

# RECORDING OF PROCEEDINGS ACT 1980.

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## RECORDING OF PROCEEDINGS.

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No. 84 of 1980.

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AN ACT to make provision for recording oral proceedings in and before tribunals and for incidental and other connected purposes, to make provision for the custody of certain records made under this Act and otherwise and to repeal the Recording of Evidence Act 1975 and Part XVII of the Acts Amendment (Master, Supreme Court) Act 1979.

*[Assented to 9 December 1980.]*

**B**E 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 Proceedings Act 1980*. Short title.

Commence-  
ment.

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

Repeal.

3. The Recording of Evidence Act 1975 and Part XVII of the Acts Amendment (Master, Supreme Court) Act 1979 are repealed.

Saving.

4. Nothing in this Act prevents a tribunal from taking notes, or directing a person to take notes, whether in manuscript or otherwise, and otherwise than in accordance with this Act, of any proceedings before the tribunal but, where a record is made under this Act of those proceedings, the record so made, subject to this Act, shall be the record of the proceedings for the purposes of this Act.

Interpreta-  
tion.

5. In this Act unless the contrary intention appears—

“approval” means approval in accordance with this Act;

“approved” means approved in accordance with this Act;

“certified” means certified in accordance with this Act;

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

“Family Court” means the Family Court of Western Australia constituted under the Family Court Act 1975;

“medium” means a tape, wire or other material that is inserted or intended to be inserted in a mechanical device for the purpose of making a record;

“mechanical device” means a tape-recording machine or any mechanical, electronic or other device, including a manually operated typewriter, used for the purpose of making a record;

“proceedings” means any oral proceedings in and before a tribunal including testimony given before the tribunal, a summing up, ruling or direction given by, or address to, the tribunal but does not include—

- (a) committal proceedings conducted under Part V of the Justices Act 1902;
- (b) any proceedings in respect of which an order under section 7 is in force;

“record” means—

(a) when used as a noun—

- (i) where a mechanical device is used, a medium on which oral proceedings are recorded;
- (ii) where shorthand is used, the shorthand notes of a proceeding;

(b) when used as a verb, to reduce to writing or to take down in shorthand or to make a record by some means of some mechanical device of any proceedings and includes any step in the process of doing so,

but does not include a transcript;

“recorder” means a person appointed as a recorder under section 11;

“registrar” means—

- (a) in relation to a tribunal having an office designated as such, the person holding that office and includes the person holding the office of deputy registrar if there is such an office;

- (b) in relation to a tribunal having no office designated as such, the person appointed to carry out the functions and duties conferred or imposed on the registrar by this Act;

“reproduce” means—

- (a) in relation to a record, to copy the record;
- (b) in relation to a transcript, to copy the transcript;

“section” means a section of this Act;

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

“transcribe” means to reduce a record to writing in the English language;

“transcript” means—

- (a) where a record was originally made in shorthand or on a medium, the record so made reduced to writing in the English language;
- (b) where a record was originally made by reducing the record to writing in the English language during the proceedings, the record so made in the English language;

“tribunal” means—

- (a) any person or body constituted as a court under the law of the State;
- (b) any person having, in Western Australia, by law or by consent of parties, authority to hear, receive, and examine evidence;
- (c) a Royal Commission,

and includes any person or body that is pursuant to section 6 a tribunal for the purposes of this Act but does not include any person or body that pursuant to that section is not a tribunal for the purposes of this Act.

6. (1) The Attorney General may by order direct that any person or body, other than the Supreme Court, the Family Court and the District Court—

Power to  
declare  
tribunals.

- (a) is a tribunal for the purposes of this Act;  
or
- (b) is not a tribunal for the purposes of this Act.

(2) An order under subsection (1)—

- (a) may be made by reference to a person or body or class of person or body;
- (b) may direct that a person or body—
  - (i) is a tribunal for the purposes of this Act notwithstanding that the person or body is of a class of person or body that is not a tribunal for the purposes of this Act;
  - (ii) is not a tribunal for the purposes of this Act notwithstanding that the person or body is of a class of person or body that is a tribunal for the purposes of this Act.

(3) An order under this section—

- (a) may be varied or revoked by a subsequent order of the Attorney General;
- (b) shall be published in the *Government Gazette*.

Attorney  
General  
may give  
directions in  
respect of  
certain  
proceedings.

7. (1) The Attorney General may order that any proceedings other than proceedings in the Supreme Court, the District Court or the Family Court, are proceedings which shall be recorded or transcribed or both in accordance with a direction given under subsection (4).

(2) An order under subsection (1) may be given by reference to—

- (a) time, place or circumstance;
- (b) a particular tribunal or class of tribunal;
- (c) a particular proceeding or proceedings of a class.

(3) An order under this section shall be published in the *Government Gazette* and may be varied or cancelled by the Attorney General by a subsequent notice so published.

(4) Where an order under this section applies to proceedings, the Attorney General may from time to time give written directions in relation to the recording and transcription of such proceedings and effect shall be given to any such direction.

(5) A direction under subsection (4) may be given to—

- (a) a registrar; or
- (b) a person constituting a tribunal,

and may be given generally or in relation to a particular tribunal or class of tribunal.

(6) The Attorney General may vary or revoke any direction given under subsection (4).

(7) A record or transcript made pursuant to a direction given under this section is deemed to be a record or transcript, as the case requires, made in accordance with this Act.

8. (1) Subject to section 7, a tribunal or the registrar thereof may direct that any proceedings or part of any proceedings shall be recorded in accordance with this Act.

Recording of  
proceedings.

(2) A direction under subsection (1)—

(a) may be given in relation to a particular proceeding or the class of proceedings of that tribunal generally;

(b) may be given in relation to only a part of a proceeding or class of proceedings.

9. (1) Subject to section 7, a party to any proceedings may apply to the registrar for a transcript of the proceedings or such portion thereof as is specified in the application.

Application  
for tran-  
scription.

(2) An application under subsection (1)—

(a) may be made by the party or his solicitor or counsel;

(b) shall be accompanied by the prescribed fee (if any is payable) unless the registrar directs that satisfactory arrangements have been made for the payment of that fee.

(3) Subsections (1) and (2) apply to and in relation to proceedings in respect of which a direction under section 7 (4) is in force.

10. (1) A tribunal or the registrar thereof may direct that a record of a proceeding be transcribed in accordance with this Act.

Transcrip-  
tion of  
recordings.

(2) Where a direction is given under subsection (1) the record to which the direction relates shall be transcribed in the prescribed manner.

(3) A direction under subsection (1) may be given in relation to the recording of any proceeding or part thereof or the recording of a class of proceeding or recordings of that tribunal generally.



(4) Where proceedings are being recorded under this Act and an application is made in accordance with section 9 for a transcript of the proceeding and—

- (a) the prescribed fee payable in relation to the making of the transcript has been paid; or
- (b) the registrar directs that satisfactory arrangements have been made for the payment of the prescribed fee payable in relation to the transcript,

a transcript of the proceeding shall be made or reproduced in terms of the application in accordance with this Act.

Appoint-  
ment of  
recorders.

11. (1) The Attorney General may by notice published in the *Government Gazette* appoint a person as a recorder for the purposes of this Act.

(2) An appointment of a person as a recorder under subsection (1) may be revoked by the Attorney General at any time.

(3) An appointment under subsection (1) may be made—

- (a) generally; or
- (b) (i) by reference to the holder of a specified office or to a person of a class;
- (ii) with respect to a tribunal or tribunal of a class or a proceeding or proceeding of a class;
- (iii) limiting the function to be carried out by any person so appointed.

Recorders to  
be officers of  
the tribunal.

12. (1) A person acting as a recorder in relation to a tribunal is whilst so acting an officer of the tribunal and shall comply with any direction given by the tribunal or the registrar thereof.

(2) A recorder shall faithfully carry out his duties to the best of his ability.

13. (1) Every transcript or reproduction made under this Act shall be certified by a recorder or the registrar of the tribunal before which the proceeding was heard and signed by him.

Certified  
transcript to  
be evidence.

(2) A certification for the purposes of subsection (1) shall be in accordance with the regulations.

(3) A transcript or reproduction that is certified and signed by a recorder or registrar of the tribunal before which the proceeding was heard is, for the purposes of any proceedings, evidence—

(a) that it is a true and accurate account of the proceeding to which it relates; and

(b) that a statement therein attributed to a person was in fact made by that person.

(4) Where a transcript or reproduction is certified in accordance with the regulations, the certificate is evidence that the record and the transcript are made in accordance with this Act.

(5) Where in any proceedings before a court it is shown to the satisfaction of the court that there has been a failure to comply with this Act or the regulations made thereunder with respect to the making of a record or transcript that is sought to be adduced in evidence in those proceedings the court may if it is satisfied that the failure has not affected or is not likely to affect the accuracy of the record or transcript or that part of the record or transcript, as the case may be, that is sought to be adduced in evidence, admit the record or transcript or part thereof, as the case may be, without any further proof other than the certificate given for the purposes of subsection (1) of this section.

(6) In subsection (5) "court" includes—

- (a) a court,
- (b) a person or body having in Western Australia by law or consent of the parties authority to hear, receive, and examine evidence; or
- (c) a Royal Commission,

whether or not a tribunal for the purposes of this Act.

Custody of  
record and  
transcript.

14. (1) Subject to subsection (2), a record and any transcript of a proceeding shall be in custody of the registrar of the tribunal before which the proceeding was heard and it is the duty of the registrar of the tribunal to retain and preserve any such record and transcript.

(2) Where pursuant to section 7 (4) the Attorney General gives a direction in relation to the recording or transcription of proceedings he may give such further directions as he considers necessary for the proper despatch of the record or transcript of those proceedings and for the custody of the record and transcript of such proceedings.

(3) Directions given under subsection (2) may be given generally or with respect to a particular tribunal or such tribunals as are specified in the direction.

Attorney  
General may  
give direc-  
tions for  
storage of  
records.

15. (1) Notwithstanding section 14, the Attorney General may direct that such records and transcripts as he specifies in his direction, whether by reference to periods of time, classes of proceedings or classes of tribunals, shall be stored in such place as he specifies in his direction and effect shall be given to any such direction.

(2) Where a record or transcript is stored in a place pursuant to a direction given under subsection (1) the custody of the record or transcript, as the case requires, is—

- (a) if the record or transcript is a record or transcript of a proceeding in the Supreme Court, the Family Court or the District Court—in the custody of the registrar of the respective court;
- (b) if the record or transcript is a record or transcript of a proceeding in a tribunal other than the Supreme Court, the Family Court or the District Court—in the person appointed pursuant to subsection (3) to be the custodian thereof.

(3) The Attorney General may by order appoint a person or the holder for the time being of any office specified in the order to be the custodian of records and transcripts for the purposes of subsection (2) (b).

(4) An order under subsection (3)—

- (a) may be given by reference to records and transcripts of proceedings of a tribunal or class of tribunal;
- (b) may be varied or revoked by a subsequent order given by the Attorney General.

(5) An order given by the Attorney General under subsection (3) or subsection (4) shall be published in the *Government Gazette*.

16. (1) A record of proceedings shall not be destroyed—

Destruction  
of records.

- (a) until the expiration of 6 months from the time allowed by law for instituting an appeal, or applying for leave to appeal, or for a new trial, in respect of the proceedings to which the record relates; or
- (b) unless a transcript of the record has been made and certified, while any such appeal or application is pending.

(2) Subject to subsection (1), a record of proceedings may be destroyed in accordance with the regulations.

Retention of  
records made  
under other  
Acts.

17. Subject to any order given by the Attorney General in relation to any tribunal other than the Supreme Court, the District Court, and the Family Court, the record of evidence taken in any legal proceedings retained under any other Act or under a rule, or practice shall, after the coming into operation of this Act, continue to be so retained and, where that other Act, rule or practice so permits, may be destroyed thereunder.

Supply of  
transcript to  
persons who  
are not  
parties.

18. (1) Any person who is not a party to proceedings may for sufficient cause apply for a transcript of the proceedings or such portion thereof as is specified in the application.

(2) An application under subsection (1) shall be made to the registrar who may approve or refuse to approve of the application.

(3) Where an application under subsection (1) is approved by the registrar the transcript the subject of the application shall be supplied to the applicant on payment of the prescribed fee (if any is payable).

Judicial  
notice

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

- (a) the appointment of a person as registrar of a tribunal or as a recorder under this Act; and
- (b) the signature of every person who is or has been a registrar of a tribunal or a recorder under this Act.

Offences.

20. (1) Any person who—

- (a) personates a recorder 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 recorder, and assumes to do any act, or attend in any place for the purpose of doing any act, by virtue of his pretended appointment;

- (c) being a recorder or registrar, makes, signs or gives a certificate pursuant to section 13 which is false in a material particular;
- (d) without lawful authority, removes any record or transcript from its proper custody or place of storage;
- (e) permits a record or transcript to be heard or seen by any person, who is not authorized to hear or see it pursuant to this Act;
- (f) without lawful authority, destroys any record or transcript; or
- (g) falsifies, interferes with, makes, alters or causes any omission in, a record, transcript or reproduction, otherwise than in accordance with this Act,

commits an offence.

Penalty: Imprisonment for 12 months or a fine of \$2 000.

(2) Any person who attempts to commit any of the offences referred to in subsection (1) commits an offence.

Penalty: Imprisonment for 6 months or a fine of \$1 000.

21. (1) The Attorney General, in relation to any power or function conferred or imposed on him by or under this Act, and the registrar of a tribunal having an office designated as such, in relation to any power or function conferred or imposed on him by or under this Act, may, generally or as otherwise provided in the instrument of delegation, by writing signed by him, delegate to any officer of the Public Service of the State all or any of his powers and functions under this Act other than this power of delegation. Delegation.

(2) A power or function so delegated when exercised by the delegate, shall, for the purposes of

this Act, be deemed to have been exercised by the Attorney General or the registrar, as the case requires.

(3) Where, under this Act, the exercise of a power or the performance of a function by a person is dependent upon the opinion, belief, or state of mind of that person in relation to a matter and that power or function has been delegated under this section, that power or function may be exercised or performed by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

(4) A delegation under this section may be—

- (a) made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;
- (b) revoked or varied by instrument in writing signed by the person making the delegation.

(5) A delegation under this section does not prevent the exercise of any power or function by the person making the delegation.

**Regulations.**

22. (1) The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or contemplated as being prescribed or which are necessary or expedient to be prescribed for carrying this Act into effect.

(2) Without limiting the generality of subsection

(1) the Governor may make regulations—

- (a) prescribing the procedures to be adopted in making records and transcripts and reproducing records and transcripts and the transmission of records and transcripts;
- (b) prescribing the functions and duties of recorders;
- (c) requiring a recorder to take an oath that he will faithfully discharge his functions and duties and prescribing the form of such oath;

- (d) requiring a recorder to make a statutory declaration in any circumstances prescribed in the regulations;
  - (e) prescribing the forms of certification to be given as to any transcript or reproduction made under this Act and providing for different forms of certification to be given according to different circumstances;
  - (f) prescribing the fees to be paid in respect of any recordings, transcripts and reproductions, and in respect of other matters relating thereto including conditions to be fulfilled before a record or transcript is made, the persons by whom such fees shall be payable and the recovery of and exemptions from such fees;
  - (g) subject to this Act, relating to the custody and destruction of records and transcripts made in accordance with this Act, and the period for which, or the circumstances in which, they are to be retained;
  - (h) subject to this Act, relating to the custody and destruction of records and transcripts made otherwise than in accordance with this Act (and whether made before or after the commencement of this Act) in any proceedings including committal proceedings under Part V of the Justices Act 1902, and the period for which, or the circumstances in which, they are to be retained;
  - (i) prescribing penalties not exceeding \$1 000 for any contravention of the regulations.
- (3) Regulations may be made under this Act—
- (a) so as to apply—
    - (i) generally or to any specified class or classes of case or subject-matter;
    - (ii) at all times or at any specified time or times;



- (iii) throughout the State or in any specified part or parts of the State;
  - (b) so that different regulations apply to different tribunals or classes of tribunals, or different proceedings or classes of proceedings or in different circumstances or so that regulations apply differently according to such factors as may be specified;
  - (c) so as to require a matter affected by them to be—
    - (i) in accordance with a specified standard or specified requirement; or
    - (ii) as approved by, or to the satisfaction of, a specified person or body, or a specified class of person or body;
  - (d) so as to confer on or delegate to a specified person or body, or a specified class of person or body, a discretionary authority;
  - (e) so as to provide that, in specified cases or a specified class of case or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified;
  - (f) so as to require any matter or thing to be verified by statutory declaration.
- (4) In subsection (3) “specified” means specified in the regulations.