

Queensland



ANNO UNDECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 33 of 1962

An Act to make new Provision for the Recording of Legal Proceedings

[ASSENTED TO 19TH DECEMBER, 1962]

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:—

1. Short title. (1) This Act may be cited as "*The Recording of Evidence Act of 1962.*"

(2) **Application of this Act to legal proceedings already commenced.** This Act may be applied to any legal proceeding commenced before and in progress at the commencement of this Act.

2. Severability. This Act, including every regulation hereunder, shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment hereof or provision of any regulation hereunder would but for this section have been construed as being in excess of that power, it shall nevertheless be a valid enactment or provision to the extent to which it is not in excess of that power.

3. Repeal of 6 Geo. V. No. 26, Savings. (1) "*The Shorthand Reporters in Courts of Summary Jurisdiction Act of 1915*" (in this subsection referred to as "the repealed Act") is hereby repealed:

Provided that, but without limiting the operation of "*The Acts Interpretation Acts, 1954 to 1962*"—

(a) unless otherwise provided by this Act, every person who immediately prior to the commencement of this Act holds the appointment as shorthand reporter under and for the purposes of the repealed Act shall be deemed to have been appointed as a shorthand reporter under and for the purposes of this Act and, subject to and for the purposes of this Act and until his appointment is determined, shall continue to hold his appointment without further or other appointment under this Act;

(b) the repealed Act shall be deemed to continue in force notwithstanding such repeal in relation to—

(i) all proceedings reported thereunder prior to the commencement of this Act; and

(ii) all proceedings commenced before and in progress at the commencement of this Act of which shorthand notes have been taken prior to the commencement of this Act,

and, without limiting the generality of the foregoing, for the purpose of giving future effect to all transcriptions of those reports and certificates as to those transcriptions.

(2) **Other Savings.** This Act shall not prejudice any shorthand report taken prior to the commencement of this Act or any shorthand report taken otherwise than under this Act and after the commencement hereof of any proceeding or part of any proceeding or the transcription thereof or any certificate as to that transcription.

4. Meaning of terms. (1) In this Act unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say:—

"Court" includes the Supreme Court and any Judge thereof, a District Court and any Judge thereof, the Industrial Court, a Magistrates Court, and any court established and constituted by or under any law of this State;

"Judicial person" includes any stipendiary magistrate, industrial magistrate, justice, or coroner, and any arbitrator, commissioner, officer, registrar, or other person or body having by law or by consent of parties authority to hear or receive evidence or examine witnesses or other persons;

"Legal proceeding" includes any proceeding (whether civil or criminal) in or before any court, any proceeding before justices, and any proceeding before any court, tribunal, or person (including any inquiry, examination, or arbitration) in which evidence is or may be given, as well as any part of any legal proceeding;

- “Mechanical means”—In relation to the recording under this Act of any legal proceeding, the recording by a tape recording machine or any mechanical, electronic, or other device (in this Act referred to as “a mechanical device”);
- “Minister”—The Minister for Justice or any other Minister of the Crown for the time being administering this Act;
- “Recorder”—A person holding for the time being the appointment under and for the purposes of this Act as a recorder;
- “Record under this Act”—In relation to any legal proceeding, the evidence (if any) and other matter (if any) recorded in any manner authorised by this Act;
- “Shorthand reporter”—A person holding for the time being the appointment under and for the purposes of this Act as a shorthand reporter;
- “Transcription”—In relation to any record under this Act, the transcription to longhand writing, typewriting, or other mode of the record.

5. Power to direct recording under this Act. (1) In any legal proceeding in or before any Court or judicial person, the Court or judicial person may in its or his discretion, with or without any application for the purpose, direct that any evidence to be given and any ruling, direction, address, summing up, and other matter in the legal proceeding (or of any part of the legal proceeding in question) be recorded—

- (a) (if a shorthand reporter is available) in shorthand; or
- (b) (if a mechanical device and a recorder are available) by the mechanical device; or
- (c) (if a shorthand reporter, mechanical device, and a recorder are available) in shorthand or by the mechanical device or partly in shorthand and partly by the mechanical device.

(2) The recording under this Act pursuant to any such direction shall be made by any one or more shorthand reporters who are available or, if the recording is made by mechanical means, under the supervision of or operation by a recorder or recorders who are available.

6. Power to appoint shorthand reporters and recorders. (1) The Governor in Council may from time to time for the purposes of this Act appoint fit and proper persons to be—

- (a) shorthand reporters;
- (b) (in relation to the recording under this Act of legal proceedings by mechanical means) recorders:

Provided that if so requested by the Court or judicial person who has directed the recording under this Act of the legal proceeding by shorthand or mechanical means, the Minister may appoint a shorthand reporter or, as the case may be, recorder for the purpose of a particular legal proceeding.

- (2) A person may hold—
 - (a) any such office in conjunction with any other office held by him;
 - (b) the office of shorthand reporter as well as the office of recorder.

(3) Subject to subsection (2) of this section, the provisions of this Act shall not prejudice or otherwise affect the application of the provisions of "*The Public Service Acts, 1922 to 1960*," to any office referred to in subsection (1) of this section, or to any person appointed or deemed to be appointed to any such office, and shall not prejudice or otherwise affect any lawful exemption from those Acts of any such office or officer.

(4) The Minister may cause—

- (a) any appointment made under this section;
- (b) any appointment as a shorthand reporter continued by this Act in force for the purposes hereof;
- (c) any cancellation or other determination of any such appointment,

to be notified in the *Gazette* and judicial notice shall be taken of every such notification.

7. Oath of office. Every person appointed or deemed to have been appointed under this Act as a shorthand reporter and every person appointed under this Act as a recorder for the purposes of this Act shall before entering upon the duties of his office under this Act take before a Judge, a Judge of a District Court, or a stipendiary magistrate, or in the case of a shorthand reporter or a recorder appointed by the Minister for the purpose of the recording under this Act of a particular legal proceeding, the Court or judicial person before whom the legal proceeding is to be recorded (each of whom is hereby authorised to administer or cause to be administered the oath to such persons or person) the following oath (with such adaptations thereof as are necessary under the circumstances):—

"I swear by Almighty God that I will faithfully record all legal proceedings which I am required to record, whether in shorthand or by mechanical means, under "*The Recording of Evidence Act of 1962*", and that I will faithfully transcribe or cause to be transcribed all legal proceedings recorded under that Act which I am required thereunder to transcribe."

8. Persons recording under this Act to be officers of the Court. Every person recording under this Act any legal proceeding shall for the time being—

- (a) be an officer of the Court or tribunal in or for which he is required to record the evidence or other matter in the legal proceeding;
- (b) be under the direction of the Court or judicial person in which or before whom the evidence or other matter in the legal proceeding is received or heard, in relation to the performing of his duty in recording and, whilst the legal proceeding is in progress, transcribing or causing to be transcribed such evidence or other matter.

9. Transcription may be made by another officer. The record under this Act of any legal proceeding may be transcribed at any time by or under the supervision of some shorthand reporter or recorder, as the case requires, other than the person who acted as the shorthand reporter or recorder at the making of the record.

10. Transcription to be *primâ facie* evidence. Every record under this Act of any legal proceeding and any transcription thereof when certified to as correct by a shorthand reporter or recorder, according as the record was made in shorthand or by mechanical means, shall be received by every Court or judicial person as *primâ facie* evidence of anything therein recorded.

11. Person giving evidence need not sign deposition, &c. (1) Notwithstanding anything to the contrary contained in any Act, rule, or practice, in all cases where it is prescribed or required by law that the deposition of a witness is to be read over to and signed by him, or that any evidence or other matter is to be reduced to or taken down in writing or signed, or there is some other provision of the law to the like effect, it shall be sufficient for all purposes if the deposition, evidence, or other matter, as the case may be, is recorded under this Act and there is made a transcription thereof, certified to as correct in accordance with section ten of this Act, which certified transcription need not be signed by the witness or by the Court or judicial person in or before whom the deposition, evidence, or other matter is taken or given.

(2) Any reference in any Act to the deposition of any witness or to the depositions of any witnesses taken shall, where the evidence of the witness or witnesses has been recorded under this Act, be read as a reference to a transcription of that record under this Act certified to as correct in accordance with section ten of this Act.

12. Offences. (1) (a) A person shall not directly or indirectly hold himself out as—

- (i) a shorthand reporter; or
- (ii) a recorder,

unless he then holds such appointment under and for the purposes of this Act.

Penalty: One hundred pounds.

(b) Proceedings for an offence against this subsection may be taken in a summary way under "*The Justices Acts, 1886 to 1960.*"

(2) Any person (whether a shorthand reporter or a recorder or not) who—

- (a) wilfully records or transcribes or causes any other person to record or transcribe, in a false or incorrect manner any evidence or other matter required to be recorded under this Act;
- (b) unless authorised by or under this Act, destroys any record under this Act;
- (c) wilfully alters or falsifies or causes or permits anyone to alter or falsify any record under this Act or any transcription thereof or any certificate under and for the purposes of this Act;
- (d) wilfully certifies as correct any transcription of any record under this Act, which is false or incorrect,

shall be guilty of an indictable offence and is liable to imprisonment with hard labour for five years.

13. Regulations. (1) The Governor in Council may from time to time make regulations providing for all or any purposes, whether generally or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or convenient to carry out the objects and purposes of this Act, and, where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for and supplying such omission or insufficiency.

(2) Without limiting the generality of the foregoing provisions of this section and without derogating from the other provisions of this Act, regulations may be made for or in respect of all or any of the purposes, matters, and things following:—

- (a) prescribing the functions and duties of shorthand reporters and recorders under and for the purposes of this Act;
- (b) providing for and regulating and controlling the custody and manner in which records under this Act and transcriptions thereof are to be kept and the period for which or circumstances when the same are to be retained unless sooner destroyed under this Act;
- (c) providing for and regulating and controlling the destruction of any records under this Act and providing for the keeping and future effectiveness of transcriptions of records so destroyed;
- (d) prescribing the type and class of equipment to be used if so prescribed in the recording of any legal proceeding by mechanical means and the manner in which it is to be operated;
- (e) providing for and regulating and controlling the issuing of transcriptions of any record under this Act and prescribing the persons to whom the same may be issued;
- (f) providing for and fixing the fees to be paid in respect of the recording of all or any legal proceedings, in respect of transcriptions and copies of transcriptions thereof, and in respect of other prescribed matters, or for any of these, and prescribing the persons by whom all or any such fees shall be payable and providing for the recovery of and exemptions from such fees;
- (g) prescribing penalties for any contraventions of the regulations, but so that no such penalty shall exceed one hundred pounds.

14. Publication of regulations, &c. (1) Every regulation made under this Act shall—

- (a) be published in the *Gazette*;
- (b) upon its publication in the *Gazette* be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
- (c) take effect from the date of such publications unless, in the case of any such regulation, a later date is specified in that or any other regulation, for its commencement when in such event it shall take effect from that later date; and

(d) be laid before Parliament within fourteen sitting days after such publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2) If Parliament passes a resolution of which notice has been given at any time within fourteen days after any such regulation has been laid before Parliament disallowing such regulation, or part thereof, that regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further regulation.