

# CHAPTER 1

## INTRODUCTION

### Background

1.1 On 18 June 2008, the Senate referred the provisions of the Evidence Amendment Bill 2008 (Evidence Bill) to the Standing Committee on Legal and Constitutional Affairs, for inquiry and report not before 25 September 2008.

1.2 The Evidence Bill amends the *Evidence Act 1995* (Evidence Act) to implement the majority of recommendations made by the Australian Law Reform Commission (ALRC), the New South Wales Law Reform Commission (NSWLRC) and the Victorian Law Reform Commission (VLRC) (collectively, Commissions) as a result of their inquiry into the operation of the uniform Evidence Acts. At present, the Commonwealth, New South Wales (NSW), Tasmania, the Australian Capital Territory (ACT) and Norfolk Island are all part of the uniform Evidence Act regime.

1.3 The report of the Commissions, entitled *Uniform Evidence Law* (Uniform Evidence Law Report), was released on 8 February 2006.<sup>1</sup> The primary objectives of the Commissions' inquiry were to identify and address any defects in the uniform Evidence Acts, and to maintain and further the harmonisation of the laws of evidence throughout Australia.

1.4 The Commissions reported that the uniform Evidence Acts are working well and that there are no major structural problems with the legislation or its underlying policy. While areas of concern were identified and addressed in the Uniform Evidence Law Report, the Commissions concluded that a major overhaul of the uniform Evidence Acts regime was neither warranted nor desirable. However, the Commissions made a range of recommendations to 'fine tune' the uniform Evidence Acts and promote harmonisation between Australian jurisdictions.<sup>2</sup>

1.5 In November 2005, the Standing Committee of Attorneys-General (SCAG) established a working group to advise Ministers on reforms arising from the Uniform Evidence Law Report. The working group considered the Uniform Evidence Law Report's recommendations and developed model evidence provisions with a view to creating greater national uniformity in evidence laws. An expert reference group established by SCAG also commented on the model evidence provisions and recommended modifications and departures from some of the recommendations in the Uniform Evidence Law Report. The model evidence provisions were endorsed by SCAG in July 2007. The Explanatory Memorandum (EM) to the Evidence Bill notes

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1 ALRC, NSWLRC, VLRC, *Uniform Evidence Law: Report*, ALRC Report 102, NSWLRC Report 112, VLRC Final Report, December 2005.

2 Explanatory Memorandum (EM), p. 1.

that, as part of a strategy to promote further harmonisation, the working group is currently considering other possible reforms arising from the Uniform Evidence Law Report and further developments in case law.<sup>3</sup>

1.6 NSW has passed legislation implementing the model evidence provisions. The *Evidence Amendment Act 2007* (NSW) was assented to on 1 November 2007 and will commence by proclamation, not before May 2008. A number of other states are currently preparing legislation to implement the provisions.

1.7 The Evidence Bill implements the majority of the model evidence provisions. However, the Evidence Bill does not include the model evidence provisions relating to a general confidential relationships privilege or the provisions extending client legal privilege and public interest immunity to pre-trial proceedings. The rationale for the exclusion is that the Federal Government is still considering its response to the ALRC's 2007 report entitled, *Privilege in Perspective*,<sup>4</sup> which recommended that separate legislation be created to cover various aspects of the law and procedure governing client privilege claims in federal investigations. That report noted the Uniform Evidence Law Report's approach but did not make broader recommendations about the extension of privilege in other areas. According to the EM, the Federal Government considers that it is appropriate to defer extension of these privileges until its response to the ALRC's 2007 report has been finalised.<sup>5</sup>

1.8 The EM states that the amendments in the Evidence Bill are largely technical and will have most impact on the courts and legal practitioners, their aim being to promote uniform evidence laws in order to increase efficiencies for the courts, legal practitioners and business.<sup>6</sup>

1.9 Schedule 3 of the Bill is unrelated to the Evidence Bill's main purpose.<sup>7</sup> Schedule 3 amends the *Amendments Incorporation Act 1905*, renaming it the *Acts Publication Act 1905*, and provides for certain printed and electronic versions of Acts to be taken as an accurate record of those Acts.

## **Conduct of the inquiry**

1.10 The committee advertised the inquiry in *The Australian* newspaper on 16 July 2008, and invited submissions by 25 July 2008. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to over 50 organisations and individuals.

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3 p. 1.

4 ALRC, *Privilege in Perspective*, Report 107, December 2007.

5 p. 2.

6 p. 2.

7 It is unclear why Schedule 3 is included in a bill relating to evidence law. The EM and the Second Reading Speech do not provide any explanation for this.

1.11 The committee received a large number of form letters, and variations on form letters, from individuals who either expressed support for, or opposition to, the provisions of the Evidence Bill relating to the compellability exception for de facto partners. Most of the submissions received from individuals were categorised as either form letters or variations on form letters.

1.12 Examples of form letters were published on the committee's website but it was not possible to list and publish all individual submissions categorised as form letters or variations on form letters. This was due to the large number of submissions received for this inquiry and other concurrent inquiries being conducted by the committee, and the resources required to publish all those submissions. However, all submissions (apart from confidential submissions) are available to the general public and can be provided by the committee secretariat upon request.

1.13 Those individual submissions that were considered not to fit into the categories of form letters or variations on form letters were listed and published on the committee's website, and are listed at Appendix 1 to this report. The committee received 12 submissions from organisations. These were also published on the website and are listed at Appendix 1.

1.14 The committee received 59 joint submissions in relation to this inquiry and other concurrent inquiries relating to the Same-Sex Relationship (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 (Same-Sex Superannuation Bill) and the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 (Family Law Bill). These are also listed at Appendix 1.

1.15 The committee held a public hearing in Canberra on 7 August 2008. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://www.aph.gov.au/hansard>.

1.16 The committee also held hearings in Sydney, Melbourne and Canberra on 5, 6 and 7 August 2008 respectively in relation to both the Same-Sex Superannuation Bill and the Family Law Bill. Due to considerable overlap between certain issues which arose at the hearings into all three bills, this report will refer to evidence relating to the Same-Sex Superannuation Bill and the Family Law Bill, as well as to the bill which is the subject of this inquiry.

## **Acknowledgement**

1.17 The committee thanks the organisations and individuals who made submissions and gave evidence at the public hearing.

## **Note on references**

1.18 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.