



New South Wales

# **Criminal Procedure Amendment (Vulnerable Persons) Act 2007 No 6**

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New South Wales

# **Criminal Procedure Amendment (Vulnerable Persons) Act 2007 No 6**

Act No 6, 2007

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An Act to amend the *Criminal Procedure Act 1986* to make further provision with respect to the giving of evidence in proceedings by children and intellectually impaired persons and to consequentially repeal the *Evidence (Children) Act 1997*; and for other purposes. [Assented to 15 June 2007]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Criminal Procedure Amendment (Vulnerable Persons) Act 2007*.

**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 Consequential amendment of other Acts**

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

**5 Repeal of Evidence (Children) Act 1997 No 143**

The *Evidence (Children) Act 1997* is repealed.

**6 Repeal of Evidence (Children) Regulation 2004**

The *Evidence (Children) Regulation 2004* is repealed.

**7 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## **Schedule 1      Amendment of Criminal Procedure Act 1986**

(Section 3)

**[1] Section 76**

Omit the section. Insert instead:

**76 Recordings of interviews with vulnerable persons**

- (1) A written statement may be in the form of a transcript of a recording made by an investigating official of an interview with a vulnerable person, during which the vulnerable person was questioned by the investigating official in connection with the investigation of the commission or possible commission of the offence (as referred to in section 306R), but only if this section is complied with.
- (2) The copy of the transcript of the recording must be certified by an investigating official as an accurate transcript of the recording and served on the accused person in accordance with section 75.
- (3) The accused person must be given, in accordance with the regulations under section 306V (2), a reasonable opportunity to listen to and, in the case of a video recording, to view, the recording.
- (4) However, if the requirements of the regulations under section 306V (2) have not been complied with, the recording may be admitted if the court is satisfied that:
  - (a) the parties consent to the recording being admitted, or
  - (b) the accused person and his or her lawyer (if any) have been given a reasonable opportunity otherwise than in accordance with such regulations to listen to or view the recording and it would be in the interests of justice to admit the recording.
- (5) Nothing in this Division requires the prosecutor to serve on the accused person a copy of the actual recording made by an investigating official of an interview with the vulnerable person (other than a transcript of the record).
- (6) This section does not affect section 306V (2).
- (7) Section 79 (3) does not apply to or in relation to a written statement certified under this section.

- (8) In this section:
- investigating official* has the same meaning as it has in Part 6 of Chapter 6.
- vulnerable person* has the same meaning as it has in Part 6 of Chapter 6.
- Note.** Part 6 of Chapter 6 allows vulnerable persons (children and intellectually impaired persons) to give evidence of a previous representation in the form of a recording made by an investigating official of an interview with the vulnerable person. Section 306V (2) (which is contained in that Part) provides that such evidence is not to be admitted unless the accused person and his or her lawyer have been given a reasonable opportunity to listen to or view the recording.

**[2] Section 91 Witness may be directed to attend**

Insert after section 91 (7):

- (7A) A direction may not be given under this section so as to require the attendance of the complainant in proceedings for a prescribed sexual offence if the complainant is an intellectually impaired person (within the meaning of Part 6 of Chapter 6).

**[3] Section 185**

Omit the section. Insert instead:

**185 Recording of interviews with vulnerable persons**

- (1) If the prosecutor intends to call a vulnerable person to give evidence in proceedings, the brief of evidence may include a transcript of a recording made by an investigating official of an interview with the vulnerable person, during which the vulnerable person was questioned by the investigating official in connection with the investigation of the commission or possible commission of the offence (as referred to in section 306R).
- (2) A copy of the transcript of the recording must be certified by an investigating official as an accurate transcript of the recording and served on the accused person in accordance with section 183.
- (3) A brief of evidence that includes a transcript of a recording of an interview with a vulnerable person is not required also to include a written statement from the vulnerable person concerned.
- (4) The transcript of the recording is taken, for the purposes of this Division, to be a written statement taken from the vulnerable person. Accordingly, any document or other thing identified in the transcript as a proposed exhibit forms part of the brief of evidence.

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- (5) Nothing in this Division requires the prosecutor to serve on the accused person a copy of the actual recording made by an investigating official of an interview with the vulnerable person.
- (6) This section does not affect section 306V (2).
- (7) In this section:  
*investigating official* has the same meaning as it has in Part 6 of Chapter 6.  
*vulnerable person* has the same meaning as it has in Part 6 of Chapter 6.  
**Note.** Part 6 of Chapter 6 allows vulnerable persons (children and intellectually impaired persons) to give evidence of a previous representation in the form of a recording made by an investigating official of an interview with the vulnerable person. Section 306V (2) (which is contained in that Part) provides that such evidence is not to be admitted unless the accused person and his or her lawyer have been given a reasonable opportunity to listen to or view the recording.

**[4] Section 274 Application**

Insert at the end of the section:

**Note.** Certain provisions of Part 6 (Giving of evidence by vulnerable persons) of this Chapter extend to evidence given in proceedings of a civil nature arising from certain offences (for example, see section 306ZA (c)).

**[5] Sections 291 (2) and (5), 291C (1) and 306E (3)**

Omit “the *Evidence (Children) Act 1997*” wherever occurring.

Insert instead “Part 6”.

**[6] Section 291A Other parts of proceedings may be heard in camera**

Omit section 291A (6) (b). Insert instead:

- (b) the entitlement of a vulnerable person (within the meaning of Part 6) to have a person present when giving evidence under section 306ZK.

**[7] Section 291B Incest offence proceedings to be held entirely in camera**

Omit section 291B (3) (b). Insert instead:

- (b) the entitlement of a vulnerable person (within the meaning of Part 6) to have a person present when giving evidence under section 306ZK.

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

Omit “section 28 of the *Evidence (Children) Act 1997*” from section 294A (5).

Insert instead “section 306ZL”.

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

Omit “child if Part 4 of the *Evidence (Children) Act 1997*” from section 294B (2).

Insert instead “vulnerable person (within the meaning of Part 6) if Division 4 of that Part”.

**[10] Section 294C Complainant entitled to have support person or persons present when giving evidence**

Omit “the *Evidence (Children) Act 1997*” from section 294C (2) (a).

Insert instead “Part 6”.

**[11] Section 294C (6)**

Omit “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.”.

**[12] Section 294C (7) and (8)**

Insert after section 294C (6) (before the note):

- (7) If the complainant is a vulnerable person (within the meaning of Part 6) when the evidence is given, section 306ZK does not apply.
- (8) Nothing in this section affects any entitlement a complainant has under section 275B.

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[13] Chapter 6, Part 6

Insert after Part 5:

## Part 6 Giving of evidence by vulnerable persons

### Division 1 Preliminary

#### 306M Definitions

(1) In this Part:

**child protection prohibition order** means a prohibition order within the meaning of the *Child Protection (Offenders Prohibition Orders) Act 2004*, and includes an interim child protection prohibition order made under that Act.

**court**, in relation to a proceeding referred to in section 306ZA (d), includes the Victims Compensation Tribunal.

**courtroom**, in relation to a proceeding referred to in section 306ZA (d), includes the place where the Victims Compensation Tribunal is sitting.

**intellectually impaired person**—see subsection (2).

**investigating official** means:

- (a) a police officer (other than a police officer who is engaged in covert investigations), or
- (b) in relation to the questioning of a child—a person who is engaged, in conjunction with an investigating official described in paragraph (a), in an investigation caused to be made by the Director-General of the Department of Community Services under section 27 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (c) any other person prescribed by the regulations for the purposes of this definition.

**personal assault offence** means any of the following offences:

- (a) an offence under Part 3 of the *Crimes Act 1900*,
- (b) an offence under section 545AB or 562AB of the *Crimes Act 1900*,
- (c) an offence under section 562ZG, or section 562I as in force before its substitution, of the *Crimes Act 1900*,
- (d) an offence under section 227 of the *Children and Young Persons (Care and Protection) Act 1998*,
- (e) an offence that includes the commission of, or an intention to commit, any of the above offences,



- (f) an offence of attempting, or of conspiracy or incitement, to commit any of the above offences.

**recording** means:

- (a) an audio recording, or
- (b) a video recording, or
- (c) a video recording accompanied by a separately but contemporaneously recorded audio recording.

**vulnerable person** means a child or an intellectually impaired person.

- (2) For the purposes of this Part, a person is **intellectually impaired** if the person has:
  - (a) an appreciably below average general intellectual function, or
  - (b) a cognitive impairment (including dementia or autism) arising from, or as a result of, an acquired brain injury, neurological disorder or a developmental disorder, or
  - (c) any other intellectual disability.

**Note.** See section 306P as to the application of this Part to the giving of evidence by intellectually impaired persons.

**306N Words and expressions used in Evidence Act 1995**

- (1) Words and expressions that are defined in the *Evidence Act 1995* and that are used in this Part have the same meanings in this Part as they have in the *Evidence Act 1995*.
- (2) This section applies except so far as the context or subject-matter otherwise indicates or requires.
- (3) However, this section does not apply to a word or expression defined in section 306M.

**306O Relationship to Evidence Act 1995**

The provisions of this Part are in addition to the provisions of the *Evidence Act 1995* and do not, unless a contrary intention is shown, affect the operation of that Act.

**306P Application of Part**

- (1) To the extent that this Part applies to children, this Part applies (unless a contrary intention is shown) in relation to evidence given by a child who is under the age of 16 years at the time the evidence is given.

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- (2) To the extent that this Part applies to intellectually impaired persons, this Part applies (unless a contrary intention is shown) in relation to evidence given by an intellectually impaired person in the manner provided by this Part only if the court is satisfied that the facts of the case may be better ascertained if the person's evidence is given in such a manner.

### **Division 2 Recording of out of court statements**

#### **306Q Regulations may require interviews with vulnerable persons to be recorded**

If the regulations so require, an investigating official who questions a vulnerable person in connection with the investigation of the commission or possible commission of an offence by the person or any other person is, in accordance with any such regulations, to record any representation made by the vulnerable person in the course of the interview during which the vulnerable person is questioned.

### **Division 3 Giving evidence of out of court representations**

#### **306R Evidence to which this Division applies**

- (1) This Division applies to evidence of a previous representation of a vulnerable person made in the course of an interview during which the person is questioned by an investigating official in connection with the investigation of the commission or possible commission of an offence.
- (2) To the extent that this Division applies to intellectually impaired persons, this Division does not apply to evidence of a previous representation made before the commencement of this Division.

#### **306S Ways in which evidence of vulnerable person may be given**

- (1) Subject to this Part, a vulnerable person may give evidence of a previous representation to which this Division applies made by the person in any criminal proceeding wholly or partly:
- (a) in the form of a recording of the previous representation made by an investigating official of the interview in the course of which the previous representation was made and that is viewed or heard, or both, by the court, or
  - (b) orally in the courtroom, or

- (c) if the evidence is given in any proceeding to which Division 4 applies—in accordance with alternative arrangements made under section 306W.

**Note.** See section 306ZA.

- (2) Evidence in the form of a recording given by a vulnerable person under subsection (1) (a) is not required to be served on a party to any proceeding (including proceedings in relation to apprehended violence commenced under Part 15A of the *Crimes Act 1900*).
- (3) Nothing in this section affects the giving of evidence by means of a written statement for the purposes of Division 3 of Part 2 of Chapter 3.

**Note.** See also section 306ZN.

**306T Wishes of vulnerable person to be taken into account**

- (1) A person must not call a vulnerable person to give evidence of a previous representation to which this Division applies made by the vulnerable person by means other than a recording made by an investigating official of the interview in the course of which the previous representation was made unless the person has taken into account any wishes of the vulnerable person, considered in the light of:
- (a) in the case of a child—the child’s age and understanding, or
- (b) in the case of an intellectually impaired person—the person’s intellectual impairment.
- (2) However, subsection (1) does not permit a person to require a vulnerable person to express the vulnerable person’s wishes in relation to the matter.

**306U Vulnerable person entitled to give evidence in chief in form of recording**

- (1) A vulnerable person is entitled to give, and may give, evidence in chief of a previous representation to which this Division applies made by the person wholly or partly in the form of a recording made by an investigating official of the interview in the course of which the previous representation was made and that is viewed or heard, or both, by the court. The vulnerable person must not, unless the person otherwise chooses, be present in the court, or be visible or audible to the court by closed-circuit television or by means of any similar technology, while it is viewing or hearing the recording.

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- (2) Subject to section 306Y, a person is entitled to give, and may give (no matter what age the person is when the evidence is given), evidence as referred to in subsection (1) in the form of a recording of a previous representation to which this Division applies made by the person when the person was less than 16 years of age.
- Note.** Under section 306Y, a court may order that a vulnerable person not give evidence in the form of a recording if it is satisfied that it is not in the interests of justice for the evidence to be given by a recording.
- (3) If a vulnerable person who gives evidence as referred to in subsection (1) is not the accused person in the proceeding, the vulnerable person must subsequently be available for cross-examination and re-examination:
- (a) orally in the courtroom, or
  - (b) if the evidence is given in any proceeding to which Division 4 applies—in accordance with alternative arrangements made under section 306W.
- (4) Subsection (3) does not apply in relation to committal proceedings.
- (5) Section 5BBA of the *Evidence (Audio and Audio Visual Links) Act 1998* does not apply to evidence given as referred to in subsection (1).

**306V Admissibility of recorded evidence**

- (1) The hearsay rule and the opinion rule (within the meaning of the *Evidence Act 1995*) do not prevent the admission or use of evidence of a previous representation to which this Division applies given by a vulnerable person under this Division in the form of a recording made by an investigating official.
- (2) Evidence of a previous representation to which this Division applies of a vulnerable person who is not the accused person in a proceeding that is given by the vulnerable person in the form of a recording made by an investigating official is not to be admitted unless it is proved that the accused person and his or her lawyer (if any) were given, in accordance with the regulations, a reasonable opportunity to listen to and, in the case of a video recording, view the recording.
- (3) However, if the requirements of any regulations made under subsection (2) have not been complied with, the recording may be admitted if the court is satisfied that:
- (a) the parties consent to the recording being admitted, or

(b) the accused person and his or her lawyer (if any) have been given a reasonable opportunity otherwise than in accordance with such regulations to listen to or view the recording and it would be in the interests of justice to admit the recording.

(4) The court may rule as inadmissible the whole or any part of the contents of a recording adduced as evidence under this Division.

**306W Alternative arrangements for giving evidence**

The court may order that alternative arrangements be made in accordance with Division 4 for the giving of evidence by the vulnerable person in any proceeding to which that Division applies.

**306X Warning to jury**

If a vulnerable person gives evidence of a previous representation wholly or partly in the form of a recording made by an investigating official in accordance with this Division in any proceedings in which there is a jury, the judge must warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the evidence being given in that way.

**306Y Evidence not to be given in form of recording if contrary to interests of justice**

- (1) A vulnerable person must not give evidence by means of a recording made by an investigating official in accordance with this Division if the court orders that such means not be used.
- (2) The court may only make such an order if it is satisfied that it is not in the interests of justice for the vulnerable person's evidence to be given by a recording.

**306Z Transcripts of recordings**

The court may order that a transcript be supplied to the court or, if there is a jury, to the jury, or both, of all or part of evidence of a previous representation to which this Division applies made by a vulnerable person that is given in the form of a recording if it appears to the court that a transcript would be likely to aid its or the jury's comprehension of the evidence.

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**Division 4 Giving of evidence by closed-circuit television**

**306ZA Application of Division**

This Division applies to the following proceedings:

- (a) a proceeding in which it is alleged that a person has committed a personal assault offence,
- (b) a proceeding in relation to an application for an apprehended violence order, or a variation or revocation of such an order,
- (c) a civil proceeding arising from the commission of a personal assault offence,
- (d) a proceeding before the Victims Compensation Tribunal in respect of the hearing of a matter arising from the commission of a personal assault offence that is the subject of an appeal or a reference to it,
- (e) a proceeding in relation to an application for a child protection prohibition order or to vary or revoke any such order or a proceeding in relation to a contravention of any such order.

**306ZB Vulnerable persons have a right to give evidence by closed-circuit television**

- (1) Subject to this Part, a vulnerable person who gives evidence in any proceeding to which this Division applies is entitled to give that evidence by means of closed-circuit television facilities or by means of any other similar technology prescribed for the purposes of this section.
- (2) Subject to subsections (4) and (5), a child who is 16 or more but less than 18 years of age at the time evidence is given in a proceeding to which this Division applies is entitled to give the evidence as referred to in subsection (1) if the child was under 16 years of age when the charge for the personal assault offence to which the proceedings relate was laid.
- (3) A vulnerable person may choose not to give evidence by the means referred to in subsection (1).
- (4) A vulnerable person must not give evidence by means of closed-circuit television facilities or any other prescribed technology if the court orders that such means not be used.

- (5) The court may only make such an order if it is satisfied that there are special reasons, in the interests of justice, for the vulnerable person's evidence not to be given by such means.
- (6) This section does not apply to a vulnerable person:
  - (a) who is the accused or defendant in any proceeding referred to in section 306ZA (a), (b) or (c), or
  - (b) who is or was accused of committing the offence that gave rise to a proceeding referred to in section 306ZA (d).
- (7) Nothing in this section affects the operation of section 13 of the *Evidence Act 1995*.

**306ZC Accused vulnerable persons may be allowed to give evidence by closed-circuit television**

- (1) This section applies to a vulnerable person who is the accused person, or person against whom a complaint is made, in any proceeding to which this Division applies.
- (2) The court may make an order permitting a vulnerable person's evidence in a proceeding to which this Division applies to be given by means of closed-circuit television facilities or any other similar technology prescribed for the purposes of this section.
- (3) Such an order may be made in relation to a child only if the court is satisfied:
  - (a) that the child may suffer mental or emotional harm if required to give evidence in the ordinary way, or
  - (b) that the facts may be better ascertained if the child's evidence is given in accordance with such an order.
- (4) A court may make an order under this section permitting a vulnerable person to whom this section applies who is an accused detainee within the meaning of the *Evidence (Audio and Audio Visual Links) Act 1998* to give evidence in a proceeding to which this Division applies by means of closed-circuit television facilities or any other similar technology prescribed for the purposes of this section despite Part 1B of that Act.
- (5) A vulnerable person may choose not to give evidence by means of closed-circuit television facilities or other similar technology.

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**306ZD Giving evidence by closed-circuit television**

- (1) If the evidence of a vulnerable person who is entitled or permitted to give evidence by means of closed-circuit television facilities or any other similar technology under this Division is given from a location outside a court, that location is taken to be part of the court in which the proceeding is being held.
- (2) If the evidence of a vulnerable person who is entitled or permitted to give evidence by means of closed-circuit television facilities or any other similar technology under this Division is given from a location outside a court, the court may order:
  - (a) that a court officer be present at that other location, and
  - (b) that any other person be present with the vulnerable person as an interpreter, for the purpose of assisting the vulnerable person with any difficulty in giving evidence associated with an impairment or a disability, or for the purpose of providing the vulnerable person with other support.
- (3) Any such order does not limit the entitlement that a vulnerable person has under section 306ZK to choose another person to be present with him or her when giving evidence.
- (4) Nothing in this section affects any entitlement a vulnerable person has under section 275B.

**306ZE Giving identification evidence when closed-circuit television is used**

- (1) Subject to subsection (4), if a vulnerable person is entitled to give evidence by means of closed-circuit television facilities or any other similar technology, that person may not give identification evidence by those means.
- (2) However, such a person is entitled to refuse to give identification evidence until after the completion of the person's other evidence (including examination in chief, cross-examination and re-examination).
- (3) In addition, the court must ensure that such a person is not in the presence of the accused for any longer than is necessary for the vulnerable person to give identification evidence.
- (4) Subsection (1) does not prevent the giving of identification evidence by means of closed-circuit television facilities or any other similar technology that relates to evidence that is not a fact in issue.

**Note.** *Identification evidence* is defined in the *Evidence Act 1995*.



**306ZF Proceedings may be moved to allow use of closed-circuit television facilities**

- (1) This section applies if a vulnerable person is entitled or permitted to give evidence by means of closed-circuit television facilities or any other similar technology under this Division.
- (2) If the court is not equipped with such facilities or technology, or it otherwise considers it appropriate to do so, the court may adjourn the proceeding or any part of the proceeding to a court or place that is equipped with such facilities or technology so that the vulnerable person's evidence may be given by such means.

**306ZG Use of closed-circuit television or similar technology**

Closed-circuit television facilities or similar technology used under this Division for the giving of evidence by a vulnerable person are to be operated in such a manner that the persons who have an interest in the proceeding are able to see the vulnerable person (and any person present with the vulnerable person) on the same or another television monitor.

**306ZH Vulnerable persons have a right to alternative arrangements for giving evidence when closed-circuit television facilities not available**

- (1) This section applies to any proceeding in which a vulnerable person is entitled or permitted to give evidence by means of closed-circuit television facilities or other similar technology (by virtue of section 306ZB or an order made under section 306ZC) but does not do so because:
  - (a) such facilities and such technology are not available (and the court does not move the proceeding under section 306ZF), or
  - (b) the vulnerable person chooses not to give evidence by those means, or
  - (c) the court orders that the vulnerable person may not give evidence by those means (or, in the case of a vulnerable person to whom section 306ZC applies, the court does not order that the vulnerable person may give evidence by those means).
- (2) In such a proceeding, the court must make alternative arrangements for the giving of evidence by the vulnerable person, in order to restrict contact (including visual contact) between the vulnerable person and any other person or persons.

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- (3) Those alternative arrangements may include any of the following:
    - (a) the use of screens,
    - (b) 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 vulnerable person's line of vision),
    - (c) the adjournment of the proceeding or any part of the proceeding to other premises.
  - (4) A vulnerable person may choose not to use any such alternative arrangements. In that case, the court must direct that the vulnerable person be permitted to give evidence orally in the courtroom.
  - (5) Any premises to which a proceeding is adjourned under this section are taken to be part of the court in which the proceeding is being heard.

**306ZI Warning to jury**

- (1) In any criminal proceeding in which the evidence of a vulnerable person is given by means of closed-circuit television facilities or any other similar technology (by virtue of section 306ZB), the judge must:
  - (a) inform the jury that it is standard procedure for the evidence of vulnerable persons in such cases to be given by those means, and
  - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities or that technology.
- (2) In any criminal proceeding in which the evidence of a vulnerable person is given by means of closed-circuit television facilities or any other similar technology (by virtue of section 306ZC), the judge must warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities or that technology.
- (3) In any criminal proceeding in which arrangements are made for a person to be with a vulnerable person giving evidence (by virtue of section 306ZD or 306ZK), the judge must:
  - (a) inform the jury that it is standard procedure in such cases for vulnerable persons to choose a person to be with them, and

- (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the presence of that person.
- (4) In any criminal proceeding in which alternative arrangements for the giving of evidence by a vulnerable person are made (by virtue of section 306ZH or 306ZL), the judge must:
  - (a) inform the jury that it is standard procedure in such cases for alternative arrangements to be used when vulnerable persons give evidence, and
  - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those alternative arrangements.

## **Division 5 Miscellaneous**

### **306ZJ Validity of proceedings not affected**

- (1) The failure of a vulnerable person to give evidence in accordance with a provision of this Part does not affect the validity of any proceeding or any decision made in connection with that proceeding.
- (2) The failure of an investigating official to record a representation of a child in accordance with any regulations made under section 306Q does not affect the validity of any proceeding in which evidence of the representation is given.

### **306ZK Vulnerable persons have a right to presence of a supportive person while giving evidence**

- (1) This section applies to:
  - (a) a criminal proceeding in any court, and
  - (b) a civil proceeding arising from the commission of a personal assault offence, and
  - (c) a proceeding in relation to a complaint for an apprehended violence order, and
  - (d) a proceeding before the Victims Compensation Tribunal in respect of the hearing of a matter arising from the commission of a personal assault offence that is the subject of an appeal or a reference to it, and
  - (e) a proceeding in relation to an application for a child protection prohibition order or to vary or revoke any such order.

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- (2) A vulnerable person who gives evidence in a proceeding to which this section applies is entitled to choose a person whom the vulnerable person would like to have present near him or her when giving evidence.
  - (3) Without limiting a vulnerable person's right to choose such a person, that person:
    - (a) may be a parent, guardian, relative, friend or support person of the vulnerable person, and
    - (b) may be with the vulnerable person as an interpreter, for the purpose of assisting the vulnerable person with any difficulty in giving evidence associated with an impairment or a disability, or for the purpose of providing the vulnerable person with other support.
  - (4) To the extent that the court or tribunal considers it reasonable to do so, the court or tribunal must make whatever direction is appropriate to give effect to a vulnerable person's decision to have such a person present near the vulnerable person, and within the vulnerable person's sight, when the vulnerable person is giving evidence.
  - (5) The court or tribunal may permit more than one support person to be present with the vulnerable person if the court or tribunal thinks that it is in the interests of justice to do so.
  - (6) This section extends to a vulnerable person who is the accused or the defendant in the relevant proceeding.

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

**306ZL Vulnerable persons have a right to alternative arrangements for giving evidence when accused is unrepresented**

- (1) This section applies to a criminal proceeding in any court, or a civil proceeding arising from the commission of a personal assault offence, in which the accused or defendant is not represented by a lawyer.
- (2) A vulnerable person who is a witness (other than the accused or the defendant) in a proceeding to which this section applies is to be examined in chief, cross-examined or re-examined by a person appointed by the court instead of by the accused or the defendant.

- (3) If any such person is appointed, that person is to ask the vulnerable person only the questions that the accused or the defendant requests the person to put to the vulnerable person.
- (4) A person appointed under this section, when acting in the course of his or her appointment, must not independently give the accused or the defendant legal or other advice.
- (5) The court may choose not to appoint such a person if the court considers that it is not in the interests of justice to do so.
- (6) This section applies whether or not closed-circuit television facilities or other similar technology is used to give evidence, and whether or not alternative arrangements under section 306ZH are used in the proceedings.
- (7) Anything done or omitted to be done by a person who:
  - (a) is appointed under this section, and
  - (b) is an Australian lawyer,when acting in the course of the appointment or otherwise in accordance with this section does not, if the thing was done or omitted to be done in good faith, subject the person personally to any action, liability, claim or demand.

**306ZM Court orders**

The court may make, vary or revoke an order under a provision of this Part either on its own motion or on application by a party to the proceeding or by the vulnerable person giving evidence.

**306ZN General discretion of court not affected**

Unless a contrary intention is shown, nothing in this Part limits any discretion that a court has with respect to the conduct of a proceeding.

**Note.** See, for example, Part 3.11 (Discretions to exclude evidence) of the *Evidence Act 1995*.

**306ZO Regulations**

Without limiting any regulations made under section 4, the regulations may make provision for or with respect to the use of closed-circuit television facilities or other similar technology for the giving of evidence by vulnerable persons in accordance with this Part.

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**306ZP Rules of court**

- (1) Rules of court may (subject to any regulations made under this Act) be made in respect of the giving of evidence under this Part.
- (2) In particular, rules of court may (subject to the regulations) also make provision for or with respect to the use of closed-circuit television facilities or other similar technology for the giving of evidence by vulnerable persons in accordance with this Part.

**[14] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Criminal Procedure Amendment (Vulnerable Persons) Act 2007*

**[15] Schedule 2**

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of  
Criminal Procedure Amendment  
(Vulnerable Persons) Act 2007**

**Definition**

In this Part:

*amending Act* means the *Criminal Procedure Amendment (Vulnerable Persons) Act 2007*.

**Amendments**

The amendments made to this Act by the amending Act do not extend to any proceedings commenced before the commencement of the amendments and any such proceedings are to be dealt with as if the amending Act had not been enacted.

**Effect of repeal of Evidence (Children) Act 1997**

Any proceedings to which the *Evidence (Children) Act 1997* applied that were pending immediately before the repeal of that Act by the amending Act are to continue to be dealt with as if that Act had not been repealed.

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## Schedule 2 Consequential amendment of other Acts

(Section 4)

### 2.1 Children (Criminal Proceedings) Act 1987 No 55

#### Section 11 Publication and broadcasting of names

Omit “Part 3 of the *Evidence (Children) Act 1997*” from section 11 (6).

Insert instead “Division 3 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*”.

### 2.2 Crimes Act 1900 No 40

#### [1] Section 562ZH Measures to protect children in AVO proceedings

Omit “Parts 3 and 4 of the *Evidence (Children) Act 1997*” from section 562ZH (5).

Insert instead “Divisions 3 and 4 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*”.

#### [2] Section 562ZH (6)

Omit “Part 3 of the *Evidence (Children) Act 1997*”.

Insert instead “Division 3 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*”.

#### [3] Section 562ZN Right to presence of supportive person

Omit “child to whom section 27 of the *Evidence (Children) Act 1997*” from section 562ZN (1).

Insert instead “person to whom section 306ZK of the *Criminal Procedure Act 1986*”.

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## **2.3 Evidence (Audio and Audio Visual Links) Act 1998 No 105**

### **Section 5 Application of Act**

Omit “Part 4 of the *Evidence (Children) Act 1997*” from the note to section 5 (1A).

Insert instead “Division 4 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*”.

[Agreement in principle speech made in Legislative Assembly on 9 May 2007  
Second reading speech made in Legislative Council on 5 June 2007]

BY AUTHORITY