

Responses to feedback received from the public consultation on proposed amendments to the Evidence Act

Background

1. On 30 September 2011, the Ministry of Law (MinLaw) released a [public consultation paper](#) as well as a draft Evidence (Amendment) Bill to seek views on proposed amendments to the Evidence Act (EA). The public consultation closed on 30 October 2011, and MinLaw received feedback from various legal stakeholders including practitioners, academics, the Supreme Court, the Attorney-General's Chambers, the Law Society and the Singapore Corporate Counsel Association, as well as other institutions, public agencies and some members of the public.
2. MinLaw has considered the feedback received and incorporated specific feedback into the present proposed amendments in the Evidence (Amendment) Bill 2012.

Feedback Received

3. The feedback received from the public consultation was generally in favour of the proposed amendments. Most supported the proposed reforms to the four specific areas of the law of evidence, and a number submitted further improvements and suggestions to the provisions in the draft Bill.
4. The feedback which MinLaw has incorporated into the Bill is set out below.

Legal Professional Privilege for In-House Legal Counsel

5. The original proposed amendment envisaged that a legal counsel must be called to the Singapore Bar or qualified in another jurisdiction to enjoy legal privilege. However, we received feedback that such a requirement would narrow the scope of the privilege and may not benefit all legal counsel, given that there could be experienced legal counsel who may not have seen the need to be qualified in Singapore or elsewhere, given the nature of their work. Such privilege should thus not be contingent on whether a legal counsel is called to the Singapore Bar or qualified in another jurisdiction, but whether he was employed in the capacity of legal counsel and whether the communication in question relates to matters of legal advice.
6. We adopted this feedback in the proposed amendments in the Bill, which state that in-house legal counsel may enjoy legal privilege so long as they are employed for the purpose of giving legal advice and the communication for which privilege is claimed relates to matters of legal advice.
7. Feedback was also received, in particular from a number of in-house legal counsel, that the relevant provisions should clarify that an in-house legal counsel need not hold a practising certificate to enjoy legal privilege. Given that the final proposed amendments in the Bill remove the requirement of

being called to the Singapore Bar or qualified elsewhere, it would be clear under the revised provisions that an in-house legal counsel need not hold a practising certificate to enjoy legal privilege.

Technical Refinements of the Provisions for Computer Output, Hearsay and Opinion Evidence

8. A number of academics suggested certain technical amendments to the provisions pertaining to computer output, hearsay and opinion evidence to further refine these provisions. MinLaw has considered and accepted most of these suggestions.
9. In the case of opinion evidence, MinLaw adopted the suggestion that the concept of “substantiality” should be removed from the threshold of admissibility of opinion evidence under the new section 47, given that such a concept may result in new definitions and technicalities that could distract the court from the core issue of whether it needs to rely on such evidence for assistance, and may unduly restrict the admission of opinion evidence.
10. Some respondents also supported the proposal to provide the Courts with the discretion to exclude otherwise relevant opinion evidence in the interests of justice. The new section 47 provides for such discretion in subsection (4).
11. In the case of hearsay evidence, there were suggestions to consider introducing more fundamental amendments to overhaul this area of the law of evidence, including abolishing the hearsay rule¹ altogether. MinLaw has considered these suggestions, and after taking into account the feedback from others, reached the view that the hearsay rule should be retained. The rule still plays an important role today in our law of evidence, especially for criminal proceedings where an accused’s liberty or life could be at stake. Allowing hearsay evidence, which veracity is not tested by cross-examination, to be admitted without any qualification or restriction as evidence in court may also inundate court proceedings with large amounts of unreliable evidence. This would lead to a wastage of judicial time and pose a risk that cases may inadvertently be erroneously decided based on such unreliable evidence.
12. In addition, the present proposed amendments in the Bill seek to expand the existing statutory exceptions for hearsay evidence (as well as introduce some new exceptions) and, at the same time, confer on the courts an overriding discretion to exclude otherwise relevant hearsay evidence in the interests of justice. This strikes a better balance between the use of helpful hearsay evidence and the risk of such evidence being unreliable.

Credit of Rape Victims

¹ The hearsay rule provides that a person generally cannot admit a statement as evidence without also calling the maker of the statement to testify in court as a witness. This ensures that the veracity of a statement will be tested in court through the cross-examination of its maker.

13. Apart from the proposed amendments in the four areas of the EA, MinLaw also received specific feedback from AWARE, which suggested the deletion of section 157(d) of the EA. This section permitted the credit of a rape victim to be impeached by proof that she is of a “generally immoral” character.
14. This provision has, at times, unfortunately been seen as an invitation for an accused person and his lawyers to further traumatise the sexual assault victim.
15. With the deletion of section 157(d), it is now clear that the admissibility of a sexual assault victim’s sexual history will depend solely on the relevance of such evidence to the issues in the proceedings.

Conclusion

16. MinLaw would like to thank all respondents who have provided invaluable feedback during the public consultation.

MINISTRY OF LAW
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