court, shall be excluded from the court.

(3) Upon an application for an order under section 4 or 5 the court—

(a) may receive evidence by way of affidavit;

and

(b) may admit and have regard to evidence that it considers to be relevant, credible and trustworthy, which would not ordinarily be admissible in proceedings before the court.

(4) The power vested in a court by section 4 or 5 may be exercised in chambers.

7. Admissibility of evidence. (1) A record of evidence taken pursuant to an order made under section 4 or 5, including all documents adduced upon the taking of the evidence and furnished with the record, shall, upon its receipt in Queensland, be held in the custody of the court that made the order.

(2) Subject to subsections (3) and (4), the evidence or a record of the evidence that appears, by certification or otherwise, to have been taken pursuant to an order made under section 4 or 5 is admissible as evidence of the matters contained therein—

(a) in the court proceeding in which the order was made under section 4 and in any proceeding arising out of or in connexion with that proceeding;

(b) in the examination of witnesses in relation to an indictable offence for the purposes of which the order was made under

section 5 and in any proceeding arising out of or in connexion with that examination;

- (c) in any examination of witnesses in relation to an indictable offence or other proceeding arising out of or in connexion with the investigation for the purposes of which the order was made under section 5 and in any proceeding arising out of or in connexion with that examination or other proceeding.

(3) The evidence or record of evidence is not admissible in a particular proceeding or examination of witnesses if—

- (a) it appears to the court conducting the proceeding or the justice conducting the examination that the person whose evidence it is is in Queensland and is able to attend the hearing;
or
- (b) the evidence would not have been admissible had it been given or produced by a witness at the hearing.

(4) If it appears in the interests of justice to do so, the court conducting a proceeding or the justice conducting an examination of witnesses may, in its or his discretion, exclude from the proceeding or examination evidence taken in an examination held pursuant to an order made under section 4 or 5 notwithstanding that it is otherwise admissible.

Such evidence shall not be excluded by reason only that there appear to be technical defects—

- in proceedings leading to the making of the order;
- in the commission or letter of request issued pursuant to the order;
- or
- in proceedings taken to give effect to the commission or letter of request.

(5) In this section a reference to evidence taken pursuant to an order includes reference to—

- (a) a document produced at the examination conducted pursuant to the order and any facsimile or other copy of such a document;
and
- (b) answers made, in writing or orally and reduced to writing, to any written interrogatories presented at the examination conducted pursuant to the order.

(6) A document that pursuant to this section is admissible in evidence in any proceeding or examination of witnesses, where it is a facsimile or other copy of an original, shall nevertheless be admissible in evidence and be treated in the proceeding or examination as if it were the original of which it is a copy.

(7) A copy of evidence or a record of evidence taken pursuant to an order made under section 5 for the purposes of an investigation concerning the commission of an indictable offence and held in the custody of a court in Queensland may be furnished by the proper officer of the court to a member of the police force who is conducting the investigation, upon his request.

8. Exclusion of evidence in criminal proceeding. This Part does not affect the power of a court conducting a criminal proceeding to exclude evidence that would, if admitted, operate unfairly against the defendant.

9. Operation of other laws. This Part is not intended to exclude or limit the operation of any law, or of any rule or regulation made under any law, that makes provision for the examination of witnesses outside Australia for the purposes of a proceeding in Queensland.

10. Regulations and rules of court. (1) The Governor in Council may make regulations, not inconsistent with this Part, prescribing all matters—

- (a) required or permitted by this Part to be prescribed;
or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part,

and in particular for and in relation to the practice and procedure of a court in proceedings for the making of an order under section 4 or 5.

(2) The power conferred by any Act to make rules regulating the practice and procedure of a court includes power to make rules, not inconsistent with this Part or with regulations made under this section, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Part and in particular for and in relation to the practice and procedure of the court in proceedings for the making of an order under section 4 or 5.