

Evidence (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Act.

Clause 2 states that the Act comes into operation when proclaimed.

Clause 3 states that the **Evidence Act 1958** is called the Principal Act.

PART 2—ORDERS AND COMMISSIONS IN VICTORIA

Clause 4 inserts a new Division 1 in Part 1 of the Evidence Act. The new Division reenacts with certain amendments existing provisions allowing the Supreme Court or County Court to order the examination of witnesses within Victoria for proceedings before those courts.

New Division 1—Orders and Commissions to Examine Witnesses

New section 4 allows the Supreme Court to make certain orders for the taking of evidence in civil or criminal proceedings before the Supreme Court or County Court.

New section 5 states that the provisions of the new Division do not affect the power of a court in a criminal proceedings to exclude evidence that would be unfair or had been illegally obtained.

New section 6 states that the new provisions are not intended to exclude or limit the operation of any other relevant law.

PART 3—EVIDENCE ON COMMISSION

Clause 5 inserts new Division 1A and 1B in Part 1 of the Evidence Act. The new provisions implement an agreement by the Standing Committee of Attorneys-General for uniform legislation dealing with the examination of witnesses interstate and overseas.

New Division 1A—Examination of Witnesses Abroad

New section 9A defines a number of terms used in the Division.

New section 9B allows the Supreme Court or the County Court to make certain orders for the taking of evidence from witnesses outside Australia for use in civil or criminal proceedings before those courts.

New section 9C allows the Supreme Court to make similar orders in relation to civil or criminal proceedings before the Magistrates' Court.

New section 9D states that the provisions of the new Division do not affect the power of a court in a criminal proceeding to exclude evidence that would be unfair or had been illegally obtained.

New section 9E states that the new provisions are not intended to exclude or limit the operation of any other relevant law.

New Division 1B—Examination of witnesses outside the State but within Australia

New section 9F states that the Division does not apply to an examination outside Australia.

New section 9G defines a number of terms used in the Division.

New section 9H allows the Supreme Court or County Court in any criminal or civil proceedings to make certain orders for taking of evidence on commission from a witness outside Victoria but within Australia.

New section 9I allows the Supreme Court to make similar orders in relation to civil proceedings before the Magistrates' Court.

New section 9J states that the provisions of the new Division do not affect the power of a court in a criminal proceeding to exclude evidence that would be unfair or had been illegally obtained.

New section 9K states that the new provisions are not intended to exclude or limit the operation of any other relevant law.

Clause 6 inserts a new Division 1C in Part 1 of the Evidence Act. The new Division implements an agreement by the Standing Committee of Attorneys-General for uniform legislation dealing with the taking of evidence on behalf of certain interstate and overseas courts.

New Division 1C—Taking of evidence for foreign and Australian courts

New section 9L defines a number of terms used in the Division.

New section 9M states that this Division applies to requests from certain courts or tribunals outside Victoria for the Supreme Court to make orders for the taking of evidence in Victoria for the purpose of proceedings or pending proceedings outside Victoria.

New section 9N allows the Supreme Court to make appropriate orders to enable the evidence to be obtained to meet the request of the court or tribunal outside Victoria.

New section 9O provides that a person required to give evidence pursuant to an order under section 9N cannot be compelled to give evidence which the person could not be compelled to give in similar proceedings in Victoria or in the jurisdiction where the proceedings are to take place.

New section 9P creates an offence of making false statements in the course of giving evidence pursuant to an order under section 9N.

New section 9Q states that the new provisions are not intended to exclude or limit the operation of any other relevant law.

Clause 7 repeals certain Imperial Acts.

PART 4—DISPUTE SETTLEMENT CENTRES

Clause 8 amends Division 8 of the Evidence Act by renaming Neighbourhood Mediation Centres as Dispute Settlement Centres, and Neighbourhood Mediators as mediators.

Clause 9 is a transitional provision.

PART 5—AMENDMENT OF EVIDENCE (NEIGHBOURHOOD MEDIATION CENTRES) ACT 1987

Clause 10 repeals the Evidence (Neighbourhood Mediation Centres) Act 1987, to remove the sunset provision for protection of confidentiality of work done by Dispute Settlement Centres.

