



TASMANIA

---

**EVIDENCE AMENDMENT (EVIDENCE ON COMMISSION)  
ACT 1992**

---

**No. 13 of 1992**

---

**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Principal Act
4. Parts VIII and IX inserted
  - Part VIII—Taking of evidence for foreign and Australian courts
    - 150—Interpretation
    - 151—Application to the Supreme Court for assistance in obtaining evidence for proceedings in other court
    - 152—Power of the Supreme Court to give effect to application for assistance
    - 153—Privilege of witnesses
    - 154—Offence
    - 155—Operation of other laws
    - 156—Rules of Court
  - Part IX—Examination of witnesses outside the State
    - 157—Interpretation
    - 158—Proceedings in the Supreme Court
    - 159—Proceedings in inferior courts
    - 160—Exclusion of evidence in criminal proceedings
    - 161—Operation of other laws
    - 162—Regulations and Rules of Court
5. Repeals





**EVIDENCE AMENDMENT (EVIDENCE ON  
COMMISSION) ACT 1992**

---

**No. 13 of 1992**

---

**AN ACT to amend the *Evidence Act 1910* and to repeal the *Evidence Amendment (Evidence on Commission) Act 1987* and certain Imperial Acts in so far as they apply in Tasmania**

**[Royal Assent 6 August 1992]**

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**Short title**

**1**—This Act may be cited as the *Evidence Amendment (Evidence on Commission) Act 1992*.

**Commencement**

**2**—The provisions of this Act commence on a day or days to be proclaimed.

### Principal Act

3—In this Act, the *Evidence Act 1910\** is referred to as the Principal Act.

### Parts VIII and IX inserted

4—After section 149 of the Principal Act, the following Parts are inserted:—

## PART VIII

### TAKING OF EVIDENCE FOR FOREIGN AND AUSTRALIAN COURTS

#### Interpretation

150—In this Part, unless the contrary intention appears—

“**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 151.

\* 1 Geo. V No. 20. For this Act, as amended to 1 June 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 52 of 1981, Nos. 60 and 75 of 1982, No. 29 of 1984, Nos. 5, 21 and 51 of 1985, No. 34 of 1986, Nos. 55 and 77 of 1987, Nos. 4 and 25 of 1988, No. 5 of 1990, and Nos. 1, 25, 27 and 46 of 1991.

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

151—(1) If an application is made to the Supreme Court for an order for evidence to be obtained in Tasmania 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 Tasmania; 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 152 to 155 (inclusive) apply.

(2) Sections 152 to 155 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**

152—(1) The Supreme Court has power, in relation to an application referred to in section 151, by order to make such provision for obtaining evidence in Tasmania 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; and
- (b) for the production of documents; and
- (c) for the inspection, photographing, preservation, custody or detention of any property; and

- (d) for the taking of samples of any property and the carrying out of any experiments on or with any property; and
- (e) for the medical examination of any person; and
- (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**

153—(1) A person shall not be compelled by virtue of an order under section 152 to give any evidence which the person could not be compelled to give—

- (a) in similar proceedings in Tasmania; 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 if that court, on the matter being referred to it, upholds 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.

### Offence

154—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 152, 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 punishment on indictment under the *Criminal Code*.

### Operation of other laws

155—This Part is 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.

### Rules of Court

156—(1) Rules may be made under the *Supreme Court Civil Procedure Act 1932* for or with respect to—

- (a) the manner in which an application mentioned in section 151 is to be made; and

- (b) the circumstances in which an order can be made under section 152; and
- (c) the manner in which any reference mentioned in section 152 (3) is to be made.

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

---

## PART IX

### EXAMINATION OF WITNESSES OUTSIDE THE STATE

#### Interpretation

157—(1) In this Part, unless the contrary intention appears—

“Australia” includes—

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

(b) New Zealand;

“examination” includes any proceeding for the taking of evidence of a person conducted by the judicial authorities of a foreign country in relation to a letter of request issued as a result of an order made by a court under this Part;

“inferior court” means a court of the State, except when exercising federal jurisdiction, not being the Supreme Court within the meaning of section 158;

“judicial authority”, in relation to a place outside the State, means—

(a) the Supreme Court of another State or a Territory of the Commonwealth; or

(b) a court in that place that has the power or jurisdiction to give effect to a request made under section 158 (2) (c); or

(c) a court or person prescribed as a judicial authority for that place.



(2) In this Part, a reference to a place outside the State shall be taken to refer to a place outside the State whether within or outside Australia.

### **Proceedings in the Supreme Court**

158—(1) In this section, “**Supreme Court**” means that Court except when exercising federal jurisdiction.

(2) In any civil or criminal proceeding before the Supreme Court, the Court may, in its discretion and where it appears in the interests of justice to do so, on the application of a party to the proceeding, make, in relation to a person outside the State, an order—

- (a) for the examination of the person on oath or affirmation at any place outside the State before a judge of the Court, an officer of the Court or such other person as the Court may appoint; or
- (b) for the issue of a commission for the examination of the person on oath or affirmation at any place outside the State; or
- (c) for the issue of a letter of request to the judicial authorities of a place outside the State to take, or to cause to be taken, the evidence of the person.

(3) In determining whether it is in the interests of justice to make an order under subsection (2) in relation to the taking of evidence of a person, the matters to which the Supreme Court shall have regard include the following matters:—

- (a) whether the person is willing or able to come to the State to give evidence in the proceeding;
- (b) whether the person will be able to give evidence material to any issue to be tried in the proceeding;
- (c) whether, having regard to the interest of the parties to the proceeding, justice will be better served by granting or refusing the order.

(4) Where the Supreme Court makes an order under subsection (2) (a) or (2) (b), the Court may, in its discretion, at the time of the making of the order or at a subsequent time, give such directions as it thinks just relating to the procedure to be followed in and in relation to the examination, including directions as to the time, place and manner of the examination, and to any other matter that the Court thinks relevant.

(5) Where the Supreme Court makes, in relation to a proceeding, an order under subsection (2) (c) in relation to the taking of evidence of a person, the Court may, in its discretion, include in the order a request as to any matter relating to the taking of that evidence, including any of the following matters:—

- (a) the examination, cross-examination or re-examination of the person, whether the evidence of the person is given orally, upon affidavit or otherwise;
- (b) the attendance of the legal representative of each party to the proceeding and the participation of those persons in the examination in appropriate circumstances;
- (c) any prescribed matter.

(6) Subject to subsection (7), the Supreme Court may, on such terms, if any, as it thinks fit, permit a party to the proceeding to tender as evidence in the proceeding the evidence of a person taken in an examination held as a result of an order made under subsection (2) or a record of that evidence.

(7) Evidence of a person tendered pursuant to subsection (6) is not admissible if—

- (a) it appears to the satisfaction of the Supreme Court at the hearing of the proceeding that the person is in the State and is able to attend the hearing; or
- (b) the evidence would not have been admissible had it been given or produced at the hearing of the proceeding.

(8) Where it is in the interests of justice to do so, the Supreme Court may, in its discretion, exclude from the proceeding evidence taken in an examination held as a result of an order made under subsection (2), notwithstanding that it is otherwise admissible.

(9) The power vested in the Supreme Court under subsection (2) may be exercised in chambers.

(10) In this section, a reference to evidence taken in an examination includes a reference to—

- (a) a document produced at the examination; and
- (b) answers made, whether in writing, or orally and reduced to writing, to any written interrogatories presented at the examination.

### **Proceedings in inferior courts**

159—(1) The Supreme Court may, in its discretion, on the application of a party to a civil or criminal proceeding before an inferior court, exercise the same power to make an order of a kind referred to in section 158 (2) for the purpose of that proceeding as the Supreme Court has under that subsection for the purpose of a proceeding in the Supreme Court.

(2) Sections 158 (6), 158 (7) and 158 (8) apply in relation to evidence taken in an examination held as a result of an order made by the Supreme Court by virtue of this section in relation to an inferior court as if—

- (a) in those sections—
  - (i) a reference to the proceeding were a reference to the proceeding in the inferior court; and
  - (ii) a reference to the Supreme Court were a reference to the inferior court; and
- (b) in sections 158 (6) and 158 (8), a reference to an order made under subsection (2) were a reference to an order made by the Supreme Court by virtue of this section.

(3) The power vested in the Supreme Court under subsection (1) may be exercised in chambers.

### **Exclusion of evidence in criminal proceedings**

160—This Part does not affect the power of a court in a criminal proceeding to exclude evidence in the exercise of its discretion.

### **Operation of other laws**

161—This Part is not intended to exclude or limit the operation of any other law of the State, or of any rule or regulation made under, or in pursuance of, such a law, that makes provision for the examination of witnesses outside the State for the purpose of a proceeding in the State.

### **Regulations and Rules of Court**

162—(1) The Governor may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part and, in particular, for or with respect to the practice and procedure of the Supreme Court in proceedings for the making of an order under section 158 or 159.

(2) The power of the judges of the Supreme Court, or a majority of them, to make Rules of Court, pursuant to section 197 of the *Supreme Court Civil Procedure Act 1932*, regulating the practice and procedure of the Supreme Court extends, for the purpose of regulating proceedings brought under this Part in or before that Court, to making any rules, not inconsistent with this Part or with any regulations made under this section, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Part and, in particular, for or with respect to the practice and procedure of the Supreme Court in proceedings for the making of an order under section 158 or 159 of this Act.

(3) This section does not affect any power to make regulations or rules under any other law.

**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 Tasmania:—

- (a) *The Evidence on Commission Act, 1831* (1 Will. 4 c. 22);
  - (b) *The Foreign Tribunals Evidence Act, 1856* (19 & 20 Vict. c. 113);
  - (c) *The British Law Ascertainment Act, 1859* (22 & 23 Vict. c. 63);
  - (d) *The Evidence by Commission Act, 1885* (48 & 49 Vict. c. 74).
- (2) Nothing in subsection (1) affects—
- (a) any application to any court or judge which is pending at the commencement of this Act; or
  - (b) any certificate given for the purposes of such an application; or
  - (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.

(3) The *Evidence Amendment (Evidence on Commission) Act 1987* is repealed.

---

