

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EVIDENCE AND PROCEDURE (NEW ZEALAND) BILL 1993

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and new clauses to be moved on behalf of the Government

(Circulated by the authority of the Minister for Justice,
the Honourable Duncan Kerr, MP)



OUTLINE OF AMENDMENTS

The amendments make technical and other minor changes to the Bill.

The amendments (other than those of a technical or drafting nature) will -

- enable tribunals to be prescribed for the purposes of the subpoena provisions of the Bill or for the video link provisions (as well as for both);
- enable regulations prescribing a Commonwealth tribunal for the purposes of the video link provisions of the Bill to also provide that the tribunal cannot make an order for the payment of expenses relating to obtaining evidence by video link or telephone against a person other than the Commonwealth; and
- insert a new clause in the Bill to ensure that all orders made by New Zealand courts under corresponding New Zealand legislation, including orders made by specialist courts and tribunals, can be enforced in Australia under the *Foreign Judgments Act 1991*.

Financial Impact Statement

The amendments are not expected to have any significant financial impact on Commonwealth expenditure or revenue.

Clause 4: Extended definition of “court” etc.

Amendment 1

This amendment omits subclause 4(1) and insert new subclauses 4(1)(1A) and (1B).

New subclauses 4(1) and (1A) replace subclause 4(1). They provide that a tribunal will be taken to be a court for the purposes of one or more Parts of the Bill (except Parts 1 and 6) if regulations so provide.

New subclause 4(1B) provides, in effect, that where a tribunal is taken to be a court for the purposes of a Part of the Bill, a reference in such a Part to a judge will refer also to a member of the tribunal. This is significant for clause 34 which relates to immunities of persons taking part in New Zealand proceedings by video link or telephone by Australia and clause 37 which relates to contempt in such proceedings.

Amendment 2

This amendment replaces subclause 4(3) with a new provision, in order to make a drafting amendment.

New subclause 4(3) provides that in clause 4 a reference to a tribunal means a person or body authorised by or under a law of the Commonwealth, a State, a Territory or New Zealand to take evidence on oath or affirmation but does not include a court or a person exercising a power conferred on the person as a judge, magistrate, coroner or officer of a court.

Clause 28: Expenses

Amendment 3

Clause 28 authorises a court to make orders for the payment of expenses incurred in relation to taking evidence or receiving submissions from New Zealand by telephone or video link.

This amendment will insert a new subclause (2) in clause 28 to provide that where a Commonwealth tribunal is prescribed in regulations under subclause 4(1) for the purposes of Part 4 of the Bill, those regulations may also provide that the tribunal may not make an order under clause 28 against a person other than the Commonwealth.

This amendment will enable regulations to ensure that clause 28 applies consistently with the general approach in Commonwealth tribunals in which orders for payment of expenses may only be made against the Commonwealth.

Application of the *Foreign Judgments Act 1991*

Amendment 4

This amendment will insert a new clause 46A in Part 7 of the Bill.

New section 46A applies to an order made by a New Zealand court, under the New Zealand legislation reciprocal to this Bill, for the payment of expenses incurred by a witness in complying with a subpoena served on the witness in Australia in accordance with Part 3 of this Bill or in connection with taking evidence or receiving submissions by video link or telephone from Australia under Part 5 of this Bill.

This new section provides that the *Foreign Judgments Act 1991* will apply, with modifications, to such an order to ensure that it will be enforceable by registration under that Act.