

CHAPTER 1

INTRODUCTION

1.1 On 12 February 2009, the Senate referred the Foreign Evidence Amendment Bill 2008 (Bill) to the Standing Committee on Legal and Constitutional Affairs, for inquiry and report by 3 March 2009. The reporting date was subsequently extended to 6 March 2009.

1.2 The Bill was introduced in the House of Representatives on 3 December 2008 by the Attorney-General, the Hon. Robert McClelland MP. It primarily amends Part 3 of the *Foreign Evidence Act 1994* (Act) to streamline the process for adducing foreign material that appears to consist of a business record. It also makes additional amendments, and includes application and transitional provisions.

Summary of key amendments

1.3 The key amendments contained in Schedule 1 of the Bill are as follows:

- provision that foreign material that appears to consist of a business record may be adduced unless the court considers the business record is not reliable, probative, or is privileged;
- provision that testimony may also be taken under an obligation to tell the truth imposed, whether expressly or implied, by or under a law of the foreign country;
- creation of a presumption that the requirements as to the form of the testimony have been met, unless evidence sufficient to raise a doubt is adduced to the contrary;
- clarification of the application of the Act to non-conviction based proceeds of crime matters;
- modernisation of references to audio and video tape;
- grant to the court of discretion to limit the use that may be made of foreign evidence, where there is a danger that a particular use of the foreign evidence may prejudice a party; and
- removal of an anomaly whereby the Attorney-General, in certifying that material has been received in response to a mutual assistance request, must also certify that the material satisfies the requirements for testimony.¹

1 Explanatory Memorandum, p. 1.

1.4 The amendments would apply to Commonwealth criminal proceedings, related civil proceedings, and all proceedings under the *Proceeds of Crime Act 2002* and the *Proceeds of Crime Act 1987*. Through regulations, the amendments could also apply to state/territory criminal proceedings, related civil proceedings specified in the regulations, and proceeds of crime proceedings.

Conduct of the inquiry

1.5 The committee wrote to over 20 interested parties inviting submissions. Details of the inquiry, the Bill, and associated documents were placed on the committee's website.

1.6 The committee received eight submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.7 A public hearing was held in Canberra on 20 February 2009. 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://aph.gov.au/hansard>.

Acknowledgement

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

Note on references

1.9 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.