



Evidence and Discovery Act 1867

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Reprint note

Powers under the *Reprints Act 1992* have been used in this reprint to bring the legislation into line with current drafting practice.

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Queensland

Evidence and Discovery Act 1867

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Evidence and Discovery Act 1867

An Act to consolidate and amend the law of evidence and discovery at common law

Part 1 Judgments decrees and orders

31 Copies of judgments decrees rules and orders of Supreme Court to be received in evidence if duly certified by master prothonotary chief clerk or deputy registrar respectively

- (1) Copies of all judgments decrees rules and orders filed or recorded in the Supreme Court of the said State at Brisbane shall be admitted as evidence of the contents thereof by all courts Judges justices and other legal tribunals and in every judicial proceeding in the said State without production of the originals of such documents respectively provided the copies of such orders and decrees made in the equitable jurisdiction of the said Supreme Court at Brisbane be certified under the hand of the master in equity of the said court and that such copies of all judgments decrees rules and orders made in the common law and ecclesiastical jurisdiction of the said Supreme Court at Brisbane be certified under the hand of the prothonotary or chief clerk thereof.
- (2) And they shall be deemed prima facie to be so certified if they purport to be so certified.

37A Powers as to oaths and notarial Acts abroad

- (1) In this section—
authorised employee means an employee of—

[s 37A]

- (a) the Commonwealth authorised under section 3(c) of the *Consular Fees Act 1955* (Cwlth); or
- (b) the Australian Trade Commission authorised under section 3(d) of the *Consular Fees Act 1955* (Cwlth).

consular officer means a person appointed to hold or act in any of the following offices (being an office of the United Kingdom of Great Britain and Northern Ireland or of some other country which is a member of the Commonwealth of Nations) in a country or place outside the United Kingdom of Great Britain and Northern Ireland or, as the case may be, such other country, that is to say—

- (a) ambassador; or
 - (b) high commissioner; or
 - (c) minister; or
 - (d) head of mission; or
 - (e) commissioner; or
 - (f) charge d'affaires; or
 - (g) counsellor or secretary at an embassy, high commissioner's office, legation or other post; or
 - (h) consul-general; or
 - (i) consul; or
 - (j) vice-consul; or
 - (k) pro-consul; or
 - (l) trade commissioner; or
 - (m) consular agent.
- (2) Where any oath, affidavit, or notarial act is required for the purpose of any court or matter in Queensland, any such oath or affidavit, and any such notarial act which, if done in the United Kingdom of Great Britain and Northern Ireland, a notary public could do may, in any country or place outside the Commonwealth of Australia, be made, sworn, or done

before a consular officer or authorised employee exercising his or her functions in that country or place.

- (2A) Every such oath, affidavit, or notarial act made, sworn, or done before any such consular officer or authorised employee shall be as effectual as if duly made, sworn, or done before a lawful authority in Queensland.
- (3) Any document required, authorised, or permitted by any Act or law of Queensland to be attested or verified by, or sealed, or signed, or acknowledged or declared before a justice of the peace of this State may, in any country or place outside the Commonwealth of Australia, be attested, or verified by, or sealed, or signed, or acknowledged or declared by or before a consular officer or authorised employee exercising his or her functions in that country or place.
- (3A) Every document attested or verified by, or sealed, or signed, or acknowledged or declared before any such consular officer or authorised employee shall be as effectual as if duly attested, or verified by, or sealed, or sworn, or acknowledged or declared before a justice of the peace in Queensland.
- (4) Where any enactment in force at the passing of the *Evidence and Discovery Acts Amendment Act 1960* or thereafter in force requires, authorises, or permits any notarial act to be done by, or any oath or affidavit to be made or taken or any document to be sealed or signed or acknowledged or declared before, any person appointed to hold or act in any diplomatic or consular office of the United Kingdom of Great Britain and Northern Ireland, whether that person is in that enactment referred to as a British ambassador, envoy, minister, charge d'affaires, secretary of embassy or legation, consul-general, consul, vice-consul, pro-consul, or consular agent, or by any other title, then the same may be done by or, as the case may be, made, or taken, or sealed, or signed, or acknowledged or declared in any country or place outside the Commonwealth of Australia before any consular officer or authorised employee exercising his or her functions in that country or place.
- (5) For the purposes of this subsection—

enactment includes a provision of any order in council, regulation, rule, by-law, or other instrument made pursuant to any Act of this State as well as any enactment of the Legislature of this State.

38 Certain documents to be evidence without proof of seal or signature of official persons

Any document purporting to have affixed impressed or subscribed thereon or thereto the seal and signature of any British ambassador envoy minister charge d'affaires secretary of embassy or legation consul-general consul vice-consul acting consul pro-consul or consular agent or of any Australian consular officer or an authorised employee within the meaning of the *Australian Consular Officers' Notarial Powers and Evidence Act 1946* or of any other person who is a consular officer or an authorised employee within the meaning of section 37A of this Act, in testimony of any oath affidavit affirmation or notarial act having been administered sworn affirmed had or done by or before him or her shall be deemed prima facie to be so affixed impressed or subscribed and shall accordingly be admitted in evidence without proof of any such seal and signature being the seal and signature of the person whose seal and signature the same purport to be or of the official character of such person.

Part 2 Speeches or addresses

43 Speeches to the jury

- (1) Upon the trial of any civil cause the addresses to the court or jury shall be regulated as follows—the party who begins or his or her counsel shall be allowed in the event of the party's opponent not announcing at the close of the case of the party who begins his or her intention to adduce evidence to address

the court or jury a second time at the close of such case for the purpose of summing up the evidence.

- (2) And the party on the other side or his or her counsel shall be allowed to open the case and also to sum up the evidence (if any).
- (3) And the right to reply shall be the same as at present.

61 Such examinations may be read without proof

Affidavits and affirmations duly taken under this Act shall and may be received read and made use of in and before any court of law or equity or other judicature whatever in the State and the Judges and officers thereof in or in relation to any action suit cause matter or proceeding in or before any such court or judicature in like manner and shall be of the same force and effect as affidavits and affirmations taken in or before such court or judicature or by any person duly commissioned or authorised by such court or judicature to take such affidavits or affirmations and shall be filed and dealt with accordingly.

67 Depositions of prisoners' witnesses dying before trial—attendance of witnesses for prisoner

- (1) In every case where any witness who shall have been called and examined before the justice or justices by and on behalf of a party committed or held to bail shall happen to die before the trial and in cases in which the witness shall be so ill as not to be able to travel and in all cases in which the justices who committed the prisoner or held the prisoner to bail shall have certified before such committal or holding to bail that the evidence of the witness is material and that the prisoner is in their belief willing to attend the trial but will be unable to bear in the expense of attendance the deposition of such witness may be read in evidence to the jury in the prisoner's defence if the party on trial shall so require.
- (2) However, where any witness has in due time before the trial been subpoenaed by the Crown such certificate of such justices shall not render the deposition admissible.

