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# Parliamentary Counsel's Committee - Draft d01

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Evidence-second tranche amendments

Schedule 1 Amendments to Model Uniform Evidence Act

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## **Schedule 1 Amendments to Model Uniform Evidence Act**

**[1] Section 128 Privilege in respect of self-incrimination in other proceedings**

Omit "If" from section 128 (3). Insert instead "Subject to subsection (4), if".

**[2] Section 128 (3)**

Insert "is not to require the witness to give the evidence, and" before "is to inform".

**[3] Section 128 (7) (b)**

Insert "evidence of" before "any".

**[4] Section 128 (12)–(14)**

Insert after section 128 (11) (before the notes):

- (12) If a person has been given a certificate under a prescribed State or Territory provision in respect of evidence given by a person in a proceeding in a State or Territory court, the certificate has the same effect, in a proceeding to which this subsection applies, as if it had been given under this section.
- (13) For the purposes of subsection (12), a prescribed State or Territory provision is a provision of a law of a State or Territory declared by the regulations to be a prescribed State or Territory provision for the purposes of that subsection.
- (14) Subsection (12) applies to a proceeding in relation to which this Act applies because of section 4, other than a proceeding for an offence against a law of the Commonwealth or for the recovery of a civil penalty under a law of the Commonwealth.

**[5] Section 128, note 3**

Omit the note. Insert instead:

- 3 Section 128 (12) to (14) of the Commonwealth Act gives effect to certificates in relation to self-incriminating evidence under the [State/Territory] Act in proceedings in federal and ACT courts and in prosecutions for Commonwealth and ACT offences.

**[6] Section 128A Privilege in respect of self-incrimination—exception for certain orders etc**

Insert after section 128A (10):

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Amendments to Model Uniform Evidence Act

Schedule 1

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- (11) If a person has been given a certificate under a prescribed State or Territory provision in respect of information of a kind referred to in subsection (6) (a), the certificate has the same effect, in a proceeding to which this subsection applies, as if it had been given under this section.
  - (12) For the purposes of subsection (11), a prescribed State or Territory provision is a provision of a law of a State or Territory declared by the regulations to be a prescribed State or Territory provision for the purposes of that subsection.
  - (13) Subsection (11) applies to a proceeding in relation to which this Act applies because of section 4, other than a proceeding for an offence against a law of the Commonwealth or for the recovery of a civil penalty under a law of the Commonwealth.

**Note.** Section 128A (11) to (13) of the Commonwealth Act gives effect to certificates in relation to self-incriminating evidence under the [State/Territory] Act in proceedings in federal and ACT courts and in prosecutions for Commonwealth and ACT offences.

**[7] Section 189 The voir dire**

Omit "128 (8)" from section 189 (6). Insert instead "128 (10)".

**[8] Dictionary**

Omit clause 4 from Part 2. Insert instead:

**4 Unavailability of persons**

- (1) For the purposes of this Act, a person is taken not to be available to give evidence about a fact if:
  - (a) the person is dead, or
  - (b) the person is, for any reason other than the application of section 16 (Competence and compellability: judges and jurors), not competent to give the evidence, or
  - (c) the person is mentally or physically unable to give the evidence and it is not reasonably practicable to overcome that inability, or
  - (d) it would be unlawful for the person to give the evidence, or
  - (e) a provision of this Act prohibits the evidence being given, or
  - (f) all reasonable steps have been taken, by the party seeking to prove the person is not available, to find the person or secure his or her attendance, but without success, or

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- (g) all reasonable steps have been taken, by the party seeking to prove the person is not available, to compel the person to give the evidence, but without success.
- (2) In all other cases the person is taken to be available to give evidence about the fact.