

EVIDENCE AMENDMENT (NO. 2) BILL

EXPLANATORY NOTE

THIS Bill amends the Evidence Act 1908.

In broad terms, the purpose of the Bill is to prescribe a procedure whereby the Attorney-General can prevent the production of documentary evidence required by a foreign authority where he is satisfied that the production of that evidence would, in some defined way, be prejudicial to the interests of New Zealand.

This Bill broadly follows similar provisions enacted in the United Kingdom and Australia: see the Protection of Trading Interests Act 1980 (U.K.), and the Foreign Proceedings (Prohibition of Certain Evidence) Act 1976 (Aust.).

Clause 1 relates to the Short Title.

Clause 2 inserts in the principal Act a new heading and *sections 48g to 48j*.

Restrictions on Production of Evidence for Use in or by Foreign Authorities

Section 48g is an interpretative provision. The definition of the term "document" is the same as that set out in *clause 2* of the Evidence Amendment Bill presently before Parliament.

The definition of the term "foreign authority" goes beyond overseas courts and tribunals to cover any person who has authority to request or direct the production of any evidence, and is extended to cover inter-governmental organisations.

Section 48h prohibits a New Zealand court from giving effect to a request by a foreign authority for the production of any document if the Attorney-General certifies that the request infringes the jurisdiction of New Zealand or is otherwise prejudicial to the sovereignty of New Zealand, or to the trading, commercial, or economic interests of New Zealand.

Section 48i, broadly, empowers the Attorney-General, by written order, to prohibit the production without his consent of any document required for use in or by a foreign authority in any of the circumstances described in *subsection (1)*.

Subsections (2) and (3) describe the terms and scope of the order that the Attorney-General may make.

Subsection (4) requires every order to be published in the *Gazette*, and served on any person to whom it is specifically directed.

Subsection (5) provides that an order under this section prevails over any enactment or rule of law to the contrary.

Section 48j is a supportive penal provision.

Hon. Mr McLay

EVIDENCE AMENDMENT (NO. 2)

ANALYSIS

Title	48h. Court not to order production of evidence if production would infringe jurisdiction or prejudice sovereignty, etc.
1. Short Title	
2. Heading and new sections inserted in principal Act	48i. Attorney-General may prohibit production of documents requested by foreign authority
<i>Restrictions on Production of Evidence for Use in or by Foreign Authorities</i>	
48g. Interpretation	48j. Offence

A BILL INTITULED

An Act to amend the Evidence Act 1908 to authorise the imposition of restrictions in certain cases on the production of evidence required for use in or by foreign authorities

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

1. **Short Title**—This Act may be cited as the Evidence Amendment Act (No. 2) 1980, and shall be read together
10 with and deemed part of the Evidence Act 1908* (hereinafter referred to as the principal Act).

*R.S. Vol. 2, p. 339

2. Heading and new sections inserted in principal Act—

The principal Act is hereby amended by inserting, after section 48F (as inserted by section 4 of the Evidence Amendment Act 1962), the following heading and sections:

*“Restrictions on Production of Evidence for Use in or by
Foreign Authorities* 5

“48G. Interpretation—In sections 48H and 48I of this Act, unless the context otherwise requires,—

“‘Document’ means a document in any form, whether signed or initialled or otherwise authenticated by its maker or not; and includes— 10

“(a) Any writing on any material:

“(b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored: 15

“(c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

“(d) Any book, map, plan, graph, or drawing: 20

“(e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced: 25

“‘Foreign authority’ means any court, tribunal, or authority of any country outside New Zealand; and includes any officer, examiner, or other person having authority to take or receive any evidence, whether on behalf of a court or otherwise, or to direct that any evidence be taken or received; and also includes any intergovernmental organisation. 30

Cf. Foreign Proceedings (Prohibition of Certain Evidence) Act 1976 (Aust), s. 3

“48H. Court not to order production of evidence if production would infringe jurisdiction or prejudice sovereignty, etc.— 35

Notwithstanding anything in this Act or any other Act or rule of law, no Court in New Zealand shall make an order giving effect to a request issued by or on behalf of a foreign authority for the production of any document or any evidence of the contents of any document if the Attorney-General certifies in writing that the request infringes the jurisdiction of 40

New Zealand or is otherwise prejudicial to the sovereignty of New Zealand, or is likely to be prejudicial to the trading, commercial, or economic interests of New Zealand.

Cf. Protection of Trading Interests Act 1980 (U.K.), s. 4

5 “48I. **Attorney-General may prohibit production of documents requested by foreign authority**—(1) This section applies in any case where the Attorney-General is satisfied that—

10 “(a) A foreign authority is exercising or is proposing to exercise any jurisdiction or power of a kind or in a manner that infringes or is prejudicial to the sovereignty of New Zealand; or

15 “(b) It is desirable for the purpose of protecting the trading, commercial, or economic interests of New Zealand that an order be made under subsection (2) of this section; or

20 “(c) Any request or direction made by a foreign authority for the production of any document is for purposes other than those of any civil or criminal proceedings already instituted in any country outside New Zealand; or

25 “(d) Any such request or direction is made wholly or principally for the purpose of the discovery of documents before the trial of any proceedings in any such country other than civil or criminal proceedings already instituted.

“(2) In any case to which this section applies the Attorney-General may, by order in writing under his hand, prohibit—

30 “(a) The production in, or for the purposes of, a foreign authority of any document that, at the time of the making of the order or at any time while the order remains in force, is in New Zealand; or

35 “(b) The doing of any act in New Zealand, in relation to any document that, at the time of the making of the order or at any time while the order remains in force is in New Zealand, with the intention that the act will result, or where there is reason to believe that the act will result, in the document,

or evidence of the contents of the document, being produced or given in, or for the purposes of, a foreign authority; or

“(c) The giving by a person, at a time when he is a New Zealand citizen or is a resident of New Zealand, of evidence before a foreign authority in relation to, or to the contents of, any document that, at the time of the making of the order or at any time while the order is in force, is in New Zealand,— except with the written consent of the Attorney-General or as is permitted in the order, and on such conditions as the Attorney-General may specify. 5 10

“(3) An order under this section may—

“(a) Be directed to a particular person, or to a particular class of persons, or to persons generally: 15

“(b) Relate to a particular foreign authority, or to a particular class of foreign authorities, or to foreign authorities generally:

“(c) Relate to a particular document, or to a particular class of documents. 20

“(4) An order under this section—

“(a) Shall be published in the *Gazette*; and

“(b) If it is directed to a particular person, shall be served on that person in accordance with rules of Court.

“(5) Every order made under this section shall have effect according to its tenor notwithstanding anything in this Act or any other Act or rule of law. 25

Cf. Foreign Proceedings (Prohibition of Certain Evidence) Act 1976 (Aust), ss 4 to 6; Protection of Trading Interests Act 1980 (U.K.), s. 2 30

“48J. **Offence**—(1) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply in any respect with an order made under section 48I of this Act.

“(2) Every person who commits an offence against this section is liable on summary conviction— 35

“(a) In the case of an individual, to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000:

“(b) In the case of a body corporate, to a fine not exceeding \$5,000: 40

“(3) A person who is neither a citizen of New Zealand nor a body corporate incorporated in New Zealand shall not be guilty of an offence under this section by reason of anything done outside New Zealand.

5 “(4) No proceedings for an offence against this section shall be instituted without the consent of the Attorney-General.”

10 Cf. Foreign Proceedings (Prohibition of Certain Evidence) Act 1976 (Aust), s. 7; Protection of Trading Interests Act 1980 (U.K.), s. 3