

EVIDENCE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Evidence Act 1908.

Clause 2: There is only a limited number of cases in which the wife or husband of a person charged with an offence may give evidence for the prosecution. *Subclauses (1) and (2)* of this clause have the effect of adding to that number by amending the Evidence Act 1908 so that the wife or husband of a person charged with the offence of cruelty to a child under section 195 of the Crimes Act 1961 shall be a competent but not compellable witness for the prosecution.

This was the position where a person was charged with this offence under section 28 of the Infants Act 1908. However, this section was repealed by the Crimes Act 1961 and the need to maintain the same position with regard to prosecutions under the new section 195 of the Crimes Act 1961 was overlooked.

Subclauses (3) and (4) of this clause have the effect of adding to the limited number of cases in which the wife of a person charged with an offence may give evidence for the prosecution.

At present subsection (4) of section 5 of the Evidence Act 1908 provides that a wife may give evidence for the prosecution where her husband is charged with certain sexual offences against a woman or girl who is a daughter or grand-daughter of the husband or wife or was at the time of the alleged offence under the care or protection of the husband or wife.

This provision is extended so that the wife may give evidence for the prosecution where the husband is charged with sodomy against such a woman or girl or with sodomy or certain other sexual offences against a boy under the age of 21 years at the time of the alleged offence who is a son or grandson of the husband or wife or was at the time of the alleged offence under the care or protection of the husband or wife.

Clause 3 inserts a new section 12A in the principal Act. It provides for the proof in civil or criminal proceedings of previous convictions in New Zealand, the United Kingdom, and Australia by means of fingerprints. The provision makes it easier to prove convictions by this method.

Subsection (4) of the new section 12A enables the section to be extended by Order in Council so that the procedure laid down can be used to prove, by this method, convictions which have occurred in specified countries outside New Zealand, the United Kingdom, and Australia.

Clause 4 inserts in the principal Act several new provisions dealing with the taking of evidence in New Zealand for use in overseas proceedings. The new provisions effect several changes in the existing law on this subject and they collect in one place the scattered statutory provisions which at present apply. Most of these existing provisions are contained in various English statutes.

Under these provisions there is no proper provision for taking evidence in New Zealand for use in criminal proceedings in other Commonwealth countries, although there is provision for taking evidence for use in such proceedings in foreign countries.

The new provisions provide for the taking of evidence for use in both civil and criminal proceedings (not being criminal proceedings of a political character) in the Courts of countries outside New Zealand whether those countries are within or outside the Commonwealth.

Clause 5 provides that certain United Kingdom enactments shall cease to have effect as part of the law of New Zealand.

Hon. Mr Hanan

EVIDENCE AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Evidence Act 1908

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Evidence Amendment Act 1962, and shall be read together with and deemed part of the Evidence Act 1908* (hereinafter referred to as the principal Act).

*1957 Reprint, Vol. 4, p. 689
Amendment: 1958, No. 17

2. Evidence of accused's wife or husband in certain criminal cases—(1) Section 5 of the principal Act (as substituted by subsection (1) of section 2 of the Evidence Amendment Act 1952) is hereby amended by adding to subsection (3) the following paragraph: 5

“(d) An offence against section 195 of the Crimes Act 1961.”

(2) Section 5 of the principal Act (as so substituted) is hereby further amended by adding to paragraph (c) of subsection (3) the word “or”. 10

(3) Section 5 of the principal Act (as so substituted) is hereby further amended by repealing subsection (4) (as amended by section 2 of the Evidence Amendment Act 1958 and subsection (1) of section 411 of the Crimes Act 1961), and substituting the following subsection: 15

“(4) The wife of a person charged with an offence shall be a competent but not compellable witness for the prosecution, and without the consent of the person charged, at every stage of the proceedings, where the person against whom or in respect of whom the offence is alleged to have been committed is a woman or a child under the age of twenty-one years at the time of the alleged offence who— 20

“(a) Is a daughter or grand-daughter or son or grand-son of the person charged or of his wife, whether the relationship is traced through lawful wedlock or not; or 25

“(b) Was at the time of the alleged offence under the care or protection of the person charged or of his wife,—

and the offence is an offence, or an attempt to commit an offence, under any of the provisions of sections 128 to 135 or sections 140 to 142 of the Crimes Act 1961.” 30

(4) The following enactments are hereby consequentially repealed:

(a) Section 2 of the Evidence Amendment Act 1958: 35

(b) So much of the Third Schedule to the Crimes Act 1961 as relates to the Evidence Act 1908.

3. Proof of convictions by fingerprints—The principal Act is hereby further amended by inserting, after section 12, the following section: 40

“12A. (1) A conviction may be proved against any person in any civil or criminal proceedings by the production of such evidence as is mentioned in this section.

“(2) A certificate purporting to be signed by a fingerprint expert who is—

“(a) A member of the Police; or

5 “(b) A member of any police force in the United Kingdom or;

“(c) A member of the police force of any State or Territory of the Commonwealth of Australia,—

10 to which is exhibited or on which are shown copies of the fingerprints of any person and certifying that those copies are copies of the fingerprints of a person who was convicted in that country of any offence of which particulars are given, shall be admissible in evidence for the purpose of proving the identity of any person alleged to have been convicted in that country of any such offence.

15 “(3) A certificate, purporting to be signed by a fingerprint expert who is a member of the Police, and certifying that the copies of the fingerprints which are exhibited to or shown on a certificate made under subsection (2) of this section and the fingerprints of the person in respect of whom a conviction
20 is sought to be proved (a copy of which fingerprints is exhibited to or shown on the certificate made under this subsection) are the fingerprints of the same person, shall be evidence that the person in respect of whom the conviction is sought to be proved was the person convicted of the offence
25 of which particulars were given in the certificate made under subsection (2) of this section.

“(4) The Governor-General may from time to time by Order in Council declare that certificates purporting to be made by specified persons or classes of persons in any country
30 outside New Zealand, the United Kingdom, or Australia and to the same effect, in respect of convictions for offences committed in that country, as certificates under subsection (2) of this section shall be evidence as if they had been made under the said subsection.

35 “(5) In this section the term ‘country’ includes any State, territory, province, or other part of a country.

“(6) The mode of proving a conviction authorised by this section shall be in addition to any other method of proving the conviction.”

40 Cf. Evidence (Amendment) Act 1954, s. 2 (e) (N.S.W.)

4. **New sections substituted**—The principal Act is hereby further amended by repealing section 48 and the heading above that section, and substituting the following heading and sections:

“Evidence for Use in Overseas Proceedings” 5

“48. **Interpretation**—For the purposes of sections 48A to 48F of this Act—

“‘Overseas Court’ means a Court or tribunal exercising jurisdiction in any country outside New Zealand:

“‘Overseas representative’ means any Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Chargé d’Affaires, Head of Mission, or Consular officer of any country other than New Zealand exercising jurisdiction in New Zealand; and includes any person lawfully acting for any such officer and also includes any Diplomatic Secretary on the staff of any such Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Chargé d’Affaires, or Head of Mission. 10 15 20

“48A. **Examination of witness at request of overseas Court**— 20

(1) Where any civil or criminal proceedings (not being criminal proceedings of a political character) are pending before any overseas Court of competent jurisdiction, and that Court is desirous of obtaining the testimony in relation to those proceedings of any witness in New Zealand, the Supreme Court or a Judge thereof may order the examination of the witness upon oath, upon interrogatories, or otherwise, before any person named in the order. 25

“(2) Such an order may be made upon the application, in accordance with the rules of the Supreme Court of New Zealand, of the agents in New Zealand of the parties to the proceeding before the overseas Court or, subject to those rules, upon the application of the Solicitor-General. 30

“(3) The Court or Judge may by the same or any subsequent order, or any other Judge may by any subsequent order, require the attendance of any person named in the order for the purpose of being examined, or the production of any document mentioned in the order, and may give such directions as to the time, place, and manner of the examination, and all other matters connected therewith, as it or he thinks just. 35 40

“(4) Any order made under this section may be enforced in the same manner as if it were an order made by the Court or Judge in proceedings pending in the Court or before the Judge.

5 Cf. Foreign Tribunals Evidence Act 1856, s. 1 (U.K.); Evidence by Commission Act 1859, s. 1 (U.K.); Extradition Act 1870, s. 24 (U.K.); Evidence by Commission Act 1885, ss. 2, 3 (U.K.)

“48B. Powers of Court may be exercised by Registrar—

10 (1) The Judge usually exercising the jurisdiction of the Court in any place, or if there is more than one such Judge the Chief Justice or the senior Judge at that place, as the case may be, may authorise the Registrar of the Court in that place to exercise the powers of the Court under subsections
15 (1) to (3) of section 48A of this Act, either generally or in respect of any particular case or class of case. Any such authorisation may be revoked at any time.

(2) Where any matter in respect of which he has jurisdiction under any such authorisation appears to the Registrar
20 to be one of special difficulty he may refer the matter to a Judge who may dispose of the matter or may refer it back to the Registrar with such directions as he thinks fit.

(3) Nothing in this section shall prevent the exercise by
25 any Judge of any jurisdiction or powers conferred on any Registrar under this section.

“48C. Evidence in support of application—(1) Evidence that any civil or criminal proceedings are pending in an overseas Court and that the Court is desirous of obtaining in relation thereto the testimony of the witness to whom the
30 application relates may be given by Letter of Request, commission rogatoire, or other document issued by that Court, or by the certificate of an overseas representative given in accordance with subsection (3) of this section, or by such other means as the Supreme Court or a Judge thereof
35 may accept.

“(2) Any Letter of Request, commission rogatoire, or other document purporting to be sealed with the seal of any overseas Court or signed by a Judge or other judicial officer or by a Registrar or other officer of the Court shall for the purposes
40 of this section and section 48A of this Act be received in evidence without proof of the seal of the Court or of the signature of the Judge or other person, or of the judicial or official character of the Judge or other person.

“(3) A certificate purporting to be signed by an overseas representative to the effect that any matter in relation to which an application is made under section 48A of this Act is a civil or criminal proceeding pending in a Court having jurisdiction in the proceeding in the country of which he is a representative, and that the Court is desirous of obtaining the testimony of the witness to whom the application relates, shall be sufficient evidence of the matters so certified. 5

“(4) A certificate made under subsection (3) of this section shall be received in evidence without proof of the signature of the person who signed the certificate and without proof of the official character of that person. 10

Cf. Foreign Tribunals Evidence Act 1856, s. 2 (U.K.)

“48D. **Protection of witnesses**—(1) Every person examined pursuant to an order made under section 48A of this Act shall have the same right to refuse to answer any question, whether on the ground that his answer might tend to incriminate him, or on the ground of privilege, or on any other ground whatsoever, as if the proceedings were pending in the Supreme Court. 15 20

“(2) No person examined pursuant to any such order shall be compelled to produce any document that he could not be compelled to produce if the proceedings were pending in the Supreme Court.

Cf. Foreign Tribunals Evidence Act 1856, s. 5 (U.K.); Evidence by Commission Act 1859, s. 4 (U.K.) 25

“48E. **Witnesses’ expenses**—Every witness required to attend for examination pursuant to an order made under section 48A of this Act shall be entitled to a sum for his allowances and travelling expenses and loss of time in accordance with the scale prescribed for the time being by regulations made under the Summary Proceedings Act 1957. 30

Cf. Foreign Tribunals Evidence Act 1856, s. 4 (U.K.); Evidence by Commission Act 1859, s. 3 (U.K.)

“48F. **Solicitor may take affidavit or declaration**—(1) In this section— 35

“‘Affidavit’ means any affidavit or affirmation made before a solicitor of the Supreme Court of New Zealand;

“‘Declaration’ means any written statement declared by the maker thereof to be true in the presence of a solicitor of the Supreme Court of New Zealand. 40

“(2) It shall be lawful for any solicitor of the Supreme Court of New Zealand to take the affidavit or declaration of any person in relation to any proceedings, whether civil or criminal, which are certified in accordance with this section to be pending in any overseas Court.

“(3) Every such affidavit or declaration shall be intitled ‘In the matter of section 48F of the Evidence Act 1908’, and every such declaration shall be expressed to be made pursuant to the provisions of this section.

10 “(4) No such affidavit or declaration shall be taken unless the solicitor taking it has received a written certificate—

“(a) From the overseas Court that the affidavit or declaration is required for the purpose of proceedings pending in the Court; or

15 “(b) From an overseas representative of the country in which the overseas Court exercises jurisdiction that he believes the affidavit or declaration to be required for the purpose of proceedings pending in the overseas Court.

20 “(5) A certificate for the purposes of paragraph (a) of subsection (4) of this section may be given by any Judge or judicial officer of the overseas Court, or by any Registrar or other officer of that Court.

25 “(6) Where a certificate is given pursuant to paragraph (b) of subsection (4) of this section, the jurat or attestation of the affidavit or declaration shall state the name and official designation of the overseas representative on whose certificate the affidavit or declaration has been taken.

30 “(7) Every such affidavit or declaration shall be deemed to have been made in a judicial proceeding within the meaning of the Crimes Act 1961, and any person who falsely makes any such affidavit or declaration shall be guilty of perjury or of making a false declaration accordingly.

35 “(8) In any prosecution in respect of any such affidavit or declaration it shall be conclusively presumed that proceedings were actually pending in the overseas Court and that a certificate was given in accordance with subsection (4) of this section.”

Cf. Evidence Act 1908, s. 48

5. Certain United Kingdom Acts to cease to have effect as part of the law of New Zealand—As from the commencement of this Act the enactments specified in the Schedule to this Act shall cease to have effect as part of the law of New Zealand.

Section 5**SCHEDULE**

UNITED KINGDOM ENACTMENTS CEASING TO HAVE EFFECT IN
NEW ZEALAND

1 Will. 4, ch. 22	The Evidence on Commission Act 1831.
19 & 20 Vict., ch. 113	The Foreign Tribunals Evidence Act 1856.
22 Vict., ch. 20	The Evidence by Commission Act 1859.
24 & 25 Vict., ch. 11	The Foreign Law Ascertainment Act 1861.
33 & 34 Vict., ch. 52	The Extradition Act 1870: Section 24.
48 & 49 Vict., ch. 74	The Evidence by Commission Act 1885.