



New South Wales

Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003 No 42

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Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003 No 42

Act No 42, 2003

An Act to amend the *Criminal Procedure Act 1986* to protect a complainant in certain sexual offence proceedings from being questioned directly by the accused person. [Assented to 3 September 2003]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Criminal Procedure Act 1986 No 209

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

Schedule 1 Amendments

(Section 3)

[1] Section 294A

Insert after section 294:

294A Arrangements for complainant in sexual offence proceedings giving evidence when accused person is unrepresented

- (1) This section applies to sexual offence proceedings during which the accused person is not represented by counsel.
- (2) The complainant cannot be examined in chief, cross-examined or re-examined by the accused person, but may be so examined instead by a person appointed by the court.
- (3) The person appointed by the court is to ask the complainant only the questions that the accused person requests that person to put to the complainant.
- (4) Any such person, when acting in the course of an appointment under this section, must not independently give the accused person legal or other advice.
- (5) The court does not have a discretion to decline to appoint a person under this section, despite anything to the contrary in section 28 of the *Evidence (Children) Act 1997* or any other Act or law.
- (6) This section applies whether or not closed-circuit television facilities or other similar technology (or alternative arrangements) are used by the complainant to give evidence.
- (7) If such a person is appointed in proceedings before a jury, the judge must:
 - (a) inform the jury that it is standard procedure in such cases to appoint the person to put the questions to the complainant, and
 - (b) warn the jury not to draw any inference adverse to the accused person or to give the evidence any greater or lesser weight because of the use of that arrangement.
- (8) This section extends to proceedings instituted before the commencement of this section, including proceedings that have been partly heard.

(9) In this section:

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 sexual offence.

complainant, in relation to any proceedings, means the person, or any of the persons, on whom a 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 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
- (b) 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.

sexual offence means:

- (a) a prescribed sexual offence, or
- (b) an offence against section 73, 78A, 78B, 80D, 91A, 91B, 91D, 91E, 91F or 91G of 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).

sexual offence proceedings means proceedings in which a person stands charged with a sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

[2] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Criminal Procedure Amendment (Sexual Offence Evidence)
Act 2003*

[Second reading speech made in—
Legislative Assembly on 2 September 2003
Legislative Council on 3 September 2003]

BY AUTHORITY