



Australian Capital Territory

Foreign Tribunals Evidence Act 1856 19 and 20 Vic c 113

Republication No 1

Republication date: 5 July 2002

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Foreign Tribunals Evidence Act 1856* 19 and 20 Vic c 113 as in force on 5 July 2002. It includes any commencement, repeal or expiry affecting the republished law and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

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Contents

| | Page |
|---|------|
| 1 Order for examination of witnesses in relation to matters pending before foreign tribunal | 2 |
| 2 Certificate of ambassador etc sufficient evidence in support of application | 2 |
| 3 Examination of witnesses to be taken on oath | 3 |
| 4 Expenses of witnesses | 3 |
| 5 Extent of right of refusal to answer questions and to produce documents | 3 |
| 6 Certain courts and judges to have authority under this Act | 4 |

Endnotes

| | |
|-----------------------|---|
| 1 About the endnotes | 5 |
| 2 Abbreviation key | 5 |
| 3 Legislation history | 6 |

Contents

| | | |
|---|-------------------|------|
| | | Page |
| 4 | Amendment history | 6 |



Australian Capital Territory

Foreign Tribunals Evidence Act 1856 19 and 20 Vic c 113

An Act to provide for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before foreign tribunals

1 Order for examination of witnesses in relation to matters pending before foreign tribunal

- (1) If, on an application for this purpose, it is made to appear to any court or judge having authority under this Act that any court or tribunal of competent jurisdiction in a foreign country, before which any civil or commercial matter is pending, is desirous of obtaining the testimony in relation to the matter of any witness within the jurisdiction of the firstmentioned court, or of the court to which the judge belongs, or of the judge, it shall be lawful for the court or judge to order the examination on oath, on interrogatories or otherwise, before any person named in the order, of the witness accordingly.
- (2) It shall be lawful for the court or judge, by the same order, or for the court or judge, or any other judge having authority under this Act, by any subsequent order to command the attendance of any person to be named in the order, for the purpose of being examined, or the production of any writings or other documents to be mentioned in the order, and to give all the directions about the time, place and manner of the examination, and all other matters connected with it, that may appear reasonable and just.
- (3) The order may be enforced in like way as an order made by the court or judge in a cause pending in the court or before the judge.

2 Certificate of ambassador etc sufficient evidence in support of application

- (1) A certificate signed by the ambassador, minister, or other diplomatic agent of any foreign power, received as such by Her Majesty, or if there is no such diplomatic agent, then of the consul general or consul at any such foreign power in Australia, received and admitted as such by Her Majesty, that any matter in relation to which an application is made under this Act is a civil or commercial matter pending before a court or tribunal in the country of which he or she

is the diplomatic agent or consul having jurisdiction in the matter so pending, and that the court or tribunal is desirous of obtaining the testimony of the witness to whom the application relates, shall be evidence of the matters so certified.

- (2) But if no such certificate is produced, other evidence to that effect shall be admissible.

3 Examination of witnesses to be taken on oath

It shall be lawful for every person authorised to take the examination of witnesses by any order made under this Act to take all such examinations on the oath of the witnesses, or affirmation if affirmation is allowed by law instead of oath, to be administered by the person so authorised.

4 Expenses of witnesses

However, every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance at a trial.

5 Extent of right of refusal to answer questions and to produce documents

- (1) Also, every person examined under any order made under this Act shall have the like right to refuse to answer questions tending to incriminate himself or herself, and other questions, that a witness in any cause pending in the court by which or by a judge of the court or before the judge by whom the order for examination was made would be entitled to.
- (2) In addition, no person shall be compelled to produce under any order made under this Act any writing or other document that the person would not be compellable to produce at a trial of such a cause.

6 Certain courts and judges to have authority under this Act

Her Majesty's Superior Courts of Common Law at Westminster and in Dublin respectively, the Court of Session in Scotland, and any Supreme Court in any of Her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who by any order of Her Majesty in Council may be appointed for this purpose, shall respectively be courts and judges having authority under this Act.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

| | |
|---|---|
| am = amended | ord = ordinance |
| amdt = amendment | orig = original |
| ch = chapter | p = page |
| cl = clause | par = paragraph |
| def = definition | pres = present |
| dict = dictionary | prev = previous |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously |
| div = division | prov = provision |
| exp = expires/expired | pt = part |
| Gaz = Gazette | r = rule/subrule |
| hdg = heading | reg = regulation/subregulation |
| IA = Interpretation Act 1967 | renum = renumbered |
| ins = inserted/added | reloc = relocated |
| LA = Legislation Act 2001 | R[X] = Republication No |
| LR = legislation register | s = section/subsection |
| LRA = Legislation (Republication) Act 1996 | sch = schedule |
| mod = modified / modification | sdiv = subdivision |
| No = number | sub = substituted |
| num = numbered | SL = Subordinate Law |
| o = order | <u>underlining</u> = whole or part not commenced or to be expired |
| om = omitted/repealed | |

3 Legislation history

This Act was originally a UK Act—The Foreign Tribunals Evidence Act, 1856 19 and 20 Vic c 113 (UK). The Act was renamed as the *Foreign Tribunals Evidence Act 1856* when it was first republished under the *Legislation Act 2001*.

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4 the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former UK laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

Under the *Interpretation Act 1967* (repealed), s 65 all former UK Acts in force in the ACT immediately before 10 November 1999 (including this Act) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former UK Acts fully into ACT laws.

Foreign Tribunals Evidence Act 1856 19 and 20 Vic c 113

as amended by

Imperial Acts Application Act 1986 No 93 s 5 and sch 3 pt 20

notified 12 January 1987 (Cwlth Gaz 1986 No S1)

s 5 and sch 3 pt 20 commenced 12 January 1987 (s 2 (1))

4 Amendment history

The *Imperial Acts Application Act 1986* (the **1986 Act**), sch 3, pt 20 set out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT (see 1986 Act, s 5 (1), (4) and (5)).

This Act was amended before 3 September 1939 in the UK by the *Statute Law Revision and Civil Procedure Act 1881* (UK) and the *Perjury Act 1911* (UK). Those amendments were incorporated into the text of the Act. To the extent (if any) to which the amendments did not apply in the ACT of their own force, the amendments were made by the 1986 Act.

Section 2 was amended by the 1986 Act to allow consuls in Australia to give certificates under the section.

This Act has not been amended since the enactment of the 1986 Act, except under the *Legislation Act 2001*.

Name of Act

am R1 LA

Order for examination of witnesses in relation to matters pending before foreign tribunal

s 1 ss num R1 LA

Certificate of ambassador etc sufficient evidence in support of application

s 2 ss num R1 LA

Extent of right of refusal to answer questions and to produce documents

s 5 ss num R1 LA

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