LEGISLATIVE RESEARCH SERVICE
DEPARTMENT OF THE PARLIAMENTARY LIBRARY

EVIDENCE AMENDMENT BILL 1985

Date introduced: 16 October 1985
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

DIGEST OF BILL

Purpose

To amend the Evidence Act 1905 (the Principal Act) to provide for the taking of evidence overseas and to increase the range of persons who may give ancillary evidence relating to business records.

Background

The Principal Act alters the common law rules of evidence in civil or criminal matters which fall within federal jurisdiction. However, the Principal Act deals with limited areas and, in most respects, the rules of evidence that apply to cases falling within federal jurisdiction are the same as those that apply in the State or Territory in which the case is heard.

Although the rules of evidence differ from State to State, it appears that the High Court, the Federal Court and Supreme Courts are able to order that evidence be gained from overseas for use in civil cases. However, it is unsure whether this situation applies to criminal matters. An inferior court (e.g. a Magistrates Court) has no power to order that evidence be obtained overseas.

The Bill is also concerned with the range of people who may give ancillary evidence to prove business records. Before evidence, such as business records, can be admitted in a Court, some proof must be brought forward to prove its authenticity. This is usually accomplished by taking evidence from someone who can identify the records. This Bill will widen the range of people who may give such ancillary evidence.
Main Provisions

A detailed analysis of the clauses of the Bill is contained in the Explanatory Memorandum.

The range of persons who may give ancillary evidence on business records is increased by clause 3 which amends section 7J of the Principal Act. Officers of the Australian Federal Police who hold the rank of sergeant or above and persons authorised by the Attorney-General will be able to give ancillary evidence concerning business records, where the evidence of such records is given either in Australia or overseas. If the evidence is given in Australia it may, in addition, be supported by the ancillary evidence of a Justice of the Peace or a person authorised to administer oaths. A Diplomatic or Consular Officer will be able to give ancillary evidence on business records where the evidence of such records is given overseas.

The examination of witnesses overseas for civil or criminal matters is dealt with by a new Part IIIB which is to be inserted in the Principal Act by clause 4. Proposed section 7V will allow superior courts (as defined in proposed section 7T) to make an order, or to issue a letter of request to overseas authorities that evidence be taken from a person overseas. Proposed sub-section 7V(2) will make it clear that the Court has a discretion to issue such an order and outlines the matters a Court should take into account when exercising this discretion. Such evidence will not be admissible unless it satisfies all other rules of evidence (proposed sub-section 7V(6)).

Parties before inferior Courts (as defined in proposed section 7T) will be able to apply to the relevant Supreme Court for an order that evidence be obtained overseas (proposed section 7W).

Remarks

The Attorney-General stated in his Second Reading Speech that "The making of an order by a Court of the taking of evidence overseas could result in increased costs for the parties since overseas representation at the examination could be necessary. In civil cases existing practice deals with this point. However, in criminal cases where the Commonwealth is the applicant for an order, it is reasonable for the Commonwealth to provide assistance to the defendant in cases of hardship, where in all the circumstances it is
reasonable for such assistance to be granted. This will be done within the existing guidelines for financial assistance".[1]

For further information, if required, contact the Law and Government Group.

References


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