

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FOREIGN EVIDENCE BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the Government

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

Amendment 1 - Paragraph 25(2)(e):

Paragraph 25(2)(e) provides that a court must take into account, in the exercise of its discretion to direct that certain foreign material not be adduced as evidence, where the exclusion of the material would cause prejudice to the defence. This formulation does not treat the prosecution and the defence equally. The Government amendment will remedy this defect by using the words 'a party to the proceedings' in place of 'the defence'. It could also be argued that in a court's consideration of foreign material obtained on behalf of the prosecution that it will 'prejudice the defence' in all cases within the ordinary meaning of the term. Therefore the Government proposes to amend clause 25(2)(e) to qualify the nature of the prejudice to that of unfair prejudice to a party to the proceedings.

Amendment 2 - Sub clause 33(2):

Clause 33 mirrors Clause 25. So that the clauses continue to mirror one another as closely as possible, the Government proposes to insert a new paragraph 33(2)(e) in the same form as that proposed in relation to paragraph 25(2)(e).

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