



Tonga

# **FOREIGN EVIDENCE ACT**

**Chapter 3.08**

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## FOREIGN EVIDENCE ACT

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## FOREIGN EVIDENCE ACT

### AN ACT TO PROVIDE FOR THE MANNER AND FORM IN WHICH EVIDENCE OBTAINED FROM OUTSIDE THE KINGDOM OF TONGA MAY BE ADMISSIBLE IN PROCEEDINGS IN TONGA AND FOR RELATED PURPOSES<sup>1</sup>

Commencement [17th November, 2000]

#### 1 Short title

This Act may be cited as the Foreign Evidence Act.

#### 2 Interpretation

In this Act, unless the context otherwise requires —

“**criminal proceeding**” includes —

- (a) a prosecution for an offence; and
- (b) a proceeding for the sentencing of a person convicted of an offence;

“**foreign material**” means —

- (a) the testimony of a person that —
  - (i) was obtained from a foreign State as a result of a request of a kind referred to in section 4 of the Mutual Assistance in Criminal Matters Act;<sup>2</sup> or
  - (ii) complies with the requirements of section 4 of this Act;
- (b) any exhibit annexed to any such testimony;
- (c) any part of any such testimony or exhibit;

“**foreign State**” means —

- (a) any country other than Tonga; and
- (b) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws;

“**related civil proceeding**”, in relation to a criminal proceeding, means any civil proceeding arising from the same subject matter from which the criminal proceeding arose;

“**Tongan court**” means —

- (a) the Court of Appeal;
- (b) the Supreme Court;
- (c) the Magistrate’s Court; or
- (d) a person or body authorised by Tongan law, or by consent of parties, to hear, receive and examine evidence;

“**Tongan law**” means a law of or in force in Tonga.

### **3 Application of this Act**

This Act applies to —|

- (a) foreign material that is adduced in evidence in a proceeding before a Tongan court that is —
  - (i) a criminal proceeding under Tongan law; or
  - (ii) a related civil proceeding;
- (b) testimony obtained as a result of a request made by or on behalf of the Attorney General to a foreign State for the testimony of a person pursuant to the Mutual Assistance in Criminal Matters Act; and
- (c) any exhibit annexed to any such testimony.

### **4 Requirements for testimony**

- (1) Any testimony taken before a foreign court shall be —
  - (a) on oath or affirmation; or
  - (b) under such caution or admonition as would be accepted by courts in the foreign State concerned, for the purposes of giving testimony in proceedings before those courts.
- (2) The testimony may be taken *in camera*.

### **5 Form of testimony**

- (1) The testimony may be recorded —

- (a) in writing;
  - (b) on audio tape;
  - (c) on video tape; or
  - (d) by any other electronic or mechanical means.
- (2) The writing need not —
- (a) be in the form of an affidavit; or
  - (b) constitute a transcript of a proceeding in a foreign court.
- (3) The testimony shall be endorsed with or accompanied by a certificate to the effect that —
- (a) it is an accurate record of the evidence given; and
  - (b) it was taken in a manner specified in section 4.
- (4) The certificate shall —
- (a) be signed or certified by a judge, magistrate or court officer of the foreign State to which the request was made; and
  - (b) bear an official or public seal of —
    - (i) the foreign State; or
    - (ii) an authority of the foreign State responsible for matters relating to justice, being a Minister of State, a Ministry or Department of Government, or an officer in or of the Government.

## **6 Foreign material may be adduced as evidence**

- (1) Subject to subsection (2), foreign material may be adduced as evidence in any criminal proceedings or related civil proceedings.
- (2) The foreign material shall be inadmissible if —
- (a) the Court is satisfied that the person who gave the testimony concerned is present in Tonga and is able to testify at the hearing;
  - (b) the evidence would not have been admissible had it been adduced from the person at the hearing; or
  - (c) it appears to the Court that the interests of justice would not be served by admitting the evidence.
- (3) In reaching a decision pursuant to subsection (2)(c), the Court shall take into account —
- (a) the extent to which the foreign material provides evidence that would not otherwise be available;
  - (b) the probative value of the foreign material with respect to any issue that is likely to be determined in the proceeding;
  - (c) whether the maker of the statements could be cross-examined;

- (d) whether exclusion of the material would cause undue expense or delay; and
- (e) whether exclusion of the foreign evidence would prejudice —
  - (i) the defence in a criminal proceeding; or
  - (ii) any party to a related civil proceeding.

## **7 Proof of service of documents abroad**

The service of a document in a foreign State may be proved by affidavit of the person who served it.

## **8 Certificates relating to foreign material**

- (1) The Attorney General or a person authorised by the Attorney General may certify that specified foreign material was obtained as a result of a request made to a foreign State by or on behalf of the Attorney General.
- (2) It shall be presumed (unless evidence sufficient to raise reasonable doubt is adduced to the contrary) that the foreign material specified in the certificate was obtained as a result of that request.

## **9 Operation of other Tongan laws**

This Act does not limit the ways in which a matter may be proved or evidence may be adduced under any other Tongan law.



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## ENDNOTES

<sup>1</sup> Act 16 of 2000

<sup>2</sup> Cap. 10.21