

Queensland



EVIDENCE ON COMMISSION ACT 1988

**Reprinted as in force on 11 December 1995
(includes amendments up to Act No. 58 of 1995)**

Reprint No. 1

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 11 December 1995.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use different spelling consistent with current drafting practice (s 26(2))
- use standard punctuation consistent with current drafting practice (s 27)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit unnecessary referential words (s 41)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43).

See endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
 - **table of changed names and titles**
 - **table of renumbered provisions.**

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EVIDENCE ON COMMISSION ACT 1988

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EVIDENCE ON COMMISSION ACT 1988

[as amended by all amendments that commenced on or before 11 December 1995]

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

PART 1—PRELIMINARY

Short title

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

PART 2—EXAMINATION OF WITNESSES ABROAD

Definitions

2. In this part—

“**Australia**” includes the external Territories.

“**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.

Meaning of proceeding arising out of another proceeding etc.

3. For the purposes of this Act, a proceeding shall be taken to arise out of or in connection 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.

Order made in proceeding

4.(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; or
- (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 subsection (1)(a) or (b), 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 subsection (1)(c), 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.

Order made for purposes of proceeding or investigation

5.(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 police officer;

a Magistrates Court constituted under the *Justices Act 1886* 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 section 4(1)(c).

(1A) Such order may be made upon the application of the complainant or defendant in the case of a proceeding referred to in subsection (1)(a) or a police officer authorised in that behalf by the Director of Public Prosecutions in the case of an investigation referred to in subsection (1)(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 subsection (1)(b) 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.

Procedure upon application for orders

6.(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, the applicant's 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.

Admissibility of evidence

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

(4A) Such evidence shall not be excluded by reason only that there appear to be technical defects—

- (a) in proceedings leading to the making of the order; or
- (b) in the commission or letter of request issued pursuant to the order; or
- (c) 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 police officer who is conducting the investigation, upon the police officer's request.

Exclusion of evidence in criminal proceeding

8. 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.

Operation of other laws

9. 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.

Regulation making power

10.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may make provision about the practice and procedure of a court in a proceeding for the making of an order under section 4 or 5.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 11 December 1995. Future amendments of the Evidence on Commission Act 1988 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 List of legislation

Evidence on Commission Act 1988 No. 8

date of assent 7 April 1988
 commenced on date of assent
 as amended by—

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
 commenced on date of assent

5 List of annotations

Definitions

s 2 prev s 2 om 1995 No. 58 s 4 sch 1
 pres s 2 (prev s 3(1)) renum 1995 No. 58 s 4 sch 1
 def “**Australia**” sub 1995 No. 58 s 4 sch 1

Meaning of proceeding arising out of another proceeding etc.

prov hdg ins 1995 No. 58 s 4 sch 1

s 3 prev s 3(2) renum 1995 No. 58 s 4 sch 1

Regulation making power

s 10 sub 1995 No. 58 s 4 sch 1

6 Table of changed names and titles

TABLE OF CHANGED NAMES AND TITLES
 under the Reprints Act 1992 ss 23 and 23A

Old	New	Reference provision
member of the police force	police officer	Police Service Administration Act 1990 s 11.1(1)(c) (see also s 1.4)
director (of prosecutions)	director (of public prosecutions)	Director of Public Prosecutions Act 1984 s 34

7 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

Previous	Renumbered as
5(1), 2nd sentence	5(1A)
7(4), 2nd sentence	7(4A)
7(4A), 1st unnum para	7(4A)(a)
7(4A), 2nd unnum para	7(4A)(b)
7(4A), 3rd unnum para	7(4A)(c)