

## EVIDENCE.

No. 18 of 1974.

AN ACT to make further provision with respect to the taking of evidence by or for Courts or Persons acting judicially, to amend the Evidence Act, 1906-1971, and for other purposes.

[Assented to 16th October, 1974.]

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. (1) This Act may be cited as the *Evidence Act Amendment Act, 1974.* Short title and citation.

(2) In this Act the Evidence Act, 1906-1971, is referred to as the principal Act. Reprinted Acts. Approved for reprint 2nd July, 1971, as amended by Act No. 41 of 1971.

(3) The principal Act as amended by this Act may be cited as the Evidence Act, 1906-1974.

Commence-  
ment.

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

Section 104A  
amended.

3. The principal Act is amended by deleting subsection (5) of section 104A and substituting a new subsection as follows—

(5) In this section “authority” means any court, judge, person or body that is authorised under the law of any State or Territory of the Commonwealth, New Zealand or any other foreign country to take or receive evidence on oath therein. .

New Sections  
109 to 118  
added.

4. The principal Act is amended by adding after section 108 the heading “*Summary Procedure for Examination of Witnesses otherwise than at a hearing.*” and ten new sections as follows—

Interpreta-  
tion.

109. In section one hundred and nine to section one hundred and eighteen of this Act—

“Corresponding court”—

- (a) in relation to a court or person acting judicially in a prescribed country, means the court or person acting judicially in Western Australia that is declared by notice in writing under the hand of the Attorney General published in the *Gazette* to be the court or person in Western Australia that corresponds to that court or person in the prescribed country; and
- (b) in relation to a court or person acting judicially in Western Australia, means the court or person acting judicially in a prescribed country that is declared by notice in writing under

the hand of the Attorney General published in the *Gazette* to be the court or person in a prescribed country that corresponds to that court or person in Western Australia;

“Examiner” means a judge, judge’s associate, 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 which is declared by the regulations to be a prescribed country for the purposes of section one hundred and nine to section one hundred and eighteen of this Act.

110. (1) Where a court or person acting judicially in Western Australia is authorized by or under any Act or law to authorize 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 he is satisfied that it is necessary in the interest 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.

Power to  
W.A. court  
to request  
correspond-  
ing court  
in a  
prescribed  
country  
to take  
evidence for  
use in  
W.A. court.

(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.

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

111. (1) Where by or under any Act or law of a prescribed country provision is made to permit the taking of the evidence of any person that is required in connexion with any legal proceedings otherwise than at the hearing of those proceedings by a court or person acting judicially, a court or person acting judicially in Western Australia 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 his 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.

As to summons of witnesses.

112. Upon service on a person of an order requiring him 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 he were summoned before the court or person by which or whom the order was made.

Examination, cross-examination and re-examination.

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

- (a) any 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 any person examined before him 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 he was appointed as are necessary for the proper exercise of his functions under section one hundred and nine to section one hundred and eighteen of this Act and may administer oaths and adjourn the examination from time to time as he thinks fit.

114. (1) If any person being examined before an examiner objects to answer any question put to him, 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.

Objections.

(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.

115. (1) Where pursuant to any such order—

Depositions  
to be  
signed.

- (a) a witness has given evidence to the examiner, his deposition shall be signed by him and by the examiner or where the witness refuses to sign or requires alterations that the examiner considers to be unjustified the deposition shall be signed by the examiner who shall

certify that the deposition is a correct record and the reasons for the deposition 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 him 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.

Power to  
W.A. court  
to transmit  
requests  
to other  
places.

116. Where a court or person acting judicially in Western Australia 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 Western Australia and is not proceeding to Western Australia 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 he 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.

Saving as  
to personal  
attendance.

117. Nothing in section one hundred and nine to section one hundred and eighteen of this Act 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.

118. The Governor may make regulations for <sup>Regulations.</sup>  
or with respect to—

- (a) fixing and requiring the payment of fees and expenses for or incurred in taking of evidence under section one hundred and nine to section one hundred and seventeen of this Act; and
  - (b) anything which is required or is necessary to be prescribed for carrying those sections into effect.
-