



Recording of Evidence Act 1962

Reprinted as in force on 25 November 2008

Reprint No. 2A

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 25 November 2008. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

Replacement reprint date If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.



Queensland

Recording of Evidence Act 1962

Contents

		Page
1	Short title	3
4	Definitions	3
4A	When does a legal proceeding take place in a courtroom	5
4B	Recording may be continuous	5
5	Power to direct recording under this Act	5
6	Power to appoint shorthand reporters and recorders	6
7	Oath of office	7
8	Persons recording under this Act to be officers of the court	7
9	Transcription may be made by another officer	8
10	Record and transcription to be evidence	8
11	Depositions of witnesses	8
11A	Retention and destruction of records	9
11B	Access to out-of-session recording prohibited	10
12	Offences	11
13	Regulations	11
14	Declaratory provision for Justice and Other Legislation Amendment Act 2005	13
15	Transitional provision for Justice and Other Legislation Amendment Act 2007	13
16	Transitional provision for Justice and Other Legislation Amendment Act 2008, pt 26	13
 Endnotes		
1	Index to endnotes	14
2	Date to which amendments incorporated	14
3	Key	15
4	Table of reprints	15
5	Tables in earlier reprints	16

Contents

6	List of legislation	16
7	List of annotations	17

Recording of Evidence Act 1962

[as amended by all amendments that commenced on or before 25 November 2008]

An Act to make new provision for the recording of legal proceedings

1 Short title

This Act may be cited as the *Recording of Evidence Act 1962*.

4 Definitions

In this Act—

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

courtroom means any room in which a judicial person sits or is likely to sit for the purposes of a legal proceeding.

dictation-tape means a tape (other than a master-tape) containing the record or any part of the record made under this Act by mechanical means of a legal proceeding.

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

legal proceeding includes any proceeding (whether civil or criminal) in or before any court, any proceeding before justices, and any proceeding before any court, tribunal, or person (including any inquiry, examination, or arbitration) in

which evidence is or may be given, as well as any part of any legal proceeding.

master-tape means the tape containing a complete record made under this Act by mechanical means of a legal proceeding.

mechanical means, in relation to the recording under this Act of any legal proceeding, means the recording by recording equipment.

out-of-session recording means a recording of matter that—

- (a) takes place in a courtroom that is equipped with recording equipment to be used for the purposes of this Act; and
- (b) is made by that recording equipment; and
- (c) is made when no legal proceeding is taking place in the courtroom.

recorder means a person holding for the time being the appointment under and for the purposes of this Act as a recorder.

recording equipment means a tape recording machine or any mechanical, electronic or other device for recording matter.

record under this Act—

- (a) in relation to a legal proceeding taking place in a courtroom—means the evidence (if any) and other matter (if any) recorded in any manner authorised by this Act, and includes, if the record on a master-tape is a digital recording, a replication of the record onto a separate data storage medium; or
- (b) if no legal proceeding is taking place in a courtroom—means matter recorded in an out-of-session recording.

shorthand reporter means a person holding for the time being the appointment under and for the purposes of this Act as a shorthand reporter.

tape means a tape or other item from which a record made under this Act by mechanical means may be reproduced.

transcription, in relation to any record under this Act, means the transcription to longhand writing, typewriting or other mode of the record.

4A When does a legal proceeding take place in a courtroom

A legal proceeding takes place in a courtroom when a judicial person sits for the purposes of a legal proceeding.

4B Recording may be continuous

- (1) This section applies if a courtroom is equipped with recording equipment to be used for the purposes of this Act.
- (2) Matter in the courtroom may be recorded by that recording equipment whether or not a legal proceeding is taking place in the courtroom.

5 Power to direct recording under this Act

- (1) In any legal proceeding in or before any court or judicial person, the court or judicial person may in its or the judicial person's discretion, with or without any application for the purpose, direct that any evidence to be given and any ruling, direction, address, summing up, and other matter in the legal proceeding (or of any part of the legal proceeding in question) be recorded—
 - (a) if a shorthand reporter is available—in shorthand; or
 - (b) if recording equipment and a recorder are available—by the recording equipment; or
 - (c) if a shorthand reporter, recording equipment, and a recorder are available—in shorthand or by the recording equipment or partly in shorthand and partly by the recording equipment.
- (2) The recording under this Act pursuant to any such direction shall be made by any 1 or more shorthand reporters who are available or, if the recording is made by mechanical means, under the supervision of or operation by a recorder or recorders who are available.

6 Power to appoint shorthand reporters and recorders

- (1) The chief executive may, for this Act, appoint appropriate persons to be—
 - (a) shorthand reporters;
 - (b) in relation to the recording under this Act of legal proceedings by mechanical means—recorders.
- (1A) However, if so requested by the court or judicial person who has directed the recording under this Act of the legal proceeding by shorthand or mechanical means, the chief executive may appoint a shorthand reporter or, as the case may be, recorder for the purpose of a particular legal proceeding.
- (2) A person may hold—
 - (a) any such office in conjunction with any other office held by the person;
 - (b) the office of shorthand reporter as well as the office of recorder.
- (3) Subject to subsection (2), the provisions of this Act shall not prejudice or otherwise affect the application of the provisions of the *Public Service Act 2008* to any office referred to in subsection (1), or to any person appointed or deemed to be appointed to any such office, and shall not prejudice or otherwise affect any lawful exemption from that Act of any such office or officer.
- (4) The chief executive may cause—
 - (a) any appointment made under this section;
 - (b) any appointment as a shorthand reporter continued by this Act in force for the purposes hereof;
 - (c) any cancellation or other determination of any such appointment;

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

7 Oath of office

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

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

8 Persons recording under this Act to be officers of the court

Every person recording under this Act any legal proceeding shall for the time being—

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

9 Transcription may be made by another officer

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

10 Record and transcription to be evidence

- (1) A record under this Act of a legal proceeding is to be received by a court or judicial person as evidence of anything recorded in the record.
- (2) A transcription of a record under this Act that is certified as being a transcription held—
 - (a) in the official records of the State Reporting Bureau; or
 - (b) by the body responsible for the safe custody of court transcriptions;

by the officer in charge of those records or transcriptions is to be received by a court or judicial person as evidence of anything recorded in the transcription.

11 Depositions of witnesses

- (1) Notwithstanding anything to the contrary contained in any Act, rule, or practice, in all cases where it is prescribed or required by law that the deposition of a witness is to be read over to and signed by the witness, or that any evidence or other matter is to be reduced to or taken down in writing or signed, or there is some other provision of the law to the like effect, it shall be sufficient for all purposes if the deposition, evidence, or other matter, as the case may be, is recorded under this Act.
- (2) Any reference in any Act to the deposition of any witness or to the depositions of any witnesses taken shall, where the evidence of the witness or witnesses has been recorded under this Act, be read as a reference to a transcription of that record under this Act certified under section 10(2).

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- (3) A transcription (certified as aforesaid) made under this Act of such a record need not be signed by the witness or by the court or judicial person in or before whom the deposition, evidence or other matter is taken or given.

11A Retention and destruction of records

- (1) This section does not apply to a record under this Act that is an out-of-session recording.
- (2) The record on a master-tape shall not be destroyed—
- (a) within the time allowed by law for instituting any appeal or application for a rehearing or review in relation to the legal proceeding in question; or
 - (b) where an appeal or application for a rehearing or review or otherwise in relation to the legal proceeding in question is instituted—until that appeal or application is finally determined or otherwise terminated.
- (3) Despite subsection (2), the record on a master-tape may be destroyed if the record is a digital recording that has been replicated onto a separate data storage medium.
- (4) The court or judicial person who directs that any legal proceeding be recorded by recording equipment or who is hearing or may hear an appeal or application for a rehearing or review or otherwise in relation to such legal proceeding or who rehears or reviews or may rehear or review such legal proceeding may at any time—
- (a) make such order for the retention of the record made on the master-tape for such period and subject to such conditions as the court or judicial person thinks fit;
 - (b) if—
 - (i) a transcription of the record has been made under this Act; and
 - (ii) the transcription has been certified as correct by the responsible shorthand reporter or recorder;

then, whether or not an order has been made under paragraph (a), by order authorise the destruction of the record on the master-tape.

- (5) An order made under subsection (4)(a) in relation to the retention of a record that is a digital recording is taken to be satisfied if the record on the master-tape has been replicated onto a separate data storage medium.
- (6) Subject to subsection (2) and to an order made under subsection (4), a record on a master-tape, other than a record that may be destroyed under subsection (3), may be destroyed at any time—
 - (a) after a transcription of the record has been made;
 - (b) before such a transcription has been made if—
 - (i) the legal proceeding so recorded is not one in or before a court of record; or
 - (ii) the record is of a hearing *ex parte* by a Magistrates Court of a simple offence or breach of duty or is of some other prescribed class of legal proceeding in respect of a simple offence or breach of duty.
- (7) A record on a dictation-tape may be destroyed at any time—
 - (a) after a transcription of the record has been made; or
 - (b) as prescribed.

11B Access to out-of-session recording prohibited

- (1) A person can not have access to a record under this Act or a transcription of the record if the record is an out-of-session recording.
- (2) However, a recorder may access all recordings under this Act, including out-of-session recordings, for the purpose of carrying out the person's functions under this Act.
- (3) This section applies despite anything to the contrary in another Act.

12 Offences

(1) A person shall not directly or indirectly hold himself or herself out as—

- (a) a shorthand reporter; or
- (b) a recorder;

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

Maximum penalty—4 penalty units.

(1A) Proceedings for an offence against subsection (1) may be taken in a summary way under the *Justices Act 1886*.

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

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

shall be guilty of an indictable offence and is liable to imprisonment for 5 years.

13 Regulations

(1) The Governor in Council may from time to time make regulations providing for all or any purposes, whether generally or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or convenient to carry out the objects and purposes of this Act and, where there may be in this Act no provision or no

sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for and supplying such omission or insufficiency.

- (2) Without limiting the generality of the foregoing provisions of this section and without derogating from the other provisions of this Act, regulations may be made for or in respect of all or any of the purposes, matters, and things following—
- (a) prescribing the functions and duties of shorthand reporters and recorders under and for the purposes of this Act;
 - (b) providing for and regulating and controlling the custody and manner in which records under this Act and transcriptions thereof are to be kept and the period for which or circumstances when the same are to be retained unless sooner destroyed under this Act;
 - (c) providing for and regulating and controlling the destruction of any records under this Act (other than records that are out-of-session recordings) and providing for the keeping and future effectiveness of transcriptions of records so destroyed;
 - (d) prescribing the type and class of equipment to be used if so prescribed in the recording of any legal proceeding by mechanical means and the manner in which it is to be operated;
 - (e) providing for and regulating and controlling the making and issuing of transcriptions of any record under this Act (other than a record that is an out-of-session recording) and prescribing the persons to whom the same may be issued;
 - (f) providing for and fixing the fees to be paid in respect of the recording of all or any legal proceedings, in respect of transcriptions and copies of transcriptions thereof, and in respect of other prescribed matters, or for any of these, and prescribing the persons by whom all or any such fees shall be payable and providing for the recovery of and exemptions from such fees;

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- (g) prescribing penalties for any contraventions of the regulations, but so that no such penalty shall exceed \$200.

14 Declaratory provision for Justice and Other Legislation Amendment Act 2005

- (1) Despite section 11(4), the destruction of the record on a master-tape before the commencement of section 11(5) as inserted by the *Justice and Other Legislation Amendment Act 2005*, section 139 is authorised if the record was a digital recording that had been replicated onto a separate data storage medium.
- (2) The amendment of the *Recording of Evidence Regulation 1992* by the *Justice and Other Legislation Amendment Act 2005* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

15 Transitional provision for Justice and Other Legislation Amendment Act 2007

A person appointed as a shorthand reporter or recorder under section 6, as in force immediately before the commencement of this section, continues to hold the appointment after the commencement as if the appointment had been made by the chief executive.

16 Transitional provision for Justice and Other Legislation Amendment Act 2008, pt 26

- (1) This section applies if, before the commencement of this section—
- (a) a person has applied for a copy of a record under this Act or a transcription of the record; and
- (b) the person has not been issued with the copy or transcription.
- (2) It is declared that section 11B applies, and is taken to have always applied, in relation to the record or transcription.

Endnotes

1 Index to endnotes

	Page
2 Date to which amendments incorporated	14
3 Key	15
4 Table of reprints	15
5 Tables in earlier reprints	16
6 List of legislation	16
7 List of annotations	17

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 25 November 2008. Future amendments of the Recording of Evidence Act 1962 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
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

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.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1992 Act No. 40	14 August 1992	19 July 1994
1A	1996 Act No. 37	1 December 1996	21 January 1997

Reprint No.	Amendments included	Effective	Notes
1B	2005 Act No. 70	8 December 2005	
1C	2007 Act No. 37	28 September 2007	R1C withdrawn, see R2
2	—	28 September 2007	
2A	2008 Act No. 59	25 November 2008	

5 Tables in earlier reprints

Name of table	Reprint No.
Changed citations and remade laws	1
Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Recording of Evidence Act 1962 No. 33

date of assent 19 December 1962

commenced on date of assent

amending legislation—

Justices Acts and Other Acts Amendment Act 1968 No. 14 pt 3

date of assent 19 April 1968

commenced on date of assent

Corrective Services (Consequential Amendments) Act 1988 No. 88 s 4

date of assent 1 December 1988

commenced 15 December 1988 (see s 2(2) of Act and o in c pubd gaz 10 December 1988 p 1675)

Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 6

date of assent 14 November 1990

commenced on date of assent

Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 s 163 sch 1

date of assent 14 August 1992

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Justice and Other Legislation Amendment Act 2005 No. 70 s 1, pt 20 div 1

date of assent 8 December 2005

commenced on date of assent

Justice and Other Legislation Amendment Act 2007 No. 37 pts 1, 29

date of assent 29 August 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 28 September 2007 (2007 SL No. 241)

Justice and Other Legislation Amendment Act 2008 No. 59 s 1, pt 26, s 119 sch

date of assent 25 November 2008

commenced on date of assent

7 List of annotations

Short title

s 1 sub 1992 No. 40 s 163 sch 1

Severability

s 2 om 1992 No. 40 s 163 sch 1

Repeal of 6 Geo. 5 No. 26, Savings

s 3 om 1992 No. 40 s 163 sch 1

Definitions

prov hdg sub 2008 No. 59 s 120(1)

s 4 def “**courtroom**” ins 2008 No. 59 s 120(2)
 def “**dictation-tape**” ins 1968 No. 14 s 19(a)
 def “**judicial person**” amd 2005 No. 70 s 138(1)
 def “**master-tape**” ins 1968 No. 14 s 19(b)
 def “**mechanical means**” amd 2008 No. 59 s 120(3)
 def “**Minister**” sub 1990 No. 80 s 3 sch 6
 om 1992 No. 40 s 163 sch 1
 def “**out-of-session recording**” ins 2008 No. 59 s 120(2)
 def “**recording equipment**” ins 2008 No. 59 s 120(2)
 def “**record under this Act**” amd 2005 No. 70 s 138(2); 2008 No. 59 s 120(4)–(5)
 def “**tape**” ins 1968 No. 14 s 19(c)

When does a legal proceeding take place in a courtroom

s 4A ins 2008 No. 59 s 121

Recording may be continuous

s 4B ins 2008 No. 59 s 121

Power to direct recording under this Act

s 5 amd 2008 No. 59 s 119 sch

Power to appoint shorthand reporters and recorders

s 6 amd 1996 No. 37 s 147 sch 2; 2007 No. 37 s 143; 2008 No. 59 s 119 sch

Record and transcription to be evidence

s 10 sub 1992 No. 40 s 163 sch 1

Depositions of witnesses

prov hdg sub 2008 No. 59 s 122(1)

s 11 amd 1968 No. 14 s 20; 1992 No. 40 s 163 sch 1; 2005 No. 70 s 139; 2008 No. 59 s 122(2)–(7)

Retention and destruction of records

s 11A ins 2008 No. 59 s 123
 (2)–(7) (prev s 11(4)–(9)) renum and reloc 2008 No. 59 s 122(7)

Access to out-of-session recording prohibited

s 11B ins 2008 No. 59 s 123

Offences

s 12 amd 1988 No. 88 s 4(1); 1992 No. 40 s 163 sch 1

Regulations

s 13 amd 1968 No. 14 s 21; 2008 No. 59 s 124

Declaratory provision for Justice and Other Legislation Amendment Act 2005

s 14 prev s 14 om 1992 No. 40 s 163 sch 1
pres s 14 ins 2005 No. 70 s 140

Transitional provision for Justice and Other Legislation Amendment Act 2007

s 15 ins 2007 No. 37 s 144

Transitional provision for Justice and Other Legislation Amendment Act 2008, pt 26

s 16 ins 2008 No. 59 s 125