

Queensland



EVIDENCE ACT 1977

**Reprinted as in force on 5 January 2004
(includes commenced amendments up to 2003 Act No. 77)**

Reprint No. 7D

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- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
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Also see endnotes for information about—

- **when provisions commenced**
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Queensland



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EVIDENCE ACT 1977

[as amended by all amendments that commenced on or before 5 January 2004]

An Act to consolidate, amend and reform the law of evidence and for related purposes

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Evidence Act 1977*.

2 Act binds Crown

This Act binds the Crown not only in right of the State of Queensland but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

2A Notes in text

A note in the text of this Act is part of the Act.

3 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

4 Meaning of “copy” of document etc.

In this Act, any reference to a copy of a document includes—

- (a) in the case of a document falling within paragraph (e) but not paragraph (f) of the definition “document” in schedule 3—a transcript of the sounds or other data embodied therein; and

- (b) in the case of a document falling within paragraph (f) but not paragraph (e) of that definition—a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not; and
- (c) in the case of a document falling within both those paragraphs—such a transcript together with such a reproduction or still reproduction; and
- (d) in the case of a document not falling within the said paragraph (f) of which a visual image is embodied in a document falling within that paragraph—a reproduction or still reproduction of that image, whether enlarged or not;

and any reference to a copy of the material part of a document shall be construed accordingly.

5 Meaning of document purporting to be of certain character etc.

For the purposes of this Act a document, including any instrument or part of an instrument, purports—

- (a) to be of a certain character; or
- (b) to have been produced or authenticated at a certain time, in a certain manner, by a certain person or body, or by a person having a certain qualification or occupying a certain office; or
- (c) any other matter whatever;

if the document expressly or impliedly represents that matter or a court can assume that matter from the contents of the document or otherwise.

PART 2—WITNESSES

Division 1—Who may testify

6 Witnesses interested or convicted of offence

No person shall be excluded from giving evidence in any proceeding on the ground—

- (a) that the person has or may have an interest in the matter in question, or in the result of the proceeding; or
- (b) that the person has previously been convicted of any offence.

7 Parties, their wives and husbands as witnesses

(1) Each of the parties to a proceeding (not being a criminal proceeding) and a person on whose behalf such a proceeding is brought or defended is competent and compellable to give evidence on behalf of either or any of the parties to the proceeding.

(2) The husband or wife of a party to a proceeding (not being a criminal proceeding) and the husband or wife of a person on whose behalf such a proceeding is brought or defended is competent and compellable to give evidence on behalf of either or any of the parties to the proceeding.

8 Witnesses in a criminal proceeding

(1) In a criminal proceeding, each person charged is competent to give evidence on behalf of the defence (whether that person is charged solely or jointly with any other person) but is not compellable to do so.

(2) The husband or wife of an accused person in a criminal proceeding is competent and compellable to give evidence in the proceeding in any court, either for the prosecution or for the defence, and without the consent of the accused.

(3) In a criminal proceeding, a husband or wife is competent and compellable to disclose communications made between the husband and the wife during the marriage.

Division 1A—Competency of witnesses and capacity to be sworn

9 Presumption as to competency

(1) Every person, including a child, is presumed to be—

- (a) competent to give evidence in a proceeding; and
- (b) competent to give evidence in a proceeding on oath.

(2) Subsection (1) is subject to this division.

9A Competency to give evidence

(1) This section applies if, in a particular case, an issue is raised, by a party to the proceeding or the court, about the competency of a person called as a witness in the proceeding to give evidence.

(2) The person is competent to give evidence in the proceeding if, in the court's opinion, the person is able to give an intelligible account of events which he or she has observed or experienced.

(3) Subsection (2) applies even though the evidence is not given on oath.

9B Competency to give sworn evidence

(1) This section applies if, in a particular case, an issue is raised, by a party to the proceeding or the court, about the competency of a person called as a witness in the proceeding to give evidence on oath.

(2) The person is competent to give evidence in the proceeding on oath if, in the court's opinion, the person understands that—

- (a) the giving of evidence is a serious matter; and
- (b) in giving evidence, he or she has an obligation to tell the truth that is over and above the ordinary duty to tell the truth.

(3) If the person is competent to give evidence in the proceeding but is not competent to give the evidence on oath, the court must explain to the person the duty of speaking the truth.

Note—

The *Oaths Act 1867*, section 17, makes provision for a person called as a witness to make his or her solemn affirmation instead of being sworn.

9C Expert evidence about witness's ability to give evidence

(1) This section applies to a proceeding if—

- (a) under section 9A, the court is deciding whether a person is able to give an intelligible account of events which he or she has observed or experienced; or
- (b) under section 9B, the court is deciding whether a person understands the matters mentioned in section 9B(2)(a) and (b); or
- (c) the evidence of a child under 12 years is admitted.

(2) Expert evidence is admissible in the proceeding about the person's or child's level of intelligence, including the person's or child's powers of perception, memory and expression, or another matter relevant to the person's or child's competence to give evidence, competence to give evidence on oath, or ability to give reliable evidence.

9D Evidence admitted under s 9A

(1) Evidence admitted under section 9A that is written down as a deposition is taken to be a deposition for all purposes.

(2) If evidence is admitted under section 9A—

- (a) the probative value of the evidence is not decreased only because the evidence is not given on oath; and
- (b) a person charged with an offence may be convicted on the evidence; and
- (c) the person giving the evidence is liable to be convicted of perjury to the same extent as if the person had given the evidence on oath.

Division 1B—Special provisions for child witnesses

9E Principles for dealing with a child witness

(1) Because a child tends to be vulnerable in dealings with a person in authority, it is the Parliament's intention that a child who is a witness in a proceeding should be given the benefit of special measures when giving the child's evidence.

(2) The following general principles apply when dealing with a child witness in a proceeding—

- (a) the child is to be treated with dignity, respect and compassion;
- (b) measures should be taken to limit, to the greatest practical extent, the distress or trauma suffered by the child when giving evidence;
- (c) the child should not be intimidated in cross-examination;
- (d) the proceeding should be resolved as quickly as possible.

(3) In this section—

“**child**” means a child under 16 years.

Division 2—Privileges and obligations of witnesses

10 Privilege against self incrimination

(1) Nothing in this Act shall render any person compellable to answer any question tending to criminate the person.

(2) However, in a criminal proceeding where a person charged gives evidence, the person’s liability to answer any such question shall be governed by section 15.

12 Admissibility of evidence as to access by husband or wife

Notwithstanding anything contained in any Act or any rule of law, neither the evidence of any person nor any statement made out of court by any person shall be inadmissible in any proceeding whatever by reason of the fact that it is tendered with the object of proving, or that it proves or tends to prove, that marital intercourse did or did not take place at any time or during any period between that person and a person who is or was the person’s wife or husband or that any child is or was, or is not or was not, their legitimate child.

13 Compellability of parties and witnesses as to evidence of adultery

Notwithstanding anything in any Act or any rule of law, in any proceeding whatever—

- (a) a party shall not be entitled to refuse to answer any interrogatory or to give discovery of documents;
- (b) a witness, whether a party or not, shall not be entitled to refuse to answer any question, whether relevant to any issue or relating to credit merely;

on the ground solely that such answer or discovery would or might relate to, or would tend or might tend to establish, adultery by that party or that witness, or by any other person with that party or that witness, as the case may be.

14 Abolition of certain privileges

(1) The following rules of law are hereby abrogated except in relation to criminal proceedings, that is to say—

- (a) the rule whereby, in any proceeding, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose the person to a forfeiture;
- (b) the rule whereby, in any proceeding, a person other than a party to the proceeding cannot be compelled to produce any deed or other document relating to the person's title to any land.

(2) The rule of law whereby, in any civil proceeding, a party to the proceeding cannot be compelled to produce any document relating solely to the party's own case and in no way tending to impeach that case or support the case of any opposing party is hereby abrogated.

Division 3—Examination and cross-examination of witnesses**15 Questioning a person charged in a criminal proceeding**

(1) Where in a criminal proceeding a person charged gives evidence, the person shall not be entitled to refuse to answer a question or produce a document or thing on the ground that to do so would tend to prove the commission by the person of the offence with which the person is there charged.

(2) Where in a criminal proceeding a person charged gives evidence, the person shall not be asked, and if asked shall not be required to answer, any question tending to show that the person has committed or been convicted of or been charged with any offence other than that with which the person is there charged, or is of bad character, unless—

- (a) the question is directed to showing a matter of which the proof is admissible evidence to show that the person is guilty of the offence with which the person is there charged;
- (b) the question is directed to showing a matter of which the proof is admissible evidence to show that any other person charged in that criminal proceeding is not guilty of the offence with which that other person is there charged;
- (c) the person has personally or by counsel asked questions of any witness with a view to establishing the person's own good

character, or has given evidence of the person's good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution or of any other person charged in that criminal proceeding;

- (d) the person has given evidence against any other person charged in that criminal proceeding.

(3) A question of a kind mentioned in subsection (2)(a), (b) or (c) may be asked only with the court's permission.

(4) If the proceeding is a trial by jury, an application for the court's permission under subsection (3) must be made in the absence of the jury.

15A Questioning of witness as to certain convictions

A witness in any criminal or civil proceeding shall not be asked and if asked shall not be required to answer any question tending to show that the witness has committed or been convicted of or been charged with any offence if, where the witness has been convicted of the offence—

- (a) the conviction is one in relation to which a rehabilitation period is capable of running pursuant to the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and
- (b) in relation to the conviction the rehabilitation period within the meaning of that Act is not running at the time of the criminal or civil proceeding;

unless the permission of the court to ask the question has first been obtained, such permission to be applied for in a trial by jury in the absence of the jury.

16 Witness may be questioned as to previous conviction

Subject to this Act, a witness may be questioned as to whether the witness has been convicted of any indictable or other offence and upon being so questioned, if the witness either denies the fact or refuses to answer, it shall be lawful for the party so questioning to prove such conviction.

17 How far a party may discredit the party's own witness

(1) A party producing a witness shall not be allowed to impeach the credit of the witness by general evidence of bad character but may contradict the witness by other evidence, or (in case the witness in the opinion of the court proves adverse) may by leave of the court prove that the witness has made at other times a statement inconsistent with the present testimony of the witness.

(2) However, before such last mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness and the witness must be asked whether or not the witness has made such statement.

18 Proof of previous inconsistent statement of witness

(1) If a witness upon cross-examination as to a former statement made by the witness relative to the subject matter of the proceeding and inconsistent with the present testimony of the witness does not distinctly admit that the witness has made such statement, proof may be given that the witness did in fact make it.

(2) However, before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness and the witness must be asked whether or not the witness has made such statement.

19 Witness may be cross-examined as to written statement without being shown it

(1) A witness may be cross-examined as to a previous statement made by the witness in writing or reduced into writing relative to the subject matter of the proceeding without such writing being shown to the witness.

(1A) However, if it is intended to contradict the witness by the writing the attention of the witness must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting the witness.

(2) A court may at any time during the hearing of a proceeding direct that the writing containing a statement referred to in subsection (1) be produced to the court and the court may make such use in the proceeding of the writing as the court thinks fit.

20 Cross-examination as to credit

(1) The court may disallow a question as to credit put to a witness in cross-examination, or inform the witness the question need not be answered, if the court considers an admission of the question's truth would not materially impair confidence in the reliability of the witness's evidence.

(2) In this section—

“question as to credit”, for a witness, means a question that is not relevant to the proceeding except that an admission of the question's truth may affect the witness's credit by injuring the witness's character.

21 Improper questions

(1) The court may disallow a question put to a witness in cross-examination or inform a witness a question need not be answered, if the court considers the question is an improper question.

(2) In deciding whether a question is an improper question, the court must take into account—

- (a) any mental, intellectual or physical impairment the witness has or appears to have; and
- (b) any other matter about the witness the court considers relevant, including, for example, age, education, level of understanding, cultural background or relationship to any party to the proceeding.

(3) Subsection (2) does not limit the matters the court may take into account in deciding whether a question is an improper question.

(4) In this section—

“improper question” means a question that uses inappropriate language or is misleading, confusing, annoying, harassing, intimidating, offensive, oppressive or repetitive.

Division 4—Evidence of special witnesses

21A Evidence of special witnesses

(1) In this section—

“relevant matter”, for a person, means the person’s age, education, level of understanding, cultural background or relationship to any party to the proceeding, the nature of the subject-matter of the evidence, or another matter the court considers relevant.

“special witness” means—

- (a) a child under 16 years; or
- (b) a person who, in the court’s opinion—
 - (i) would, as a result of a mental, intellectual or physical impairment or a relevant matter, be likely to be disadvantaged as a witness; or
 - (ii) would be likely to suffer severe emotional trauma; or
 - (iii) would be likely to be so intimidated as to be disadvantaged as a witness;

if required to give evidence in accordance with the usual rules and practice of the court.

(1A) This section does not apply to a child to the extent division 4A¹ applies to the child.

(1B) A party to a proceeding or, in a criminal proceeding, the person charged may be a special witness.

(2) Where a special witness is to give or is giving evidence in any proceeding, the court may, of its own motion or upon application made by a party to the proceeding, make or give 1 or more of the following orders or directions—

- (a) in the case of a criminal proceeding—that the person charged be excluded from the room in which the court is sitting or be obscured from the view of the special witness while the special witness is giving evidence or is required to appear in court for any other purpose;
- (b) that, while the special witness is giving evidence, all persons other than those specified by the court be excluded from the room in which it is sitting;
- (c) that the special witness give evidence in a room—
 - (i) other than that in which the court is sitting; and

¹ Division 4A (Evidence of affected children)

- (ii) from which all persons other than those specified by the court are excluded;
- (d) that a person approved by the court be present while the special witness is giving evidence or is required to appear in court for any other purpose in order to provide emotional support to the special witness;
- (e) that a video-taped recording of the evidence of the special witness or any portion of it be made under such conditions as are specified in the order and that the videotaped evidence be viewed and heard in the proceeding instead of the direct testimony of the special witness;
- (f) another order or direction the court considers appropriate about the giving of evidence by the special witness, including, for example, any of the following—
 - (i) a direction about rest breaks for the special witness;
 - (ii) a direction that questions for the special witness be kept simple;
 - (iii) a direction that questions for the special witness be limited by time;
 - (iv) a direction that the number of questions for a special witness on a particular issue be limited.

(4) Subject to any order made pursuant to subsection (5), in any criminal proceeding an order shall not be made pursuant to subsection (2)(a), (b) or (c) excluding the person charged from the room in which a special witness is giving evidence unless provision is made, by means of an electronic device or otherwise, for that person to see and hear the special witness while the special witness is giving evidence.

(5) Where the making of a video-taped recording of the evidence of a special witness is ordered pursuant to subsection (2)(e), the court may further order that all persons other than those specified by the court be excluded from the room in which the special witness is giving that evidence.

(5A) However, any person entitled in the proceeding to examine or cross-examine the special witness shall be given reasonable opportunity to view any portion of the video-taped recording of the evidence relevant to the conduct of that examination or cross-examination.

(6) A video-taped recording under this section of evidence given by a special witness, or a lawfully edited copy of the recording—

- (a) is as admissible as if the evidence were given orally in the proceeding in accordance with the usual rules and practice of the court; and
- (b) is, unless the relevant court otherwise orders, admissible in—
 - (i) any rehearing or re-trial of, or appeal from, the proceeding; or
 - (ii) in the case of evidence given for a criminal proceeding—
 - (A) another proceeding in the same court for the relevant charge or for another charge arising out of the same, or the same set of, circumstances; or
 - (B) a civil proceeding arising from the commission of the offence.

(7) The room in which a special witness gives evidence pursuant to an order made pursuant to subsection (2)(c) or (e) shall be deemed to be part of the court in which the proceeding is being held.

(8) If evidence is given, or to be given, in a proceeding on indictment under an order or direction mentioned in subsection (2)(a) to (e), the judge presiding at the proceeding must instruct the jury that—

- (a) they should not draw any inference as to the defendant's guilt from the order or direction; and
- (b) the probative value of the evidence is not increased or decreased because of the order or direction; and
- (c) the evidence is not to be given any greater or lesser weight because of the order or direction.

Division 4A—Evidence of affected children

Subdivision 1—Preliminary

21AA Purposes of div 4A

The purposes of this division are—

- (a) to preserve, to the greatest extent practicable, the integrity of an affected child's evidence; and
- (b) to require, wherever practicable, that an affected child's evidence be taken in an environment that limits, to the greatest extent practicable, the distress and trauma that might otherwise be experienced by the child when giving evidence.

21AB How purposes are to be achieved

To achieve the purposes of this division, the division prescribes the following measures for an affected child when giving evidence for a relevant proceeding—

- (a) for a criminal proceeding—
 - (i) the child's evidence is to be pre-recorded in the presence of a judicial officer, but in advance of the proceeding;
 - (ii) if the measure in paragraph (a) can not be given effect, the child's evidence is to be given at the proceeding, but with the use of an audio visual link or with the benefit of a screen;
 - (iii) for a committal proceeding, the child's evidence-in chief is to be given only as a statement and, ordinarily, the child is not to be called as a witness for cross-examination;
- (b) for a civil proceeding, the child's evidence is to be given at the proceeding with the use of an audio visual link or with the benefit of a screen.

21AC Definitions for div 4A

In this division—

“affected child” means a child who is a witness in a relevant proceeding and who is not a defendant in the proceeding.

“child” see section 21AD.

“civil proceeding arising from the commission of a relevant offence” does not include a proceeding for a domestic violence order under the *Domestic and Family Violence Protection Act 1989*.

“counsel” includes solicitor.

“defendant” means—

- (a) in a criminal proceeding—a person charged with an offence; or
- (b) in a civil proceeding arising from the commission of a relevant offence—a person whose act or omission is complained of.

“offence involving violence” means an offence against any of the following provisions of the Criminal Code—

- a provision of chapter 28²
- a provision of chapter 29³ other than section 317A, 318, 319, 319A, 321, 321A, 327, 329, 330, 331, 332, 333 or 334
- sections 335, 339, 340, 354, 354A and 355
- a provision of chapter 33A⁴
- sections 363, 363A and 364.

“offence of a sexual nature” means an offence against any of the following provisions of the Criminal Code—

- a provision of chapter 22⁵ other than section 224, 225 or 226
- a provision of chapter 32.⁶

“preliminary hearing” means a hearing under section 21AK.⁷

“prescribed relationship”, between a child who is a witness in a proceeding and a defendant in the proceeding, means any of the following—

- (a) a relationship, regardless of whether it is a half, adoptive or step relationship, where the defendant is—
 - (i) a parent of the child; or
 - (ii) a grandparent of the child; or
 - (iii) a brother or sister of the child; or
 - (iv) an uncle, aunt, nephew, niece or cousin of the child;

2 Criminal Code, chapter 28 (Homicide—suicide—concealment of birth)

3 Criminal Code, chapter 29 (Offences endangering life or health)

4 Criminal Code, chapter 33A (Unlawful stalking)

5 Criminal Code, chapter 22 (Offences against morality)

6 Criminal Code, chapter 32 (Rape and sexual assaults)

7 Section 21AK (Video-taping of affected child’s evidence)

- (b) a relationship arising because, at the time of the alleged offence with which the defendant is charged, the defendant lived in the same household as the child;
- (c) a relationship arising because the defendant had the care of, or exercised authority over, the child in a household on a regular basis.

“proceeding” means any civil or criminal proceeding, including a preliminary hearing.

“relevant offence”, in relation to a proceeding, means—

- (a) an offence of a sexual nature; or
- (b) an offence involving violence, if there is a prescribed relationship between a child who is a witness in the proceeding and a defendant in the proceeding.

“relevant proceeding” means—

- (a) a criminal proceeding for a relevant offence, whether or not the proceeding also relates to other offences; or
- (b) a civil proceeding arising from the commission of a relevant offence.

“step relationship” includes a relationship corresponding to a step relationship arising because of cohabitation in a de facto relationship or because of a foster relationship or a legal arrangement.

21AD Meaning of “child”

(1) For the purposes of a proceeding for this division, a **“child”** is—

- (a) if the proceeding is a criminal proceeding—
 - (i) an individual who is under 16 years when the first of the following happens—
 - (A) the defendant in the proceeding is arrested;
 - (B) a complaint is made under the *Justices Act 1886*, section 42⁸ in relation to the defendant in the proceeding;

8 *Justices Act 1886*, section 42 (Commencement of proceedings)

- (C) a notice to appear is served on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 214;⁹ or
- (ii) an individual who is 16 or 17 years when the first of the matters mentioned in subparagraph (i) happens and who is a special witness; or
- (b) if the proceeding is a civil proceeding arising from the commission of a relevant offence—
- (i) an individual who is under 16 years when the proceeding starts; or
- (ii) an individual who is 16 or 17 years when the proceeding starts and who is a special witness.

(2) An individual remains a “**child**” for the purposes of giving evidence for a proceeding if the child gives evidence for the proceeding at any time before the child turns 18 years.

Subdivision 2—Committal proceeding

21AE Application of sdiv 2

This subdivision applies to the taking of an affected child’s evidence for a committal proceeding for a relevant offence, whether or not the committal proceeding also relates to other offences.

21AF Evidence-in-chief

(1) The affected child’s evidence-in-chief must be given as a statement without the child being called as a witness.

(2) For this section, the *Justices Act 1886*, section 110A¹⁰ applies with all necessary changes and as though a reference in that section to a written statement included a reference to a statement contained in a document as defined under schedule 3.

⁹ *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

¹⁰ *Justices Act 1886*, section 110A (Use of tendered statements in lieu of oral testimony in committal proceedings)

(3) Also, for the purposes of applying the *Justices Act 1886*, section 110A, that section is to be read with the following changes—

- (a) if the child’s statement is a written statement—subsections (4), (5)(a) and (d), (8) and (9) of that section were omitted;
- (b) if the child’s statement is not a written statement—
 - (i) subsections (4), (5), (8) and (9) of that section were omitted; and
 - (ii) in subsection (13)—
 - (A) the words ‘read as evidence’ were omitted and the words ‘received as evidence’ were inserted in their place; and
 - (B) paragraph (a) were omitted.

(4) Further, for the purposes of applying the *Justices Act 1886*, section 111,¹¹ that section applies with all necessary changes and is to be read as though, in subsections (1) and (2), the words ‘read as evidence’ were omitted and the words ‘received as evidence’ were inserted in their place.

(5) In addition, for the purposes of applying the *Criminal Law Amendment Act 1892*,¹² section 4, that section applies with all necessary changes and is to be read as though—

- (a) a reference to a deposition included a reference to a statement contained in a document; and
- (b) a reference to the reading of a deposition that is not a written statement included a reference to the showing of a statement contained in a document.

(6) In this section—

“**statement**” means—

- (a) a written statement; or
- (b) a statement contained in a document.

11 *Justices Act 1886*, section 111 (Depositions of persons dead, absent etc)

12 *Criminal Law Amendment Act 1892*, section 4 (If prisoner does not require witnesses to attend, their depositions may be put in at trial with any exhibits attached)

21AG Cross-examination

(1) The affected child may be cross-examined only if, under this section, a magistrate requires a party to call the child as a witness for that purpose.

(2) The requirement may be made, on an application, by—

- (a) a magistrate at a direction hearing under the *Justices Act 1886*, section 83A;¹³ or
- (b) the magistrate presiding at the committal proceeding.

(3) A magistrate at a direction hearing must not require the child to be called as a witness for cross-examination unless the magistrate is satisfied that—

- (a) the party seeking to cross-examine the child has—
 - (i) identified an issue to which the proposed questioning relates; and
 - (ii) provided a reason why the evidence of the child is relevant to the issue; and
 - (iii) explained why the evidence disclosed by the prosecution does not address the issue; and
 - (iv) identified to the magistrate the purpose and general nature of the questions to be put to the child to address the issue; and
- (b) the interests of justice can not adequately be satisfied by leaving cross-examination of the child about the issue to the trial.

(4) The magistrate presiding at the committal proceeding must not require the child to be called as a witness for cross-examination unless the magistrate is satisfied that—

- (a) the evidence before the court at the committal has identified an issue to which the proposed questioning relates that could not reasonably have been anticipated before the committal; and
- (b) the party making the application has—
 - (i) provided a reason why the evidence of the child is relevant to the issue; and

13 *Justices Act 1886*, section 83A (Direction hearing)

- (ii) explained why the evidence before the court does not address the issue; and
 - (iii) identified to the magistrate the purpose and general nature of the questions to be put to the child to address the issue; and
- (c) the interests of justice can not adequately be satisfied by leaving cross-examination of the child about the issue to the trial.

(5) Without limiting the matters to which the magistrate may have regard for subsection (3)(b) or (4)(c), the magistrate—

- (a) must consider whether—
 - (i) the prosecution case is adequately disclosed; and
 - (ii) the charge is adequately particularised; and
- (b) must have regard to the vulnerability of children, the general principles stated in section 9E and the undesirability of calling a child as a witness for a committal proceeding.

(6) The magistrate must give reasons for the magistrate's decision on the application.

(7) If, under this section, the magistrate requires a party to call the child as a witness for cross-examination—

- (a) the child's evidence must be taken under subdivision 3 or 4;¹⁴ and
- (b) when the magistrate decides the application, the magistrate must decide whether the child's evidence is to be taken under subdivision 3 or under subdivision 4, and how it is to be taken, and give a direction accordingly.

(8) In deciding whether the child's evidence is to be taken under subdivision 3 or 4, and how it is to be taken, the magistrate must have regard to the following—

- (a) the distress or trauma likely to be suffered by the child when giving evidence and the need to minimise the child's distress or trauma;
- (b) whether a local court has an audio visual link and, if not, the availability of another appropriate place with appropriate

14 Subdivision 3 (Pre-recording of affected child's evidence) or 4 (Taking of affected child's evidence using audio visual link or screen)

equipment and facilities for taking or video-taping the child's evidence under subdivision 3 or 4;

- (c) whether the parties would be substantially inconvenienced if the proceeding were to be adjourned to another place mentioned in paragraph (b) that is not within the same locality as the court;
- (d) the need for committal proceedings to be conducted expeditiously.

(9) In this section—

“local court” means—

- (a) in relation to a magistrate at a direction hearing—a court at which the committal proceeding would ordinarily be held; or
- (b) in relation to the magistrate presiding at the committal proceeding—the court in which the committal proceeding is being held or another court within the court precincts.

“magistrate”, presiding at a committal proceeding, includes justices presiding at the proceeding.

21AH Limitation on cross-examination

(1) If the affected child is to be cross-examined, the party calling the child may first ask the child questions for identifying the child and establishing that the child made the statement mentioned in section 21AF¹⁵ and the truthfulness of the statement.

(2) The presiding magistrate or justices must not allow the child to be cross-examined about an issue other than the issue in relation to which the child was required to be called unless the magistrate or justices are satisfied as mentioned in section 21AG(3)(a) and (b) or section 21AG(4)(a) to (c), whichever is relevant, in relation to the issue.

(3) Also, the presiding magistrate or justices—

- (a) must not allow cross-examination to continue to the extent it—
 - (i) does not appear relevant to an issue for which it may be conducted; or
 - (ii) consists of exploratory questions asked in the hope of receiving any answer or any assistance to the party

15 Section 21AF (Evidence-in-chief)

conducting the cross-examination, commonly known as a ‘fishing expedition’; and

- (b) must disallow a question that may be disallowed under section 20 or 21.¹⁶

(4) The child may be re-examined by the party calling the child.

Subdivision 3—Pre-recording of affected child’s evidence

21AI Application of sdiv 3

(1) This subdivision applies to taking an affected child’s evidence—

- (a) for a summary trial for a relevant offence; and
(b) for a trial on indictment for a relevant offence; and
(c) for a committal proceeding for a relevant offence, if a magistrate or justices give a direction as mentioned in section 21AG(7)(b)¹⁷ that the child’s evidence is to be taken under this subdivision.

(2) However, this subdivision does not apply to an affected child who is a witness for the defence.

(3) Subsection (1) applies to a proceeding whether or not the proceeding also relates to offences other than the relevant offence.

21AJ Presentation of indictment

If the affected child’s evidence is to be taken for a trial on indictment, the indictment must be presented before the evidence can be taken under this subdivision.

21AK Video-taping of affected child’s evidence

(1) The affected child’s evidence must be taken and video-taped at a hearing under this section (a “**preliminary hearing**”) presided over by a judicial officer.

(2) The video-taped recording must be presented—

¹⁶ Section 20 (Cross-examination as to credit) or 21 (Improper questions)

¹⁷ Section 21AG (Cross-examination)

- (a) if taken for a committal proceeding—to the court at the committal proceeding; or
- (b) if taken for a trial—to the court at the trial.

(3) To facilitate the operation of this section for the taking of the child's evidence in a proceeding, the judicial officer may order that the preliminary hearing be conducted by audio visual link.

(4) The provisions of part 3A¹⁸ relating to the use of an audio visual link in criminal proceedings apply for, and are not limited by, subsection (3).

(5) To facilitate the operation of this section for a trial, the judicial officer must, if it is not practicable at the place of the trial to take and video-tape the child's evidence—

- (a) adjourn the trial to an appropriately equipped place to allow the evidence to be taken and video-taped; or
- (b) make another order the judicial officer considers appropriate including, for example, an order that the preliminary hearing be conducted by audio visual link.

(6) If the taking and video-taping of the child's evidence is done at a place that is not a courtroom, the place is taken to be a courtroom for all purposes for the preliminary hearing.

(7) It does not matter whether or not the judicial officer presiding and the counsel appearing at the preliminary hearing are the same judicial officer presiding and counsel appearing at an adjourned preliminary hearing or at the proceeding in which the video-taped recording is presented to the court.

(8) Also, it does not matter if, while the preliminary hearing is conducted, the judicial officer, counsel, parties and witnesses are at different places.

Example—

To facilitate the taking and video-taping of the affected child's evidence, the judicial officer directs that the child give the evidence by audio visual link. The preliminary hearing is conducted while the judicial officer, counsel and defendant are in a courtroom in a particular city and the child is in a room in another city connected to the courtroom through the audio visual link.

(9) In this section—

“appropriately equipped place”, for the taking and video-taping of an affected child’s evidence, means a court, or another place that is not a court, that—

- (a) is equipped to take and video-tape the child’s evidence; and
- (b) allows the defendant to see and hear the child while the child is giving evidence, for example, through an audio visual link.

“evidence” means evidence-in-chief or evidence given in cross-examination or re-examination.

21AL Court to give directions for taking an affected child’s evidence

(1) The judicial officer presiding at the preliminary hearing may make any order the judicial officer considers appropriate in relation to taking and video-taping the affected child’s evidence.

(2) Without limiting subsection (1), the judicial officer may give directions, with or without conditions, as to the conduct of the preliminary hearing, including directions as to—

- (a) whether the child is to be in the courtroom or a separate room when the child’s evidence is being taken; and
- (b) the persons who may be present in the same room as the child when the child’s evidence is being taken.

(3) Subsection (2)(b) is subject to section 21AU.

Note—

Section 21AU makes provision about the exclusion of persons while an affected child witness is giving evidence in relation to a relevant offence.

(4) At the preliminary hearing—

- (a) the defendant—
 - (i) must not be in the same room as the child when the child’s evidence is being taken; but
 - (ii) must be capable of seeing and hearing the child while the child is giving evidence; and
- (b) subject to the judicial officer’s control, the child is to give his or her evidence-in-chief and be cross-examined and re-examined; and

- (c) except as provided by this subdivision, the usual rules of evidence apply.

(5) The judicial officer may adjourn the hearing from time to time until the taking and video-taping of the child's evidence is complete.

21AM Use of pre-recorded evidence

(1) A video-taped recording of the affected child's evidence made under this subdivision for a proceeding, or a lawfully edited copy of the recording—

- (a) is as admissible as if the evidence were given orally in the proceeding in accordance with the usual rules and practice of the court; and
- (b) is, unless the relevant court otherwise orders, admissible in—
- (i) any rehearing or re-trial of, or appeal from, the proceeding; or
- (ii) another proceeding in the same court for the relevant charge or for another charge arising out of the same, or the same set of, circumstances; or
- (iii) a civil proceeding arising from the commission of the relevant offence.

(2) The admissibility of the recording or copy for a proceeding is not affected only because the child turns 18 before the evidence is presented at the proceeding.

21AN Giving of further evidence

(1) This section applies if the affected child has given evidence under this subdivision for a proceeding and has been excused from further attendance as a witness at the proceeding.

(2) A party may apply to the court for an order that the child—

- (a) give further evidence under this subdivision at another preliminary hearing; or
- (b) attend at the proceeding to give further evidence.

(3) The court must not make the order unless satisfied that—

- (a) if the child were giving evidence before a court in the ordinary way, the child could be recalled to give further evidence; and
- (b) it would be in the interests of justice to make the order.

(4) The court must not make an order that the child attend at the proceeding to give further evidence unless satisfied it is not possible or not practical for the child to give the further evidence at another preliminary hearing.

21AO Court order that evidence not to be taken and recorded under this sdiv

(1) This section applies if an affected child is to give evidence in a criminal proceeding, other than a committal proceeding, for a relevant offence.

(2) A party may apply to the court for an order that the child's evidence not be taken and video-taped under this subdivision.

(3) The court may make the order for good reason, having regard to the child's wishes and the purposes of this division.

Example—

If a courtroom or other place with facilities to take and video-tape the affected child's evidence is not likely to be available within a reasonable time, the court may decide the child's interests are better served by dealing with the proceeding quickly rather than waiting for a courtroom or other place with the necessary facilities to become available.

Subdivision 4—Taking of affected child's evidence using audio visual link or screen

21AP Application of sdiv 4

(1) This subdivision applies to taking an affected child's evidence—

- (a) for a summary trial for a relevant offence, if the evidence is not taken under subdivision 3; or
- (b) for a trial on indictment for a relevant offence, if the evidence is not taken under subdivision 3; or

- (c) for a committal proceeding for a relevant offence, if a magistrate or justices give a direction as mentioned in section 21AG(7)(b)¹⁹ that the child's evidence is to be taken under this subdivision; or
- (d) for summary trial, trial on indictment or committal proceeding for a relevant offence, if the child is ordered under section 21AN to attend at the proceeding to give further evidence; or
- (e) for a civil proceeding arising from the commission of a relevant offence.

(2) Subsection (1) applies to a proceeding whether or not the proceeding also relates to offences other than the relevant offence.

21AQ Audio visual links or screening arrangements must be used

(1) This section—

- (a) applies subject to any order under section 21AR; and
- (b) has effect despite the Criminal Code, section 617.²⁰

(2) If there is an audio visual link within the court precincts, the judicial officer presiding at the proceeding for the giving of evidence by the affected child must direct that—

- (a) the child give evidence outside the courtroom and the evidence be transmitted to the courtroom by means of the audio visual link; or
- (b) while the child is giving evidence, the defendant be held in a room apart from the courtroom and the evidence be transmitted to that room by means of the audio visual link.

(3) It is not necessary that the place outside the courtroom at which the child gives evidence under subsection (2)(a) be within the court precincts.

(4) If a direction is given under subsection (2)(a) or (b) and the audio visual link enables video-taping, the child's evidence must be video-taped.

(5) If a direction can not be given under subsection (2)(a) or (b), a screen, one-way glass or other thing must be so placed in relation to the child while he or she is giving evidence that the child can not see the defendant.

19 Section 21AG (Cross-examination)

20 Criminal Code, section 617 (Presence of accused)

(6) A video-taped recording of the child's evidence made under this section, or a lawfully edited copy of the recording, is, unless the relevant court otherwise orders, admissible in—

- (a) any rehearing or re-trial of, or appeal from, the proceeding; or
- (b) another proceeding in the same court for the relevant charge or for another charge arising out of the same, or the same set of, circumstances; or
- (c) a civil proceeding arising from the commission of the relevant offence.

21AR Court may order that s 21AQ does not apply

(1) This section applies if—

- (a) a relevant proceeding has been started in a court; and
- (b) an affected child is to give evidence in the proceeding.

(2) The party who is to call the child as a witness may apply to the presiding judicial officer for an order that section 21AQ is not to apply to the child.

(3) The judicial officer may grant the application only if the judicial officer is satisfied the child is able and wishes to give evidence in the defendant's presence without using an audio visual link or a screen.

Subdivision 5—General

21AS Prosecutor or applicant to advise that an affected child is to give evidence

(1) The prosecutor or applicant in a relevant proceeding must inform the court, before the proceeding starts, that an affected child may give evidence in the proceeding.

(2) For a trial on indictment, the prosecutor must inform the court at the time the indictment is presented.

(3) A failure to comply with subsection (1) or (2) does not prevent an affected child's evidence being taken or video-taped under this division or affect the admissibility of the evidence.

21AT Identification of persons or things by affected child

(1) This section applies if an affected child is required to identify a person, including the defendant, or thing when the child is giving evidence.

(2) The court may make the orders it considers appropriate to ensure that the identification is carried out in a way that limits the distress or trauma that might be suffered by the child when making the identification.

Note—

See section 9E for the general principles to be applied when dealing with a child witness.

(3) The court must also decide at what point during the giving of the child's evidence the identification is to be made.

(4) If an affected child is required to be in the defendant's presence for the purposes of identification, the child should not be required to be in the defendant's presence for the identification for any longer than is necessary.

21AU Exclusion of public

(1) This section applies if an affected child is to give evidence in a relevant proceeding under this division.

(2) If the child is to give evidence about an offence of a sexual nature, the court must exclude from the room in which it is sitting all persons other than essential persons while the child is giving the evidence.

(3) If the child is to give evidence other than in relation to an offence of a sexual nature, the court must exclude from the room in which it is sitting all persons other than essential persons while the child is giving the evidence unless the court is satisfied that the interests of justice require the evidence to be heard in open court.

(4) In this section—

“**essential person**”, for a proceeding, means any of the following persons—

- (a) a party to the proceeding and the party's counsel;
- (b) a Crown law officer or a person authorised by a Crown law officer;
- (c) the prosecutor;
- (d) a person whose presence is, in the court's opinion, necessary or desirable for the proper conduct of the proceeding;

- (e) a support person for the child under section 21AV;
- (f) a person who applies to the court to be present and whose presence, in the court's opinion—
 - (i) would serve a proper interest of the person; and
 - (ii) would not be prejudicial to the child's interests.

21AV Affected child entitled to support

(1) An affected child, while he or she is giving evidence in a relevant proceeding, is entitled to have near to him or her a person who may provide the child with support (a “**support person**”).

(2) A person may be the child's support person only if the person is approved by the court on application by the party proposing to call the child.

(3) The support person must be permitted to be in close proximity to the child, and within the child's sight, while the child is giving evidence.

(4) An affected child may, with the agreement of the court, waive the entitlement to a support person under subsection (1).

(5) The court must not agree to the waiver if the court considers the waiver is not in the child's best interests.

21AW Instructions to be given to jury

(1) This section applies to a proceeding on indictment if any of the following measures is taken—

- (a) an affected child's evidence is taken in a way provided for under subdivision 3 or 4;²¹
- (b) a person is excluded under section 21AU while an affected child gives evidence;
- (c) an affected child has a support person under section 21AV while the child gives evidence.

(2) The judicial officer presiding at the proceeding must instruct the jury that—

21 Subdivision 3 (Pre-recording of affected child's evidence) or 4 (Taking of affected child's evidence using audio visual link or screen)

- (a) the measure is a routine practice of the court and that they should not draw any inference as to the defendant's guilt from it; and
- (b) the probative value of the evidence is not increased or decreased because of the measure; and
- (c) the evidence is not to be given any greater or lesser weight because of the measure.

21AX Orders, directions and rulings concerning affected child witnesses

(1) The court may make any orders or give any directions or rulings it considers appropriate for this division on the court's own initiative or on an application made to the court by a party to the proceeding.

(2) Subsection (1) does not limit the Criminal Code, section 590AA or the *Justices Act 1886*, section 83A.²²

Division 4B—Dealing with a recording

21AY Definitions for div 4B

In this division—

“presiding judicial officer”, in relation to a recording, means the judicial officer presiding at—

- (a) the proceeding in which the recording is made; or
- (b) the proceeding in which the recording is presented or to be presented; or
- (c) a hearing for giving a direction or ruling under the Criminal Code, section 590AA;²³ or
- (d) a direction hearing under the *Justices Act 1886*, section 83A.²⁴

“recording” means—

22 Criminal Code, section 590AA (Pre-trial directions and rulings) or the *Justices Act 1886*, section 83A (Direction hearing)

23 Criminal Code, section 590AA (Pre-trial directions and rulings)

24 *Justices Act 1886*, section 83A (Direction hearing)

- (a) a video-taped recording of a special witness's evidence made under section 21A;²⁵ or
- (b) a video-taped recording of an affected child's evidence made under division 4A, subdivision 3 or subdivision 4;²⁶ or
- (c) a copy of a video-taped recording mentioned in paragraph (a) or (b).

21AZ Approval to edit or otherwise change a recording

(1) An original recording must not be edited or otherwise changed in any way.

(2) The presiding judicial officer may, on application, give approval for a copy of an original recording to be edited or changed in a stated way.

Example—

The presiding judicial officer may give approval for a copy of an original recording to be edited to omit certain inadmissible material.

21AZA Court to give directions about the use or safe-keeping of a recording

(1) The presiding judicial officer may make any order the judicial officer considers appropriate about the use or safe-keeping of a recording.

(2) Without limiting subsection (1), the presiding judicial officer may give directions, with or without conditions, as to—

- (a) the persons, or classes of persons, who are authorised to have possession of a recording; and
- (b) the giving up of possession of a recording.

(3) The presiding judicial officer must have regard to the following matters when deciding the persons, or classes of persons, who are authorised to have possession of a recording—

- (a) the need for counsel involved in the proceeding to have access to the recording;

25 Section 21A (Evidence of special witnesses)

26 Division 4A (Evidence of affected children), subdivision 3 (Pre-recording of affected child's evidence) or subdivision 4 (Taking of affected child's evidence using audio visual link or screen)

- (b) the need to ensure that persons authorised to have possession of the recording are able to take appropriate measures to ensure there is no unauthorised access to the recording.

(4) In this section—

“use”, of a recording, includes copying of the recording.

21AZB Unauthorised possession of, or dealing with, recording

(1) A person commits an offence who, without authority—

- (a) has a recording in his or her possession; or
- (b) supplies, or offers to supply, a recording to any person; or
- (c) plays, copies or erases a recording or permits a person to play, copy or erase a recording.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

(2) A person has authority for subsection (1) only if the person has the possession or does the thing mentioned in subsection (1)—

- (a) in the case of a public official—for a purpose connected with the proceeding for which the recording was made or any rehearing or re-trial of, or appeal from, the proceeding, or civil proceeding in which the recording may be presented in evidence; or
- (b) in any case—as authorised by a judicial officer under section 21AZA.

21AZC Publishing a recording prohibited

(1) A person must not publish all or part of a recording other than with the approval of the relevant court and in accordance with any condition attached to the court’s approval.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

(2) An approval under subsection (1) may be given only in exceptional circumstances.

(3) In subsection (1)—

“**publish**” means disseminate to the public by radio or television or otherwise by the transmission of light or sound.

“**relevant court**” means the court presiding at the proceeding or preliminary hearing at which the recording is made or the court of trial or appeal at which the recording is presented.

Division 5—Witness anonymity

21B Definitions for div 5

In this division—

“**controlled operation**” means a controlled operation approved under the *Police Powers and Responsibilities Act 2000*, chapter 5, part 2, division 3²⁷ for the purposes of an investigation being conducted by a law enforcement agency.

“**covert operative**”, for a controlled operation conducted by a law enforcement agency, means a police officer or another person named as a covert operative in an approval under the *Police Powers and Responsibilities Act 2000*, section 178.²⁸

“**law enforcement agency**” means—

- (a) the Crime and Misconduct Commission; or
- (b) the police service.

“**protected witness**” has the meaning given by section 21F.²⁹

“**relevant entity**”, for a relevant proceeding, means the entity before whom the relevant proceeding is being heard or conducted.

“**relevant proceeding**” means a proceeding before a court, including a criminal proceeding.

27 *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities), part 2 (Controlled operations), division 3 (Approval of controlled operations)

28 *Police Powers and Responsibilities Act 2000*, section 178 (What approval must state)

29 Section 21F (Effect of witness anonymity certificate)

21C Application of division

This division applies to a relevant proceeding in which a witness who is or was a covert operative is or may be required to give evidence that was obtained when the operative was engaged in activities for a controlled operation.

21D Witness anonymity certificate

(1) The chief executive officer of a law enforcement agency may, for the agency, give a witness anonymity certificate in the approved form for the purposes of a relevant proceeding if the officer considers it is reasonably necessary to protect a person—

- (a) who is, or was, a covert operative for the agency; and
- (b) who is, or may be, required to give evidence in the proceeding.

(2) Also, a senior police officer may, for the police service, give the witness anonymity certificate for the purposes of a relevant proceeding if the senior police officer considers it is reasonably necessary to protect a person—

- (a) who is, or was, a covert operative for the police service; and
- (b) who is, or may be, required to give evidence in the proceeding.

(3) The law enforcement agency must—

- (a) file the witness anonymity certificate with the relevant entity before the person for whom the certificate was given is called to give evidence; and
- (b) if the agency is the police service, give to the chairperson of the Crime and Misconduct Commission a copy of the certificate and notice of the date it was filed.

(4) Power to give a witness anonymity certificate under subsection (1) or (2) may not be delegated.

(5) Subsection (4) applies despite any other Act.

(6) A decision to give a witness anonymity certificate under this section—

- (a) is final and conclusive; and
- (b) can not be impeached for informality or want of form; and

- (c) can not be appealed against, reviewed, quashed or invalidated in any court.

(7) In this section—

“senior police officer” means a person performing functions in the police service as—

- (a) a deputy commissioner; or
- (b) the assistant commissioner responsible for crime operations.

21E What witness anonymity certificate must state

(1) A witness anonymity certificate must state the following in relation to a person for whom the certificate is given (the **“witness”**)—

- (a) the name the witness used in the relevant controlled operation;
- (b) for a stated period the witness was a covert operative for a stated law enforcement agency;
- (c) the witness has not been convicted of any offence, other than a stated offence;
- (d) if the witness is a police officer, whether the witness has at any time been found guilty of misconduct or a breach of discipline within the meaning of either of the following and if so, details of the misconduct or breach of discipline—
 - (i) the *Police Service Administration Act 1990*;
 - (ii) a law of the Commonwealth or another State that corresponds to the *Police Service Administration Act 1990*;
- (e) if, to the knowledge of the person giving the certificate, a court or judge has made any adverse comment on the credibility of the witness, what was said about the witness.

(2) A witness anonymity certificate must not include any information that may enable the actual identity of the witness, or where the witness lives, to be revealed.

21F Effect of witness anonymity certificate

On the filing of a witness anonymity certificate—

- (a) the witness (“**protected witness**”) may give evidence in the relevant proceeding under the name the witness used in the relevant controlled operation; and
- (b) subject to section 21I—
 - (i) a question may not be asked that may lead to the disclosure of the actual identity of the protected witness or where the protected witness lives; and
 - (ii) a witness, including the protected witness, can not be required to answer a question, give any evidence, or provide any information, that may lead to the disclosure of the actual identity of the protected witness or where the protected witness lives; and
 - (iii) a person involved in a relevant proceeding must not make a statement that discloses or could disclose the actual identity of the protected witness or where the witness lives.

21G Persons to be given copy of witness anonymity certificate

(1) On the filing of a witness anonymity certificate, the relevant law enforcement agency must give a copy of the certificate to the following—

- (a) for a criminal proceeding—each accused person to whom the relevant proceeding relates or the person’s lawyer;
- (b) for a civil proceeding—each party to the relevant proceeding or the party’s lawyer;
- (c) for another proceeding—each person who has been given leave to appear in the relevant proceeding or the person’s lawyer.

(2) The relevant entity may also require the relevant law enforcement agency to give a copy of the witness anonymity certificate to a person the relevant entity considers should be given a copy.

21H Orders relevant entity may make on filing of witness anonymity certificate

(1) The relevant entity may make any order it considers necessary to protect the identity of the protected witness.

Example of types of orders—

1. An order prohibiting sketching of the witness.

2. An order that the witness give evidence in the absence of the public.

(2) A person must not contravene an order made under subsection (1).

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(3) Subsection (2) does not limit the relevant entity’s power to punish for contempt.

21I Relevant entity may grant leave to disclose identity

(1) The relevant entity may, on application to it, give leave to any of the following (“**relevant party**”) to ask questions of a witness, including the protected witness, or make a statement that, if answered or made, may disclose the protected witness’s actual identity or where the protected witness lives—

- (a) for a criminal proceeding—each accused person to whom the relevant proceeding relates or the person’s lawyer;
- (b) for a civil proceeding—each party to the relevant proceeding or the party’s lawyer;
- (c) for another proceeding—each person who has been given leave to appear in the relevant proceeding or the person’s lawyer;
- (d) a lawyer assisting the relevant entity.

(2) The relevant entity may direct that the application be heard in the absence of any jury empanelled for the proceeding and the public.

(3) The relevant entity must not give leave under subsection (1) unless satisfied—

- (a) there is some evidence that, if believed, would call into question the credibility of the protected witness; and
- (b) it is in the interests of justice for the relevant party to be able to test the credibility of the protected witness; and
- (c) it would be impractical to test properly the credibility of the protected witness without knowing the actual identity of the witness.

(4) If the relevant entity gives leave, a person may, in accordance with the leave—

- (a) ask a question that may lead to the disclosure of the actual identity of the protected witness or where the protected witness lives; or
- (b) answer a question, give evidence, or provide information that may lead to the disclosure of the actual identity of the protected witness or where the protected witness lives; or
- (c) make a statement that discloses or could disclose the actual identity of the protected witness or where the witness lives.

(5) The relevant entity may also make any orders the entity considers appropriate in the circumstances, including, for example, orders about hearing the relevant part of the proceeding in the absence of the public, and suppressing the publication of anything said in the relevant part of the proceeding.

(6) A person must not contravene an order made under subsection (5).

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(7) Subsection (5) does limit the relevant entity’s power to punish for contempt.

21J Review of giving of witness anonymity certificates other than by Crime and Misconduct Commission

(1) This section applies to witness anonymity certificates filed with a relevant entity by the police service.

(2) As soon as practicable after the end of a proceeding in which a witness anonymity certificate is filed by the police service, the commissioner of the police service must give the chairperson of the Crime and Misconduct Commission notice of the date the proceeding to which the certificate relates ended.

(3) The chairperson must—

- (a) review the giving of each witness anonymity certificate as soon as practicable after the end of the proceeding to which the certificate relates and, in any event, within 3 months after the end of the year in which the certificate is filed; and
- (b) consider whether, in the circumstances, it was appropriate to give the certificate; and

- (c) if the chairperson considers it was inappropriate to give the certificate, notify whichever of the following is relevant of that fact as soon as practicable—
- (i) for a criminal proceeding—each accused person to whom the relevant proceeding relates or the person’s lawyer;
 - (ii) for a civil proceeding—each party to the relevant proceeding or the party’s lawyer;
 - (iii) for another proceeding—each person who has been given leave to appear in the relevant proceeding or the person’s lawyer;
 - (iv) a lawyer assisting the relevant entity.
- (4) The commissioner of the police service, if asked by the chairperson, must give the chairperson—
- (a) all the information the police service used for deciding to give a witness anonymity certificate; and
 - (b) particulars relating to each person to whom a copy of the certificate was given under section 21G.
- (5) The chairperson—
- (a) must give a copy of any report on the review to the commissioner of the police service as soon as practicable after the report is completed; and
 - (b) may include a report about the reviews in the annual report of the operations of the Crime and Misconduct Commission.

21K Review of operation of division

(1) The Attorney-General must ensure the operation of this division is reviewed within 5 years after it commences.

(2) Also, the Attorney-General must table a report on the review in the Parliament within 3 months after the review is complete.

Division 6—Cross-examination of protected witnesses**21L Application of division 6**

This division applies only to criminal proceedings, other than summary proceedings under the *Justices Act 1886*.

21M Meaning of “protected witness”

(1) For this division, each of the following persons is a “**protected witness**”—

- (a) a witness under 16 years;
- (b) a witness who is an intellectually impaired person;
- (c) for a proceeding for a prescribed special offence, an alleged victim of the offence;
- (d) for a proceeding for a prescribed offence, an alleged victim of the offence who the court considers would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness.

(2) It does not matter whether the proceeding mentioned in subsection (1)(c) or (d) relates also to another offence that is not a prescribed special offence or a prescribed offence.

(3) In this section—

“**alleged victim**” of an offence means a person, other than the person charged, who is—

- (a) alleged to be a person in relation to whom the offence was committed; or
- (b) alleged to have been subject to violence in relation to the offence.

“prescribed offence” means an offence defined in the Criminal Code, section 75, 122, 127, 206, 308, 309, 323, 335, 338, 338A, 339, 340, 346, 354, 354A, 355, 359, 413, 414, 415, 416, 417, 417A or 419.³⁰

“prescribed special offence” means an offence defined in the Criminal Code, section 208, 209, 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 229B, 306, 313, 315, 316, 317, 320, 320A, 322, 323A, 323B, 359E, 363, 363A, 364, 409 or 412 or chapter 32.³¹

“violence” means—

- (a) an assault on, or injury to, a person; or
- (b) a threat of an assault on, or an injury to, a person.

21N No cross-examination of protected witness by person charged

A person charged may not cross-examine a protected witness in person.

30 Criminal Code, section 75 (Threatening violence), 122 (Corruption of jurors), 127 (Corruption of witnesses), 206 (Offering violence to officiating ministers of religion), 308 (Threats to murder in document), 309 (Conspiring to murder), 323 (Wounding and similar acts), 335 (Common assault), 338 (Assaults on persons protecting wrecks), 338A (Assaults of member of crew on aircraft), 339 (Assaults occasioning bodily harm), 340 (Serious assaults), 346 (Assaults in interference with freedom of trade or work), 354 (Kidnapping), 354A (Kidnapping for ransom), 355 (Deprivation of liberty), 359 (Threats), 413 (Assault with intent to steal), 414 (Demanding property with menaces with intent to steal), 415 (Demanding property, benefit or performance of services with threats), 416 (Attempts at extortion by threats), 417 (Procuring execution of deeds etc. by threats), 417A (Taking control of aircraft) or 419 (Burglary)

31 Criminal Code, section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16), 213 (Owner etc. permitting abuse of children on premises), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 217 (Procuring young person etc. for carnal knowledge), 218 (Procuring sexual acts by coercion etc.), 219 (Taking child for immoral purposes), 221 (Conspiracy to defile), 222 (Incest), 227 (Indecent acts), 229B (Maintaining a sexual relationship with a child), 306 (Attempt to murder), 313 (Killing unborn child), 315 (Disabling in order to commit indictable offence), 316 (Stupefying in order to commit indictable offence), 317 (Acts intended to cause grievous bodily harm and other malicious acts), 320 (Grievous bodily harm), 320A (Torture), 322 (Maliciously administering poison with intent to harm), 323A (Female genital mutilation), 323B (Removal of child from State for female genital mutilation), 359E (Punishment of unlawful stalking), 363 (Child-stealing), 363A (Abduction of child under 16), 364 (Cruelty to children under 16), 409 (Definition of “robbery”) or 412 (Attempted robbery) or chapter 32 (Rape and sexual assaults)

21O Procedure for cross-examination of protected witness if person charged has no legal representative

(1) This section applies if—

- (a) a person charged does not have a legal representative for a proceeding; and
- (b) the court rules that a person is a protected witness for the proceeding.

(2) The court must advise the person charged present before the court that—

- (a) the person charged may not cross-examine the protected witness in person; and
- (b) the court will arrange for the person charged to be given free legal assistance by Legal Aid for the cross-examination unless the person charged—
 - (i) arranges for legal representation; or
 - (ii) does not want the protected witness to be cross-examined.

(3) The court must also require the person charged to advise the court by a particular date or time the court considers reasonable if the person charged—

- (a) has arranged for a legal representative to act for the person charged for the proceeding; or
- (b) has arranged for a legal representative to act for the person charged for cross-examination of the protected witness; or
- (c) does not want the protected witness to be cross-examined.

(4) If, by the particular date or time, the court has not received advice from the person charged under subsection (3) that the person charged has arranged for a legal representative or does not want the protected witness cross-examined, the court must make an order that the person charged be given free legal assistance by Legal Aid for the cross-examination of the protected witness by a lawyer.

21P Legal assistance for cross-examination of protected witness

If a person charged is given legal assistance by Legal Aid because of an order under section 21O(4), the lawyer who cross-examines the protected

witness for the person charged is the person's legal representative for the purposes only of the cross-examination.

21Q Satisfaction of Criminal Code, section 616

(1) This section applies if a person charged who does not have a legal representative for the cross-examination of a protected witness refuses legal assistance, available because of an order under section 21O(4), to cross-examine the witness.

(2) The Criminal Code, section 616³² is taken to have been satisfied for the person charged in relation to cross-examination of the witness despite the person charged being unable to cross-examine the witness because of section 21N.

21R Jury direction

(1) This section applies if there is a jury and a person charged—

- (a) does not have a legal representative other than for the cross-examination of a protected witness; or
- (b) does not have a legal representative for the cross-examination of a protected witness.

(2) The court must give the jury any warning the court considers necessary to ensure the person charged is not prejudiced by any inference that might be drawn from the fact the person charged has been prevented from cross-examining the protected witness in person.

21S Orders, directions and rulings concerning protected witnesses

The court may make any orders or give any directions or rulings it considers appropriate for the purposes of this division on the court's own initiative or on an application made to the court by a party to the proceeding.

32 Criminal Code, section 616 (Defence by counsel)

PART 3—MEANS OF OBTAINING EVIDENCE

Division 1—Commissions, requests and orders to examine witnesses

22 Commission, request or order to examine witnesses

(1) The Supreme Court or a judge thereof, on application made under the Rules of the Supreme Court, shall have the same powers to issue a commission, request or order to examine witnesses for the purpose of civil proceedings in any court other than the Supreme Court as it or the judge has for the purpose of civil proceedings in the Supreme Court.

(2) The rules of the Supreme Court, with such adaptations as the circumstances may require, shall apply and extend to a commission, request or order to examine witnesses issued by authority of subsection (1) and to all proceedings taken thereunder as if the commission, request or order were issued by authority of those rules.

(3) Subject to all just exceptions, the depositions taken upon the examination of a witness before an examiner by virtue of this section certified under the hand of the examiner are admissible in evidence, without proof of the signature to such certificate, unless it is proved that the witness is at the time of the hearing at which the depositions are offered in evidence within a convenient distance of the place of the hearing and able to attend.

(4) The costs of proceedings taken by virtue of this section shall be costs in the cause, unless otherwise directed either by the judge issuing the commission, request or order or by the court for the purpose of whose proceedings the examination is conducted.

23 Commission or order in criminal cases

(1) In any criminal proceeding, if any witness is out of the jurisdiction of the Supreme Court or more than 400 km from the intended place of trial or is from age or infirmity unable to attend the trial or if the testimony of any witness is in danger of being lost by reason of the age or infirmity of the witness or by reason of the witness being about to depart out of the jurisdiction or to some place beyond the said distance of 400 km, the Supreme Court or a judge thereof may, on the application or with the consent of the Attorney-General or the crown prosecutor as well as the person charged, but not otherwise, order—

- (a) that any such witness within the jurisdiction of the Supreme Court be examined on oath, either viva voce or upon interrogatories or otherwise, before a specified officer of the court or other specified person; or
- (b) that a commission issue for the examination of such witness on oath, either viva voce or upon interrogatories or otherwise, at any place in or out of the jurisdiction.

(2) The Supreme Court or a judge thereof may, at the same time or subsequently, give all such directions touching the time, place and manner of such examination, as well within the jurisdiction as without, and all other matters and circumstances connected with such examination as appear reasonable and just.

(3) Subject to all just exceptions, the depositions taken upon the examination of a witness before an examiner by virtue of this section certified under the hand of the examiner are admissible in evidence, without proof of the signature to such certificate, unless it is proved that the witness is at the time of the hearing at which the depositions are offered in evidence within a convenient distance of the place of the hearing and able to attend.

(4) Any person authorised by any order or commission under this section to take the examination of any witness shall take such examination upon the oath of such witness and may administer the necessary oaths to such witness.

24 Power of person appointed by foreign authority to take evidence and administer oaths

(1) Subject to subsections (2) to (4), where an authority desires to take or receive evidence in Queensland, that authority may appoint a person to take or receive evidence in Queensland and a person so appointed has power to take or receive evidence in Queensland for that authority and for that purpose to administer an oath.

(2) Where the authority is not a court or judge, a person so appointed has no power to take or receive evidence, or to administer an oath, in Queensland unless the person has first obtained the consent of the Attorney-General.

(3) This section does not authorise the taking or receiving of evidence by a person so appointed in or for use in criminal proceedings.

(4) In this section—

“authority” means any court, judge, or person who, or body which, is authorised under the law of a place outside Queensland to take or receive evidence on oath or under any other sanction authorised by law in that place.

Division 2—Summary procedure to obtain evidence for Queensland or other jurisdictions

25 Definitions for div 2

In this division—

“corresponding court”—

- (a) in relation to a court or person acting judicially in a prescribed country—means the court or person acting judicially in Queensland declared by regulation to be the court or person in Queensland that corresponds to that court or person in the prescribed country; and
- (b) in relation to a court or person acting judicially in Queensland—means the court or person acting judicially in a prescribed country declared by regulation to be the court or person in a prescribed country that corresponds to that court or person in Queensland.

“examiner” means a judge, magistrate, clerk of a Magistrates Court or any duly qualified legal practitioner.

“prescribed country” means any State or Territory of the Commonwealth, New Zealand and any other State, Territory or country that is declared by regulation to be a prescribed country for the purposes of this division.

26 Power of Queensland court to request corresponding court in a prescribed country to take evidence for use in Queensland court

(1) Where a court or person acting judicially in Queensland is authorised by or under any Act or law to authorise or order evidence to be taken otherwise than at the hearing of the legal proceedings in respect of which the evidence is required, that court or person may on the application of a person who desires to lead evidence, if it or the person is satisfied that it is necessary in the interests of justice, request a corresponding court to order

the examination of a witness or the production of documents by a person or both such examination and production.

(2) Any deposition received from a corresponding court which purports to have been signed by the deponent and the examiner or to have been certified as a correct record by the examiner may, subject to all just exceptions, be put in as evidence at the hearing of the legal proceedings and any documents received from a corresponding court may, subject to all just exceptions, be put in at the hearing as if produced at the hearing by the person who produced the documents pursuant to the order of the corresponding court.

(3) A court or person acting judicially shall take judicial notice of the seal of a corresponding court and of the signature of any examiner appointed by a corresponding court.

27 Power to take evidence on request from corresponding court of a prescribed country

(1) Where by or under any Act or law of a prescribed country provision is made for the evidence of any person that is required in connection with any legal proceedings to be taken otherwise than at the hearing of those proceedings by a court or person acting judicially, a court or person acting judicially in Queensland that is a corresponding court to a court or person acting judicially in the prescribed country before which or whom legal proceedings are being held may, upon receipt of a request in writing from that court or person in the prescribed country, make an order for the examination of a witness and the production of documents by a person or both for such examination or production before an examiner named in the order at a time and place specified in the order.

(2) The order shall require reasonable notice to be given by post to each party to the legal proceedings at the party's address as shown in the request of the time when and place where the examination is to take place or the documents are to be produced.

28 Summons of witnesses

Upon service on a person of an order requiring the person to attend for examination or to produce documents, together with the payment or tender of a reasonable sum for expenses, the person shall attend at the time and place appointed and shall have and be subject to the same rights and

liabilities as if the person were summoned before the court or person by which or whom the order was made.

29 Examination

(1) Subject to any directions contained in the order for examination—

- (a) a person ordered to be examined before the examiner may be cross-examined and re-examined; and
- (b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as they would have been conducted before the court or person acting judicially who made the order for the examination.

(2) The examiner may put any question to a person examined before the examiner as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.

(3) An examiner shall have and may exercise such of the powers of the court or person acting judicially by whom the examiner was appointed as are necessary for the proper exercise of the examiner's functions under this division and may administer oaths and adjourn the examination from time to time as the examiner thinks fit.

30 Objections

(1) If a person being examined before an examiner objects to answering any question put to the person, or if objection is taken to any such question that question, the ground for the objection and the answer to any such question to which objection is taken shall be set out in the deposition of that person or any statement annexed thereto.

(2) The validity of the ground for objecting to answer any such question or for objecting to such question shall not be determined by the examiner but by the corresponding court at whose request the examination is being conducted.

31 Depositions to be signed

(1) Where pursuant to an order for examination—

- (a) a witness has given evidence to the examiner, the depositions of the witness shall be signed by the witness and by the examiner or

where the witness refuses to sign or requires alterations that the examiner considers to be unjustified the depositions shall be signed by the examiner who shall certify that the depositions are a correct record and the reasons for them not being signed by the witness;

- (b) documents have been produced to the examiner by a person not giving evidence, the examiner shall attach to such documents a certificate signed by the examiner stating the name of that person.

(2) All depositions and documents taken before or produced to the examiner pursuant to any such order shall be delivered by the examiner to the court or person by which or whom the order was made for transmission to the corresponding court.

32 Power of Queensland court to transmit requests to other places

Where a court or person acting judicially in Queensland receives a request from a corresponding court for the examination of a witness or the production of documents by a person and it appears to the court or person acting judicially that the witness or person is not in Queensland and is not proceeding to Queensland but is in or proceeding to another country that is a prescribed country under the law of the country of the corresponding court the court—

- (a) may transmit the request to a corresponding court in that other prescribed country together with such information as it or the person possesses concerning the whereabouts and intended movements of the person;
- (b) shall give notice to the corresponding court from which it received the request that the documents have been so transmitted.

33 Saving as to personal attendance

Nothing in this division limits or abridges the power of a court or a person acting judicially to require a witness to attend in person before the court or person.

Division 3—General procedure to obtain evidence for other jurisdictions**35 Definitions for div 3**

In this division—

“civil proceedings”, in relation to a requesting court, means proceedings in any civil or commercial matter.

“overseas country” means a country, or part of a country, outside the Commonwealth.

“request” includes any commission, order or other process issued by or on behalf of a requesting court.

“requesting court” has the meaning given to it in section 36.

35A Application of division to Crown

Nothing in this division shall be construed as enabling any court to make an order that is binding on the Crown or on any person in the person's capacity as an officer or servant of the Crown.

36 Application to Supreme Court to obtain evidence for civil proceedings in another jurisdiction

Where an application by way of originating summons is made to the Supreme Court or a judge thereof for an order for evidence to be obtained in the State, and the court or judge is satisfied—

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (**“the requesting court”**) exercising jurisdiction in a State or Territory of the Commonwealth other than Queensland or in an overseas country; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated;

the court or judge shall have the powers conferred by the following provisions of this division.

37 Power of Supreme Court to give effect to application to obtain evidence

(1) The Supreme Court or a judge thereof on an application under section 36 shall have power by order to make such provision for obtaining evidence in the State as may appear to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made, and any such order may require a person specified therein to take such steps as the court or judge may consider appropriate for that purpose.

(2) Without prejudice to the generality of subsection (1), an order under this section may make provision—

- (a) for the examination of witnesses, either orally or in writing; and
- (b) for the production of documents; and
- (c) for the inspection, photographing, preservation, custody or detention of any property; and
- (d) for the taking of samples of any property and the carrying out of any experiments on or with any property; and
- (e) for the medical examination of any person.

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the Supreme Court (whether or not proceedings of the same description as those to which the application for the order relates), but this subsection shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.

(4) An order under this section shall not require a person—

- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in the person's possession or power; or
- (b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in the person's possession or power.

(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the Supreme Court.

(6) An order under this section may be enforced in the same manner as if it were an order made by the Supreme Court or a judge thereof in proceedings pending in the Supreme Court or before the judge.

38 Privilege of witnesses

(1) A person shall not be compelled by virtue of an order under section 37 to give any evidence which the person could not be compelled to give—

- (a) in civil proceedings in the State; or
- (b) subject to subsection (2), in civil proceedings in the State or Territory of the Commonwealth or the overseas country in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) shall not apply unless the claim of the person in question to be exempt from giving the evidence is either—

- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
- (b) conceded by the applicant for the order;

and where such a claim made by any person is not supported or conceded as aforesaid the person may (subject to the other provisions of this section) be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(3) In this section, references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) to the transmission of evidence given by a person shall be construed accordingly.

39 Judicial proceedings for the purposes of the Criminal Code

Proceedings wherein a person gives or is required to give any testimony (either orally or in writing) pursuant to an order under section 37 shall be a judicial proceeding for the purposes of the Criminal Code, chapter 16³³ whether or not the testimony is given or required to be given on oath or under any other sanction authorised by law.

33 Criminal Code, chapter 16 (Offences relating to the administration of justice)

PART 3A—AUDIO VISUAL LINKS AND AUDIO LINKS

Division 1—Preliminary

39A Purposes of pt 3A

The purposes of this part are—

- (a) to provide for Queensland to participate in a substantially uniform interstate scheme for the taking or receiving of evidence, and the making or receiving of submissions, from or in participating States; and
- (b) to facilitate the giving and receiving of evidence, and the making and receiving of submissions, in Queensland court proceedings, by audio visual link or audio link.

39B Application of pt 3A

(1) This part applies to a proceeding whether commenced before or after the commencement of this part.

(2) This part does not limit any law of the State that makes provision for—

- (a) the use of audio visual links or audio links; or
- (b) the taking of evidence, or the making of submissions, in or outside the State for the purpose of a proceeding in the State.

(3) In particular, this part does not affect a prohibition under another Act on the making of an order about the use of an audio visual link or audio link without the consent of all parties to a proceeding.

(4) This part does not authorise a defendant in a criminal proceeding before a Queensland court to appear before, or give evidence or make a submission to the court by audio visual link or audio link unless expressly authorised by the Criminal Code, section 594(4),³⁴ the *Juvenile Justice*

34 Criminal Code, section 594 (Accused person to be called upon to plead to indictment)

Act 1992, section 53 or 159³⁵ or the *Penalties and Sentences Act 1992*, section 15A.³⁶

39C Definitions for pt 3A

In this part—

“audio link” means facilities, including telephone, that enable reasonably contemporaneous and continuous audio communication between persons at different places.

“before”, a court, includes in a court.

“court location” means the courtroom, or other place, where the court is sitting.

“external location”, for a court, means the location, external to the court location—

- (a) in or outside Queensland or Australia from which evidence or a submission is being, is to be, or has been taken or made by audio visual link or audio link under this part; or
- (b) for the application of this part under the *Criminal Code*, section 594³⁷—at which an accused person is being, is to be, or has been arraigned; or
- (c) for the application of this part under the *Juvenile Justice Act 1992*, section 159 or the *Penalties and Sentences Act 1992*, section 15A—at which an offender or a child is being, is to be, or has been sentenced.

“participating State” means another State in which provisions of an Act of that State in terms that substantially correspond to divisions 2 and 3 are in force.

“Queensland court” means—

- (a) the Supreme Court, the District Court or a Magistrates Court; or

35 *Juvenile Justice Act 1992*, section 53 (Granting of bail by audiovisual link or audio link) or 159 (Audio visual link or audio link may be used to sentence)

36 *Penalties and Sentences Act 1992*, section 15A (Audio visual link or audio link may be used to sentence)

37 *Criminal Code*, section 594 (Accused person to be called upon to plead to indictment)

- (b) the Coroners Court; or
- (c) another court established under an Act; or
- (d) another tribunal declared under a regulation to be a court for this part.

“recognised court” means a court or tribunal of a participating State that is authorised by the provisions of an Act of that State in terms substantially corresponding to divisions 2 and 3 to direct that evidence be taken or submissions be made by audio visual link or audio link from Queensland.

“tribunal” means a body or person that may take evidence on oath.

Division 2—Use of interstate audio visual links or audio links in proceedings before Queensland courts

39D Application of div 2

This division applies to any proceeding, including a criminal proceeding, before a Queensland court.

39E State courts may take evidence and submissions from outside State

(1) The court may, on the court’s own initiative or on the application of a party to a proceeding before the court, direct that evidence be taken or submissions be made by audio visual link or audio link from a participating State.

(2) The court may exercise in the participating State, in connection with taking evidence or receiving submissions by audio visual link or audio link, any of its powers that the court may be permitted, under the law of the participating State, to exercise in the participating State.

39F Legal practitioners entitled to practise

A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a barrister or solicitor or both in relation to the following—

- (a) the examination-in-chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given

by audio visual link or audio link in a proceeding before the court;

- (b) making of submissions by audio visual link or audio link from the participating State in a proceeding before the court.

Division 3—Use of interstate audio visual links or audio links in proceedings in participating States

39G Application of div 3

This division applies to any proceeding, including a criminal proceeding, before a recognised court.

39H Recognised courts may take evidence or receive submissions from persons in Queensland

The court may, for a proceeding before it, take evidence or receive submissions, by audio visual link or audio link, from a person in Queensland.

39I Powers of recognised courts

(1) The court may, for the proceeding, exercise in Queensland, in connection with taking evidence or receiving submissions by audio visual link or audio link, any of its powers other than its powers—

- (a) to punish for contempt; and
(b) to enforce or execute its judgments or process.

(2) The laws of the participating State, including rules of court, that apply to the proceeding in that State also apply to the practice and procedure of the court in taking evidence or receiving submissions by audio visual link or audio link from a person in Queensland.

(3) For the purposes of the court exercising its powers in Queensland, the external location in Queensland is taken to be part of the court location.

39J Orders made by recognised court

Without limiting section 39I, the court may, by order—

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private at the external location in Queensland; and
- (b) require a person to leave the external location in Queensland; and
- (c) prohibit or restrict the publication of evidence given in the proceeding or the name of a party to, or a witness in, the proceeding.

39K Enforcement of order

(1) An order under section 39J must be complied with.

(2) Subject to rules of court made under the *Supreme Court of Queensland Act 1991*, the order may be enforced by the Supreme Court as if the order were an order of that court.

(3) Without limiting subsection (2), a person who contravenes the order—

- (a) is taken to be in contempt of the Supreme Court; and
- (b) is punishable accordingly;

unless the person establishes that the contravention should be excused.

39L Privileges, protection and immunity of participants in proceedings before recognised court

(1) A judge or other person presiding at or otherwise taking part in a judicial capacity in the proceeding before the court has, in connection with evidence being taken or submissions being received by audio visual link or audio link from the external location in Queensland, the same privileges, protection and immunity as a Supreme Court judge.

(2) A person appearing as a legal practitioner in the proceeding before the court has, in connection with evidence being taken or submissions being received by audio visual link or audio link from the external location in Queensland, the same protection and immunity as a barrister appearing before the Supreme Court.

(3) A person at the external location in Queensland appearing as a witness in the proceeding before the court by audio visual link or audio link has the same protection and immunity as a witness in a proceeding before the Supreme Court.

39M Recognised court may administer oath in the State

(1) The court may administer an oath or affirmation in accordance with its practice and procedure for the purpose of obtaining the testimony of a person in Queensland by audio visual link or audio link in the proceeding.

(2) Evidence given on the oath or affirmation is taken to be given in a Queensland judicial proceeding for the purposes of Queensland law.

39N Assistance to recognised court

An officer of a Queensland court may, if asked by the recognised court, do any of the following things for the proceeding—

- (a) attend at the external location in Queensland;
- (b) take the action the recognised court directs to facilitate the proceeding;
- (c) administer an oath or affirmation.

39O Contempt of recognised court

A person must not, in connection with evidence or a submission that is to be, is being, or has been given or made at the external location in Queensland in the proceeding before the court, do any of the following things—

- (a) assault, in Queensland—
 - (i) a witness in the proceeding; or
 - (ii) a person appearing in the proceeding as a legal practitioner; or
 - (iii) an officer of a Queensland court giving assistance under section 39N;
- (b) deliberately interrupt or obstruct the court;
- (c) create or continue, or join in creating or continuing, a disturbance at the external location in Queensland;
- (d) attempt to influence improperly anyone in connection with the proceeding;
- (e) deliberately and without lawful excuse, disobey an order or direction given by the court to regulate conduct happening while

evidence is being given or a submission is being made by audio visual link or audio link;

- (f) do anything in connection with the proceeding that would be a contempt of court if the thing done were done in, or in relation to, a Queensland judicial proceeding.

Maximum penalty—imprisonment for 3 months.

39P Double jeopardy

(1) This section applies to a person who does an act or makes an omission that is an offence both—

- (a) under this part; and
(b) under a law of a participating State.

(2) The person must not be prosecuted or punished under this part for the offence if the person has been prosecuted or punished under the law of the participating State for the offence.

Division 4—General provisions about the use of audio visual links or audio links

39Q Application of div 4

(1) This division applies to any proceeding, including a criminal proceeding, before a Queensland court.

- (2) This division does not limit, and is not limited by, division 2 or 3.

39R Queensland courts may take evidence and submissions from external location

(1) Subject to any rules of the court, the court may, on the application of a party to the proceeding before the court, direct that a person appear before, or give evidence or make a submission to, the court by audio visual link or audio link from a location inside or outside Queensland, including a location outside Australia.

(2) The court may, at any time, vary or revoke a direction made under this section on its own initiative or on the application of a party to the proceeding.

39S Failure of the link

If an audio visual link or audio link fails in the proceeding, the court may adjourn the proceeding, or make another appropriate order, as if a person present at the external location were at the court location.

39T Expenses

The court may make the orders it considers just for payment of expenses incurred in connection with taking evidence or making submissions by audio visual link or audio link.

39U External location to be considered part of Queensland court location

(1) An external location in the proceeding before the court is taken to be part of the court location in the proceeding for all purposes relating to a Queensland law for the administration of justice.

(2) In this section—

“a law for the administration of justice” includes a law about any of the following—

- (a) compulsory attendance at court;
- (b) punishment for failing to attend at court;
- (c) the presence of a person at court;
- (d) evidence, including compellability to give evidence;
- (e) perjury, contempt, procedure, privileges, protection or immunities.

“law” includes any written or unwritten law, and a rule, practice or procedure of the court.

39V Witness outside Queensland—when compellable

If the external location from which a witness giving evidence by audio visual link or audio link in the proceeding is outside Queensland, the witness is compellable to give evidence only to the extent the witness—

- (a) would be compellable to give the evidence if present in Queensland; and

- (b) would be compellable to give the evidence in court proceedings under the law of the place from which the evidence is given.

39W Administration of oaths and affirmations

An oath or affirmation may be sworn for giving testimony by audio visual link or audio link—

- (a) over the link in a way that is as near as practicable to the way the witness could be sworn at the court location; or
- (b) by a person at the external location in accordance with the court's direction.

39X Testimony from outside Australia other than on oath

(1) This section applies if the external location is in a country other than Australia and an oath is not allowed under the law of the country.

(2) The evidence may be given otherwise than on oath under a caution or admonition that would be accepted by a court in that country for the purpose of giving evidence in the court.

(3) The probative value of the evidence given under subsection (2) is not diminished merely because the evidence is not given on oath.

(4) A person giving the evidence under subsection (2) is liable to be convicted of perjury as if the evidence were given on oath.

39Y Putting documents to a person at an external location

(1) If in the course of examination of a person by audio visual link or audio link it is necessary to put a document to the person, the court may permit the document to be put to the person—

- (a) if the document is at the court location—by sending a copy of it to the external location in any way and the copy then put to the person; or
- (b) if the document is at the external location—by putting it to the person and then sending it to the court location in any way.

(2) A document put to a person under subsection (1) is admissible as evidence without proof that the transmitted copy is a true copy of the relevant document.

39Z Extension of rule-making power

If there is a power under another Act to make rules for the court, the power includes a power to make rules, not inconsistent with this part, that are necessary or convenient for carrying out or giving effect to this part.

**PART 4—JUDICIAL NOTICE OF SEALS, SIGNATURES
AND LEGISLATIVE ENACTMENTS****41 Public Seal of the State**

All courts shall take judicial notice of the impression of the Public Seal of the State without evidence of such seal having been impressed or any other evidence relating thereto.

42 Signatures of holders of public offices etc. to be judicially noticed

(1) Judicial notice must be taken of—

- (a) the signature of a person who is or has been the holder of a public office; and
- (b) the fact that the person holds or has held the office.

(2) For subsection (1), the following offices are public offices—

- (a) the office of Governor;
- (b) the office of a Minister;
- (c) the office of a judge, magistrate or warden;
- (d) the office of an official of a court;
- (e) the office of a justice of the peace or commissioner for declarations;
- (f) another office of a public nature established under an Act;
- (g) an office prescribed under an Act for this section.

(3) Schedule 1 provides examples of offices of a public nature established under an Act.

(4) This section is in addition to, and does not limit, the common law, another provision of this Act or a provision of another Act.

42A Certain seals to be judicially noticed etc.

(1) Judicial notice must be taken of the imprint of any seal of an office or entity established under an Act, and a document on which the imprint appears must be presumed to have been properly sealed unless the contrary is established.

(2) This section is in addition to, and does not limit, the common law, another provision of this Act or a provision of another Act.

43 Acts and statutory instruments to be judicially noticed

Judicial notice must be taken of the following—

- (a) every Act;
- (b) every statutory instrument;
- (c) the time when every Act or statutory instrument commenced, and every provision of every Act or statutory instrument commenced.

43A Administrative arrangements to be judicially noticed

Judicial notice must be taken of the administrative arrangements set out in an order published in the gazette and purportedly made under the *Constitution of Queensland 2001*, section 44.³⁸

38 *Constitution of Queensland 2001*, section 44 (Administrative arrangements)

PART 5—PROOF OF DOCUMENTS AND OTHER MATTERS

Division 1—Proof of official and judicial documents and matters

44 Proof by purported certificate, document etc.

Where by a law in force in Queensland—

- (a) a certificate; or
- (b) an official or public document; or
- (c) a document of a corporation; or
- (d) a copy of, or extract from, a document;

is admissible in evidence for any purpose, a document purporting to be the certificate, document, copy or extract shall, unless the contrary intention appears, be admissible in evidence to the same extent and for the same purpose provided that it purports to be authenticated in the manner (if any) directed by that law.

45 Proof of gazette

The production of a document purporting to be the gazette shall be evidence that the document is the gazette and was published on the day on which it bears date.

46 Proof of printing by government printer etc.

(1) The production of a document purporting to be printed by the government printer or by the authority of the Government of the State shall be evidence that the document was printed by the government printer or by such authority.

(2) The production of a document purporting to be authorised by the parliamentary counsel is evidence that the document was authorised by the parliamentary counsel.

46A Presumption of accuracy of copy of legislation

(1) A document purporting to be—

- (a) a copy of an Act or a copy of an Act incorporating all amendments to a date specified therein; and
- (b) printed by the government printer or by the authority of the Government of the State, or authorised by the parliamentary counsel;

shall be taken to be a correct copy of the Act or, as the case may be, of the Act as amended to that date until the contrary is proved and the date appearing therein as the date on which the Act was assented to by and on behalf of the Crown shall for all purposes be evidence of the date of such assent.

(2) A document purporting to be—

- (a) a copy of an item of subordinate legislation or a copy of an item of subordinate legislation incorporating amendments to a stated date; and
- (b) printed by the government printer or by the authority of the Government of the State, or authorised by the parliamentary counsel;

is to be taken to be a correct copy of the subordinate legislation or of the subordinate legislation as amended to that date, as the case may be, unless the contrary is established, and the date stated on the document as the date when the subordinate legislation was made or approved is evidence of that date.

46B Court or tribunal may inform itself about Act or statutory instrument

(1) A court or tribunal may inform itself about an Act or statutory instrument in any way it considers appropriate.

Examples of ways that may be appropriate—

1. Using an electronic version of an Act as available on the internet or on a CD-ROM other than an authorised reprint under the *Reprints Act 1992*.
2. Using a printed copy of an Act in a publication other than an authorised reprint under the *Reprints Act 1992*.

(2) However, the court or tribunal must consider whether the document or source it intends to consult appears to be a reliable source of information.

(3) Subsection (1) does not limit any law providing for a way in which a court or tribunal may be informed about an Act or statutory instrument, including any other provision of this Act or the *Reprints Act 1992*.

47 Proof of votes and proceedings of Legislature and of legislative material

(1) All documents purporting to be copies of the Votes and Proceedings of the Legislature or of any House of the Legislature or copies of legislative material, if purporting to be printed by the government printer or by the authority of the Government of the State or, for documents purporting to be legislative material, authorised by the parliamentary counsel, shall on their production be admitted as evidence thereof.

(2) In this section—

“**legislative material**” includes—

- (a) a Bill, an amendment of a Bill or an explanatory note for a Bill, introduced into, moved in, tabled in, or circulated to members of, the Legislative Assembly; or
- (b) an explanatory note or regulatory impact statement for subordinate legislation.

“**Votes and Proceedings**” shall be deemed to include journals and minutes, Bills before the Legislature and any papers purporting to be printed by the authority of and to be laid before the Legislature or any House of the Legislature.

48 Proof of proclamations, orders in council etc.

Evidence of—

- (a) a proclamation, order in council, commission, order, rule, regulation or other instrument made or issued by the Governor or Governor in Council; or
- (b) an order, rule, regulation or other instrument made or issued by or under the authority of any Minister or of any public commission or board; or
- (c) other subordinate legislation;

may be given—

- (d) by the production of the gazette purporting to contain it; or

- (e) by the production of a document purporting to be a copy of it and purporting to be printed by the government printer or by the authority of the Government of the State; or
- (f) for subordinate legislation—by the production of a document purporting to be a copy of it, and purporting to be authorised by the parliamentary counsel; or
- (g) by the production (in the case of a proclamation, order in council, commission, order, rule, regulation or other instrument made or issued by the Governor or Governor in Council) of a copy or extract purporting to be certified as a true copy or extract under the hand of the clerk of the Executive Council; or
- (h) by the production (in the case of any order, rule, regulation or other instrument made or issued by or under the authority of any Minister) of a copy or extract purporting to be certified as a true copy or extract under the hand of any Minister.

49 Proof of standard rules, codes and specifications

If an Act, or statutory instrument adopts by way of reference, wholly or in part, any of the standard rules, codes or specifications of the bodies known as the Standards Association of Australia, Standards Australia, the British Standards Institution or other body expressly or impliedly identified in the Act, evidence of any such standard rule, code or specification may be given—

- (a) by the production of a document purporting to be a copy of it and purporting to be published by or on behalf of the Standards Association of Australia, Standards Australia, the British Standards Institution or other body concerned; or
- (b) by the production of a document purporting to be a copy of it and purporting to be printed by the government printer or by the authority of the Government of the State.

50 Proof of act done by Governor or Minister

Where by any law at any time in force the Governor or the Governor in Council or a Minister is authorised or empowered to do any act, production of the gazette purporting to contain a copy or notification of any such act shall be evidence of such act having been duly done.

51 Proof of public documents

Where a document is of such a public nature as to be admissible in evidence on its mere production from proper custody, a copy of or extract from the document shall be admissible in evidence if—

- (a) it is proved to be an examined copy or extract; or
- (b) it purports to be certified as a true copy or extract under the hand of a person described in the certificate as the person to whose custody the original is entrusted.

52 Proof of registers of British vessels etc.

(1) Every register of a vessel kept under any of the Acts relating to the registry of British vessels may be proved by the production of—

- (a) the original; or
- (b) an examined copy of the original; or
- (c) a copy purporting to be certified as a true copy under the hand of the person having the charge of the original.

(2) A person having the charge of the original of such register is required to furnish such certified copy to any person applying at a reasonable time for the same upon payment of such fee (if any) as is prescribed by law.

(3) Every—

- (a) such register or such copy of a register; and
- (b) certificate of registry granted under any of the said Acts relating to the registry of British vessels and purporting to be signed as required by law;

shall be admissible in evidence of—

- (c) all the matters contained or recited in such register when the register or such copy of the register is produced; and
- (d) all the matters contained recited in or endorsed on such certificate of registry when the said certificate is produced.

53 Proof of judicial proceedings

(1) Where it is sought to prove any of the following matters—

- (a) a judgment, decree, rule, conviction, acquittal, sentence or other order, process, act or decision of any court;
- (b) an affidavit, pleading, will, codicil, indictment or other legal document filed, deposited or presented in any court;
- (c) the pendency or existence at any time before any court of any proceeding;

evidence of such matter and, as the case may be, of any particulars relating thereto may be given by the production of—

- (d) the original of the order, process, act, decision or document; or
- (e) a document proved to be an examined copy of the order, process, act, decision or document; or
- (f) a document purporting to be a copy of the order, process, act, decision or document and to be sealed with the seal of the court; or
- (g) a certificate showing such matter and such particulars and purporting to be under the hand of—
 - (i) a registrar of the court; or
 - (ii) a person having the custody of the records or documents of the court; or
 - (iii) any other proper officer of the court; or
 - (iv) a deputy of such registrar, person or officer.

(2) In this section—

“**court**” means any court of Queensland, of the Commonwealth or of any other State or Territory.

54 Proof of identity of a person convicted

(1) An affidavit purporting to be made by a fingerprint expert who is a member of the police force of Queensland or of the Commonwealth or of any other State or Territory and in the approved form shall be admissible in evidence for the purpose of proving the identity of any person alleged to have been convicted in Queensland, in the Commonwealth or in the other State or Territory of any offence.

(2) Any such affidavit shall be evidence that the person, a copy of whose fingerprints is exhibited to such affidavit—

- (a) is the person who, in any document exhibited to such affidavit and purporting to be a certificate of conviction or certified copy of such conviction, is referred to as having been convicted; and
- (b) has been convicted of the offences mentioned in such affidavit.

55 Proof of incorporation or registration of company in Queensland

(1) Evidence of the incorporation or registration of a company within the meaning of the Corporations Act that is taken to be registered in Queensland may be given by the production of—

- (a) a certificate of the incorporation or registration of the company that purports to be given by the Australian Securities and Investments Commission (the “**commission**”), the commission’s delegate or a commission officer; or
- (b) an affidavit or statutory declaration of an officer of the company (“**company verification**”) made under the *Oaths Act 1867*.

(2) The date of incorporation or registration mentioned in the certificate or company verification is evidence of the date on which the company was incorporated or registered.

(2A) Evidence that a company is not incorporated or registered, or no longer incorporated or registered, may be given by the production of a certificate that purports to be given by the commission, the commission’s delegate or a commission officer.

(2B) The date a company ceased being incorporated or registered mentioned in the certificate is evidence of the date on which the company ceased being incorporated or registered.

(3) A document that purports to be—

- (a) a copy of, or extract from, a document kept and registered in the office of the commission; and
- (b) certified by the commission or the delegate or an officer of the commission;

is admissible in evidence in all cases in which the original document is admissible and for the same purposes and to the same extent.

(4) If the prosecution in a criminal proceeding intend to rely on a company verification, the prosecutor must serve a copy of it on the defendant or the defendant’s legal representative—

- (a) for a summary trial or committal proceeding—
 - (i) when the summons is served on the defendant; or
 - (ii) not later than 14 days after the defendant first appears in court for the alleged offence; or
- (b) for a trial on indictment—not later than 14 days after the indictment against the defendant is presented.

(5) A defendant who is served with a copy of a company verification under subsection (4) must give the prosecution a written notice stating whether the defendant intends to contest a following matter about the company's incorporation or registration mentioned in the company verification—

- (a) the fact of its incorporation or registration;
- (b) the date of its incorporation or registration;
- (c) the date on which it ceased being incorporated or registered.

(6) The defendant must give the notice by not later than—

- (a) 10 days before the day the trial of the proceedings to which the notice relates starts; or
- (b) the end of a later period allowed by the court, if the court considers it just to extend the period in the particular circumstances.

(7) If, in a proceeding before it, a court considers the defendant or the defendant's lawyer has unnecessarily caused the prosecution to prove the incorporation or registration of a company, the court may order the defendant to pay the prosecution's costs of proving the incorporation or registration.

(8) For this section, a defendant is taken to be served with a copy of a company verification if the copy is served on the defendant's lawyer.

56 Proof of unallocated State land grants

Upon its production in any proceeding wherein it is sought to prove any grant from the Crown of land within the State a document that purports—

- (a) to be a copy of the instrument of grant or of an entry of such instrument; and
- (b) to be certified under the hand of the registrar of titles;

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

57 Proof of lease or licence

(1) This section applies to an instrument of lease or licence issued or continued in force and held under any of the following Acts—

- *Land Act 1994*
- *Mineral Resources Act 1989*
- *Housing Act 2003*.

(2) An instrument may be proved by the production of a document purporting to be a copy of the instrument certified by the chief executive of the issuing department.

(3) In this section—

“issuing department”, for an instrument of a lease or licence, means the department dealing with matters about the provisions of the Act under which the lease or licence was issued or continued in force and held.

58 Proof of letters patent

(1) The chief executive (premiers) may certify a copy of any letters patent issued by the Crown in relation to the State, or in relation to any matter that concerns the State, to be a true copy of the letters patent.

(2) The chief executive (premiers) may delegate the power under subsection (1) to an officer of that chief executive’s department.

(3) The copy of the letters patent certified by the chief executive (premiers) is, on production in any proceeding in which it is sought to prove the letters patent, evidence of the matters contained in the copy.

(4) In this section—

“chief executive (premiers)” means the chief executive of the department dealing with matters under the *Constitution of Queensland 2001*.

58A Proof of document under Royal Sign Manual

Evidence of a document under the signature or royal hand of the Sovereign in relation to the State or in relation to any matter concerning the State (the **“Royal Sign Manual document”**) may be given by the

production of a document purporting to be a copy of the Royal Sign Manual document certified by the chief executive of the department dealing with matters under the *Constitution of Queensland 2001*.

Division 2—Proof of certain miscellaneous documents and matters

59 Comparison of disputed writing

(1) Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses and such writings and the evidence of witnesses respecting the same may be submitted as evidence of the genuineness or otherwise of the writing in dispute.

(2) A court may compare a disputed writing with any writing that is genuine and act upon its own conclusions in relation thereto.

60 Proof of instrument to validity of which attestation is not necessary

It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

61 Proof of instrument to validity of which attestation is necessary

(1) Any instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive.

(2) Nothing in this section shall apply to the proof of wills or other testamentary documents.

62 Presumption as to documents 20 years old

Where any document is proved or purports to be not less than 20 years old, there shall be made any presumption which immediately before the date of the passing of the *Evidence Acts Amendment Act 1962* would have been made in the case of a document of like character proved or purporting to be not less than 30 years old.

63 Wills, deeds etc. may be verified by declaration

(1) Any attesting witness to the execution of any will or codicil, deed, or instrument in writing, and any other competent person, may verify and prove the signing, sealing, publication, or delivery of any such will, codicil, deed or instrument in writing by declaration in writing made under the *Oaths Act 1867*.

(2) A party who intends to adduce in evidence as proof of the execution of a will, codicil, deed or instrument in writing a declaration made in accordance with subsection (1) shall give such notice of the party's intention to do so as may be required by rules of court.

(3) The method of proof prescribed by this section shall be in addition to and not in derogation of any other method of proving the due execution of a will or codicil prescribed by rules of court.

64 Evidentiary effect of probate etc.

(1) The probate of a will or letters of administration with a will annexed are evidence of the due execution of the will.

(2) The copy of a will annexed to a probate or to letters of administration is evidence of the contents of the will.

(3) The probate of a will is evidence of the death of the testator and, if the probate states the date of death of the testator, of the date of the testator's death.

(4) Letters of administration of the estate of a deceased person are evidence of the death of the person and, if the letters of administration state the date of death of the person, of the date of the person's death.

(5) In this section—

- (a) a reference to probate shall be read as a reference to probate, and to an exemplification of probate, whether granted within or outside the State; and
- (b) a reference to letters of administration shall be read as a reference to letters of administration, to an exemplification of letters of administration, whether granted within or outside the State and to an order to administer the estate of a deceased person granted to the public trustee.

65 Maps, charts etc.

(1) Where in a proceeding there is a question as to the territorial limits or situation of an area or place, or the distance between 2 places, a court may admit in evidence—

- (a) a published book, map, chart or document that appears to the court to be a reliable source of information in relation to the question; or
- (b) a certificate purporting to be given by the chief executive (surveys), or the holder of another office that, in the court's opinion, qualifies the person to express an opinion about the question.

(2) In any proceeding a map, chart or plan purporting to be issued or published by any department of the Government of the State or of the Commonwealth or by an officer thereof in discharge of the officer's functions shall, upon its production, be sufficient evidence of the matters stated or delineated thereon until the contrary is proved.

66 Astronomical phenomena

(1) Where in a proceeding there is a question as to the time or duration of any astronomical phenomenon that has occurred or shall occur in relation to a place, a court may admit in evidence a certificate about the question given by the chief executive (surveys).

(2) The certificate may include an explanation of the terms used therein, a statement of their recognised practical application, and the basis for calculating the time or duration of the astronomical phenomenon.

(3) In this section—

“**astronomical phenomenon**” includes the rising or setting of the sun or moon, the position of the sun or moon, the phase of the moon and the degree of twilight.

Division 3—Proof of certain Australian and overseas documents and matters

67 Definitions for div 3

In this division—

“overseas country” means a country or part of a country outside the Commonwealth and includes any international organisation of which the Commonwealth or an overseas country is a member.

“statute” includes any instrument of a legislative nature made, granted or issued under a statute.

68 Proof of certain Australian and overseas written laws etc.

Evidence of—

- (a) a statute, proclamation or act of state of a State or Territory other than Queensland; or
- (b) a statute, proclamation, treaty or act of state of an overseas country;

may be given by the production of—

- (c) a copy proved to be an examined copy thereof; or
- (d) a copy purporting to be sealed with the seal of that State, Territory or country; or
- (e) a book or pamphlet purporting to be published by the authority of the government of that State, Territory or country or by the government or official printer of that State, Territory or country containing the statute, proclamation, treaty or act of state; or
- (f) a book or publication that appears to the court to be a reliable source of information containing the statute, proclamation, treaty or act of state; or
- (g) a book or pamphlet that is proved to the satisfaction of the court to be admissible in the courts in that State, Territory or country as evidence of the statutes, proclamations, treaties or acts of state of that State, Territory or country contained in that book or pamphlet.

69 Proof of judicial proceedings of an overseas country

Evidence of—

- (a) a judgment, decree, rule, conviction, acquittal, sentence or other order, process, act or decision of any court in an overseas country; or

- (b) an affidavit, pleading, will, codicil, indictment or other legal document filed, deposited or presented in any such court;

may be given by the production of a copy thereof—

- (c) proved to be an examined copy thereof; or
- (d) purporting—
 - (i) to be sealed with the seal of such court; or
 - (ii) to be signed by a judge of such court with a statement in writing attached by the judge to the judge's signature that such court has no seal and without proof of the judge's judicial character or of the truth of such statement.

70 Proof of certain documents admissible elsewhere in Australia

Any document which by a law at any time in force in a State or Territory other than Queensland is admissible in evidence for any purpose in a court of that State or Territory without proof of—

- (a) the seal or stamp or signature authenticating the same; or
- (b) the judicial or official character of the person appearing to have signed the same, shall be admissible in evidence to the same extent and for the same purpose in all courts in Queensland without such proof.

71 Royal proclamations, orders of the Privy Council etc.

(1) Evidence of any royal proclamation, order of Her Majesty's Privy Council, order, regulation, dispatch, or any other instrument made or issued by Her Majesty or by Her Majesty's Privy Council, or by or under the authority of any of Her Majesty's Secretaries of State, or of any department of Her Majesty's Government in the United Kingdom, may be given—

- (a) by the production of a document purporting to be a copy of the London gazette or of the government gazette purporting to contain a reprint of such proclamation, order of the Privy Council, order, regulation, dispatch or other instrument; or
- (b) by the production in the case of any such proclamation of a copy purporting to be printed by the government printer.

(2) In this section (but without affecting the generality of the expression when used elsewhere)—

“**Her Majesty**” includes any predecessors of Her Majesty.

72 Proof of certain Australian and overseas public documents

Where a document of a State or Territory of the Commonwealth other than Queensland or of an overseas country is of such a public nature that it would if it were a Queensland document be admissible in evidence in Queensland on its mere production from proper custody, a copy of or extract from the document shall be admissible in evidence if—

- (a) it is proved to be an examined copy or extract; or
- (b) it purports to be certified as a true copy or extract under the hand of a person described in the certificate as the person to whose custody the original is entrusted.

73 Proof of incorporation or registration of certain Australian and overseas companies

Evidence of the incorporation or registration of a company within the meaning of the Corporations Act that is taken to be registered in a State or Territory of the Commonwealth other than Queensland or in an overseas country may be given by the production of a certificate of the incorporation or registration of that company which purports to be signed or issued by the Australian Securities and Investments Commission or the proper officer or body in that country, and the date of incorporation or registration mentioned in such certificate shall be evidence of the date on which the company was incorporated or registered.

74 Proof of birth, adoption, death or marriage

A document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, adoption, death or marriage alleged to have taken place whether in Australia or elsewhere is evidence in a proceeding of the matters contained therein.

Division 4—Proof of telegraphic messages**75 Notice of intention to adduce telegraphic message in evidence**

(1) In any proceeding (not being a criminal proceeding), any party may at any time after the commencement thereof give notice to any other party that the party proposes to adduce in evidence at the trial or hearing any telegraphic message that has been sent by telegraph from any place in the Commonwealth to any other place in the Commonwealth.

(1A) However—

- (a) the time between the giving of such notice and the day on which such evidence shall be tendered shall not in any case be less than 2 days; and
- (b) every such notice shall specify the names of the sender and receiver of the message, the subject matter thereof, and the date as nearly as may be.

(2) Any such notice may be served and the service thereof proved in the same manner as notices to produce may now be served and proved.

76 Proof of message

Where a notice under section 75 has been given, the production of a telegraphic message described in the notice and purporting to have been sent by any person, together with evidence that the same was duly received from a telegraph office, shall be evidence that such message was sent by the person so purporting to be the sender thereof to the person to whom the same is addressed.

77 Proof of sending a message

Where a notice under section 75 has been given, the production of a telegraphic message, or a copy thereof verified on oath, together with evidence that such message was sent to or delivered at a telegraph office and that the fees (if any) for the transmission thereof were duly paid shall be evidence that such message was duly delivered to the person named therein as the person to whom the same was to be transmitted.

Division 5—Admissibility of convictions in civil proceedings**78 Definitions for div 5**

In this division—

“conviction” does not include—

- (a) a conviction that has been set aside or quashed; or
 - (b) where the person convicted of an offence has been granted a pardon in respect of that offence, such a conviction;
- and the term **“convicted”** has a corresponding meaning.

“court” means any court of Queensland, of the Commonwealth or of any other State or Territory but does not include a court martial.

79 Convictions as evidence in civil proceedings

(1) In this section—

“civil proceeding” does not include an action for defamation.

(2) In any civil proceeding the fact that a person has been convicted by a court of an offence is admissible in evidence for the purpose of proving, where to do so is relevant to any issue in that proceeding, that the person committed that offence.

(3) In any civil proceeding in which by virtue of this section a person is proved to have been convicted by a court of an offence the person shall, unless the contrary is proved, be taken to have committed the acts and to have possessed the state of mind (if any) which at law constitute that offence.

(4) This section applies—

- (a) whether or not a person was convicted upon a plea of guilty; and
- (b) whether or not the person convicted is a party to the civil proceeding.

80 Convictions as evidence in actions for defamation

In an action for defamation in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in the action, proof that at the time when the issue falls to be determined that

person stands convicted by a court of that offence is conclusive evidence that the person committed that offence.

81 Evidence identifying the particulars of a conviction

Without prejudice to the reception of any other evidence for the purpose of identifying the particulars of a conviction—

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of any document which is admissible as evidence of the complaint, information, indictment or charge on which the person in question was convicted;

shall be admissible for that purpose where by virtue of section 79 or 80 evidence of the conviction may be given.

82 Operation of other laws not affected

Nothing in this division derogates from the operation of any other law under which a conviction or finding of fact in a criminal proceeding is, for the purposes of any proceeding, made evidence or conclusive evidence of any fact.

Division 6—Books of account

83 Definitions for div 6

In this division—

“book of account” includes any document used in the ordinary course of any undertaking to record the financial transactions of the undertaking or to record anything acquired or otherwise dealt with by, produced in, held for or on behalf of, or taken or lost from the undertaking and any particulars relating to any such thing.

“court” means—

- (a) in relation to any proceeding in the Supreme Court—the Supreme Court or a judge thereof; and
- (b) in relation to any proceeding in the District Court—the District Court or a judge thereof; and

- (c) in relation to any proceeding in a Magistrates Court or before justices—the Magistrates Court, a magistrate or a justice; and
- (d) in relation to any other proceeding—the Supreme Court or a judge thereof.

84 Entries in book of account to be evidence

Subject to this division, in all proceedings—

- (a) an entry in a book of account shall be evidence of the matters transactions and accounts therein recorded; and
- (b) a copy of an entry in a book of account shall be evidence of the entry and of the matters transactions and accounts therein recorded.

85 Proof that book is a book of account

(1) An entry or a copy of an entry in a book of account shall not be admissible in evidence under this division unless it is first proved that the book was at the time of the making of the entry 1 of the ordinary books of account of the undertaking to which it purports to relate and that the entry was made in the usual and ordinary course of that undertaking.

(2) Such proof may be given by a responsible person familiar with the books of account of the undertaking and may be given orally or by an affidavit sworn or by a declaration made before a commissioner or person authorised to take affidavits or statutory declarations.

86 Verification of copy

(1) A copy of an entry in a book of account shall not be admissible in evidence under this division unless it is further proved that the copy has been examined with the original entry and is correct.

(2) Such proof may be given by some person who has examined the copy with the original entry and may be given either orally or by an affidavit sworn or by a declaration made before a commissioner or person authorised to take affidavits or statutory declarations.

87 Matters which may be proved under this division ordinarily to be so proved

A person engaged in any undertaking or an employee of that person shall not in any proceeding to which the person is not a party be compellable to produce any book of account the contents of which can be proved under this division or to appear as a witness to prove the matters transactions and accounts therein recorded unless by order of a court.

88 Court may order books of account or copies to be made available

(1) On the application of any party to a proceeding, a court may order that such party be at liberty to inspect and take copies of or extracts from any entries in a book of account of any undertaking for any of the purposes of such proceeding.

(2) An order under this section may be made either with or without summoning the person engaged in the undertaking or any other party and shall be served on the person engaged in the undertaking 3 clear days before the same is to be obeyed unless the court otherwise directs.

(3) An order under this section may direct that the person engaged in the undertaking shall, on payment of such fee as is specified in the order, prepare and deliver to the party who obtained that order a duly verified copy of such entries as may be required for evidence in the proceeding.

(4) For the purposes of subsection (2), Saturday, Sunday, and any day which is a public holiday throughout the State or in that part of the State in which the order is to be obeyed shall be excluded from the computation of time.

(5) Where a person engaged in any undertaking is a party to a proceeding, the other party or parties thereto shall be at liberty to inspect and make copies of or extracts from the original entries and the accounts of which such entries form a part and the documents in respect of which such entries were made as though this division had not been enacted.

89 Proof that a person has no account

(1) Where it is sought to prove for the purposes of a proceeding that a person did not at a given time have an account with an undertaking or with any branch thereof, evidence of the fact may be given by a responsible person familiar with the books of account of the undertaking or, as the case may be, of the branch thereof.

(2) Such evidence may be given by such person orally or by an affidavit sworn or by a declaration made before a commissioner or person authorised to take affidavits or statutory declarations.

90 Costs

(1) The costs of any application to a court under or for the purposes of this division and the costs of anything done or to be done under an order of a court made under or for the purposes of this division shall be in the discretion of the court, who may order the same or any part thereof to be paid to any party by the person engaged in the undertaking concerned where the same have been occasioned by any default or delay on the part of that person.

(2) Any such order against a person engaged in an undertaking may be enforced as if the person were a party to the proceeding.

91 Application of ss 84–86 and 89

Sections 84 to 86 and 89 shall apply to and in relation to books of account and persons engaged in undertakings in any State or Territory.

PART 6—ADMISSIBILITY OF STATEMENTS AND REPRESENTATIONS

92 Admissibility of documentary evidence as to facts in issue

(1) In any proceeding (not being a criminal proceeding) where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, subject to this part, be admissible as evidence of that fact if—

- (a) the maker of the statement had personal knowledge of the matters dealt with by the statement, and is called as a witness in the proceeding; or
- (b) the document is or forms part of a record relating to any undertaking and made in the course of that undertaking from information supplied (whether directly or indirectly) by persons who had, or may reasonably be supposed to have had, personal

knowledge of the matters dealt with in the information they supplied, and the person who supplied the information recorded in the statement in question is called as a witness in the proceeding.

(2) The condition in subsection (1) that the maker of the statement or the person who supplied the information, as the case may be, be called as a witness need not be satisfied where—

- (a) the maker or supplier is dead, or unfit by reason of bodily or mental condition to attend as a witness; or
- (b) the maker or supplier is out of the State and it is not reasonably practicable to secure the attendance of the maker or supplier; or
- (c) the maker or supplier cannot with reasonable diligence be found or identified; or
- (d) it cannot reasonably be supposed (having regard to the time which has elapsed since the maker or supplier made the statement, or supplied the information, and to all the circumstances) that the maker or supplier would have any recollection of the matters dealt with by the statement the maker made or in the information the supplier supplied; or
- (e) no party to the proceeding who would have the right to cross-examine the maker or supplier requires the maker or supplier being called as a witness; or
- (f) at any stage of the proceeding it appears to the court that, having regard to all the circumstances of the case, undue delay or expense would be caused by calling the maker or supplier as a witness.

(3) The court may act on hearsay evidence for the purpose of deciding any of the matters mentioned in subsection (2)(a), (b), (c), (d) or (f).

(4) For the purposes of this part, a statement contained in a document is made by a person if—

- (a) it was written, made, dictated or otherwise produced by the person; or
- (b) it was recorded with the person's knowledge; or
- (c) it was recorded in the course of and ancillary to a proceeding; or
- (d) it was recognised by the person as the person's statement by signing, initialling or otherwise in writing.

93 Admissibility of documentary evidence as to facts in issue in criminal proceedings

(1) In any criminal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, subject to this part, be admissible as evidence of that fact if—

- (a) the document is or forms part of a record relating to any trade or business and made in the course of that trade or business from information supplied (whether directly or indirectly) by persons who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the information they supplied; and
- (b) the person who supplied the information recorded in the statement in question—
 - (i) is dead, or unfit by reason of the person's bodily or mental condition to attend as a witness; or
 - (ii) is out of the State and it is not reasonably practicable to secure the person's attendance; or
 - (iii) cannot with reasonable diligence be found or identified; or
 - (iv) cannot reasonably be supposed (having regard to the time which has lapsed since the person supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information the person supplied.

(2) In this section—

“business” includes any public transport, public utility or similar undertaking carried on in Queensland or elsewhere by the Crown (in right of the State of Queensland or any other right) or a statutory body.

93A Statement made before proceeding by child or intellectually impaired person

(1) In any proceeding where direct oral evidence of a fact would be admissible, any statement tending to establish that fact, contained in a document, shall, subject to this part, be admissible as evidence of that fact if—

- (a) the maker of the statement was a child or an intellectually impaired person at the time of making the statement and had

personal knowledge of the matters dealt with by the statement;
and

- (b) the child or intellectually impaired person is available to give evidence in the proceeding.

(2) Where a statement made by a child or intellectually impaired person is admissible as evidence of a fact pursuant to subsection (1), a statement made to the child or intellectually impaired person by any other person—

- (a) that is also contained in the document containing the statement of the child or intellectually impaired person; and
(b) in response to which the statement of the child or intellectually impaired person was made;

shall, subject to this part, be admissible as evidence if that other person is available to give evidence.

(3) Where the statement of a person is admitted as evidence in any proceeding pursuant to subsection (1) or (2), the party tendering the statement shall, if required to do so by any other party to the proceeding, call as a witness the person whose statement is so admitted and the person who recorded the statement.

(3A) For a committal proceeding for a relevant offence, subsections (1)(b) and (3) do not apply to the person who made the statement if the person is an affected child.

Note—

For the taking of an affected child's evidence for a committal proceeding for a relevant offence, see part 2, division 4A, subdivision 2.

(4) In the application of subsection (3) to a criminal proceeding—

“party” means the prosecution or the person charged in the proceeding.

(5) In this section—

“affected child” see section 21AC.

“child” means—

- (a) a child who is under 16 years; or
(b) a child who is 16 or 17 years and who is a special witness.

“relevant offence” see section 21AC.

93AA Unauthorised possession of, or dealing in, s 93A criminal statements

- (1) A person commits an offence who, without authority—
- (a) has a section 93A criminal statement in the person's possession; or
 - (b) supplies, or offers to supply, a section 93A criminal statement to any person; or
 - (c) copies, or permits a person to copy, a section 93A criminal statement.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
- (b) for a corporation—1 000 penalty units.

(2) A person has authority for subsection (1) only if the person has the possession or does the thing mentioned in subsection (1) for a legitimate purpose connected with the proceeding for which the section 93A statement was made or another proceeding.

(3) In this section—

“section 93A criminal statement” means a statement—

- (a) made to a person investigating an alleged offence; and
- (b) given in, or in anticipation of, a criminal proceeding about the alleged offence; and
- (c) that is potentially admissible under section 93A.

93B Admissibility of representation in prescribed criminal proceedings if person who made it is unavailable

(1) This section applies in a prescribed criminal proceeding if a person with personal knowledge of an asserted fact—

- (a) made a representation about the asserted fact; and
- (b) is unavailable to give evidence about the asserted fact because the person is dead or mentally or physically incapable of giving the evidence.

(2) The hearsay rule does not apply to evidence of the representation given by a person who saw, heard or otherwise perceived the representation, if the representation was—

- (a) made when or shortly after the asserted fact happened and in circumstances making it unlikely the representation is a fabrication; or
- (b) made in circumstances making it highly probable the representation is reliable; or
- (c) at the time it was made, against the interests of the person who made it.

(3) If evidence given by a person of a representation about a matter has been adduced by a party and has been admitted under subsection (2), the hearsay rule does not apply to the following evidence adduced by another party to the proceeding—

- (a) evidence of the representation given by another person who saw, heard or otherwise perceived the representation;
- (b) evidence of another representation about the matter given by a person who saw, heard or otherwise perceived the other representation.

(4) To avoid any doubt, it is declared that subsections (2) and (3) only provide exceptions to the hearsay rule for particular evidence and do not otherwise affect the admissibility of the evidence.

(5) In this section—

“prescribed criminal proceeding” means a criminal proceeding against a person for an offence defined in the Criminal Code, chapters 28 to 32.³⁹

“representation” includes—

- (a) an express or implied representation, whether oral or written; and
- (b) a representation to be inferred from conduct; and

³⁹ Criminal Code, chapters 28 (Homicide—Suicide—Concealment of Birth), 29 (Offences endangering life or health), 30 (Assaults) and 32 (Rape and sexual assaults)

- (c) a representation not intended by the person making it to be communicated to or seen by another person; and
- (d) a representation that for any reason is not communicated.

93C Warning and information for jury about hearsay evidence

(1) This section applies if evidence is admitted under section 93B (“**hearsay evidence**”) and there is a jury.

(2) On request by a party, the court must, unless there are good reasons for not doing so—

- (a) warn the jury the hearsay evidence may be unreliable; and
- (b) inform the jury of matters that may cause the hearsay evidence to be unreliable; and
- (c) warn the jury of the need for caution in deciding whether to accept the hearsay evidence and the weight to be given to it.

(3) It is not necessary for a particular form of words to be used in giving the warning or information.

(4) This section does not affect another power of the court to give a warning to, or to inform, the jury.

94 Admissibility of evidence concerning credibility of persons responsible for statement

(1) Where in any proceeding a statement is given in evidence by virtue of section 84, 92, 93 or 93A and a person who made the statement or supplied the information recorded in it is not called as a witness in the proceeding—

- (a) any evidence which, if that person had been so called, would be admissible for the purpose of destroying or supporting the person’s credibility as a witness shall be admissible for that purpose in that proceeding;
- (b) any evidence tending to prove that, whether before or after the person made that statement or supplied that information, the person made another statement or supplied other information (whether orally or in a document or otherwise) inconsistent therewith shall be admissible for the purpose of showing that the person has contradicted himself or herself;

but nothing in paragraphs (a) or (b) shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

(2) Where in any proceeding a statement is given in evidence by virtue of section 84, 92, 93 or 93A and a person who made the statement or supplied the information recorded in it is not called as a witness in the proceeding any evidence proving that that person has been guilty of any indictable or other offence shall, with the leave of the court, be admissible in the proceeding to the same extent as if that person had been so called and on being questioned as to whether the person had been convicted of an indictable or other offence had denied the fact or refused to answer the question.

95 Admissibility of statements produced by computers

(1) In any proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document produced by a computer and tending to establish that fact shall, subject to this part, be admissible as evidence of that fact, if it is shown that the conditions mentioned in subsection (2) are satisfied in relation to the statement and computer in question.

(2) The said conditions are—

- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person; and
- (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived; and
- (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

- (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2)(a) was regularly performed by computers, whether—

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of 1 or more computers and 1 or more combinations of computers;

all the computers used for that purpose during that period shall be treated for the purposes of this part as constituting a single computer and references in this part to a computer shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing all or any of the following things, that is to say—

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate;

and purporting to 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) shall be evidence of the matters stated in the certificate and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) Any person who in a certificate tendered in evidence by virtue of subsection (4) wilfully makes a statement material in that proceeding

which the person knows to be false or does not believe to be true is guilty of an offence.

Maximum penalty—20 penalty units or 1 year’s imprisonment.

(6) For the purposes of this part—

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) where, in the course of activities carried on by any person, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(7) Subject to subsection (3), in this section—

“**computer**” means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

95A DNA evidentiary certificate

(1) This section applies to a criminal proceeding.

(2) A certificate, in the approved form, purporting to be signed by a DNA analyst and stating any of the following matters is evidence of the matter—

- (a) that a stated thing was received at a stated laboratory on a stated day;
- (b) that the thing was tested at the laboratory on a stated day or between stated days;
- (c) that a stated DNA profile has been obtained from the thing;
- (d) that the DNA analyst—

- (i) examined the laboratory's records relating to the receipt, storage and testing of the thing, including any test process that was done by someone other than the DNA analyst; and
- (ii) confirms that the records indicate that all quality assurance procedures for the receipt, storage and testing of the thing that were in place in the laboratory at the time of the test were complied with.

(3) If a party intends to rely on the certificate, the party must—

- (a) at least 10 business days before the hearing day, give a copy of the certificate to each other party; and
- (b) at the hearing, call the DNA analyst to give evidence.

(4) If the chief executive receives a written request from a party for a copy of the laboratory's records relating to the receipt, storage and testing of the thing, the chief executive must give the party a copy of the records within 7 business days after receiving the request.

(5) If a party intends to challenge a matter stated in the certificate, the party must, at least 3 business days before the hearing day, give the chief executive and each other party notice, in the approved form, of the matter to be challenged.

(6) A party challenging a matter stated in the certificate may, with the leave of the court, require the party relying on the certificate to call any person involved in the receipt, storage or testing of the thing to give evidence at the hearing.

(7) The court may give leave only if the court is satisfied that—

- (a) an irregularity may exist in relation to the receipt, storage or testing of the thing about which the person to be called is able to give evidence; or
- (b) it is in the interests of justice that the person be called to give evidence.

(8) Any equipment used in testing the thing at the laboratory is to be taken to have given accurate results in the absence of evidence to the contrary.

(9) In this section—

“chief executive” means the chief executive of the department within which the *Health Act 1937* is administered.

“**DNA analyst**” means a person who holds an appointment as a DNA analyst under section 133A.

“**DNA profile**” means the result from DNA analysis.

“**hearing day**” means the day fixed for the start of the hearing of the proceeding.

“**party**” means the prosecution or a person charged in the proceeding.

96 Inferences concerning admissibility

(1) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of this part, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances.

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 92 or 93, the court may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a legally qualified medical practitioner.

97 Authentication

Where in any proceeding a statement contained in a document is proposed to be given in evidence by virtue of this part, it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or the material part thereof, authenticated in such manner as the court may approve.

98 Rejection of evidence

(1) The court may in its discretion reject any statement or representation notwithstanding that the requirements of this part are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(2) This section does not affect the admissibility of any evidence otherwise than by virtue of this part.

99 Withholding statement from jury room

Where in a proceeding there is a jury, and a statement in a document is admitted in evidence under this part, and it appears to the court that if the

jury were to have the document with them during their deliberations they might give the statement undue weight, the court may direct that the document be withheld from the jury during their deliberations.

100 Corroboration

For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this part shall not be treated as corroboration of evidence given by the maker of the statement or the person who supplied the information from which the record containing the statement was made.

101 Witness's previous statement, if proved, to be evidence of facts stated

(1) Where in any proceeding—

- (a) a previous inconsistent or contradictory statement made by a person called as a witness in that proceeding is proved by virtue of section 17, 18 or 19;⁴⁰ or
- (b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that the person's evidence has been fabricated;

that statement shall be admissible as evidence of any fact stated therein of which direct oral evidence by the person would be admissible.

(2) Subsection (1) shall apply to any statement or information proved by virtue of section 94(1)(b) as it applies to a previous inconsistent or contradictory statement made by a person called as a witness which is proved as mentioned in subsection (1)(a).

(3) Nothing in this part shall affect any of the rules of law relating to the circumstances in which, where a person called as a witness in any proceeding is cross-examined on a document used by the person to refresh the person's memory, that document may be made evidence in that proceeding, and where a document or any part of a document is received in evidence in any such proceeding by virtue of any such rule of law, any

40 Section 17 (How far a party may discredit the party's own witness), 18 (Proof of previous inconsistent statement of witness) or 19 (Witness may be cross-examined as to written statement without being shown it)

statement made in that document or part by the person using the document to refresh the person's memory shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by the person would be admissible.

102 Weight to be attached to evidence

In estimating the weight (if any) to be attached to a statement rendered admissible as evidence by this part, regard shall be had to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the statement, including—

- (a) the question whether or not the statement was made, or the information recorded in it was supplied, contemporaneously with the occurrence or existence of the facts to which the statement or information relates; and
- (b) the question whether or not the maker of the statement, or the supplier of the information recorded in it, had any incentive to conceal or misrepresent the facts.

103 Provisions of part are alternative

Sections 92 to 95 and 101 shall be construed as in aid of and as alternative to one another, any other provision in any other part, and any other law practice or usage with respect to the admissibility in evidence of statements.

PART 7—REPRODUCTIONS OF DOCUMENTS

Division 1—Preliminary

104 Definitions for part

In this part—

“**affidavit**” includes statutory declarations.

“**business**” includes any undertaking.

“machine copy”, in relation to a document, means a copy of the document made by a machine performing a process—

- (a) involving the production of a latent image of the document (not being a latent image on photosensitive material on a transparent base) and the development of that image by chemical means or otherwise; or
- (b) that, without the use of photosensitive material, produces a copy of the document simultaneously with the making of the document.

“original document” means—

- (a) when referred to in connection with the production of a document in answer to legal process issued by a court, the document that would, if this part had not been enacted, be required to be produced in answer to that process; or
- (b) when referred to in connection with the admissibility of a document in evidence in a proceeding—
 - (i) a document that would, if this part had not been enacted, be admissible in evidence in that proceeding in lieu of another document where a party to the proceeding failed to produce that other document in response to notice to do so given to the party by another such party; or
 - (ii) any other document that would, if this part had not been enacted, be admissible in evidence in that proceeding.

“reproduction” in relation to a document means a machine copy of the document or a print made from a transparency of the document and **“reproduce”** and any derivatives thereof have a corresponding meaning.

“transparency”, in relation to a document, means—

- (a) a developed negative or positive photograph of that document (an **“original photograph”**) made on a transparent base by means of light reflected from, or transmitted through, the document; or
- (b) a copy of an original photograph made by the use of photosensitive material (being photosensitive material on a transparent base) placed in surface contact with the original photograph; or
- (c) any 1 of a series of copies of an original photograph, the first of the series being made by the use of photosensitive material

(being photosensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b) of this definition, and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series.

Division 2—Reproduction of official documents

105 Certified reproductions of certain official documents etc. to be admissible without further proof

(1) In this section—

“**approved person**” means—

- (a) a person the Minister declares by gazette notice to be an approved person; or
- (b) where an original document to which this section relates is a document filed in a court or the official record of a proceeding, the registrar or other proper officer of the court in which the document was filed or before which the proceeding took place.

(2) A person shall not fail or cease to be an approved person by reason only of a misdescription or an abbreviated description of a designated office by virtue of which the person would, but for the misdescription or abbreviated description, be an approved person, where the misdescription or abbreviation does not materially affect identification of that person.

(3) A document that purports to be a copy of an original document shall, without further proof, be admissible in evidence in a proceeding as if it were the original document of which it purports to be a copy, if it bears or is accompanied by a certificate, purporting to have been signed by an approved person, that it is a reproduction of a document that was in the custody or control of that person in the person’s official capacity—

- (a) where the reproduction is a machine copy, at the time the machine copy was made; or
- (b) where the reproduction is a print made from a transparency, at the time when the transparency was made.

(4) Where an approved person is served with legal process to produce a document to a court it shall be a sufficient answer to such process if the person to whom the process is addressed sends by post, or causes to be delivered, to the registrar or proper officer of the court requiring the

production of the document a reproduction, certified as provided by this section, of the document and, where more than 1 document is specified howsoever in the legal process, further certifies, that, to the best of the person's knowledge and belief, the reproductions so sent or caused to be delivered are reproductions of the whole of the documents in question.

(5) For the purposes of this section and without prejudice to any form of custody or control, an approved person shall be deemed to have custody or control of a document at the time the transparency of the document was made if—

- (a) the person has custody or control of the transparency; and
- (b) the transparency—
 - (i) incorporates a transparency of a certificate purporting to have been signed by an approved person to the effect that the transparency was made as a permanent record of a document in the custody or under the control of the person who signed the certificate; or
 - (ii) is 1 of a series of transparencies that incorporates, as part of the series, a transparency of such a certificate relating to the transparencies in the series.

(6) Division 3 of this part shall not apply to or in respect of a reproduction of a document referred to in this division.

Division 3—Reproduction of business documents

106 Admissibility of reproductions of business documents destroyed, lost or unavailable

(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 proceeding to the 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 matters, be a 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 the person made a machine copy of or photographed a document—

- (a) stating the person's full name, address and occupation; and
- (b) identifying or describing the document and indicating whether the document is itself a reproduction; and
- (c) stating the day upon which the person made the machine copy or photograph, the condition of the document at that time with respect to legibility and the extent of any damage thereto; and
- (d) describing the machine or process by which the person made the machine copy or photograph; and
- (e) 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 with the object of making a machine copy or, as the case may be, a transparency of the document; and
- (f) 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 a machine copy is, or in the case of a transparency can be used to produce, a reproduction of the document.

107 Use of photographing machines

(1) For this part, a regulation may declare a machine to be an approved machine.

(2) Subject to this part, but in addition to and without derogating from the provisions of section 106(1), a print made from a transparency of an original document (being a document made or used in the course of business) shall be admissible in evidence in a proceeding to the extent to which the contents of the original document would have been admissible, whether the document is still in existence or not, upon proof that the transparency was made in good faith by using a machine that, at the time the transparency was made, was an approved machine and that the print is a print of the image on the transparency.

(3) Without prejudice to any other mode of proof an affidavit purporting to have been made by a person at or about the time the person photographed a document by means of an approved machine—

- (a) stating the person's full name, address and occupation and the person's functions or duties (if any) in relation to copying documents; and
- (b) identifying or describing the document and indicating whether the document is itself a reproduction; and
- (c) stating the day upon which the document was photographed, the condition of the document at that time with respect to legibility and the extent of any damage to the document; and
- (d) stating the person from whose custody or control the document was produced for photographing or on whose behalf or in the course of whose business the document was photographed; and
- (e) identifying the approved machine and stating that the photographing was properly carried out in the ordinary course of business by the use of apparatus and materials in good working order and condition and in accordance with the conditions (if any) attaching to the approval of such machine as so notified; and
- (f) stating that the document was photographed in good faith;

shall be evidence, whether such person is available to be called as a witness or not, that a transparency of the document referred to in the affidavit was made in good faith by using an approved machine and bears an image of the document.

108 Affidavit of maker of print from transparency to be evidence

Without prejudice to any other mode of proof an affidavit purporting to have been made by a person at or about the time the person made a print from a transparency of a document—

- (a) stating the person's full name, address and occupation; and
- (b) identifying the transparency; and
- (c) stating the day upon which the print was made, the condition of the transparency and the extent of any damage thereto; and
- (d) describing the process by which the person made the print; and

- (e) stating that the printing was properly carried out by the use of apparatus and materials in good working order and condition with the object of reproducing the whole of the image on the transparency; and
- (f) stating that the print was made in good faith;

shall be evidence, whether such person is available to be called as a witness or not, that the print was made in good faith and reproduces the whole of the image on the transparency.

109 Proof where document processed by independent processor

Where a person having the custody or control of a document—

- (a) delivers the document, or causes it to be delivered to another person (“**the processor**”) whose business is or includes the reproduction or photographing of documents for other persons; and
- (b) receives from the processor—
 - (i) a machine copy or transparency of a document; and
 - (ii) an affidavit by the processor under section 106 or 107;

an affidavit made by the person at or about that time giving particulars of the person’s custody or control of the document, its delivery to the processor and the person’s receipt from the processor, of the document and the machine copy or transparency shall, whether the person who had the custody or control of the document is available to be called as a witness or not, be admissible in a proceeding as evidence of the facts stated therein.

110 Reproduction not to be admitted as evidence unless transparency in existence

(1) Save as provided in subsection (2) a reproduction made from a transparency shall not be admitted as evidence pursuant to this division in any proceeding unless the court is satisfied—

- (a) that the transparency is in existence at the time of the proceeding; and
- (b) that the document reproduced was—
 - (i) in existence for a period of at least 12 months after the document was made; or

- (ii) delivered or sent by the party tendering the reproduction to the other party or 1 of the other parties to the proceeding.

(2) The provisions of subsection (1)(b) do not apply with respect to a print made from a transparency made by using an approved machine where, at the time the print was made, the transparency was in the custody or control of—

- (a) a Minister of the Crown in right of the Commonwealth or of the State of Queensland or of any other State or any officer in any government department under the direct control of any such Minister; or
- (b) any council, board, commission, trust or other body established or constituted by or under the law of the Commonwealth or of the State of Queensland or of any other State or Territory for any public purpose; or
- (c) a financial institution; or
- (d) any corporation that is registered under the *Life Insurance Act 1995* (Cwlth) where the document reproduced relates to the life insurance business of that corporation.

111 Transparency etc. may be preserved in lieu of document

Where any Act passed before or after the commencement of this Act requires a document to which this division applies to be preserved for any purpose for a longer period of time than 3 years it shall be a sufficient compliance with such a requirement to preserve, in lieu of any such document more than 3 years old, a transparency thereof made by using an approved machine together with an affidavit relating to the transparency being a transparency and an affidavit to which section 115 applies.

112 Proof of destruction of documents etc.

A statement by any person in an affidavit made for the purposes of this division—

- (a) that the person destroyed or caused the destruction of a document; or
- (b) that after due search and inquiry a document cannot be found; or
- (c) that, for the reasons specified therein, it is not reasonably practicable to produce a document or secure its production; or

- (d) that a transparency of a document is in the custody or control of a person, corporation or body referred to in section 110(2); or
- (e) that a document was made or was used in the course of the person's or the person's employer's business; or
- (f) that the person has made transparencies of a series of documents including the affidavit by photographing them in their proper order;

shall be evidence of the fact or facts stated, whether that person is available to be called as a witness or not.

113 One affidavit sufficient in certain circumstances

(1) This section applies to and in respect of transparencies, made by using an approved machine, of a series of documents that—

- (a) bear or have been given serial numbers in arithmetical order; or
- (b) bear or have been marked with the same distinctive identification mark; or
- (c) purport from their contents to relate to the same subject matter, to the same person or persons or to a matter between persons;

where the documents are photographed in their proper order on a continuous length of film or, where the documents are marked in accordance with paragraph (a) or (b), on separate films.

(2) An affidavit made pursuant to this division shall be deemed to be an affidavit in respect of all or any of the transparencies of a series of documents to which this section applies if it is photographed as part of the series and in lieu of identifying or describing each individual document photographed, it states the general nature of the documents in the series and—

- (a) the serial numbers of the first and last document in the series; or
- (b) the distinctive identification mark; or
- (c) the person or persons, or the matter between persons, to which the documents refer;

as the case may require.

(3) Notwithstanding anything contained in this division, a print that purports to be made from a transparency of an affidavit referred to in

subsection (2) shall be admissible in evidence in a proceeding as if it were the affidavit from which the transparency was made, if—

- (a) it is produced or tendered with a print made from a transparency of a document in the series to which the affidavit relates; and
- (b) an affidavit under section 108 relating to both prints is also produced or tendered.

114 Certification required when affidavit etc. not contained in length or series of film

Where any affidavit relating to the reproduction of a document is not an affidavit referred to in section 113(2), a copy thereof duly certified to be a true copy—

- (a) in the case of an affidavit in the custody of a body corporate—by the chairperson, secretary or by a director or manager thereof; or
- (b) in any other case—by a justice of the peace;

shall, unless the court otherwise orders, be admissible in evidence in a proceeding as if it were the affidavit of which it is certified to be a true copy.

115 Discovery, inspection and production where document destroyed or lost

(1) In this section—

“**affidavit**” includes—

- (a) a transparency, made as provided in section 113, of an affidavit; and
- (b) a copy, certified as provided in section 114, of an affidavit.

(2) This section applies to—

- (a) a transparency of a destroyed or lost document, where a print made from the transparency would, subject to compliance with the conditions prescribed by this part for the purpose, be admissible in evidence in a proceeding; and
- (b) an affidavit that would be evidence or, where the affidavit is itself in the form of a transparency, that could be the means of providing evidence, pursuant to this part, of compliance with

those conditions in so far as they relate to the making of the transparency and the destruction or loss of the document.

(3) Where any person has the custody or control of a transparency and an affidavit to which this section applies and, but for the destruction or loss of the document from which the transparency was made would be required by any law, order of court, practice or usage—

- (a) to give discovery of the document; or
- (b) to produce the document for inspection; or
- (c) to permit the making of a copy of the document or the taking of extracts therefrom; or
- (d) to supply a copy of the document;

the law, order, practice or usage shall, subject to this section, be deemed to extend to the transparency and affidavit.

(4) For the purposes of this section—

- (a) the obligation imposed by this section in respect of a requirement referred to in subsection (3)(b) shall be deemed to include an obligation—
 - (i) to provide proper facilities for reading the image on the transparency and, where the affidavit is itself in the form of a transparency, the image on the transparency of the affidavit; or
 - (ii) to produce for inspection a print made from the transparency and, where the affidavit is itself in the form of a transparency, a print made from the transparency of the affidavit, together in each case, with an affidavit that would under section 108, be evidence that the print was made in good faith and reproduces the image on the transparency; and
- (b) the obligation imposed by this section in respect of a requirement referred to in subsection (3)(d) shall be deemed not to include an obligation to supply a copy of any transparency but to include, in lieu thereof, an obligation to supply the print and affidavit or, as the case may require, the prints and affidavits, referred to in paragraph (a)(ii).

(5) Where any person has the custody or control of a transparency and an affidavit to which this section applies and is required by legal process issued by a court to produce to the court the document from which the

transparency was made, that legal process shall be deemed to require the production by the person of—

- (a) a print, made in good faith, that reproduces the image on the transparency; and
- (b) the affidavit or, where the affidavit is itself in the form of a transparency, a print, made in good faith, that reproduces the image on the transparency of the affidavit.

Division 4—General

116 Copies to be evidence

Notwithstanding any other provision of this part, where a document has been copied by means of a photographic or other machine which produces a facsimile copy of the document, the copy is, upon proof to the satisfaction of the court that the copy was taken or made from the original document by means of the machine, admissible in evidence to the same extent as the original document would be admissible in evidence without—

- (a) proof that the copy was compared with the original document; and
- (b) notice to produce the original document having been given.

117 Further reproduction may be ordered by court

(1) Subject to this section, where a print made from a transparency is, in a proceeding, tendered in evidence pursuant to the provisions of this part and—

- (a) the court is not satisfied that the print is a legible copy of the original document; or
- (b) a party to the proceeding questions the authenticity of the print and applies for an order under this section;

the court may reject the print tendered and order that a further print be made from a transparency of the original document.

(2) A further print made in compliance with an order made under this section shall be made—

- (a) where the order is made under subsection (1)(a), at the cost of the party who tendered the rejected print; or
- (b) where the order is made under subsection (1)(b), in the presence of a person appointed by the court for the purpose and at the cost of the party who applied for the order.

(3) Where a print to which division 2 of this part relates is rejected under this section, a print made in compliance with an order under this section shall be made in the same premises as the rejected print or, where this is not practicable, in accordance with directions given by the court.

118 Colours and tones of reproductions

(1) For the purposes of this part, the production of a reproduction of a document to a court in answer to a legal process, or the admission of such a reproduction in evidence in a proceeding, shall not be precluded on the ground that it is not a copy of an original document or, where the reproduction is a print made from a transparency, on the ground that the transparency does not bear an image of an original document, if the reproduction is not such a copy, or the transparency does not bear such an image, by reason only of the fact—

- (a) that, in the process by which the reproduction or transparency was made, the colours or tones appearing in the original document were altered or reversed in the reproduction or transparency; or
- (b) that any number or mark of identification added for the purposes of section 113 appears in the reproduction or transparency.

(2) A document may be certified under division 2 of this part to be a reproduction of an original document notwithstanding that—

- (a) any writing or representation describing or identifying colours in the original document appears in the reproduction; or
- (b) any colours appearing in the reproduction were added after it was made and before certification.

119 Notice to produce not required

Where a reproduction of a document is admissible in evidence pursuant to this part, it shall be so admissible whether or not notice to produce the document of which it is a reproduction has been given.

120 Proof of comparisons not required

Where a reproduction of a document is tendered as evidence pursuant to this part, no proof shall be required that the reproduction was compared with the original document.

121 Presumptions as to ancient documents

Any presumption that may be made in respect of a document over 20 years old may be made with respect to any reproduction of that document admitted in evidence under this part in all respects as if the reproduction were the document.

122 Reproductions made in other States

Where a reproduction is made of a document in another State or in a Territory and would be admissible in evidence in a proceeding in that State or Territory under a law of that State or Territory corresponding with this part, or a law of that State or Territory that a regulation declares to correspond with this part, the reproduction shall be admissible in evidence in a proceeding in Queensland in the same circumstances, to the same extent and for the like purpose as it would be admissible in evidence in a proceeding in that State or Territory under the law of that State or Territory.

123 Judicial notice

Where any Act or law requires a court to take judicial notice of the seal or signature of any court, person or body corporate appearing on a document and a reproduction of that document is, pursuant to this part, admitted in evidence in a proceeding, the court shall take judicial notice of the image of the seal or signature on the reproduction to the same extent as it would be required to take judicial notice of the seal or signature on the document.

124 A court may reject reproduction

Notwithstanding anything contained in this part, a court may refuse to admit in evidence a reproduction tendered pursuant to this part if it considers it inexpedient in the interests of justice to do so as a result of any reasonable inference drawn by the court from the nature of the reproduction, the machine or process by which it or, in the case of a print

from a transparency, by which the transparency was made, and any other circumstances.

125 Weight of evidence

In estimating the weight to be attached to a reproduction of a document admitted in evidence pursuant to this part, regard shall be had to the fact that, if the person making an affidavit pursuant to this part is not called as a witness, there has been no opportunity to cross-examine the person, and to all the circumstances from which any inference may reasonably be drawn as to—

- (a) the necessity for making the reproduction or, in the case of a print from a transparency, the transparency or for destroying or parting with the document reproduced; or
- (b) the accuracy or otherwise of the reproduction; or
- (c) any incentive to tamper with the document or to misrepresent the reproduction.

126 Provisions of part are alternative

The provisions of this part shall be construed as in aid of and as alternative to any provision of any other part, any other law or any practice or usage with respect to the production to a court or the admissibility in evidence in a proceeding of reproductions of documents.

128 Regulation may exclude application of provisions

A regulation may declare that this part, or a provision of this part, does not apply to a document.

129 Public Records Act 2002 not affected

This part does not affect the *Public Records Act 2002*.

PART 8—MISCELLANEOUS

130 Rejection of evidence in criminal proceedings

Nothing in this Act derogates from the power of the court in a criminal proceeding to exclude evidence if the court is satisfied that it would be unfair to the person charged to admit that evidence.

131 Witnesses for defence to be sworn

(1) In a criminal proceeding, any person who gives evidence on behalf of the defence shall first take an oath in such manner as the person would by law be obliged to do if the person were a witness for the prosecution.

(2) Subsection (1) is subject to part 2, division 1A.⁴¹

131A Court may order interpreter to be provided

(1) In a criminal proceeding, a court may order the State to provide an interpreter for a complainant, defendant or witness, if the court is satisfied that the interests of justice so require.

(2) In deciding whether to make an order under subsection (1), the court must have regard to the fundamental principles of justice for victims of crime declared by the *Criminal Offence Victims Act 1995*, part 2.⁴²

132 Actions for breach of promise of marriage

The plaintiff in an action for breach of promise of marriage shall not recover a verdict unless the plaintiff's testimony is corroborated by some other material evidence in support of such promise.

132A Admissibility of similar fact evidence

In a criminal proceeding, similar fact evidence, the probative value of which outweighs its potentially prejudicial effect, must not be ruled

41 Part 2 (Witnesses), division 1A (Competency of witnesses and capacity to be sworn)

42 *Criminal Offence Victims Act 1995*, part 2 (Fundamental principles of justice for victims of crime)

inadmissible on the ground that it may be the result of collusion or suggestion, and the weight of that evidence is a question for the jury, if any.

132B Evidence of domestic violence

(1) This section applies to a criminal proceeding against a person for an offence defined in the Criminal Code, chapters 28 to 30.⁴³

(2) Relevant evidence of the history of the domestic relationship between the defendant and the person against whom the offence was committed is admissible in evidence in the proceeding.

132C Fact finding on sentencing

(1) This section applies to any sentencing procedure in a criminal proceeding.

(2) The sentencing judge or magistrate may act on an allegation of fact that is admitted or not challenged.

(3) If an allegation of fact is not admitted or is challenged, the sentencing judge or magistrate may act on the allegation if the judge or magistrate is satisfied on the balance of probabilities that the allegation is true.

(4) For subsection (3), the degree of satisfaction required varies according to the consequences, adverse to the person being sentenced, of finding the allegation to be true.

(5) In this section—

“**allegation of fact**” includes the following—

- (a) information under the *Penalties and Sentences Act 1992*, section 15 or evidence given at a hearing in relation to an order under part 3A of that Act;⁴⁴

43 Criminal Code, chapters 28 (Homicide—Suicide—Concealment of Birth), 29 (Offences endangering life or health) and 30 (Assaults)

44 *Penalties and Sentences Act 1992*, section 15 (Information on sentence) or part 3A (Non-contact orders)

- (b) information under the *Juvenile Justice Act 1992*, section 150(3) or in a presentence report under section 151 of that Act;⁴⁵
- (c) information under the *Criminal Offence Victims Act 1995*, section 14;⁴⁶
- (d) other information or evidence.

133 Impounding documents

Where a document has been tendered or produced before a court, the court may, whether or not the document is admitted in evidence, direct that the document shall be impounded and kept in the custody of an officer of the court or of another person for such period and subject to such conditions as the court thinks fit.

133A DNA analysts

(1) The chief executive of the department within which the *Health Act 1937* is administered may appoint a public service officer as a DNA analyst if satisfied the officer has the necessary qualifications and experience to be a DNA analyst.

(2) The appointment takes effect on the day it is notified in the gazette.

134 Power to appoint a government printer

The Governor in Council may appoint a government printer for the State.

134A Production of documents by agencies in relation to civil proceedings

(1) A person who is a party to a civil proceeding may make written application to the principal officer of an agency to produce for inspection a document that—

- (a) is in the possession of, or under the power of, the agency; and

45 *Juvenile Justice Act 1992*, section 150 (Sentencing principles) or 151 (Pre-sentence report)

46 *Criminal Offence Victims Act 1995*, section 14 (Information during sentencing of impact of crime on victim)

(b) is relevant to an issue in the proceeding;

if the agency, the principal officer, or a member, officer or employee of the agency, could be ordered, on the application of the person, to produce the document in the proceeding.

(2) The principal officer may permit the person, on payment of the prescribed fee, to inspect the document, and take a copy of, or an extract from, the document, at a time and place nominated by the principal officer.

(3) If the principal officer permits the person to inspect and take a copy of, or an extract from, the document, the principal officer, and all persons acting on behalf of the principal officer, are entitled to the same protection as they would have had if the acts concerned had been carried out in obedience to a process of the Supreme Court.

(4) The principal officer is not required to notify another party to the proceeding of—

- (a) the making of the application; or
- (b) any action taken in relation to the application.

(4A) The principal officer may delegate his or her powers under this section to an officer or employee of the principal officer's agency.

(5) Subject to subsection (6), this section does not affect—

- (a) the operation of any law relating to the disclosure or non-disclosure of information; or
- (b) the operation of another law that authorises the inspection or copying of a document otherwise than as provided in this section; or
- (c) the power of a court to order the inspection or production of a document.

(6) If a document mentioned in subsection (1) is a document that contains information to which the *Health Services Act 1991*, section 63⁴⁷ applies, the document is, for the purposes of section 63(2)(a) of that Act, information that is expressly authorised or permitted to be given under this Act.

(7) In this section—

“agency” means—

47 *Health Services Act 1991*, section 63 (Confidentiality)

- (a) a department; or
 - (b) a public authority within the meaning of the *Freedom of Information Act 1992*; or
 - (c) a person or body declared by regulation to be an agency;
- but does not include a person or body declared by regulation not to be an agency.

“principal officer” means—

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to an agency for which a regulation declares an officer to be the principal officer—the holder of the office; or
- (c) in relation to another agency—
 - (i) if it is an incorporated body that has no members—the person who manages the body’s affairs; or
 - (ii) if it is a body (whether or not incorporated) that is constituted by 1 person—the person; or
 - (iii) if it is a body (whether or not incorporated) that is constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present.

134B Approval of forms

- (1) The chief executive may approve forms for—
 - (a) anything for which this Act requires or permits an approved form to be used; or
 - (b) another use under this Act.
- (2) Subsection (1)(b) does not apply to forms for court proceedings.

135 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about—
 - (a) fees to be charged under this Act; or

- (b) the payment of fees and expenses for, or incurred in, taking evidence under part 3, division 2.

PART 9—TRANSITIONAL AND DECLARATORY PROVISIONS

Division 1—Evidence Amendment Act 2000

136 Transitional—Evidence Amendment Act 2000

(1) Section 132C applies to a sentencing procedure regardless of whether the offence or the conviction for the offence giving rise to the sentencing procedure happened before or after the commencement of this section.

(2) In this section—

“**conviction**” means a finding of guilt, or the acceptance of a plea of guilty, by a court.

“**sentencing procedure**” means a sentencing procedure started after the commencement of this section.

137 Declaratory provision for Justice and Other Legislation Amendment Act 2003⁴⁸

To remove any doubt, it is declared that the chief executive (premiers) has always had the powers mentioned in section 58(1) and (2).

⁴⁸ This reprint contains 2 sections numbered 137. This section 137 was inserted by the *Justice and Other Legislation Amendment Act 2003*, section 77.

Division 2—Evidence (Protection of Children) Amendment Act 2003**137 Definitions for div 2⁴⁹**

In this division—

“amending Act” means the *Evidence (Protection of Children) Amendment Act 2003*.

“commencement day” means—

- (a) for section 138—the day the amending Act, section 56 commences; or
- (b) for section 139—the day the amending Act, section 57 commences; or
- (c) for sections 140, 141 and 142—the day the amending Act, section 60 commences.

“originating step”, for a proceeding, means—

- (a) the arrest of the defendant in the proceeding; or
- (b) the making of a complaint under the *Justices Act 1886*, section 42⁵⁰ in relation to the defendant in the proceeding; or
- (c) the serving of a notice to appear on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 214.⁵¹

138 Communications between a husband and wife

Section 8(3) applies to communications whether made before or after the commencement day.

49 This reprint contains 2 sections numbered 137. This section 137 was inserted by the *Evidence (Protection of Children) Amendment Act 2003*, section 67.

50 *Justices Act 1886*, section 42 (Commencement of proceedings)

51 *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

139 Evidence admitted under repealed s 9

(1) Section 9D applies to evidence admitted before the commencement day under repealed section 9 as if the evidence had been admitted under section 9A.

(2) In this section—

“**repealed section 9**” means section 9 as in force before the commencement day.

140 Committal proceeding

Part 2, division 4A, subdivision 2⁵² applies to a committal proceeding only if an originating step for the proceeding is taken on or after the commencement day.

141 Pre-recording of evidence for a summary trial

Part 2, division 4A, subdivision 3⁵³ applies to a summary trial for a relevant offence only if an originating step for the proceeding is taken on or after the commencement day.

142 Pre-recording of evidence for a trial on indictment

Part 2, division 4A, subdivision 3 applies to a trial on indictment for a relevant offence only if the indictment is presented on or after the commencement day.

52 Part 2 (Witnesses), division 4A (Evidence of affected children), subdivision 2 (Committal proceeding)

53 Part 2 (Witnesses), division 4A (Evidence of affected children), subdivision 3 (Pre-recording of affected child's evidence)

SCHEDULES**SCHEDULE 1****EXAMPLES OF OFFICES OF A PUBLIC NATURE
ESTABLISHED UNDER AN ACT**

section 42

1. Auditor-general
2. Chairperson of the Crime and Misconduct Commission
3. Chief executive of a department
4. Chief executive officer of a local government
5. Clerk of the Parliament
6. Commissioner of the police service
7. Director of public prosecutions
8. Electoral commissioner
9. Information commissioner
10. Mayor of a local government
11. Parliamentary counsel
12. Public trustee
13. Ombudsman
14. Registrar-general
15. Registrar of titles
16. Solicitor-general

SCHEDULE 2

section 8(4)

1. Criminal Code, section 208, 209, 210, 211, 215, 216, 219, 222, 229B, 302, 303, 306, 308, 311, 315, 316, 317, 318, 319, 319A, 320, 321, 322, 323, 324, 326, 335, 339, 340, 349, 350, 351 or 352.⁵⁴

54 Criminal Code section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16), 211 (Bestiality), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 219 (Taking child for immoral purposes), 222 (incest), 229B (Maintaining a sexual relationship with a child), 302 (Definition of “murder”), 303 (Definition of “manslaughter”), 306 (Attempt to murder), 308 (Threats to murder in document), 311 (Aiding suicide), 315 (Disabling in order to commit indictable offence), 316 (Stupefying in order to commit indictable offence), 317 (Acts intended to cause grievous bodily harm and other malicious acts), 318 (Obstructing rescue or escape from unsafe premises), 319 (Intentionally endangering safety of persons travelling by railway), 319A (Endangering safety of persons travelling by aircraft), 320 (Grievous bodily harm), 321 (Attempting to injure by explosive or noxious substances), 322 (Maliciously administering poison with intent to harm), 323 (Wounding and similar acts), 324 (Failure to supply necessities), 326 (Endangering life of children by exposure), 335 (Common assault), 339 (Assaults occasioning bodily harm), 340 (Serious assaults), 349 (Rape), 350 (Attempt to commit rape), 351 (Assault with intent to commit rape) or 352 (Sexual assaults)

SCHEDULE 3

DICTIONARY

section 3

“**affected child**”, for part 2, division 4A, see section 21AC.

“**affidavit**”, for part 7, see section 104.

“**approved form**” see section 134B.⁵⁵

“**audio link**”, for part 3A, see section 39C.

“**audio visual link**” means facilities, including closed-circuit television, that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places.

“**before**”, for part 3A, see section 39C.

“**book of account**”, for part 5, division 6, see section 83.

“**business**”, for part 7, see section 104.

“**chief executive (surveys)**” means the chief executive of the department in which the *Surveyors Act 1977* is administered.

“**child**”, for part 2, division 4A, see section 21AD.

“**civil proceedings**”, for part 3, division 3, see section 35.

“**controlled operation**”, for part 2, division 5, see section 21B.

“**conviction**”, for part 5, division 5, see section 78.

“**copy**”, of a document, see section 4.

“**corresponding court**”, for part 3, division 2, see section 25.

“**counsel**”, for part 2, division 4A, see section 21AC.

“**court**”—

(a) for part 5, division 5—see section 78; or

(b) for part 5, division 6—see section 83; or

⁵⁵ Section 134B (Approval of forms)

SCHEDULE 3 (continued)

- (c) otherwise—means the court, tribunal, judge, justice, arbitrator, body or person before whom or which a proceeding is held or taken.

“court location”, for part 3A, see section 39C.

“covert operative”, for part 2, division 5, see section 21B.

“criminal proceeding” includes a proceeding wherein a person is charged with a simple offence, and an examination of witnesses in relation to an indictable offence.

“defendant”, for part 2, division 4A, see section 21AC.

“document” includes, in addition to a document in writing—

- (a) any part of a document in writing or of any other document as defined herein; and
- (b) any book, map, plan, graph or drawing; and
- (c) any photograph; and
- (d) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatever; and
- (e) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (f) any film, negative, tape or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (g) any other record of information whatever.

“examiner”, for part 3, division 2, see section 25.

“external location”, for part 3A, see section 39C.

“film” includes a microfilm.

“gazette” includes any gazette, or part of a gazette, published by the government printer.

Example—

Queensland Government Industrial Gazette.

SCHEDULE 3 (continued)

“intellectually impaired person” means a person who has a disability that—

- (a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and
- (b) results in—
 - (i) a substantial reduction of the person’s capacity for communication, social interaction or learning; and
 - (ii) the person needing support.

“judge” means the member or members of a court.

“judicial officer” means a judge, magistrate or justices.

“law enforcement agency”, for part 2, division 5, see section 21B.

“lawfully edited copy”, of a video-taped recording of evidence given by a special witness or an affected child, means a copy of the recording that has been edited or otherwise changed under an approval under section 21AZ.⁵⁶

“machine copy”, for part 7, see section 104.

“offence involving violence”, for part 2, division 4A, see section 21AC.

“offence of a sexual nature”, for part 2, division 4A, see section 21AC.

“original document”, for part 7, see section 104.

“overseas country”—

- (a) for part 3, division 3—see section 35; or
- (b) for part 5, division 3—see section 67.

“participating State”, for part 3A, see section 39C.

“preliminary hearing”, for part 2, division 4A, see section 21AC.

“prescribed country”, for part 3, division 2, see section 25.

“presiding judicial officer”, for part 2, division 4B, see section 21AY.

“proceeding”—

- (a) for part 2, division 4A—see section 21AC; or

⁵⁶ Section 21AZ (Approval to edit or otherwise change a recording)

SCHEDULE 3 (continued)

- (b) otherwise—means any civil, criminal or other proceeding or inquiry, reference or examination in which by law or by consent of parties evidence is or may be given, and includes an arbitration.

“protected witness”—

- (a) for part 2, division 5—see section 21F; or
(b) for part 2, division 6—see section 21M.

“Queensland court”, for part 3A, see section 39C.

“recognised court”, for part 3A, see section 39C.

“recording”, for part 2, division 4B, see section 21AY.

“relevant entity”, for part 2, division 5, see section 21B.

“relevant offence”, for part 2, division 4A, see section 21AC.

“relevant proceeding”—

- (a) for part 2, division 4A, see section 21AC; or
(b) for part 2, division 5, see section 21B.

“reproduce”, for part 7, see section 104.

“reproduction”, for part 7, see section 104.

“request”, for part 3, division 3, see section 35.

“requesting court”, for part 3, division 3, see section 36.

“special witness” see section 21A.

“statement” includes any representation of fact, whether made in words or otherwise and whether made by a person, computer or otherwise.

“statute”, for part 5, division 3, see section 67.

“telegraph” means a system of telecommunication operated under Commonwealth law.

“telegraphic message” means any message or other communication transmitted or intended for transmission or purporting to have been transmitted by telegraph.

“telegraph office” means an office or place established or used for receiving or transmitting telegraphic messages.

SCHEDULE 3 (continued)

“transparency”, for part 7, see section 104.

“tribunal”, for part 3A, see section 39C.

“undertaking” includes public administration and any business, profession, occupation, calling, trade or undertaking whether engaged in or carried on—

- (a) by the Crown (in right of the State of Queensland or any other right), or by a statutory body, or by any other person; or
- (b) for profit or not; or
- (c) in Queensland or elsewhere.

“video-taped” means recorded as a video-taped recording.

“video-taped recording” means a recording, including the accompanying sound track, on any medium from which a moving image may be produced by any means.

ENDNOTES

1 Index to 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 5 January 2004. Future amendments of the Evidence Act 1977 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

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|---------|---|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No.[X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | rv | = revised edition |
| o in c | = order in council | s | = section |
| om | = omitted | sch | = schedule |
| orig | = original | sdiv | = subdivision |
| p | = page | SIA | = Statutory Instruments Act 1992 |
| para | = paragraph | SIR | = Statutory Instruments Regulation 2002 |
| prec | = preceding | SL | = subordinate legislation |
| pres | = present | sub | = substituted |
| prev | = previous | unnum | = unnumbered |

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

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| 3A | to 1996 Act No. 79 | 28 February 1997 | 3 March 1997 |
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| 6C | to 2001 Act No. 73 | 3 December 2001 | 7 December 2001 |
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| 6E | to 2001 Act No. 73 | 1 March 2002 | 8 March 2002 |
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5 Tables in earlier reprints

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6 List of legislation

Evidence Act 1977 No. 47

date of assent 3 October 1977

s 1 commenced on date of assent

remaining provisions commenced 1 January 1978 (see s 1(2))

amending legislation—

Criminal Law Amendment Act 1979 No. 2 pt 3

date of assent 6 April 1979

commenced 7 April 1979 (proc pubd gaz 7 April 1979 p 1359)

Evidence Act Amendment Act 1981 No. 3

date of assent 30 March 1981

commenced on date of assent

Evidence Act Amendment 1984 No. 71

date of assent 12 October 1984
commenced on date of assent

Criminal Law (Rehabilitation of Offenders) Act 1986 No. 20 s 14

date of assent 8 April 1986
commenced 1 November 1986 (proc pubd gaz 18 October 1986 p 1118)

Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1

date of assent 1 December 1988
commenced 15 December 1988 (see s 2(2) and order pubd gaz 10 December 1988 p 1675)

Criminal Code, Evidence Act and other Acts Amendment Act 1989 No. 17 pt 3

date of assent 30 March 1989
commenced 3 July 1989 (proc pubd gaz 24 June 1989 p 1821 as amd proc pubd gaz 1 July 1989 p 2190)

Public Service (Administrative Arrangements) Act (No. 2) 1990 No. 80 s 3 sch 1

date of assent 14 November 1990
amnds of ss 57–58 commenced 7 December 1989 (see s 2(4)(c))
amdt of s 104 commenced 31 August 1989 (see s 2(2)(a))

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 s 3 sch 1

date of assent 7 December 1992
commenced 18 December 1992 (1992 SL No. 439)

Justice and Attorney-General Legislation (Miscellaneous Provisions) Act 1993 No. 68 pt 3

date of assent 23 November 1993
commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 sch 1

date of assent 14 December 1993
commenced on date of assent

Justice and Attorney-General (Miscellaneous Provisions) Act 1994 No. 24 s 3(1) sch

date of assent 10 May 1994
commenced 30 May 1994 (1994 SL No. 168)

Criminal Code No. 37 of 1995 ss 1–2, 458 sch 2 pt 2

date of assent 16 June 1995
ss 1–2 commenced on date of assent
remaining provisions never proclaimed into force and rep 1997 No. 3 s 121

Statute Law (Minor Amendments) Act (No. 2) 1995 No. 51 ss 1, 3–4 sch

date of assent 22 November 1995
commenced on date of assent

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

date of assent 28 November 1995
s 4 sch 1 amdt 10 commenced 12 April 1996 (automatic commencement under AIA s 15DA(2)) (see also 1995 No. 58 s 2(1) sch 1)
remaining provisions commenced on date of assent

Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 13

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 28 February 1997 (1997 SL No. 35)

Criminal Law Amendment Act 1997 No. 3 ss 1, 2(2), 122 sch 2

date of assent 3 April 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 152)

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1–2(1)
pt 10**

date of assent 15 May 1997

commenced on date of assent

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17
ss 1–2, 74 sch**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82
ss 1–2(1) pt 11**

date of assent 5 December 1997

commenced on date of assent (see s 2(1))

Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(1) sch 1

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1998 (1998 SL No. 346)

Child Protection Act 1999 No. 10 ss 1, 2(2), 205 sch 3

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 23 March 2000 (2000 SL No. 45)

Justice Legislation (Miscellaneous Provisions) Act 1999 No. 16 ss 1–2 sch

date of assent 22 April 1999

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

Coal Mining Safety and Health Act 1999 No. 39 ss 1–2, 299 sch 1

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 16 March 2001 (2001 SL No. 14) (proposed commencement 2 September 2001 (automatic commencement under AIA s 15DA(2) (2000 SL No. 226 s 2)))

Audio Visual and Audio Links Amendment Act 1999 No. 65 pts 1–2

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2000 (2000 SL No. 14)

Evidence Amendment Act 2000 No. 41

date of assent 13 October 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 27 October 2000 (2000 SL No. 271)

Criminal Law Amendment Act 2000 No. 43 pts 1, 6

date of assent 13 October 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 27 October 2000 (2000 SL No. 270)

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch

date assent 25 October 2000

commenced on date of assent

Evidence (Witness Anonymity) Amendment Act 2000 No. 57 pts 1–2

date of assent 17 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 2000 (2000 SL No. 330)

Justice and Other Legislation (Miscellaneous Provisions) Act 2000 No. 58 ss 1–2 sch

date of assent 17 November 2000

commenced on date of assent

Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

Duties Act 2001 No. 71 ss 1–2, 551 sch 1

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

Ombudsman Act 2001 No. 73 ss 1–2, 96 sch 1

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2001 (2001 SL No. 224)

Constitution of Queensland 2001 No. 80 ss 1–2, 94 sch 2

date of assent 3 December 2001
 ss 1–2 commenced on date of assent
 remaining provisions commenced 6 June 2002 (see s 2)

Penalties and Sentences (Non-contact Orders) Amendment Act 2001 No. 94 pts 1, 3

date of assent 10 December 2001
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 2002 (2002 SL No. 158)

Public Records Act 2002 No. 11 ss 1, 2(2), 62 sch 1

date of assent 24 April 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 2002 (2002 SL No. 115)

Criminal Law Amendment Act 2002 No. 23 ss 1–2(1), (3), pt 6, s 3 sch

date of assent 23 May 2002
 ss 1–3 commenced on date of assent (see s 2(1))
 remaining provisions commenced 19 July 2002 (2002 SL No. 157)

Juvenile Justice Amendment Act 2002 No. 39 pts 1, 10

date of assent 29 August 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 2003 (2002 SL No. 350)

Juvenile Justice Act 1992 No. 44 s 341(3) (prev 262(3)) sch 3 (this Act is amended, see amending legislation below)

amending legislation—

Juvenile Justice Amendment Act 2002 No. 39 ss 1, 2, 115, 118 (amends 1992 No. 44 above)

date of assent 29 August 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 2003 (2002 SL No. 350)

Coroners Act 2003 No. 13 ss 1, 2(2), 106 sch 1

date of assent 9 April 2003
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 December 2003 (2003 SL No. 296)

Housing Act 2003 No. 52 ss 1–2, 153 sch 2

date of assent 15 September 2003
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 January 2004 (2003 SL No. 332)

Evidence (Protection of Children) Amendment Act 2003 No. 55 pts 1, 10

date of assent 18 September 2003
 ss 1–2 commenced on date of assent
 remaining provisions commenced 5 January 2004 (2003 SL No. 280)

Surveyors Act 2003 No. 70 ss 1–2, 206 sch 2

date of assent 22 October 2003
 ss 1–2 commenced on date of assent
 remaining provisions not yet proclaimed into force (see s 2)

Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(3), pt 14

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 2003 (2003 SL No. 310)

7 List of annotations**Short title**

s 1 amd 1995 No. 58 s 4 sch 1

Act binds Crown

prov hdg ins 1995 No. 58 s 4 sch 1

s 2 prev s 2 amd 1989 No. 17 s 60

om R1 (see RA s 36)

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

Notes in text

s 2A ins 2003 No. 55 s 53

Definitions

prov hdg ins 1995 No. 58 s 4 sch 1

s 3 **Note**—prev s 3 contained definitions for this Act. Definitions are now located
in schedule 3—Dictionary.

prev s 3 om R1 (see RA s 40)

pres s 3 (prev s 5(1)) renum 1995 No. 58 s 4 sch 1

amd 2003 No. 55 s 54(1), (4)

Meaning of “copy” of document etc.

prov hdg ins 1995 No. 58 s 4 sch 1

s 4 prev s 4 om R1 (see RA s 38)

pres s 4 (prev s 5(2)) renum 1995 No. 58 s 4 sch 1

amd 2003 No. 55 s 55

Meaning of document purporting to be of certain character etc.

prov hdg ins 1995 No. 58 s 4 sch 1

s 5 (prev s 5(3)) renum 1995 No. 58 s 4 sch 1

PART 2—WITNESSES**Witnesses in a criminal proceeding**

s 8 amd 2003 No. 55 s 56

Division 1A—Competency of witnesses and capacity to be sworn

div hdg ins 2003 No. 55 s 57

Presumption as to competency

s 9 amd 1989 No. 17 s 61

sub 2000 No. 43 s 44; 2003 No. 55 s 57

Competency to give evidence

s 9A ins 1989 No. 17 s 62

sub 2000 No. 43 s 44; 2003 No. 55 s 57

Competency to give sworn evidence

s 9B ins 2003 No. 55 s 57

Expert evidence about witness's ability to give evidence

s 9C ins 2003 No. 55 s 57

Evidence admitted under s 9A

s 9D ins 2003 No. 55 s 57

Division 1B—Special provisions for child witnesses

div 1B (s 9E) ins 2003 No. 55 s 57

Communications to husband or wife

s 11 om 2003 No. 55 s 58

Questioning a person charged in a criminal proceeding

s 15 amd 2000 No. 58 s 2 sch

Questioning of witness as to certain convictions

s 15A ins 1986 No. 20 s 14(1)

Cross-examination as to credit

s 20 sub 2000 No. 43 s 45

Improper questions

s 21 sub 2000 No. 43 s 45

Division 4—Evidence of special witnesses

div hdg ins 1989 No. 17 s 63

Evidence of special witnesses

s 21A ins 1989 No. 17 s 63
amd 1995 No. 58 s 4 sch 1; 2000 No. 43 s 46; 2003 No. 55 s 59

Division 4A—Evidence of affected children

div 4A (ss 21AA–21AX) ins 2003 No. 55 s 60

Division 4B—Dealing with a recording

div 4B (ss 21AY–21AZC) ins 2003 No. 55 s 60

Division 5—Witness anonymity

div hdg ins 2000 No. 57 s 4

Definitions for div 5

s 21B ins 2000 No. 57 s 4
def “law enforcement agency” sub 2001 No. 69 s 378 sch 1

Application of division

s 21C ins 2000 No. 57 s 4

Witness anonymity certificate

s 21D ins 2000 No. 57 s 4
amd 2001 No. 69 s 378 sch 1

What witness anonymity certificate must state

s 21E ins 2000 No. 57 s 4

Effect of witness anonymity certificate

s 21F ins 2000 No. 57 s 4

Persons to be given copy of witness anonymity certificate

s 21G ins 2000 No. 57 s 4

Orders relevant entity may make on filing of witness anonymity certificate

s 21H ins 2000 No. 57 s 4

Relevant entity may grant leave to disclose identity

s 21I ins 2000 No. 57 s 4

Review of giving of witness anonymity certificates other than by Crime and Misconduct Commission

prov hdg amd 2001 No. 69 s 378 sch 1

s 21J ins 2000 No. 57 s 4
amd 2001 No. 69 s 378 sch 1**Review of operation of division**

s 21K ins 2000 No. 57 s 4

Division 6—Cross-examination of protected witnesses

div 6 (ss 21L–21S) ins 2000 No. 43 s 47

Commission, request or order to examine witnesses

s 22 amd 1995 No. 58 s 4 sch 1

Power of person appointed by foreign authority to take evidence and administer oaths

s 24 amd 1981 No. 3 s 2

Definitions for div 2

prov hdg sub 1995 No. 58 s 4 sch 1

s 25 amd 1995 No. 58 s 4 sch 1

Regulations

s 34 om 1993 No. 76 s 3 sch 1

Definitions for div 3

s 35 prov hdg sub 1995 No. 58 s 4 sch 1

Application of division to Crown

s 35A (prev s 35(2)) renum 1995 No. 58 s 4 sch 1

PART 3A—AUDIO VISUAL LINKS AND AUDIO LINKS

pt hdg ins 1999 No. 65 s 4

Division 1—Preliminary

div hdg ins 1999 No. 65 s 4

Purposes of pt 3A

s 39A ins 1999 No. 65 s 4

Application of pt 3As 39B ins 1999 No. 65 s 4
amd 2002 No. 39 s 152; 1992 No. 44 s 341 sch 3 (amd 2002 No. 39 ss 115,
118)

Definitions for pt 3A

- s 39C** ins 1999 No. 65 s 4
 def “**audio visual link**” om 2003 No. 55 s 61
 def “**external location**” amd 1992 No. 44 s 341 sch 3 (amd 2002 No. 39
 ss 115, 118)
 def “**Queensland court**” amd 2003 No. 13 s 106 sch 1

Division 2—Use of interstate audio visual links or audio links in proceedings before Queensland courts

- div hdg** ins 1999 No. 65 s 4

Application of div 2

- s 39D** ins 1999 No. 65 s 4

State courts may take evidence and submissions from outside State

- s 39E** ins 1999 No. 65 s 4
 amd 2003 No. 13 s 106 sch 1

Legal practitioners entitled to practice

- s 39F** ins 1999 No. 65 s 4

Division 3—Use of interstate audio visual links or audio links in proceedings in participating States

- div 3 (ss 39G–39P)** ins 1999 No. 65 s 4

Division 4—General provisions about the use of audio visual links or audio links

- div 4 (ss 39Q–39Z)** ins 1999 No. 65 s 4

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- s 40** om 1995 No. 58 s 4 sch 1

Public Seal of the State

- prov hdg** sub 2001 No. 80 s 94 sch 2
s 41 amd 2001 No. 80 s 94 sch 2

Signatures of holders of public offices etc. to be judicially noticed

- s 42** amd 1993 No. 76 s 3 sch 1
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- s 43A** ins 2001 No. 80 s 94 sch 2

Proof of printing by government printer etc.

- prov hdg** sub 1995 No. 51 s 4 sch
s 46 amd 1995 No. 51 s 4 sch

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- prov hdg** ins 1995 No. 58 s 4 sch 1
s 46A (prev s 46(2)–(3)) renum 1995 No. 51 s 4 sch

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s 46B ins 2000 No. 58 s 2 sch

Proof of votes and proceedings of Legislature and of legislative material

prov hdg amd 1995 No. 51 s 4 sch

s 47 amd 1995 No. 51 s 4 sch

Proof of proclamations, orders in council etc.

s 48 amd 1995 No. 51 s 4 sch

Proof of standard rules, codes and specifications

prov hdg sub 1995 No. 51 s 5 sch

s 49 amd 1995 No. 51 s 4 sch; 2000 No. 58 s 2 sch

Proof of identity of a person convicted

s 54 amd 1995 No. 58 s 4 sch 1

Proof of incorporation or registration of company in Queensland

s 55 sub 1993 No. 68 s 5

amd 1997 No. 9 s 33; 2001 No. 45 s 29 sch 3

Proof of unallocated State land grants

s 56 amd 1995 No. 58 s 4 sch 1

Proof of lease or licence

s 57 amd 1990 No. 80 s 3 sch 1

sub 1993 No. 76 s 3 sch 1

amd 1995 No. 58 s 4 sch 1; 1999 No. 39 s 299 sch 1; 2003 No. 52 s 153 sch 2

Proof of letters patent

s 58 amd 1990 No. 80 s 3 sch 1; 1993 No. 76 s 3 sch 1; 2001 No. 80 s 94 sch 2

sub 2003 No. 77 s 74

Proof of document under Royal Sign Manual

s 58A ins 2001 No. 80 s 94 sch 2

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s 65 amd 1995 No. 58 s 4 sch 1

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s 66 amd 1995 No. 58 s 4 sch 1

Definitions for div 3

s 67 prov hdg sub 1995 No. 58 s 4 sch 1

Proof of incorporation or registration of certain Australian and overseas companies

prov hdg amd 2001 No. 45 s 29 sch 3

s 73 amd 2001 No. 45 s 29 sch 3

Definitions for div 5

s 78 prov hdg sub 1995 No. 58 s 4 sch 1

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PART 6—ADMISSIBILITY OF STATEMENTS AND REPRESENTATIONS**pt hdg** amd 2000 No. 43 s 48**Admissibility of documentary evidence as to facts in issue****s 92** amd 2000 No. 58 s 2 sch**Statement made before proceeding by child or intellectually impaired person****prov hdg** amd 1997 No. 3 s 122 sch 2; 2003 No. 55 s 63(1)**s 93A** ins 1989 No. 17 s 64

amd 1996 No. 79 s 42; 1997 No. 3 s 122 sch 2; 2000 No. 43 s 49; 2003 No. 55 s 63(2)–(7)

Unauthorised possession of, or dealing in, s 93A criminal statements**s 93AA** ins 2003 No. 55 s 64**Admissibility of representation in prescribed criminal proceedings if person who made it is unavailable****s 93B** ins 2000 No. 43 s 50**Warning and information for jury about hearsay evidence****s 93C** ins 2000 No. 43 s 50**Admissibility of evidence concerning credibility of persons responsible for statement****s 94** amd 1989 No. 17 s 65**Admissibility of statements produced by computers****s 95** amd 1979 No. 2 s 10; 1988 No. 88 s 3 sch 1; 1995 No. 58 s 4 sch 1**DNA evidentiary certificate****s 95A** ins 2002 No. 23 s 48**Rejection of evidence****s 98** amd 2000 No. 43 s 51**Provisions of part are alternative****s 103** amd 1989 No. 17 s 66**Definitions for part****prov hdg** sub 1995 No. 58 s 4 sch 1**s 104** amd 1990 No. 80 s 3 sch 1; 1993 No. 76 s 3 sch 1**Certified reproductions of certain official documents etc. to be admissible without further proof****s 105** amd 1984 No. 71 s 2; 1995 No. 58 s 4 sch 1; 1997 No. 82 s 36**Use of photographing machines****prov hdg** amd 1999 No. 16 s 2 sch**s 107** amd 1995 No. 58 s 4 sch 1**Reproduction not to be admitted as evidence unless transparency in existence****s 110** amd 1995 No. 58 s 4 sch 1; 1997 No. 17 s 74 sch; 2003 No. 77 s 75**Reproductions made in other States****s 122** amd 1995 No. 58 s 4 sch 1**Stamp duty****s 127** om 2001 No. 71 s 551 sch 1

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s 129 sub 1993 No. 76 s 3 sch 1; 2002 No. 11 s 62 sch 1

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s 131 amd 2003 No. 55 s 65

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s 131A ins 1997 No. 3 s 122 sch 2

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s 132B ins 1997 No. 3 s 122 sch 2

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s 132C ins 2000 No. 41 s 4

amd 2001 No. 94 s 8; 1992 No. 44 s 341 sch 3 (amd 2002 No. 39 ss 115, 118)

DNA analysts

s 133A ins 2002 No. 23 s 49

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s 134A ins 1992 No. 68 s 3 sch 1

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s 134B ins 1995 No. 58 s 4 sch 1

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s 136 prev s 136 ins 1995 No. 58 s 4 sch 1

exp 28 May 1996 (see s 136(4))

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pres sch 1 ins 1995 No. 51 s 4 sch

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def **“affidavit”** ins 2003 No. 55 s 54(3)

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def **“approved form”** ins 1995 No. 58 s 4 sch 1

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def **“audio link”** ins 2003 No. 55 s 54(3)

reloc 2003 No. 55 s 54(4)

def **“audio visual link”** ins 2003 No. 55 s 54(3)

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def **“before”** ins 2003 No. 55 s 54(3)

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def **“book of account”** ins 2003 No. 55 s 54(3)

reloc 2003 No. 55 s 54(4)

def **“business”** ins 2003 No. 55 s 54(3)

reloc 2003 No. 55 s 54(4)

def **“chief executive (surveys)”** ins 1995 No. 58 s 4 sch 1

reloc 2003 No. 55 s 54(4)

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- def **“film”** reloc 2003 No. 55 s 54(4)
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- def **“intellectually impaired person”** ins 2000 No. 43 s 43
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- def **“judge”** reloc 2003 No. 55 s 54(4)
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- def **“law enforcement agency”** ins 2003 No. 55 s 54(3)
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- def **“lawfully edited copy”** ins 2003 No. 55 s 54(3)
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- def **“offence involving violence”** ins 2003 No. 55 s 54(3)
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- def **“original document”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“overseas country”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“participating State”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“preliminary hearing”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“prescribed country”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“presiding judicial officer”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“proceeding”** sub 2003 No. 55 s 54(2)–(3)
reloc 2003 No. 55 s 54(4)
- def **“protected witness”** ins 2000 No. 43 s 43
sub 2003 No. 55 s 54(2)–(3)
reloc 2003 No. 55 s 54(4)
- def **“Queensland court”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“recognised court”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“recording”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“relevant entity”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“relevant offence”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)

- def **“relevant proceeding”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“reproduce”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“reproduction”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“request”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“requesting court”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“special witness”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“statement”** reloc 2003 No. 55 s 54(4)
- def **“statute”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“telegraph”** sub 1995 No. 58 s 4 sch 1
reloc 2003 No. 55 s 54(4)
- def **“telegraphic message”** reloc 2003 No. 55 s 54(4)
- def **“telegraph office”** sub 1995 No. 58 s 4 sch 1
reloc 2003 No. 55 s 54(4)
- def **“transparency”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“tribunal”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“undertaking”** reloc 2003 No. 55 s 54(4)
- def **“video-taped”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)
- def **“video-taped recording”** ins 2003 No. 55 s 54(3)
reloc 2003 No. 55 s 54(4)

8 List of forms notified or published in the gazette

Form 1 Version 1—Approved form under section 54(1)—Proof of identity of a person convicted

pubd gaz 10 May 1996 p 528

Form 2 Version 1—Witness Anonymity Certificate

pubd gaz 5 January 2001 p 48