

**QUESTIONNAIRE ON THE USE OF IT IN THE OPERATION OF THE EVIDENCE  
CONVENTION**

**PART 1: USE OF IT UNDER THE EVIDENCE CONVENTION**

**General**

**1.1 To what extent is Your State in favour of the use of information technology to facilitate the operation of the Evidence Convention?**

Queensland's response: Strongly in favour - use of information technology to facilitate the operation of the Evidence Convention would speed up the process significantly and has the potential to reduce costs.

New South Wales response: Somewhat in favour

**1.2 Is the transmission by electronic means of requests for the taking of evidence possible under the internal law of Your State?**

Queensland's response: Yes. Subject to the scope of the request from the requesting Court QLD has previously provided evidence in electronic form. Read together with the *Acts Interpretation Act 1954* (Qld), pursuant to s37(1)-(2) of the *Evidence Act 1977* (Qld), the Supreme Court (or a judge thereof) has the power to make such provision for the obtainment of evidence in the State as may appear appropriate for the purpose of giving effect to the request. This includes for the production of documents.

Requests are rarely received by the Supreme Court Registry, and that upon their receipt, Crown Law is briefed by the Courts to act in these matters. In previous years, Crown Law team would look after such matters. There have been no recent requests under the Convention received by the Supreme Court registry.

If the relevant internal laws are s36 of the *Evidence Act 1977*, this states that applications to obtain evidence for civil proceedings in another jurisdiction must be made by way of originating summons.

Rule 967(3) of the *Uniform Civil Procedure Rules 1999* (Qld) provides that a document may be electronically filed if the electronic filing of the document is approved by the principal registrar of the court in which the document is to be filed.

The Central Authority in Australia under the Hague Convention for receiving these requests from foreign jurisdictions in the first instance is the Attorney-General's Department. The Supreme Court Registry has been designated an additional authority to receive these requests. QLD is not aware of any internal laws which either support or preclude the electronic transmission of these requests.

New South Wales response: Yes. Electronic receipt of the letter of request does not appear to be precluded under any law of New South Wales.

**1.3 Is the execution by electronic means of requests for the taking of evidence possible under the internal law of Your State?**

Queensland's response: Yes. Qld understands the reference to execution to include the transmission of the evidence once taken under the Convention which is sometimes done by the State of Qld in appropriate cases. Otherwise execution of most of the steps related to an application under the Convention cannot be done electronically.

New South Wales response: The request would be actioned in NSW under the *Evidence on Commission Act 1995*. Accordingly, the request will need to be brought before the Supreme Court by way of Summons and affidavit in support, then for orders to be made allowing the letter of request to be actioned. The Court Rules would need to be followed which in the case of oral evidence, will require a person to be subpoenaed to give evidence and be examined before a Registrar and a transcript made, among other things.

**1.4 Is Your State party to any bilateral or multilateral agreements, other than the Evidence Convention, which provide for the use electronic means in the transmission or execution of requests for the taking of evidence?**

Australia is a party to the following bilateral treaties: *Treaty on Judicial Assistance in Civil and Commercial Matters between Australia and the Republic of Korea*, and the *Agreement on Judicial Assistance in Civil and Commercial Matters and Co-operation in Arbitration between Australia and the Kingdom of Thailand*.

Both treaties provide that execution of the request shall be effected expeditiously in the manner prescribed by the law of the requested Party or in the manner specifically requested, provided that such manner is not incompatible with the law of the requested Party.

Australia is also a party to bilateral treaties between the UK and other European countries that have been extended to Australia by the UK. These bilateral treaties were concluded in the 1920s and 1930s and many of the countries extended the treaty to their external territories at the time. Such treaties may not prohibit the use of the transmission or execution of requests electronically.

**1.5 Has Your State encountered any challenges regarding the use of information technology to facilitate the operation of the Evidence Convention?**

Response from Queensland: due to the requirement for requests to be sealed, requests are often received in hard copy form. We anticipate this being a challenge if the process was wholly electronic.

Response from New South Wales: unknown as the system is not operational in the State of NSW.

**1.6 To what extent would Your State be in favour of a common electronic platform to be used by all Contracting Parties for the operation of the Evidence Convention?**

Please note that responses to the questions were provided by Queensland and NSW.

Response from Queensland: strongly in favour

Response from NSW: neutral

**1.7 What, if any, particular challenges does Your State envisage in relation to the possible use of a common electronic platform to be used by all Contracting Parties in the operation of the Evidence Convention?**

Please note that responses to the questions were provided by Queensland and NSW.

Response from Queensland: Internal law limitations, selection of the appropriate technology, system interoperability/compatibility, security concerns.

Queensland's legislation (the UCPR) does not support the electronic execution of sworn or affirmed documents (including affidavits of service) and prescribes that sworn or affirmed documents can

only be electronically filed as imaged documents (r975 *Uniform Civil Procedure Rules 1999*). This is not likely to create an issue unless the electronic framework to be used by contracting parties relies on sworn or affirmed documents being electronically executed.

Response from New South Wales: Internal law limitations, judicial or administrative structures, implementation challenges (e.g. lack of resources), costs, selection of the appropriate technology, system interoperability/compatibility, security concerns, cooperation with other Contracting States.

## **PART 1: USE OF IT UNDER THE EVIDENCE CONVENTION (section 2)**

### **Evidence: Transmission of Requests**

#### **1.8 What is the status of the use of information technology in Your State for the transmission of Letters of Request under the Evidence Convention?**

*Choose one of the following answers*

Please note that responses to the questions were provided by Queensland and NSW.

Response from Queensland: Not (yet) under consideration

Response from New South Wales: Not (yet) under consideration

#### **1.9 What type of electronic transmission does Your State use, or would consider using for Letters of Request under the Evidence Convention?**

***Distributed ledger technology (DLT)***: A database held by participants (or nodes) in a decentralised network, where transactions and records are processed, saved and replicated by each node independently and shared with the other nodes, seeking to validate the transaction by achieving consensus on its authenticity. Blockchain is perhaps one of the most well-known of the various forms of DLT.

*Check any that apply*

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: E-mail (regular), E-mail (secured/encrypted), Electronic transmission platform administered by a public/State authority, Electronic transmission using distributed ledger technology

Response from New South Wales: E-mail (secured/encrypted), Electronic transmission platform administered by a public/State authority, Electronic transmission platform administered by a private service provider, Electronic transmission using distributed ledger technology

#### **1.10 On average, approximately what percentage of Letters of Request transmitted electronically by other Contracting Parties does Your State accept?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: unknown

Response from New South Wales: unknown. The State of NSW does not maintain records of requests received by electronic means.

**1.11 Since 2014, on average, approximately what percentage of Letters of Request received by Your State were transmitted electronically by authorities of other Contracting Parties?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: unknown

Response from New South Wales: unknown

**1.12 If the Central Authority of Your State has received Letters of Request transmitted electronically under the Evidence Convention, on average, approximately what percentage of these Letters of Request are subsequently forwarded electronically to the competent judicial authority for execution?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Not applicable.

Response from New South Wales: 0%

**1.13 What is the status of the implementation an electronic case management system in Your State for incoming and outgoing Letters of Request issued pursuant to the Evidence Convention?**

*Electronic case management system: A system that enables casework and related workflows to be followed and managed through electronic communication of information between the individuals concerned (incl. staff, as well as parties and their representatives in some cases).*

*Choose one of the following answers*

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Not (yet) under consideration.

Response from New South Wales: not (yet) under consideration

**1.14 What type of electronic case management system does Your State use, or would consider using for incoming and outgoing Letters of Request issued pursuant to the Evidence Convention?**

*Electronic case management system: A system that enables casework and related workflows to be followed and managed through electronic communication of information between the individuals concerned (incl. staff, as well as parties and their representatives in some cases).*

*Distributed ledger technology (DLT): A database held by participants (or nodes) in a decentralised network, where transactions and records are processed, saved and replicated by each node independently and shared with the other nodes, seeking to validate the transaction by achieving consensus on its authenticity. Blockchain is perhaps one of the most well-known of the various forms of DLT.*

*Choose one of the following answers*

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Case management system administered by a public/State authority and Case management system using digital ledged technology.

Response from New South Wales: Case management system administered by a public/State authority, Case management system administered by a private service provider, Case management system using digital ledged technology.

**1.15 If Your State uses an electronic case management system for incoming and outgoing Letters of Request issued pursuant to the Evidence Convention, which of the following best describes the system?**

*Electronic case management system: A system that enables casework and related workflows to be followed and managed through electronic communication of information between the individuals concerned (incl. staff, as well as parties and their representatives in some cases).*

Choose one of the following answers

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Electronic database of mainly Letters of Request and related procedures

Response from New South Wales: N/A. Unable to comment as the system is not operational in the State of NSW

**PART 1: USE OF IT UNDER THE EVIDENCE CONVENTION (section 3)  
Evidence (Chapter I): Execution of Letters of Request**

**1.16 In 2018, on average, approximately what percentage of Letters of Request received by Your State under the Evidence Convention were executed using information technology?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Unknown

Response from New South Wales: 0%

**1.17 When competent authorities of Your State execute Letters of Request transmitted electronically by another Contracting Party under the Evidence Convention, on average, in approximately what percentage of such instances are documents establishing the execution of the Letter of Request returned electronically to the requested authority (Art. 13)?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Unknown

Response from New South Wales: N/A

**1.18 In 2018, what was the approximate percentage (on average) of Letters of Request received by Your State in which the use of information technology was requested in the taking of evidence under the Evidence Convention?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: 'Unknown'

Response from New South Wales: 0%. The State of NSW does not maintain records of requests received by electronic means

**1.19 Please indicate whether Your State would accept Letters of Request under the Evidence Convention seeking the use of information technology in each of the following instances.**

	Yes	No	Unknown	Not applicable
<b>Teleconferencing / audio-link</b>		<input type="radio"/>		<input type="radio"/>
<b>Videoconferencing / video-link</b>		<input type="radio"/>		<input type="radio"/>
<b>Electronic transmission of digital evidence</b>		<input type="radio"/>		<input type="radio"/>
<b>Presenting physical evidence by electronic means</b>		<input type="radio"/>		<input type="radio"/>

Other (Please specify):

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Teleconferencing/audio-link (no), Videoconferencing/video-link (no), Electronic transmission of digital evidence (yes), Presenting physical evidence by electronic means (yes)

Legal advises that there is capacity for evidence to be taken by a court using the first three electronic methods above, and accordingly that letters of request seeking use of such information technology would be accepted in the first instance.

Response from New South Wales: Teleconferencing/audio-link (no), Videoconferencing/video-link (no), Electronic transmission of digital evidence (unknown), Presenting physical evidence by electronic means (unknown)

Teleconferencing / audio-link and Videoconferencing / video-links:

Requests for audio-link and video-link are treated by the State of NSW as being requests under article 9 of the Hague Evidence Convention for use of a special procedure. A special order from the Supreme Court must be obtained for a audio-link and/or video-link and that such use of audio-link and/or video-link cannot be guaranteed.

Provision of audio-link and/or video-link is extremely costly and that issues arise due to time difference between Australia and the State of Origin. The State of NSW respectfully requests that the Commonwealth resist any amendments to the Convention that would require use of audio-link and/or video-link in the execution of Letter of Request without there being a corresponding obligation for the State of Origin to pay associated costs (article 14).

Electronic transmission of digital evidence and Presenting physical evidence by electronic means:

Please refer to answers at 1.2 and 1.3 of the Questionnaire. Further, the use of information technology for transmission of digital and physical evidence by electronic means is not yet under consideration in the State of NSW.

**1.20 If Your State refuses requests from other Contracting Parties to use information technology in the taking of evidence in your territory, what is/are the main reason/s for such a refusal?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Not applicable

Response from New South Wales: use of technology is not provided for in internal law, use of technology is not possible as there is no compatible system in Your State, use of technology is too resource-intensive.

**1.21 If Your State uses information technology in the taking of evidence, what type of technology is used?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Teleconferencing/audio-link, videoconferencing/video link, Electronic transmission of digital evidence, Presenting physical evidence by electronic means.

Response from New South Wales: N/A.

**1.22 In 2018, what was, on average, the approximate percentage of Letters of Request sent by Your State in which the use of information technology was requested in the taking of evidence under the Evidence Convention?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: unknown

Response from New South Wales: unknown. The State of NSW does not maintain records of requests received by electronic means

**1.23 If Letters of Request sent by Your State seeking the use of technology have been refused by other Contracting Parties, what was/were the main reason/s given for such a refusal?**

*Check any that apply*

N/A

**PART 1: USE OF IT UNDER THE EVIDENCE CONVENTION (section 4)  
Evidence (Chapter II): Consular and Diplomatic Channels**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: unknown

Response from New South Wales: unknown. The State of NSW does not maintain records of the use of information technology to facilitate taking of evidence by Consulate and Diplomatic Channels.



## **PART 2: STATISTICAL DATA AND OVERALL EFFICIENCY OF THE EVIDENCE CONVENTION**

### **General Satisfaction**

#### **2.1 How does Your State rate the general operation of the Evidence Convention?**

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland: Satisfactory. The process for the taking of evidence from application to execution can be very cumbersome due to the length of time it takes for the request to be received by the relevant jurisdiction and then actioned. This can result in circumstances where the person from whom the evidence needs to be taken can no longer be located.

Response from New South Wales: Satisfactory.

### **Outside of the Evidence Convention**

#### **2.2 Outside the Evidence Convention, what is the applicable procedure if an interested person from another jurisdiction wishes to obtain assistance in the taking of evidence located in the territory of Your State?**

Response from Commonwealth Attorney-General's Department:

- Procedure provided by bilateral agreement(s)
- Procedure provided by internal law
- Other procedure (such as consular channels)

Please provide details (including full reference to the applicable legislation or caselaw):

- Evidence Act 1995 (Cth), Foreign Evidence Act 1994 (Cth), Foreign Proceedings (Excess of Jurisdiction) Act 1984 (Cth). Evidence on Commission Act 1995 (NSW), Evidence Act 1958 (VIC), Evidence Act 1929 (SA), Evidence Act 1906 (WA), Evidence Act 1971 (ACT), Evidence Act 1977 (QLD), Evidence on Commission Act 1988 (QLD), Evidence Act 2001 (TAS), Evidence on Commission Act 2001 (TAS), Evidence Act (NT), Uniform Civil Procedure Rules 2005 (NSW), General Rules of Procedure in Civil Proceedings 1996 (VIC), Supreme Court Act 1935 (SA), Rules of the Supreme Court 1971 (WA), Court Procedures Act 2004 (ACT), Court Procedures Rules 2006 (ACT), Uniform Civil Procedure Rules 1999 (QLD), Supreme Court Rules 2000 (TAS), Supreme Court Civil Procedure Act 1932 (TAS), Supreme Court Rules (NT).

Please provide details (including full reference to the applicable agreement/s):

- Treaty on Judicial Assistance in Civil and Commercial Matters between Australia and the Republic of Korea 1999
- Agreement on Judicial Assistance in Civil and Commercial Matters and Co-operation in Arbitration between Australia and the Kingdom of Thailand 1998
- Bilateral treaties between the United Kingdom and other European countries that have been extended to Australia by the UK. These bilateral treaties were concluded in the 1920s and 1930s and many of the countries extended the treaty to their external territories at the time. Even though those territories are now independent states, in many instances the treaty continues to operate.

## 2.3 Statistical Data

### 2.3.1 Evidence Convention - Chapter I

	<b>Incoming Requests Number (exact or average)</b>	<b>Incoming Requests Average Timeframe for Execution (months)</b>	<b>Incoming Requests Top 3 Forwarding Contracting Parties</b>	<b>Outgoing Requests Number (exact or average)</b>	<b>Outgoing Requests Average Timeframe for Execution (months)</b>	<b>Outgoing Requests Top 3 Requested States</b>
<b>2013</b>	29	8 months	Poland, Portugal, Argentina	0		
<b>2014</b>	26	6 months	Poland, Portugal, Argentina	0		
<b>2015</b>	32	10 months	Poland, Portugal, Argentina	1	N/A	Singapore
<b>2016</b>	49	9 months	Poland, Portugal, Argentina	2	3 months	Israel
<b>2017</b>	35	8 months	Poland, Portugal, Argentina	1	N/A	Israel
<b>2018</b>	31	9 months	Poland, Portugal, Argentina	0		

Please note – the figures (approx.) provided in the table above were provided by the Commonwealth Attorney-General’s Department as Australia’s Central Authority under the Convention.

Additionally, NSW provided the following figures (approx.) separately:

- 2013: 16 incoming requests/7 months timeframe/Turkey, Poland, Portugal top Forwarding Contracting Parties
- 2014: 4 incoming requests/6 months timeframe/Turkey, Germany, Portugal top Forwarding Contracting Parties
- 2015: 14 incoming requests/5 months timeframe/Turkey, Portugal, Germany top Forwarding Contracting Parties
- 2016: 18 incoming requests/6 months timeframe/Turkey, Vietnam, Portugal top Forwarding Contracting Parties
- 2017: 14 incoming requests/7 months timeframe/Argentina, Germany, Turkey top Forwarding Contracting Parties
- 2018: 10 incoming requests/7 months timeframe/Portugal, USA, Turkey top Forwarding Contracting Parties.
- No. of outgoing requests are unknown \*

The information provided only includes requests for evidence that were received directly at the Department of Communities & Justice (DCJ) or, that were referred to the DCJ. It is possible there may be other requests that were made directly to the Supreme Court that were not referred to the DCJ. The Supreme Court does not maintain formal records of the requests made directly to it.

Further, the figures (approx.) include requests that were executed, declined, withdrawn and discontinued. The DCJ does not keep statistic of number of requests executed, declined, etc. It would be difficult to retrospectively collect the information sought.

\* No requests were forwarded by the DCJ.

### 2.3.2 Internal Law

	Incoming Requests Number (exact or average)	Incoming Requests Average Timeframe for Execution (months)	Incoming Requests Top 3 Forwarding States	Outgoing Requests Number (exact or average)	Outgoing Requests Average Timeframe for Execution (months)	Outgoing Requests Top 3 Requested States
2013						
2014						
2015						
2016						
2017						
2018						

### 2.3.3 Bilateral Agreement(s)

	Incoming Requests Number (exact or average)	Incoming Requests Average Timeframe for Execution (months)	Incoming Requests Top 3 Forwarding States	Outgoing Requests Number (exact or average)	Outgoing Requests Average Timeframe for Execution (months)	Outgoing Requests Top 3 Requested States
2013	0		n/a	0	n/a	n/a
2014	0		n/a	0	n/a	n/a
2015	6	8 months	Korea	0	n/a	n/a
2016	0		n/a	0	n/a	n/a
2017	1	N/A	Korea	0	n/a	n/a
2018	0		n/a	0	n/a	n/a

Please note – the figures (approx.) provided in the table were provided by the Commonwealth Attorney-General’s Department.

NSW provided separate figures (approx.) as follows:

- 2013: 3 incoming requests/3 months average timeframe for execution/Turkey as the top Forwarding Contracting Party
- 2014: 2 incoming requests/5 months average timeframe for execution/Turkey as the top Forwarding Contracting Party
- 2015: 2 incoming requests/6 months average timeframe for execution/Turkey as the top Forwarding Contracting Party
- 2016: NIL
- 2017: NIL
- 2018: NIL
- The number of outgoing requests are unknown \*

NSW also provided the following response: The information provided only includes requests for evidence that were received directly at the NSW Department of Communities and Justice (DCJ) or that were referred to the DCJ.

Further, the figures (approx.) include requests that were executed, declined, withdrawn and discontinued. The DCJ does not keep statistic of number of requests executed, declined, etc. It would be difficult to retrospectively collect the information sought.

- No requests were forwarded by the DCJ

### 2.3.4 Multilateral Agreement(s) (Other than the HCCH Conventions)

	Incoming Requests Number (exact or average)	Incoming Requests Average Timeframe for Execution (months)	Incoming Requests Top 3 Forwarding States	Outgoing Requests Number (exact or average)	Outgoing Requests Average Timeframe for Execution (months)	Outgoing Requests Top 3 Requested States
2013						
2014						
2015						
2016						
2017						
2018						

### 2.3.5 Other Procedure (such as consular channels)

	Incoming Requests Number (exact or average)	Incoming Requests Average Timeframe for Execution (months)	Incoming Requests Top 3 Forwarding States	Outgoing Requests Number (exact or average)	Outgoing Requests Average Timeframe for Execution (months)	Outgoing Requests Top 3 Requested States
2013						
2014						
2015						
2016						
2017						
2018						

NSW provided separate figures (approx.) as follows:

- 2013: 10 incoming requests/3 months average timeframe for execution/Turkey as the top Forwarding Contracting Party
- 2014: 12 incoming requests/5 months average timeframe for execution/Turkey as the top Forwarding Contracting Party
- 2015: 11 incoming requests/7 months average timeframe for execution/Turkey as the top Forwarding Contracting Party
- 2016: 15 incoming requests/5 months average timeframe for execution/Turkey and Vietnam as the top Forwarding Contracting Parties
- 2017: 4 incoming requests/3 months average timeframe for execution/Turkey as the top Forwarding Contracting Party
- 2018: 4 incoming requests/9 months average timeframe for execution/Turkey as the top Forwarding Contracting Party

NSW has interpreted this section (2.3.5) as requests for taking of evidence made under the diplomatic channel. The figures include requests received either directly at the DCJ from the Office of the Consulate General or, that were referred to the DCJ by the DFAT.

Further, the figures include requests that were executed, declined, withdrawn and discontinued. The DCJ does not keep statistic of number of requests executed, declined, etc. It would be difficult to retrospectively collect the information sought.

\* None forwarded by the DCJ.

### **PART 3: PRACTICAL INFORMATION AND COUNTRY PROFILE**

Contact details (*the contact details provided in this section will be published on the HCCH website*)

#### **3.1 Is Your State a Contracting Party to the Evidence Convention?**

Yes

**3.2 If Your State is a Contracting Party, are the contact details of the Central and competent Authority(ies) designated by Your State up to date on the Evidence Section of the HCCH website? See Conclusion & Recommendation No 4 of the 2014 meeting of Special Commission.**

No.

Central authority

Private International and Commercial Law Section  
Australian Government  
Attorney-General's Department  
Robert Garran Offices  
3-5 National Circuit  
BARTON ACT 2600  
Australia

Telephone

N/A

Fax

N/A

Email: [PIL@ag.gov.au](mailto:PIL@ag.gov.au)

General website: [www.ag.gov.au](http://www.ag.gov.au)

Contact person

The Principal Legal Officer

Languages spoken by staff

English

**3.3 If Your State is a Contracting Party, is the practical information chart available on the Evidence Section of the HCCH website up to date?**

See Conclusion & Recommendation No 4 of the 2014 meeting of Special Commission.

Choose one of the following answers

Yes

**3.4 If Your State is a Contracting Party, is the Country Profile in relation to the taking of evidence by video-link under the Evidence Convention up to date?**

See Conclusion & Recommendation No 14 of the 2017 meeting of Council on General Affairs and Policy.

Yes