



New South Wales

Criminal Procedure Amendment (Sexual Offence Evidence) Act 2004 No 50

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Criminal Procedure Amendment (Sexual Offence Evidence) Act 2004 No 50

Act No 50, 2004

An Act to amend the *Criminal Procedure Act 1986* to further protect complainants in sexual offence proceedings; to make a consequential amendment to the *Evidence (Children) Act 1997*; and for other purposes. [Assented to 6 July 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Procedure Amendment (Sexual Offence Evidence) Act 2004*.

2 Commencement

This Act commences on the date of assent to this Act.

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 Evidence (Children) Act 1997 No 143

The *Evidence (Children) Act 1997* is amended as set out in Schedule 2.

Schedule 1 Amendment of Criminal Procedure Act 1986

(Section 3)

Section 294B

Insert after section 294A:

294B Giving of evidence by complainant in sexual offence proceedings—alternative arrangements

- (1) This section applies to evidence given in proceedings (including a new trial) 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) This section does not apply to or in respect of the giving of evidence by a child if Part 4 of the *Evidence (Children) Act 1997* applies to the giving of that evidence.
- (3) A complainant who gives evidence to which this section applies is entitled (but may choose not):
 - (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) if such technology is unavailable and the court does not adjourn the proceeding under subsection (4)—to give that evidence by use of alternative arrangements made to restrict contact (including visual contact) between the complainant and the accused 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 proceeding (including the level at which they are seated and the people in the complainant's line of vision),

and, whether evidence is given as referred to in paragraph (a) or (b) or otherwise, to have a person chosen by the complainant present near the complainant while he or she is

giving evidence for the purpose of providing emotional support to the complainant.

- (4) If, to enable evidence to be given as referred to in subsection (3), the court considers it appropriate to do so, the court may adjourn the proceeding or any part of the proceeding from the courtroom to another court or place.
- (5) Despite subsection (3) (a), a complainant must not give evidence as referred to in that paragraph if a court, on its own initiative or on application by a party to the proceeding, orders that such means not be used.
- (6) A court may make an order under subsection (5) only if it is satisfied that there are special reasons, in the interests of justice, for the complainant's evidence not to be given by such means.
- (7) In any proceedings in which evidence is given as referred to in subsection (3), the judge must:
 - (a) inform the jury that it is standard procedure for complainants' evidence in such cases to be given by those means or use of those arrangements, and
 - (b) warn the jury not to draw any inference adverse to the accused or give the evidence any greater or lesser weight because it is given by those means or by use of those arrangements.
- (8) Any place outside the courtroom from which a complainant gives evidence under this section is taken to be part of the courtroom in which the proceeding is being held.
- (9) If a complainant gives evidence as referred to in subsection (3) in a place other than a courtroom, the court may order that a court officer be present at that place.
- (10) This section extends to evidence given in proceedings instituted before the commencement of this section, including a new trial that was ordered to take place before that commencement and proceedings that have been partly heard.
- (11) In this section:

accused, 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 stands charged in those proceedings is alleged to have been committed.

sexual offence means:

- (a) a prescribed sexual offence, or
- (b) an offence against section 67, 68, 71, 73, 78A, 78B, 80D, 91A, 91B, 91D, 91E, 91F or 91G of the *Crimes Act 1900*, or
- (c) an offence that, at the time it was committed, was an offence to which this section applied, or
- (d) an offence that includes the commission of, or an intention to commit, an offence referred to in paragraph (a), (b) or (c), or
- (e) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b), (c) or (d).

Schedule 2 Consequential amendment of Evidence (Children) Act 1997

(Section 4)

Section 18 Children have a right to give evidence by closed-circuit television

Omit section 18 (4). Insert instead:

- (4) The court may only make such an order if it is satisfied that there are special reasons, in the interests of justice, for the child's evidence not to be given by such means.

[Second reading speech made in—
Legislative Assembly on 14 May 2004
Legislative Council on 24 June 2004]

BY AUTHORITY