



New South Wales

Criminal Procedure Further Amendment (Evidence) Act 2005 No 25

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New South Wales

Criminal Procedure Further Amendment (Evidence) Act 2005 No 25

Act No 25, 2005

An Act to amend the *Criminal Procedure Act 1986* with respect to evidence in criminal proceedings, including evidence given by complainants in sexual offence proceedings; and for other purposes. [Assented to 31 May 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Procedure Further Amendment (Evidence) Act 2005*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Criminal Procedure Act 1986

(Section 3)

[1] Section 3 Definitions

Omit the definition of *prescribed sexual offence* from section 3 (1).

Insert instead:

prescribed sexual offence means:

- (a) an offence under section 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 63, 65, 65A, 66, 66A, 66B, 66C, 66D, 66EA, 66F, 67, 68, 71, 72, 72A, 73, 74, 76, 76A, 78A, 78B, 78H, 78I, 78K, 78L, 78M, 78N, 78O, 78Q, 79, 80, 80A, 80D, 80E, 81, 81A, 81B, 86, 87, 89, 90, 90A, 91, 91A, 91B, 91D, 91E, 91F or 91G of the *Crimes Act 1900*, or
- (b) an offence that, at the time it was committed, was a prescribed sexual offence for the purposes of this Act or the *Crimes Act 1900*, or
- (c) an offence that includes the commission of, or an intention to commit, an offence referred to in paragraph (a) or (b), or
- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

[2] Section 91 Witness may be directed to attend

Omit the definitions of *child sexual assault offence* and *complainant* from section 91 (9).

Insert instead:

child sexual assault offence means:

- (a) a prescribed sexual offence, or
- (b) an offence that, at the time it was committed, was a child sexual assault offence for the purposes of subsection (8), or
- (c) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a) or (b).

complainant, in relation to any proceedings, means the person, or any of the persons, against whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed, and includes:

- (a) in relation to an offence under section 80E of the *Crimes Act 1900*, the person who is alleged to have been the subject of sexual servitude, and
- (b) in relation to an offence under section 91D, 91E or 91F of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and
- (c) in relation to an offence under section 91G of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have been used for pornographic purposes.

[3] Section 274 Application

Omit “Part”. Insert instead “Chapter”.

[4] Section 275A

Insert before section 276:

275A Improper questions

- (1) In any criminal proceedings, the court must disallow a question put to a witness in cross-examination, or inform the witness that it need not be answered, if the court is of the opinion that the question (referred to as a *disallowable question*):
 - (a) is misleading or confusing, or
 - (b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive, or
 - (c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate, or
 - (d) has no basis other than a sexist, racial, cultural or ethnic stereotype.
- (2) Without limiting the matters that the court may take into account for the purposes of subsection (1), it is to take into account:
 - (a) any relevant condition or characteristic of the witness, including age, education, ethnic and cultural background, language background and skills, level of maturity and understanding and personality, and
 - (b) any mental, intellectual or physical disability to which the witness is or appears to be subject.

- (3) A question is not a disallowable question merely because:
- (a) the question challenges the truthfulness of the witness or the consistency or accuracy of any statements made by the witness, or
 - (b) the question requires the witness to discuss a subject that could be considered to be distasteful or private.
- (4) A party to criminal proceedings may object to a question put to a witness on the ground that it is a disallowable question.
- (5) However, the duty imposed on the court by this section applies whether or not an objection is raised to a particular question.
- (6) A failure by the court to disallow a question under this section, or to inform the witness that it need not be answered, does not affect the admissibility in evidence of any answer given by the witness in response to the question.
- (7) Section 41 of the *Evidence Act 1995* does not apply to criminal proceedings to which this section applies.
- (8) A person must not, without the express permission of a court, print or publish any question that the court has disallowed under this section.
Maximum penalty: 60 penalty units.
- (9) In this section:
criminal proceedings means proceedings against a person for an offence (whether summary or indictable), and includes the following:
- (a) committal proceedings,
 - (b) proceedings relating to bail,
 - (c) proceedings relating to sentencing,
 - (d) proceedings on an appeal against conviction or sentence.

[5] Chapter 6, Part 2A

Insert after Part 2 of Chapter 6:

Part 2A Sensitive evidence

281A Definitions

(1) In this Part:

accused person means a person who stands, or any of the persons who stand, charged with an offence (whether summary or indictable), and includes the following:

- (a) in relation to proceedings for a summary offence, a defendant,
- (b) in relation to sentencing proceedings, a person who has been committed for sentence to the District Court or Supreme Court,
- (c) in relation to proceedings on an appeal against a conviction or sentence, the person convicted or sentenced.

criminal investigation means the investigation of an offence or alleged offence.

criminal proceedings means proceedings against a person for an offence (whether summary or indictable), and includes the following:

- (a) committal proceedings,
- (b) proceedings relating to bail,
- (c) proceedings relating to sentencing,
- (d) proceedings on an appeal against conviction or sentence.

prosecuting authority means:

- (a) in relation to criminal proceedings, the Director of Public Prosecutions, a delegate of the Director of Public Prosecutions, a police officer, or any other person acting in a public official capacity, who is responsible for the institution or conduct of a prosecution, and
- (b) in relation to a criminal investigation, a police officer or any other person acting in a public official capacity who is responsible for the conduct of a criminal investigation.

sensitive evidence has the meaning given by section 281B.

(2) In this Part, a reference to an **accused person** or a **prosecuting authority** includes a reference to a legal practitioner representing the accused person or the prosecuting authority.

281B Sensitive evidence—meaning

- (1) For the purposes of this Part, anything that contains or displays an image of a person (the *protected person*) is *sensitive evidence* if:
 - (a) the image is obscene or indecent, or
 - (b) providing a copy of the image to another person without the protected person's consent would interfere with the protected person's privacy, or
 - (c) the image was taken after the death of the protected person.
- (2) Without limiting subsection (1), the following are examples of sensitive evidence:
 - (a) a photograph of an alleged sexual assault victim, taken in connection with a criminal investigation or criminal proceedings, that shows the person's genitalia or otherwise shows the person in a state of undress,
 - (b) a video, held or seized by a prosecuting authority, showing a person committing a sexual offence,
 - (c) a computer hard drive, held or seized by a prosecuting authority, containing images of child pornography,
 - (d) a photograph of a deceased person taken in connection with a post mortem examination,
 - (e) a photograph of a deceased person taken at a crime scene.
- (3) In determining whether a thing is obscene or indecent, the fact that the thing was brought into existence, or is in the possession of a prosecuting authority, for the purpose of providing evidence of an offence is to be disregarded.

281C Accused person not entitled to copy of sensitive evidence

- (1) A prosecuting authority is not required and cannot be required (whether by subpoena or any other procedure), in or in connection with any criminal investigation or criminal proceedings, to give an accused person a copy of anything the prosecuting authority reasonably considers to be sensitive evidence.
- (2) This section applies despite anything to the contrary in this or any other Act, or any other law.

281D Procedures for giving access to sensitive evidence to accused person

- (1) If, but for this Part, a prosecuting authority would be required, in or in connection with any criminal investigation or criminal proceedings, to provide a copy of a thing to an accused person, and the prosecuting authority does not give a copy of the thing to the accused person as a result of this Part, the prosecuting authority must give the accused person a written notice (a ***sensitive evidence notice***) that complies with this section.
- (2) The sensitive evidence notice must:
 - (a) describe the thing that the prosecuting authority considers to be sensitive evidence, and
 - (b) indicate that, as the prosecuting authority considers the thing to be sensitive evidence, the prosecuting authority is not required to give the accused person a copy of the thing, and
 - (c) indicate that the accused person will not be given a copy of the thing, and
 - (d) contain information to the effect that the accused person is entitled to view the thing at a place nominated by the prosecuting authority and under the supervision of the prosecuting authority, and
 - (e) set out the name and contact details of the person who is responsible for arranging such a viewing on behalf of the prosecuting authority.
- (3) After receiving a sensitive evidence notice, the accused person may give the prosecuting authority a written notice (an ***access request notice***) that indicates that the accused person requires access to the thing.
- (4) The prosecuting authority must, as soon as practicable after receiving an access request notice, give the accused person, and any other person who has been engaged to assist with the accused person's case, reasonable access to the thing so as to enable them to view (but not copy) the thing. This may require access to be given on more than one occasion.
- (5) The prosecuting authority may require any such access to take place subject to such conditions as the prosecuting authority considers appropriate to ensure that there is no unauthorised reproduction or circulation of the thing and that the integrity of the thing is protected.

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- (6) Without limiting subsection (5), the prosecuting authority may require any such access to take place under the supervision of the prosecuting authority or a person assisting the prosecuting authority.
- (7) A person who is given access to a thing by a prosecuting authority under this section must not, without the authority of the prosecuting authority:
- (a) copy, or permit a person to copy, the thing, or
 - (b) give the thing to another person, or
 - (c) remove the thing from the custody of the prosecuting authority.
- Maximum penalty: 100 penalty units, or 2 years imprisonment, or both.
- (8) The Attorney General may approve the form of any notice to be used for the purposes of this section.

281E Prosecuting authority entitled to retain possession of sensitive evidence

- (1) If during any criminal proceedings an accused person is given sensitive evidence, or a copy of sensitive evidence, by the prosecuting authority in the proceedings, the court must, on application by the prosecuting authority, direct the accused person to return the sensitive evidence or copy to the custody of the prosecuting authority at or before the end of each day during which the proceedings are heard.
- (2) At the completion of any criminal proceedings in which sensitive evidence is tendered by the prosecuting authority, or sensitive evidence given to the accused person by the prosecuting authority is tendered by the accused person, the court must, on application by the prosecuting authority, direct that the sensitive evidence, and any copies of the sensitive evidence made for the purposes of the proceedings, be returned to the custody of the prosecuting authority.

281F Improper copying or circulation of sensitive evidence

- (1) A person who has possession of sensitive evidence that is prosecution evidence must not copy, or permit a person to copy, the sensitive evidence, or give possession of the sensitive evidence to another person, except:
- (a) for the legitimate purposes of a criminal investigation or criminal proceedings, or

- (b) if the person is a public official, in the proper exercise of the person's public official functions (including any functions relating to education or training).

Maximum penalty: 100 penalty units, or 2 years imprisonment, or both.

- (2) For the purposes of this section, any sensitive evidence in the possession of a person is *prosecution evidence* if:
 - (a) the person was given possession of the sensitive evidence by a prosecuting authority in or in connection with a criminal investigation or criminal proceedings, or
 - (b) the person is a public official who created, or obtained possession of, the sensitive evidence in the exercise of, or as a result of an opportunity that arose in the exercise of, public official functions in or in connection with a criminal investigation or criminal proceedings.
- (3) In this section:
public official has the same meaning as in the *Independent Commission Against Corruption Act 1988*.

[6] Sections 290 and 290A

Omit section 290. Insert instead:

290 Application

- (1) This Division applies to proceedings in respect of a prescribed sexual offence, including committal proceedings.
- (2) This Division applies to proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an alternative or additional count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

290A Definitions

In this Division:

accused person, in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in those proceedings with a prescribed sexual offence.

complainant, in relation to any proceedings, means the person, or any of the persons, against whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed, and includes:

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- (a) in relation to an offence under section 80E of the *Crimes Act 1900*, the person who is alleged to have been the subject of sexual servitude, and
 - (b) in relation to an offence under section 91D, 91E or 91F of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and
 - (c) in relation to an offence under section 91G of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have been used for pornographic purposes.

[7] Sections 291–291B

Omit section 291. Insert instead:

291 Proceedings must be held in camera when complainant gives evidence

- (1) Any part of any proceedings in respect of a prescribed sexual offence in which evidence is given by a complainant is to be held in camera, unless the court otherwise directs.
- (2) This section applies even if the complainant gives evidence by means of closed-circuit television or other technology or under any alternative arrangements available to the complainant under section 294B or under the *Evidence (Children) Act 1997*.
- (3) The court may direct that the part of proceedings in which evidence is given by the complainant be held in open court only at the request of a party to the proceedings and only if the court is satisfied that:
 - (a) special reasons in the interests of justice require the part of the proceedings to be held in open court, or
 - (b) the complainant consents to giving his or her evidence in open court.
- (4) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the part of the proceedings to be held in open court.
- (5) If the court directs that the part of the proceedings in which evidence is given by the complainant be held in open court, that does not affect the entitlement of the complainant to give evidence in the manner provided for by section 294B or by the *Evidence (Children) Act 1997*.

- (6) If the proceedings are proceedings in which a record of the original evidence of the complainant is tendered by the prosecutor under Division 3, this section does not require the record to be tendered in camera or, if the record is an audio visual or audio recording, heard by the court in camera.
- (7) This section does not affect the entitlement of a complainant to have a person or persons present when giving evidence under section 294C.

291A Other parts of proceedings may be heard in camera

- (1) The court may direct that any other part of any proceedings in respect of a prescribed sexual offence, or the entire proceedings, be held in camera.
- (2) The court may make a direction under this section on its own motion or at the request of any party to the proceedings.
- (3) In determining whether to make a direction under this section, the court is to consider the following matters:
 - (a) the need of the complainant to have any person excluded from those proceedings,
 - (b) the need of the complainant to have any person present in those proceedings,
 - (c) the interests of justice,
 - (d) any other matter that the court thinks relevant.
- (4) The requirement under section 291 that any part of the proceedings in which evidence is given by a complainant be held in camera unless the court otherwise directs still applies whether or not a direction is made under this section.
- (5) If the court makes a direction under this section, it may (either absolutely or subject to conditions) exempt any person from that direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose that the court thinks fit.
- (6) This section does not affect:
 - (a) the entitlement of a complainant to have a person or persons present when giving evidence under section 294C, or
 - (b) the entitlement of a child to have a person present when giving evidence under section 27 of the *Evidence (Children) Act 1997*.

291B Incest offence proceedings to be held entirely in camera

- (1) Any proceedings in respect of an offence under section 78A or 78B of the *Crimes Act 1900* are to be held entirely in camera, despite any other provision of this Division.
- (2) The court may (either absolutely or subject to conditions) exempt any person from the requirement that the proceedings be held in camera to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose that the court thinks fit.
- (3) This section does not affect:
 - (a) the entitlement of a complainant to have a person or persons present when giving evidence under section 294C, or
 - (b) the entitlement of a child to have a person present when giving evidence under section 27 of the *Evidence (Children) Act 1997*.

291C Media access to proceedings held in camera

- (1) If a complainant gives evidence in proceedings in respect of a prescribed sexual offence from a place other than the courtroom by means of closed-circuit television facilities or other technology that enables communication between that place and the courtroom (whether under section 294B or the *Evidence (Children) Act 1997*), and the proceedings, or the part of the proceedings concerned, are held in camera under this Division, a media representative may, unless the court otherwise directs, enter or remain in the courtroom while the evidence is given from that other place. This subsection does not apply to proceedings in respect of an offence under section 78A or 78B of the *Crimes Act 1900*.
- (2) The fact that proceedings in respect of a prescribed sexual offence, or any part of such proceedings, are held in camera under this Division does not prevent the court from making such arrangements as the court considers reasonably practicable to allow media representatives to view or hear the evidence while it is given, or to view or hear a record of that evidence, as long as the media representatives are not present in the courtroom or other place where the evidence is given during the in camera proceedings.

Note. For example, the court may permit media representatives to view the proceedings from a place other than the courtroom by means of closed-circuit television facilities.

(3) In this section:

media representative, in relation to any proceedings, means a person engaged in preparing a report of the proceedings for dissemination through a public news medium.

[8] Section 292 Publication of evidence may be forbidden in certain cases

Omit “against a person for an offence to which this Division applies” from section 292 (1).

Insert instead “against a person for a prescribed sexual offence”.

[9] Section 292 (2)

Insert “(or his or her counsel, if any)” after “accused person”.

[10] Section 293 Admissibility of evidence relating to sexual experience

Omit section 293 (1). Insert instead:

(1) This section applies to proceedings in respect of a prescribed sexual offence.

[11] Section 293 (9)

Omit the subsection.

[12] Section 294A Arrangements for complainant in prescribed sexual offence proceedings giving evidence when accused person is unrepresented

Omit “sexual offence proceedings” from section 294A (1).

Insert instead “proceedings in respect of a prescribed sexual offence”.

[13] Section 294A (9)

Omit the subsection.

[14] Section 294B Giving of evidence by complainant in prescribed sexual offence proceedings—alternative arrangements

Omit section 294B (1). Insert instead:

(1) This section applies to evidence given in proceedings (including a new trial) in respect of a prescribed sexual offence.

[15] Section 294B (3)

Omit the subsection. Insert instead:

(3) A complainant who gives evidence to which this section applies is entitled (but may choose not):

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- (a) to give that evidence from a place other than the courtroom by means of closed-circuit television facilities or other technology that enables communication between that place and the courtroom, or
 - (b) to give that evidence by use of alternative arrangements made to restrict contact (including visual contact) between the complainant and the accused person or any other person or persons in the courtroom, including the following:
 - (i) use of screens,
 - (ii) planned seating arrangements for people who have an interest in the proceedings (including the level at which they are seated and the people in the complainant's line of vision).

[16] Section 294B (7) (b)

Insert "person" after "accused".

[17] Section 294B (11)

Omit the subsection.

[18] Section 294C

Insert after section 294B:

294C Complainant entitled to have support person or persons present when giving evidence

- (1) A complainant is entitled to have a person or persons chosen by the complainant present near the complainant, and within the complainant's sight, when the complainant is giving evidence in proceedings in respect of a prescribed sexual offence.
- (2) The entitlement applies:
 - (a) even if the complainant gives evidence by means of closed-circuit television or other technology or under any alternative arrangements available to the complainant under section 294B or the *Evidence (Children) Act 1997*, and
 - (b) even if the proceedings, or the part of the proceedings in which the complainant gives evidence, are held in camera.
- (3) Without limiting the entitlement of a complainant under this section, the person or persons chosen by the complainant to be with the complainant when he or she gives evidence may include

a parent, guardian, relative, friend or support person of the complainant, or a person assisting the complainant in a professional capacity.

- (4) An accused person is not entitled to object to the suitability of the person or persons chosen by a complainant to be with the complainant when giving evidence, and the court is not to disallow the complainant's choice of person or persons on its own motion, unless the complainant's choice is likely to prejudice the accused person's right to a fair trial (for example, because the person chosen by the complainant is a witness or potential witness in the proceedings).
- (5) During any part of the proceedings in which the complainant gives evidence, the person or persons chosen by the complainant to be present when the complainant gives evidence are taken to be exempt from any requirement or direction under this Division that requires the proceedings, or the part of the proceedings concerned, to be held in camera.
- (6) This section applies to a complainant giving evidence in proceedings in respect of a prescribed sexual offence regardless of the complainant's age. If the complainant is under the age of 16 years when the evidence is given, section 27 of the *Evidence (Children) Act 1997* does not apply.

Note. This section applies to proceedings before the Children's Court because of section 27 of the *Children (Criminal Proceedings) Act 1987*.

[19] Section 295 Interpretation

Omit "In this Part" from section 295 (1). Insert instead "In this Division".

[20] Section 295 (1), definition of "sexual assault offence"

Omit paragraph (a). Insert instead:

- (a) a prescribed sexual offence, or

[21] Section 306A Definitions (as inserted by the Criminal Procedure Amendment (Evidence) Act 2005)

Insert "prescribed" before "sexual offence" in the definition of *accused person*.

[22] Section 306A, definition of “complainant” (as inserted by the Criminal Procedure Amendment (Evidence) Act 2005)

Omit the definition. Insert instead:

complainant, in relation to any proceedings, means the person, or any of the persons, against whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed, and includes:

- (a) in relation to an offence under section 80E of the *Crimes Act 1900*, the person who is alleged to have been the subject of sexual servitude, and
- (b) in relation to an offence under section 91D, 91E or 91F of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and
- (c) in relation to an offence under section 91G of the *Crimes Act 1900*, the person under the age of 18 years who is alleged to have been used for pornographic purposes.

[23] Section 306A, definition of “sexual offence” (as inserted by the Criminal Procedure Amendment (Evidence) Act 2005)

Omit the definition.

[24] Section 306B Admission of evidence of complainant in new trial proceedings (as inserted by the Criminal Procedure Amendment (Evidence) Act 2005)

Insert “prescribed” before “sexual offence” wherever occurring in section 306B (1) and (8).

[25] Section 314 Media access to court documents

Omit “, a suppression order or are held in closed court” from section 314 (4) (a).

Insert instead “or a suppression order”.

[26] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Criminal Procedure Further Amendment (Evidence) Act 2005

[27] **Schedule 2, Part 8**

Insert after Part 7:

**Part 8 Provisions consequent on enactment of
Criminal Procedure Further Amendment
(Evidence) Act 2005**

40 Definition

In this Part:

amending Act means the *Criminal Procedure Further Amendment (Evidence) Act 2005*.

41 Extension of definition of “prescribed sexual offence”

- (1) The amendments made by the amending Act to the definitions of *prescribed sexual offence* in section 3 (1), *child sexual assault offence* in section 91 and *sexual assault offence* in section 295 extend to proceedings in respect of an offence, and to civil proceedings (insofar as the amendments are relevant to civil proceedings), that were instituted or partly heard before the commencement of the amendments.

Note. Division 1B of Part 3.10 of Chapter 3 of the *Evidence Act 1995* applies the definition of *sexual assault offence* in section 295 to certain civil proceedings.

- (2) Subclause (1) does not affect the admissibility of any evidence admitted in proceedings before the commencement of those amendments or otherwise affect the validity of anything done, or omitted to be done, before that commencement.
- (3) In particular, the application, as a result of an amendment referred to in subclause (1), of section 91 (8) or 93 to proceedings to which it did not apply before the commencement of Schedule 1 [1] to the amending Act does not affect the validity of any direction given under section 91 before that commencement. However if, as a result of an amendment referred to in subclause (1), section 91 (8) or 93 applies in respect of a person directed to attend committal proceedings, and the person has not yet attended, the Magistrate must, on application by the prosecutor, revoke the direction.
- (4) The amendments made to Division 3 of Part 5 of Chapter 6 by the amending Act extend to proceedings for a new trial ordered before the commencement of the amendments, including new trial proceedings that have been instituted or partly heard.

42 Improper questions

- (1) Section 275A, as inserted by the amending Act, extends to proceedings instituted or partly heard before the commencement of that section.
- (2) However, that section does not affect the admissibility of any evidence admitted in any proceedings before that commencement or otherwise affect the validity of anything done, or omitted to be done, before that commencement.

43 Sensitive evidence

Part 2A of Chapter 6, as inserted by the amending Act, extends to a criminal investigation instituted, or criminal proceedings instituted or partly heard, before the commencement of that Part.

44 Evidence of complainant to be given in camera

- (1) New section 291, and sections 291A, 291B and 291C as inserted by the amending Act, extend to proceedings instituted or partly heard before the commencement of new section 291, subject to this clause.
- (2) The replacement of former section 291 by the amending Act does not affect the validity of any direction made under that section before the replacement of that section that requires the proceedings to be held partly or entirely in camera.
- (3) However, unless the court has already directed under former section 291 that the evidence of the complainant be given in camera, new section 291 applies in respect of any evidence given by the complainant after the commencement of new section 291. That is, such evidence must be given in camera unless the court otherwise directs under new section 291.
- (4) In this clause:
former section 291 means section 291, as in force before its replacement by the amending Act.
new section 291 means section 291, as inserted by the amending Act.

45 Other amendments relating to giving of evidence by complainant

The amendments made by the amending Act to section 294B and section 294C, as inserted by the amending Act, extend to proceedings instituted or partly heard before the commencement of those amendments.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Children (Criminal Proceedings) Act 1987 No 55

Section 10 Exclusion of general public from criminal proceedings

Insert after section 10 (3):

- (3A) Despite anything to the contrary in this Act, if criminal proceedings to which a child is a party are proceedings for a prescribed sexual offence (within the meaning of the *Criminal Procedure Act 1986*):
- (a) sections 291, 291A, 291B, 291C and 294C of that Act apply in respect of the proceedings, and
 - (b) subsections (1) and (2) of this section do not apply in respect of any part of the proceedings held in camera under section 291, 291A or 291B of that Act, and
 - (c) a person or persons whom a complainant is entitled to have present near the complainant when giving evidence (under section 294C of that Act) cannot be excluded from, or directed to leave, the place where the proceedings are heard under this section (whether or not the proceedings are held in camera).

Note. Sections 291, 291A and 291B of the *Criminal Procedure Act 1986* require certain proceedings, or parts of proceedings, for a prescribed sexual offence to be held in camera. The general rule is that any part of a proceeding in which evidence is given by the complainant must be held in camera (unless the court otherwise directs), and other parts of the proceedings may also be held in camera. The complainant is entitled to have one or more persons chosen by the complainant to be near the complainant when giving evidence under section 294C of that Act.

2.2 Crimes Act 1900 No 40

Section 578A Prohibition of publication identifying victims of certain sexual offences

Omit the definition of *complainant* from section 578A (1). Insert instead:

complainant has the same meaning as in Division 1 of Part 5 of Chapter 6 of the *Criminal Procedure Act 1986*.

2.3 Evidence Act 1995 No 25

Section 41 Improper questions

Insert at the end of the section:

Note. This section does not apply to criminal proceedings to which section 275A of the *Criminal Procedure Act 1986* applies.

2.4 Evidence (Children) Act 1997 No 143

Section 27 Children have a right to presence of a supportive person while giving evidence

Insert at the end of the section:

Note. This section does not apply if the child giving evidence is a complainant in proceedings for a prescribed sexual offence. In that case, section 294C of the *Criminal Procedure Act 1986* sets out the entitlements of the child to have one or more support persons present when giving evidence.

[Second reading speech made in—

Legislative Assembly on 23 March 2005

Legislative Council on 4 May 2005]

BY AUTHORITY