

WESTERN AUSTRALIA

---

# ACTS AMENDMENT (RECORDING OF DEPOSITIONS) ACT

---

No. 81 of 1986

---

AN ACT to amend the *Coroners Act 1920*, the *Evidence Act 1906*  
and the *Justices Act 1902*.

[Assented to 9 December 1986.]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART I—PRELIMINARY

### Short title

1. This Act may be cited as the *Acts Amendment (Recording of Depositions) Act 1986*.

## Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

## PART II—CORONERS ACT 1920

### Principal Act

3. In this Part, the *Coroners Act 1920*\* is referred to as the principal Act.

[\*Reprinted as approved 2 December 1980 and amended by Acts Nos. 17 of 1982 and 80 of 1983.]

### Section 13 repealed and a section substituted

4. Section 13 of the principal Act is repealed and the following section is substituted—

#### Evidence

“ 13. (1) The coroner shall cause a deposition given before him upon any inquest, or so much as is material, to be—

(a) reduced to writing; or

(b) recorded by means of sound-recording apparatus in the manner prescribed.

(2) A deposition reduced to writing under subsection (1) (a) shall be read over to and signed by the witness who has given the evidence and shall be signed also by the coroner.

(3) Where a recording made under subsection (1) (b) is transcribed, the person by whom the transcript is prepared or, if the transcript is checked by a person other than the person by whom the transcript is prepared, the person by whom the transcript is checked shall certify that the transcript is a correct transcript of that recording.

(4) Section 73A of the *Justices Act 1902* and regulations made under section 73 (1c) of that Act apply *mutatis mutandis* to and in relation to a recording made under subsection (1) (b). ”.

**Section 15 amended****5. Section 15 of the principal Act is amended—**

(a) by inserting after the section designation “15.” the subsection designation “(1)”;

(b) by deleting paragraph (e) and substituting the following paragraph—

“ (e) if the coroner orders a person to be committed to take his trial for any of the indictable offences referred to in section 16, then if, upon the trial of that person, it is proved that any person whose deposition has been taken in accordance with this Act, at the inquest, is dead, or out of the State or is so ill as not to be able to travel and if—

(i) the deposition was reduced to writing under section 13 (1) (a) and purports to be signed by the coroner by or before whom it purports to have been taken; or

(ii) the deposition was recorded under section 13 (1) (b) and a transcript of the recording has been made and certified in the prescribed manner to be a correct transcription of the recording,

the deposition may, subject to subsection (2), be read as evidence on the trial without further proof thereof. ”;

and

(c) by inserting the following subsections—

“ (2) A deposition referred to in—

(a) subsection (1) (e) (i) shall not be read as evidence on the trial without further proof thereof if it is proved that it was not in fact signed by the coroner by whom it purports to be signed;

(b) subsection (1) (e) (ii) shall not be read as evidence on the trial without further proof thereof if it is proved that the transcript to be used is not a correct transcription of the recording.

(3) A person shall not allege that a deposition intended to be read as evidence on a trial is an incorrect transcription of a recording unless, not less than 7 days before the commencement of the trial, that person has given the prosecutor notice in the prescribed form of his intention to raise that allegation. ”.

PART III— *EVIDENCE ACT 1906*

**Section 107 amended**

6. Section 107 of the *Evidence Act 1906*\* is amended—

(a) by deleting “A deposition” and substituting the following—

“ (1) Subject to subsection (2), a deposition ”;

(b) by deleting paragraph (c) and substituting the following paragraph—

“ (c) if—

(i) being a deposition that was reduced to writing under section 73 (1) (a) of the *Justices Act 1902*, it purports to be signed by the justices by or before whom it purports to have been taken; or

(ii) being a deposition that was recorded under section 73 (1) (b) of the *Justices Act 1902*, a transcript of the recording has been made and certified in the manner prescribed under that Act to be a correct transcription of the recording. ”; and

(c) by inserting the following subsections—

“ (2) A deposition referred to in—

(a) subsection (1) (c) (i) shall not be produced and given in evidence under subsection (1) if it is proved that the deposition was not in fact signed by the justices by or before whom it purports to be signed;

(b) subsection (1) (c) (ii) shall not be produced and given in evidence under subsection (1) if it is proved that the transcript to be used is not a correct transcription of the recording.

(3) A person shall not allege that a deposition intended to be given in evidence at the trial of the person against whom it was taken is an incorrect transcription of a recording unless, not less than 7 days before the commencement of the trial, that person has given the prosecutor notice in the prescribed form of his intention to raise that allegation. ”.

[\*Reprinted as at 14 August 1986.]

PART IV—*JUSTICES ACT 1902*

**Principal Act**

7. In this Part the *Justices Act 1902*\* is referred to as the principal Act.

[\*Reprinted as approved 9 November 1984 and amended by Acts Nos. 69 of 1984 and 15 and 119 of 1985.]

**Section 73 amended**

8. Section 73 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsections—

“ (1) When a person is charged with an indictable offence, the depositions of the witnesses shall be—

(a) reduced to writing; or

(b) recorded by means of sound-recording apparatus in the manner prescribed.

(1a) A deposition reduced to writing under subsection (1) (a) shall, if the charge is not dealt with summarily, be read over to and signed by the witness who has given the evidence and shall be signed also by the justices by or before whom it is taken.

(1b) Where a recording made under subsection (1) (b) is transcribed, the person by whom the transcript is prepared or, if the transcript is checked by a person other than the person by whom the transcript is prepared, the person by whom the transcript is checked shall certify that the transcript is a correct transcript of that recording.

## (1c) The Governor may make regulations—

- (a) prescribing the procedures to be adopted in relation to the taking and recording of depositions under this section and the reproduction and transmission of such depositions;
  - (b) with respect to the appointment of persons to record or transcribe depositions, or to check transcripts, for the purposes of this section;
  - (c) prescribing the functions and duties of persons appointed to record or transcribe depositions, or to check transcripts;
  - (d) requiring a person appointed to record or transcribe depositions, or to check transcripts, to take an oath that he will faithfully discharge his functions and duties and prescribing the form of such an oath;
  - (e) requiring a person appointed to record or transcribe depositions, or to check transcripts, to make a statutory declaration in any circumstances prescribed in the regulations;
  - (f) with respect to the preparation and checking of transcripts of recorded depositions and the form and manner of certification of such transcripts;
  - (g) with respect to the custody and destruction of recordings and transcripts made under this section and the period for which, or the circumstances in which, they are to be retained;
  - (h) with respect to such other matters necessary or expedient to be prescribed for the purpose of ensuring that a transcript of a recording is correct. ”; and
- (b) in subsection (2) by inserting after “shall” in paragraph (a) the following—

“ , if any party to the proceeding so requests, ”.

**Section 73A inserted**

9. After section 73 of the principal Act the following section is inserted—

**Offences in respect of recording of depositions**

“ 73A. Any person who—

- (a) personates a person appointed under this Act to record or transcribe depositions, or to check transcripts, on an occasion when the latter is required to do any act or attend in any place by virtue of his appointment;
- (b) falsely represents himself to be a person appointed under this Act to record or transcribe depositions, or to check transcripts, and assumes to do any act, or attend in any place for the purposes of doing any act, by virtue of his pretended appointment;
- (c) falsifies or, except in accordance with the prescribed procedures, interferes with, alters, adds to, or causes any omission in a transcript of any recording made under section 73;
- (d) having the duty of transcribing a recording made under section 73 or checking a transcript of that recording, provides a certificate in respect of any transcript so made, which certificate that person knows to be false in a material particular,

commits an offence.

Penalty: \$5 000 or imprisonment for 2 years. ”.

**Section 101B amended**

10. Section 101B of the principal Act is amended in subsection (1) by deleting “recorded” and substituting the following—

“ taken ”.

**Section 102 repealed and  
a section substituted**

11. Section 102 of the principal Act is repealed and the following section is substituted—

Statement of defendant

“ 102. (1) On a preliminary hearing, the justices—

- (a) shall examine all the witnesses called by the prosecution or called under section 73 (2) (c) in respect of written statements tendered in evidence by the prosecution under section 69; and
- (b) shall read aloud, or cause to be read aloud, the parts of written statements tendered in evidence by the prosecution that are required to be so read under section 73 (2) (a),

and thereupon the justices or one of the justices shall say to the defendant these words or words to the like effect—

“ Having been informed of the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing [or “will be recorded” as the case may be], and may be given in evidence against you upon your trial. ”.

(2) Whatever the defendant says in answer to the question required under subsection (1) shall be—

- (a) reduced to writing; or
- (b) recorded by means of sound-recording apparatus in the manner prescribed.

(3) A statement of the defendant reduced to writing under subsection (2) (a) shall be—

- (a) read over to the defendant;
- (b) signed by the justices before whom the statement was given;
- (c) signed by the defendant, if he so desires;
- (d) kept with the depositions of the witnesses; and
- (e) transmitted with the depositions of the witnesses to the proper officer as provided by this Act.

(4) Where a recording made under subsection (2) (b) is transcribed, the person by whom the transcript is prepared or, if the transcript is checked by a person other than the person by whom the transcript is prepared, the person by whom the transcript is checked shall certify that the transcript is a correct transcript of the recording.

(5) Sections 73A and regulations made under section 73 (1c) apply *mutatus mutandis* to and in relation to recordings made under this section. ”.

### Section 103 repealed and a section substituted

12. Section 103 of the principal Act is repealed and the following section is substituted—

Defendant’s statement may be put in evidence at trial

“ 103. (1) Upon the trial of a defendant, any statement made by him when he is required to plead to the charge under section 101C (b) (i) or when he is asked the question required under section 102 (1), if—

- (a) the statement was reduced to writing and purports to be signed by the justice or justices by or before whom it purports to have been taken; or
- (b) the statement was recorded under section 102 (2) (b) and a transcript of the recording has been made and certified in the prescribed manner to be a correct transcription of the recording,

may, if necessary and subject to subsection (2), be given in evidence against the defendant without further proof thereof.

(2) A statement referred to in—

- (a) subsection (1) (a) shall not be given in evidence against the defendant without further proof thereof if it is proved that it was not in fact signed by the justice or justices by whom it purports to be signed;
- (b) subsection (1) (b) shall not be given in evidence against the defendant without further proof thereof if it is proved that the transcript to be used is not a correct transcription of the recording.

(3) A person shall not allege that a statement intended to be given in evidence against a defendant is an incorrect transcription of a recording unless, not less than 7 days before the commencement of the trial of the defendant, that person has given the prosecutor notice in the prescribed form of his intention to raise that allegation. ”.

**Section 109 repealed and  
a section substituted**

13. Section 109 of the principal Act is repealed and the following section is substituted—

Depositions of persons dead or absent

“ 109. (1) When a person has been charged before justices with an indictable offence, as such, and has been committed for trial, then if, upon the subsequent trial of the person so charged, it is proved that any person whose deposition has been taken in accordance with section 73 at the hearing of such charge is dead, or out of the State, or so ill as not to be able to travel and if—

- (a) the deposition was reduced to writing under section 73 (1) (a) and purports to be signed by the justices by or before whom it purports to have been taken; or
- (b) the deposition was recorded under section 73 (1) (b) and a transcript of the recording has been made and certified in the prescribed manner to be a correct transcription of the recording,

the deposition may, subject to subsection (2), be read as evidence on the trial without further proof thereof.

(2) A deposition referred to in—

- (a) subsection (1) (a) shall not be read as evidence on the trial without further proof thereof if it is proved that it was not in fact signed by the justices by or before whom it purports to be signed;
- (b) subsection (1) (b) shall not be read as evidence on the trial without further proof thereof if it is proved that the transcript to be used is not a correct transcription of the recording.

(3) A person shall not allege that a deposition intended to be read as evidence on a trial is an incorrect transcription of a recording unless, not less than 7 days before the commencement of the trial, that person has given the prosecutor notice in the prescribed form of his intention to raise that allegation. ”.