



ANALYSIS

Title
1. Short Title

2. Evidence of accused and spouse in
criminal cases

1987, No. 138

An Act to Amend the Evidence Act 1908

[10 July 1987]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Evidence Amendment Act 1987, and shall be read together with and deemed part of the Evidence Act 1908 (hereinafter referred to as the principal Act).

2. Evidence of accused and spouse in criminal cases—
(1) The principal Act is hereby amended by repealing section 5 (as substituted by section 2 (1) of the Evidence Amendment Act 1952), and substituting the following section:

“5. (1) Except as provided by or under this or any other Act, neither the person charged with any offence nor that person’s spouse shall be a competent or compellable witness for the prosecution or defence in any proceeding in connection with the offence.

“(2) Subject to subsection (3) of this section, where any person is charged with an offence, whether solely or jointly with any other person,—

“(a) The person charged shall be a competent witness for the defence; and

“(b) That person’s spouse shall be a competent and compellable witness for the defence—
at every stage of the proceedings.

“(3) Neither the person charged nor that person’s spouse shall be called as a witness in pursuance of subsection (2) of this section except upon the application of the person charged.

“(4) A person charged and called as a witness in pursuance of subsection (2) of this section—

“(a) May be asked any question in cross-examination notwithstanding that it would tend to incriminate that person as to the offence charged; and

“(b) Is liable to be cross-examined like any other witness on any matter, though not arising out of that person’s examination in chief; but so far as the cross-examination relates to any previous conviction of that person, or to that person’s credit, the Court may limit the cross-examination as it thinks proper, although the cross-examination may be permissible in the case of any other witness.

“(5) Every person called as a witness in pursuance of subsection (2) of this section shall, unless otherwise ordered by the Court, give evidence from the witness box or other place from which the other witnesses give evidence.

“(6) The spouse of a person charged with an offence shall be a competent but not compellable witness for the prosecution, and without the consent of the person charged, at every stage of the proceedings.

“(7) Subject to subsection (8) of this section, where any person is charged with an offence jointly with any other person (hereafter in this section referred to as the co-accused), that person shall be a competent and compellable witness for the prosecution against the co-accused, and without the consent of the co-accused, or for the defence of the co-accused, at every stage of the proceedings, if—

“(a) The proceedings against that person have been stayed, or in the case of an offence punishable on summary conviction, the information against that person has been withdrawn or dismissed; or

“(b) That person has been acquitted of the offence; or

“(c) That person has pleaded guilty to the offence; or

“(d) That person is being tried separately from the co-accused.

“(8) The spouse of the co-accused shall not—

“(a) Be called as a witness for the defence in pursuance of subsection (7) of this section except upon the application of the co-accused; and

“(b) Be a compellable witness for the prosecution against the co-accused.

“(9) Where 2 or more persons are jointly charged with any offence, the evidence of any person called as a witness for the

prosecution or the defence in pursuance of this section may be received as evidence either for or against any of the persons so charged.

“(10) The provisions of this section shall not affect the operation of any other provision of this Act or of any other enactment, but shall apply notwithstanding any rule of law to the contrary.”

(2) The following enactments are hereby consequentially amended:

- (a) Section 2 of the Evidence Amendment Act 1952:
- (b) Section 2 of the Evidence Amendment Act 1962:
- (c) Section 5 (2) of the Crimes Amendment Act 1966:
- (d) So much of the Schedule to the Status of Children Act 1969 as relates to the principal Act:
- (e) So much of the Schedule to the Crimes Amendment Act (No. 3) 1985 as relates to the principal Act.

This Act is administered in the Department of Justice.
