

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

At its meeting on 7 May 2010, the Standing Committee of Attorneys-General (**SCAG**) approved the making of model amendments to the *Model Uniform Evidence Act* that was endorsed by SCAG on 26 July 2007. The model amendments relate to the mutual recognition of certificates concerning the privilege against self-incrimination and the definition of the unavailability of witnesses. The object of this Bill is to make amendments to the *Evidence Act 1995* that are uniform with the amendments approved by SCAG.

The Bill also provides for the making of savings and transitional regulations.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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Evidence Amendment Bill 2010

Explanatory note

Schedule 1 Amendment of Evidence Act 1995 No 25

Mutual recognition of certificates relating to the privilege against self-incrimination

Section 128 of the *Evidence Act 1995* provides a procedure for giving a witness who objects to giving evidence a certificate (a **self-incrimination certificate**) which grants that witness use and derivative use immunity for the evidence if the witness can claim the privilege against self-incrimination. Section 128A of the Act provides a procedure for dealing with objections on the ground of self-incrimination to complying with certain orders requiring a person to disclose information as part of, or in connection with, a search order, freezing order or other order under Part 25 of the *Uniform Civil Procedure Rules 2005* in civil proceedings. If a court is satisfied that information disclosed if a person complies with such an order may incriminate the person, it may give the person a certificate (a **self-incrimination disclosure certificate**) conferring use and derivative use immunity on the person in respect of the information.

Schedule 1 [1]–[4] amend section 128 and **Schedule 1 [5]** amends section 128A to provide for the recognition in NSW courts of certificates to the same effect as self-incrimination certificates and self-incrimination disclosure certificates given under sections 128 and 128A, respectively, if given under a provision of a law of a State or Territory declared by the regulations to be a prescribed State or Territory provision.

Unavailability of witnesses

Schedule 1 [7] substitutes clause 4 of Part 2 of the Dictionary to the *Evidence Act 1995* to implement recommendation 8-2 made by the Australian, New South Wales and Victorian Law Reform Commissions in their collaborative report on the operation of the provisions of the Uniform Evidence Acts in force in the Commonwealth, New South Wales, the Australian Capital Territory and Tasmania (*Uniform Evidence Law (2005)*) by providing that a person is taken not to be available to give evidence about a fact if the person is mentally or physically unable to give the evidence and it is not reasonably practicable to overcome that inability.

Savings and transitional provisions

Schedule 1 [6] enables the making of savings and transitional regulations.