

Evidence Amendment Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Evidence Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Evidence Amendment Bill will amend the Evidence Act 2006 to take account of the common law exceptions to the rule where a defendant's statement is admissible against the defendant but not admissible against a co-defendant in the same proceeding.

In 2006 we recommended amendments to the Evidence Bill to ensure that a statement by a defendant would not be admissible against a co-defendant in the same proceeding. Our intention in recommending these amendments was to maintain the current law relating to statements by co-defendants. After enactment, concerns were raised that the common law exceptions had not been captured in the codification. This bill makes it clear that those exceptions remain part of the law.

Preservation of common law

We recommend that clause 5 be amended to preserve the common law in respect of the admissibility of a defendant's statement against a co-defendant in circumstances where the defendant's statement is accepted by the co-defendant as well as the common law relating to

statements of co-conspirators or persons involved in joint criminal enterprises. This amendment incorporates the current clause 6(1) into new section 12A of the principal Act.

We recommend that clause 6 be amended to state explicitly the relationship between section 27 of the principal Act and the amendment contained in proposed section 12A.

This will result in consequential amendments to the bill.

Conclusion

Despite making these recommendations, we emphasise that the Evidence Act should be regarded as codification of the law of evidence in New Zealand. This amendment should not be seen as resiling from the purpose of the Act. Section 202 of the Act sets out a very clear mechanism for mandatory review of this codification. The first review is to commence on 1 December 2011 or at a later date set by the Minister of Justice.

Appendix

Committee process

The Evidence Amendment Bill was referred to the committee on 19 June 2007. We did not call for submissions on the bill as we had only a short period to consider it. We received advice from the Ministry of Justice.

Committee membership

Lynne Pillay (Chairperson)

Christopher Finlayson (Deputy Chairperson)

Chris Auchinvole

Charles Chauvel

Hone Harawira (non-voting member)

Ann Hartley

Nándor Tánczos

Nicky Wagner

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

Hon Mark Burton

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Evidence Amendment Act **2007**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**
This Act amends the Evidence Act 2006.

Part 1

Substantive amendments

- 4 Application**
Section 5(3) is amended by omitting “Act” in the second and third places where it appears and substituting in each case “section”. 5

- 5 New section 12A inserted**
The following section is inserted after section 12:

Struck out (unanimous)

- “12A Rules of common law relating to statements of co-conspirators or persons involved in joint criminal enterprises preserved** 10
Nothing in this Act affects the rules of the common law relating to the admissibility of statements of co-conspirators or persons involved in joint criminal enterprises.”

New (unanimous)

- “12A Rules of common law relating to statements of co-conspirators, persons involved in joint criminal enterprises, and certain co-defendants preserved** 15
Nothing in this Act affects the rules of the common law relating to—
- “(a) the admissibility of statements of co-conspirators or persons involved in joint criminal enterprises; or 20
“(b) the admissibility of a defendant’s statement against a co-defendant in circumstances where the defendant’s statement is accepted by the co-defendant.”

- 6 Defendants’ statements offered by prosecution** 25

Struck out (unanimous)

- (1) Section 27(1) is amended by adding “unless by the co-defendant’s words or conduct the co-defendant is taken to have accepted the truth of the statement made by the defendant”.

New (unanimous)

Section 27 is amended by adding the following subsection:

“(4) To avoid doubt, this section is subject to **section 12A.**”

Part 2 Consequential amendments

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|----------|--|----|
| 7 | Exclusion of unreliable statements
Section 28(1)(a) is amended by inserting “or, if applicable, a co-defendant” after “the defendant”. | 5 |
| 8 | Exclusion of statements influenced by oppression
Section 29(1)(a) is amended by inserting “or, if applicable, a co-defendant” after “the defendant”. | 10 |
| 9 | Improperly obtained evidence
Section 30(1)(a) is amended by inserting “or, if applicable, a co-defendant” after “the defendant”. | |

Legislative history

19 June 2007

Introduction (Bill 129–1), first reading and referral to
Justice and Electoral Committee
