

RECORDING OF EVIDENCE.

No. 59 of 1975.

**AN ACT to make new Provision for the Recording
of Legal Proceedings.**

[Assented to 24th October, 1975.]

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:—

1. This Act may be cited as the *Recording of Evidence Act, 1975.* Short title.

2. This Act shall come into operation on a date to be fixed by proclamation. Commence-
ment.

Application
to
proceedings
already
commenced.

3. Where legal proceedings were commenced in or before any court or person acting judicially before the date of coming into operation of this Act and are pending or in progress at that date, this Act may be applied to any part of those proceedings that are in or before the court or person acting judicially after that date.

Interpre-
tation.

4. In this Act, unless a contrary intention appears—

“approval” means approval in accordance with this Act;

“approved” means approved in accordance with this Act;

“certified” means certified as correct in accordance with this Act;

“court” means any court under the law of this State;

“District Court” means The District Court of Western Australia established under the District Court of Western Australia Act, 1969;

“legal proceeding” includes any action, trial, inquiry, appeal, reference, cause or matter, whether civil or criminal, in or before a court or a person acting judicially and includes an arbitration but does not include committal proceedings conducted under Part V of the Justices Act, 1902;

“master-record” means the record made—

(a) by a shorthand reporter;

(b) by a mechanical device; or

(c) by a combination of the record of a shorthand reporter and mechanical device;

“mechanical device” means a tape recording machine or any mechanical, electronic, or other device approved for the purpose of recording;

“person acting judicially” means any person having, in Western Australia, by law or by consent of parties, authority to hear, receive, or examine evidence or to determine issues between parties;

“record” means the record of a legal proceeding, or any part thereof, under this Act and “recorded” and “recording” have corresponding meanings;

“recorder” means a person who is approved as a recorder or is one of a class of persons approved as a recorder either generally or in respect of a particular mechanical device;

“section” means a section of this Act;

“shorthand reporter” means a person who is approved as a shorthand reporter or is one of a class of persons approved as shorthand reporters;

“subsection” means a subsection of the section wherein the term is used;

“transcribed” has a corresponding meaning to transcription;

“transcription” means the transcription of a record to longhand writing, typewriting or other mode, and includes the direct recording of the record by typewriting; and

“tribunal” means a court or a person acting judicially.

5. (1) In any legal proceeding any evidence given and any ruling, direction, address, summing up, and other matter in the legal proceeding may be recorded—

Power to record.

(a) if a shorthand reporter is available, in shorthand;

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

(2) Any shorthand record made pursuant to subsection (1) may be made by any one or more shorthand reporters and any other record made pursuant to that subsection may be made by or under the supervision of one or more recorders.

(3) A shorthand reporter or recorder shall to the best of his ability faithfully record or transcribe any evidence or other matter which he is required to record, and may for that purpose use such other assistance as may be necessary.

Persons recording to be officers of the tribunal.

6. Every person recording shall for the time being—

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

Transcription may be made by another officer.

7. The record may be transcribed at any time by or under the supervision of a 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.

8. Every record and any certified transcription thereof is for the purpose of the legal proceeding in which the record was made and of any other legal proceeding evidence—

Transcription to be evidence.

- (a) that it is a true and accurate account of the legal proceeding or the part of the legal proceeding to which it relates; and
- (b) that a statement therein attributed to a person was, in fact, made by that person.

9. (1) Notwithstanding subsections (2) and (3), the record on a master-record (including the record of a shorthand reporter) shall not be destroyed—

Destruction of records.

- (a) within the time allowed by law for instituting any appeal or application for a re-hearing or to set aside or review in relation to the legal proceeding in question; and
- (b) where an appeal or application for a re-hearing or to set aside or review or otherwise in relation to the proceeding in question is instituted, until that appeal or application is finally determined or otherwise terminated,

but, in any event, the master-record shall not be destroyed within twelve months of the making of that record or within such further period as the tribunal before which the recording was made or the Master, Registrar, Clerk, or other corresponding officer thereof, for sufficient cause, thinks fit.

(2) Subject to subsection (1), where any proceeding or part thereof is recorded the tribunal which is hearing or may hear an appeal or application for a re-hearing or to set aside or review or otherwise in relation to such legal proceeding or who re-hears or reviews or may re-hear or review such legal proceeding may at any time make such order for the retention of the record made on the master-record for such period and subject to such conditions as the tribunal thinks fit.

(3) Subject to subsection (1), to an order made under subsection (2), and to the regulations, a record on a master-record may be destroyed at any time—

- (a) after a certified transcription of the record has been made; or
- (b) before such a transcription has been made, if the legal proceeding so recorded is a legal proceeding in or before a tribunal (except a legal proceeding in or before the Supreme Court or the District Court) that has, for the purposes of this subsection, been prescribed.

Duty to preserve.

10. Subject to this Act or any other Act or lawful requirement, it is the duty of the Master, Registrar, Clerk, or other corresponding officer of the tribunal before which a recording is made under this Act to preserve and retain, or cause to be preserved and retained, that recording.

Issue of certified transcriptions.

11. On payment of the prescribed fee, if any—

- (a) the parties to a legal proceeding of which a recording is made under this Act are entitled to be issued with a certified transcription thereof; and
- (b) by leave of the Master, Registrar, Clerk, or other corresponding officer of the tribunal before which the recording is made, other persons who show sufficient cause may be issued with such a certified transcription.

Retention of records made under other Acts.

12. The record of any legal proceeding retained under any other Act, rule, or practice shall, after the coming into operation of this Act, continue to be so retained and, where that Act, rule or practice so permits, may be destroyed thereunder, but any record made under this Act shall be retained under this Act, and where it so permits, may be destroyed thereunder.

13. (1) Any person who is not a shorthand reporter or recorder but directly or indirectly holds himself out to be a shorthand reporter or recorder, as the case may be, commits an offence.

Penalty: Two hundred dollars.

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

- (a) wilfully makes or is instrumental in the making of a record or a transcription thereof which is false or incorrect;
- (b) unless authorized by or under this Act, wilfully destroys any record;
- (c) unless authorized by or under this Act, wilfully removes any record or transcription thereof from its prescribed custody;
- (d) wilfully causes or permits a record or transcription thereof that is in its prescribed custody to be heard or read other than for the purposes of this Act;
- (e) wilfully uses a mechanical device, or equipment ancillary thereto, by which a record was made to reproduce the record for purposes other than those of this Act;
- (f) wilfully alters or falsifies or causes or permits anyone to alter or falsify any record or any transcription or any certificate under and for the purposes of this Act;
- (g) wilfully certifies as correct any transcription which is false or incorrect; or
- (h) wilfully interferes with recording apparatus in the process of recording, or otherwise,

is guilty of a misdemeanour and is liable to imprisonment with hard labour for three years.

Publication
of approvals.

14. Notice of approval—

- (a) of persons or classes of persons as shorthand reporters or recorders, or both, for the purposes of this Act;
- (b) of the type and class of mechanical devices and equipment ancillary thereto that may be used in recording and of the manner in which they are operated; and
- (c) of persons and classes of persons by whom transcriptions may be certified,

shall be published in the *Government Gazette*.

Judicial
notice.

15. All courts and persons acting judicially shall take judicial notice of—

- (a) notices of approval published pursuant to section 14;
- (b) the official signature of every person who is approved, or who is one of a class of persons approved, to certify transcriptions; and
- (c) where the case requires, the fact that a person holds or has held an office specified in the approval.

Regulations.

16. (1) The Governor may, on the recommendation of the Attorney General, make such regulations, not inconsistent with this Act as he considers desirable for the proper administration of this Act or for achieving the objects and purposes of this Act.

(2) Without limiting the generality of subsection (1) regulations may be made providing for—

- (a) the approval of persons or classes of persons as shorthand reporters or recorders, or as both, for the purposes of this Act;

- (b) the functions and duties of shorthand reporters and recorders;
- (c) the approval of the type and class of mechanical devices and equipment ancillary thereto that may be used in recording and of the manner in which they are to be operated;
- (d) the making of transcriptions, the approval of persons or classes of persons by whom the transcriptions may be certified and the requirements for and the manner of certifying them;
- (e) the fixing of fees to be paid in respect of all or any recordings, transcriptions, and copies thereof, and in respect of other matters relating thereto; the persons by whom such fees shall be payable and the recovery of and exemptions from such fees;
- (f) the custody of records and transcriptions, and the period for which, or the circumstances when they are, to be retained, unless sooner destroyed under this Act;
- (g) the imposition of differing requirements depending upon circumstances;
- (h) the requirement that any information, document or form required to be given or furnished thereunder shall be verified by statutory declaration;
- (i) the conferring upon any person or class of persons of a discretionary authority; and
- (j) penalties not exceeding two hundred dollars for any contravention of the regulations.