

RELEVANCE

Relevance:

Relevant evidence is evidence which, if accepted, could 'rationally affect' the probability of the existence of a fact in issue (s55). Must be a material fact in issue. This description is very wide, and requires a minimum logical connection between the evidence and the fact in issue. It is a low threshold (see *Semaan v R* (2013) VSCA 134 at [32]). Must be a rational connection, and this is an objective test (*Washor v WA* (2007) 82 ALJR 33). Relevant evidence is admissible unless an exception applies (s56(1)). Evidence that is not relevant is not admissible (s56(2)). A court may find evidence to be provisionally relevant and therefore provisionally admissible (s57). A court may draw reasonable inferences from a document or thing to determine its relevance (s58).

S55 - Relevant evidence

- (1) The evidence that is relevant in a proceeding is evidence that, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding.
- (2) In particular, evidence is not taken to be irrelevant only because it relates only to—
 - (a) the credibility of a witness; or
 - (b) the admissibility of other evidence; or
 - (c) a failure to adduce evidence.

S56 - Relevant evidence to be admissible

- (1) Except as otherwise provided by this Act, evidence that is relevant in a proceeding is admissible in the proceeding.
- (2) Evidence that is not relevant in the proceeding is not admissible.

S57 - Provisional relevance

- (1) If the determination of the question whether evidence adduced by a party is relevant depends on the court making another finding (including a finding that the evidence is what the party claims it to be), the court may find that the evidence is relevant—
 - (a) if it is reasonably open to make that finding; or
 - (b) subject to further evidence being admitted at a later stage of the proceeding that will make it reasonably open to make that finding.
- (2) Without limiting subsection (1), if the relevance of evidence of an act done by a person depends on the court making a finding that the person and one or more other persons had, or were acting in furtherance of, a common purpose (whether to effect an unlawful conspiracy or as part of involvement in the commission of an offence or otherwise), the court may use the evidence itself in determining whether the common purpose existed.

- S57 allows court to class evidence as relevant if depends on other evidence (*R v Watt* (2000)) - reasonably open is the equivalent ... affirmed in *ACCC v Leah Petroleum* (2007).

S58 - Inferences as to relevance

- (1) If a question arises as to the relevance of a document or thing, the court may examine it and may draw any reasonable inference from it, including an inference as to its authenticity or identity.
- (2) Subsection (1) does not limit the matters from which inferences may properly be drawn.

Determination of admissibility/relevance:

Factors to take into account include:

- Whether the evidence in question is relevant (as defined in s55) or, at least, provisionally relevant (s57).
- How the evidence is relevant (it may be relevant in different ways and in respect of more than one fact in issue).
- What use or uses are sought to be made of the evidence.
- Whether any of the exclusionary rules in Chapter 3 apply to the evidence (some of the rules only apply to a particular use of evidence).
- Whether one permissible use of the evidence will allow it to be used for an otherwise impermissible use (e.g., s60)
- Whether discretionary exclusion of the evidence is appropriate (s135, s137, or s138).

And, it may be necessary to determine:

- Whether an order should be made under s169(1)(c) or (3) that the evidence not be admitted in evidence (due to non-compliance with the request procedure in s166 – s169).
- Whether discretionary prohibition of a particular use of the evidence is appropriate (s136)
- Whether, in civil proceedings, an order can and should be made that a provision of the Act is not to apply to the evidence (s190(3)).
- Whether there has been an effective waiver of a provision of the Act (s190(1)).

Other considerations in relevance:

Relevance of questions depend on whether any one possible answer could rationally affect the existence of a fact (*Evans v The Queen* [2007] HCA 59 at [157]). The answer may be ignored if it is irrelevant (*BBH v R* [2012] HCA 9 at [94]). An out of court statement will depend on the circumstances in which it was made as to whether it is probative of the facts asserted in it (*Papakosmas v R* (1999) 73 ALJR 1274 at [54]). Evidence of an acquittal may be relevant if it affects the probabilities of facts in issue (*Washer v WA* (2007) 82 ALJR 33 at [29]). If admitted evidence is not relevant for a particular use, it is not admissible for that use (*Lym International Pty Ltd v Marcolongo* [2011] NSWSC 562 at [6]). The fact that evidence is relevant and admissible for one use may allow it to be admissible for an otherwise inadmissible use (s60 and s77). Not decided whether s137 is mandatory or dependent on objection. Question of a document's authenticity is relevant only to the consideration of relevance (*ACCC v Air NZ (No 1)* [2012] FCA 1355 at [92]). Evidence against A will be relevant against B only if there is evidence that such an act was done in furtherance of a common purpose (s57(2)).