

Evidence Amendment Bill

Government Bill

Explanatory note

General policy statement

Under the common law and section 27 of the Evidence Act 2006, a defendant's statement is admissible against the defendant but not admissible against a co-defendant in the same proceeding. There are 3 common law exceptions to the rule, which are not included in the Evidence Act 2006. The 3 exceptions are—

- where the co-defendant accepts the truth of the statement:
- things said and done in furtherance of a common design in a case where conspiracy is alleged:
- things said and done in furtherance of a common design where the accused are alleged to have engaged in joint criminal enterprises.

The rules of the common law relating to the admissibility of evidence of co-conspirators and persons involved in joint criminal enterprises have broader application than section 27. The amendments in the Bill take account of that position.

The original Evidence Bill was based on the Law Commission's draft code and provided that if a defendant's statement offered by the prosecution was admissible, it was admissible against the defendant and any co-defendant.

Amendments were made to the Evidence Bill by the Select Committee to maintain the current law. However, the common law exceptions to the general rule were not included. This Bill amends the Act to include the common law exceptions in the Act.

The non-inclusion of the exceptions has serious implications for criminal trials involving multiple accused and evidence obtained by

interception of communications. These cases generally involve major drug dealing, organised criminal enterprises or serious violent offending. These types of multi-defendant trials are costly, lengthy, follow from resource intensive investigations, and often have a high profile.

The Bill also makes a necessary amendment to section 5 of the Evidence Act 2006.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the principal Act is the Evidence Act 2006.

Part 1 Substantive amendments

Clause 4 amends section 5 of the principal Act by replacing some of the references to “Act” with references to “section” to reflect the fact that there is a split commencement date in the principal Act.

Clause 5 inserts a *new section 12A* into the principal Act that provides that nothing in the principal Act affects the common law rule allowing for the admissibility of statements of co-conspirators or persons involved in joint criminal enterprises.

Clause 6 amends section 27(1) of the principal Act to take account of the current common law situation where the evidence of a defendant is admissible against a co-defendant if 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.

Part 2 Consequential amendments

Clauses 7 to 9 make consequential amendments to other sections of the principal Act that arise from the changes made by *clause 6*.

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.

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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:
“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.”
- 6 Defendants’ statements offered by prosecution** 15
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”.

Part 2 Consequential amendments 20

- 7 Exclusion of unreliable statements**
Section 28(1)(a) is amended by inserting “or, if applicable, a co-defendant” after “the defendant”.
- 8 Exclusion of statements influenced by oppression** 25
Section 29(1)(a) is amended by inserting “or, if applicable, a co-defendant” after “the defendant”.
- 9 Improperly obtained evidence**
Section 30(1)(a) is amended by inserting “or, if applicable, a co-defendant” after “the defendant”.

