

# EVIDENCE AMENDMENT ACT

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No. 34 of 1989

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AN ACT to amend the *Evidence Act 1906* and to repeal certain Imperial Acts so far as they apply in the State.

[Assented to 22 December 1989]

The Parliament of Western Australia enacts as follows:

## Short title

1. This Act may be cited as the *Evidence Amendment Act 1989*.

## Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

## Principal Act

3. In this Act the *Evidence Act 1906*\* is referred to as the principal Act.

[\*Reprinted as at 14 August 1986 and amended by Acts No. 81 of 1986, 66 of 1987 and 70 of 1988.]

**Sections 115 to 118C inserted**

4. The principal Act is amended by inserting before the heading "*Allowances to Witnesses and Interpreters in Specified Proceedings*" the following heading and sections—

“ *Taking of evidence for foreign and Australian courts*

Interpretation

115. In this section and in sections 116 to 118C—

“Australia” includes the Territories of the Commonwealth (whether internal or external) for the government of which as a Territory provision is made by any Commonwealth Act;

“proceedings” means—

- (a) proceedings in any civil or commercial matter; or
- (b) proceedings in or before a court in relation to the commission of an offence or an alleged offence;

“property” includes any land, chattel or other corporeal property of any description;

“request” includes any commission, order or other process issued by or on behalf of a requesting court;

“requesting court” means a court or tribunal by or on whose behalf a request is issued, as referred to in section 116.

Application to the Supreme Court for assistance in obtaining evidence for proceedings in other court

116. (1) If an application is made to the Supreme Court for an order for evidence to be obtained in Western Australia and the Supreme Court is satisfied—

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal exercising jurisdiction in a place outside Western Australia; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the provisions of sections 117 to 118B apply.

(2) Sections 117 to 118B do not apply in respect of proceedings relating to the commission of an offence or an alleged offence unless the requesting court is a court of a place in Australia or of New Zealand.

Power of the Supreme Court to give effect  
to application for assistance

117. (1) The Supreme Court has power, on any such application as is mentioned in section 116, by order to make such provision for obtaining evidence in Western Australia as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made.

(2) An order under this section may require a specified person to take such steps as the court may consider appropriate for that purpose.

(3) Without limiting the generality of subsections (1) and (2), an order under this section may, in particular, make provision—

- (a) for the examination of witnesses, either orally or in writing;
- (b) for the production of documents;
- (c) for the inspection, photographing, preservation, custody or detention of any property;
- (d) for the taking of samples of any property and the carrying out of any experiments on or with any property;
- (e) for the medical examination of any person;
- (f) without limiting paragraph (e), for the taking and testing of samples of blood from any person.

(4) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of proceedings in the Supreme Court (whether or not proceedings of the same description as those to which the application for the order relates).

(5) Subsection (4) does not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.

(6) An order under this section shall not require a person—

- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in the person's possession, custody or power; or
- (b) to produce any documents other than particular documents specified in the order and appearing to the court making the order to be, or to be likely to be, in the person's possession, custody or power.

(7) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time on attendance as a witness in proceedings before the Supreme Court.

#### Privilege of witnesses

118. (1) A person shall not be compelled by virtue of an order under section 117 to give any evidence which the person could not be compelled to give—

- (a) in similar proceedings in Western Australia; or
- (b) in similar proceedings in the place in which the requesting court exercises jurisdiction.

(2) Subsection (1) (b) does not apply unless the claim of the person in question to be exempt from giving evidence is either—

- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
- (b) conceded by the applicant for the order.

(3) Where such a claim by any person is not so supported or conceded, the person may (subject to the other provisions of this section) be required to give the evidence to which the claim relates, but that evidence shall not be transmitted to the requesting court unless that court, on the matter being referred to it, dismisses the claim.

(4) In this section, references to giving evidence include references to answering any question and to producing any document, and the reference in subsection (3) to the transmission of evidence given by a person shall be construed accordingly.

## Rules of court

118A. (1) Rules may be made under the *Supreme Court Act 1935* for or with respect to—

- (a) the manner in which an application mentioned in section 116 is to be made;
- (b) the circumstances in which an order can be made under section 117; and
- (c) the manner in which any reference mentioned in section 118 (3) is to be made.

(2) Any such rules may include such incidental, supplementary and consequential provisions as are necessary or convenient.

## Offence

118B. If any person, in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under section 117, makes a statement—

- (a) which the person knows to be false in a material particular; or
- (b) which is false in a material particular and which the person does not believe to be true,

the person is guilty of a crime and is liable to imprisonment for 7 years.

## Operation of other laws

118C. Sections 115 to 118C are not intended to exclude or limit the operation of any other law of the State that makes provision for the taking of evidence in the State for the purpose of a proceeding outside the State. ”.

## Repeals

5. (1) The following Acts of the Parliament of the United Kingdom are repealed in so far as they are part of the law of Western Australia—

*The Foreign Tribunals Evidence Act 1856;*

*The Evidence by Commission Act 1859;*

*The Evidence by Commission Act 1885.*

(2) Nothing in this section affects—

- (a) any application to any court or judge which is pending at the commencement of this Act;
  - (b) any certificate given for the purposes of such an application;
  - (c) any power to make an order on such an application; or
  - (d) the operation or enforcement of any order made on such an application.
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