



# **Recording of Evidence Act 1962**

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## Queensland

# Recording of Evidence Act 1962

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# Recording of Evidence Act 1962

## 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 or tribunal 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 medium (other than a master recording) containing the record or any part of the record made under this Act by mechanical means of a legal proceeding.

***judicial person*** includes any judge, 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 or person (including any inquiry, arbitration heard by the industrial commission, or examination) in which evidence is or may be given, as well as any part of any legal proceeding.

**master recording** means the medium containing a complete record under this Act of a legal proceeding.

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

**medium** means a disc, tape or other thing from which a record under this Act may be reproduced.

**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 who carries out a recording service.

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

**recording service** means—

- (a) the recording of relevant matter in a legal proceeding under section 5; or
- (b) the transcription of a record under this Act under an arrangement under section 5A or 5C; or
- (c) the transcription of a record under this Act by a public service employee in the department.

**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 under section 5 and includes, if the record on a master recording 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.

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*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 Recording of relevant matter in legal proceedings**

- (1) All relevant matter in a legal proceeding is to be recorded.

*Examples of ways of recording—*

- in shorthand
  - by recording equipment
- (2) The recording may be done—
    - (a) for any legal proceeding—
      - (i) under an arrangement under section 5A; or
      - (ii) by a public service employee in the department; or
    - (b) for a legal proceeding before QCAT—by a member of QCAT or an adjudicator under the QCAT Act; or
    - (c) for an inquiry or examination—under an arrangement under section 5C.
  - (3) Subsection (1) applies subject to any direction given by the court in which, or judicial person before whom, the legal proceeding is being taken.
  - (4) In this section—

*relevant matter*, in a legal proceeding, means—

- (a) evidence given in the legal proceeding; and
- (b) a ruling, direction, address, summing-up or other matter in the legal proceeding.

## **5A Arrangements for recording services**

- (1) The chief executive may enter into an arrangement with a person to provide either or both of the following services—
  - (a) the recording of relevant matter in legal proceedings under section 5;
  - (b) the transcription of records under this Act.

*Note—*

Under an arrangement, a recording or transcription may be carried out by the person who entered into the arrangement or someone else (for example, an employee, agent or subcontractor of the person who entered into the arrangement).

- (2) A certificate given by the chief executive that, on a stated day, an arrangement was in force under this section with a stated person for the provision of a stated recording service, is evidence of the matter.

## **5B Availability of copies of records and transcriptions**

- (1) The chief executive must ensure appropriate arrangements are in place to ensure the availability to any person, by purchase or otherwise, of—
  - (a) copies of records under this Act; and
  - (b) copies of transcriptions of records under this Act.
- (2) Subsection (1) does not apply to the extent that, under this or another Act or under an order of a court or judicial person, a copy of a record or transcription must not be made available to a person.
- (3) The arrangements must include arrangements for providing copies of records or transcriptions on request—
  - (a) to judicial persons at no cost; and



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- (b) to other persons, at no cost or at a cost that is less than the amount that would otherwise be payable, in accordance with the entitlements prescribed under a regulation.
- (4) The chief executive may put in place arrangements for providing copies of records or transcriptions to the Supreme Court Library Committee established under the *Supreme Court Library Act 1968*, at no cost, for the purposes of enabling the committee to maintain and administer QGIS under that Act.
- (5) However, despite an arrangement put in place under subsection (4), the chief executive must not provide to the Supreme Court Library Committee copies of the following records or transcriptions—
- (a) any part of a record under this Act of a criminal proceeding that has been made while the court is closed under a provision of an Act, or an order made under a provision of an Act requiring the court to be closed;
- (b) any part of a record under this Act of a criminal proceeding if the court makes an order prohibiting access to, or the disclosure or publication of, the part.
- (6) The chief executive may delegate, to an appropriately qualified officer of the department, a function of the chief executive under this section.

*Example of a function—*

Under a regulation made under subsection (3)(b), the chief executive may have a function of making a decision about whether a person qualifies for an entitlement to a free copy of a transcription.

- (7) In this section—
- appropriately qualified*** includes having the qualifications, experience or standing appropriate to exercise the function.
- function*** includes a power.

## 5C Inquiries and examinations

- (1) This section applies in relation to a legal proceeding that is an inquiry or examination.

- (2) The court or person before whom the inquiry or examination is conducted may arrange for either or both of the following to be carried out—
  - (a) the recording of relevant matter in the proceeding under section 5;
  - (b) the transcription of a record under this Act of the proceeding.
- (3) An arrangement under subsection (2) may be for a recording or transcription to be carried out by an officer or employee of the court or person or by someone else (for example, a person who also provides services under an arrangement with the chief executive under section 5A).
- (4) Section 5B does not apply in relation to a record under this Act of the proceeding (whether or not the record was made or transcribed under an arrangement under subsection (2)).

## **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 document purporting to be a transcription of a record under this Act, produced by a recorder, is to be received by a court or judicial person as evidence of anything recorded in the document, except to the extent the document is shown not to be an accurate transcription of the record.

## **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.

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- (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 by a recorder.
  - (3) A transcription by a recorder of a record under this Act 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 recording 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 recording may be destroyed if the record is a digital recording that has been replicated onto a separate data storage medium.
- (4) A relevant court or judicial person for a legal proceeding may make—
  - (a) an order that a record under this Act of the proceeding on a master recording be retained for the period, and on the conditions, that the court or judicial person considers appropriate; or
  - (b) if a transcription of a record under this Act of the proceeding has been made, an order authorising the destruction of the record on a master recording (whether or not an order has been made under paragraph (a)).

- (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 recording 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 recording, 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; or
  - (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 legal proceeding in a Magistrates Court and the record may be disposed of under an authority given by the archivist under the *Public Records Act 2002*, section 26.
- (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.
- (8) In this section—
- archivist** means the State Archivist established under the *Public Records Act 2002*, section 21(1).
- relevant court or judicial person**, for a legal proceeding, means a court in which or judicial person before whom—
- (a) the legal proceeding is being taken; or
  - (b) an application, appeal or other matter relating to the proceeding is being heard or may be heard.

## **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.

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- (2) However, a recorder may access all recordings under this Act, including out-of-session recordings, for the purpose of carrying out a recording service.
  - (3) This section applies despite anything to the contrary in another Act.

## 12 Offences

- (2) Any person (whether 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; or
  - (b) unless authorised by or under this Act, destroys any record under this Act; or
  - (c) wilfully alters or falsifies or causes or permits anyone to alter or falsify any record under this Act or any transcription of a record under this Act;

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—

- (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 or copies 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;
- (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**

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

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recording that had been replicated onto a separate data storage medium.

**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.

**17 Transitional provision for Classification of Computer Games and Images and Other Legislation Amendment Act 2013**

- (1) This section applies to an appointment as a shorthand reporter or recorder that was in force under section 6 immediately before the commencement.
- (2) The appointment ends on the commencement.
- (3) In this section—

*commencement* means the commencement of this section.