



New South Wales

# Criminal Procedure Further Amendment (Evidence) Bill 2005

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Criminal Procedure Act 1986* as follows:

- (a) to impose a duty on a court hearing any criminal proceeding to disallow improper questions that are put to witnesses in cross-examination,
- (b) to prevent the circulation, and the unauthorised copying, of sensitive evidence,
- (c) to require any part of proceedings for a sexual offence in which evidence is given by the complainant to be held in camera,
- (d) to confer an entitlement on a complainant in such a case to have one or more persons present near the complainant when giving evidence,
- (e) to simplify and standardise the coverage of various provisions of the Act that relate to the protection of a complainant in sexual offence proceedings,
- (f) to make it clear that a complainant in a sexual offence proceeding is entitled to give evidence by use of arrangements to restrict contact between the complainant and the accused person, instead of by the use of closed-circuit television, whether or not closed-circuit television facilities are available in the proceedings.

The Bill also amends the *Children (Criminal Proceedings) Act 1987*, the *Crimes Act 1900*, the *Evidence Act 1995* and the *Evidence (Children) Act 1997* consequentially, provides for savings and transitional matters and makes minor amendments by way of statute law revision.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the other Acts specified in Schedule 2.

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

### **Improper questions**

At present, section 41 of the *Evidence Act 1995* gives a court power to disallow a question put to a witness in cross-examination, or to inform the witness that the question need not be answered, if the question is misleading or unduly annoying, harassing, intimidating, offensive, oppressive or repetitive.

The amendments set a new standard for the cross-examination of witnesses in criminal proceedings.

Under the amendments, a court will be required to disallow a question put to a witness in cross-examination, or to inform the witness that it need not be answered, if the 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.

The factors which may be taken into account by the court in determining whether a question should be disallowed are extended to include the ethnic and cultural background of the witness, the language background and skills of the witness and the level of maturity and understanding of the witness.

The parties to proceedings are entitled to object to a disallowable question. However, the duty imposed on the court by the new provision applies whether or not an

objection is raised to a particular question. A failure to exercise that duty will not affect the admissibility of any evidence given in response to a question.

Section 41 of the *Evidence Act 1995* will no longer apply to the cross-examination of witnesses in criminal proceedings but will continue to apply to civil proceedings.

Savings and transitional provisions make it clear that the new requirements extend to proceedings already instituted or partly heard.

See **Schedule 1 [4] and [26]** (proposed clause 42).

### **Sensitive evidence**

Under the amendments, a thing that contains or displays an image of a person (referred to as 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.

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.

The amendments prevent the unauthorised circulation or copying of sensitive evidence by:

- (a) allowing a prosecuting authority to refuse to provide an accused person with a copy of the sensitive evidence (but providing for an alternative means by which the accused person is to be given access to view, but not copy, the sensitive evidence), and
- (b) allowing the prosecuting authority to retain or regain possession of sensitive evidence, or copies of sensitive evidence, tendered in criminal proceedings, and
- (c) creating offences for the unauthorised or improper copying or circulation of sensitive evidence.

Savings and transitional provisions make it clear that the new requirements extend to criminal investigations already instituted and criminal proceedings already instituted or partly heard.

See **Schedule 1 [5] and [26]** (proposed clause 43).

### **Evidence of complainant in sexual offence proceedings to be given in camera**

At present, section 291 of the *Criminal Procedure Act 1986* gives a court hearing proceedings in respect of a sexual offence power to direct that the proceedings, or any part of the proceedings, be held in camera. The amendments replace the section.

The new provisions require any part of proceedings in respect of a prescribed sexual offence in which evidence is given by a complainant to be held in camera, unless the court otherwise directs. This 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. The court may direct the evidence to be given in open court only if a party to the proceedings requests it and 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.

The court will retain a discretion to direct that other parts of the proceedings, or the entire proceedings, be held in camera.

The amendments do not affect the existing requirement that proceedings for certain incest offences must be held entirely in camera (subject to the power of the court to exempt persons).

Savings and transitional provisions make it clear that the new requirements extend to proceedings already instituted or partly heard.

See **Schedule 1 [7] and [26]** (proposed clause 44).

### **Support person or persons for complainant in sexual offence proceedings**

The amendments confer on a complainant who gives evidence in sexual offence proceedings an entitlement to have one or more persons chosen by the complainant present near the complainant, and within the complainant's sight, when the complainant gives evidence in the proceedings.

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, and
- (b) even if the proceedings, or the part of the proceedings in which the complainant gives evidence, are held in camera.

The amendments limit the right of the accused person to object to the suitability of the person or persons chosen by the complainant to be with the complainant when giving evidence.

The entitlement conferred by the new provision extends to a complainant of any age, and to cases heard in the Children's Court. If the complainant is under the age of 16 years at the time of giving evidence, the entitlement applies instead of the entitlement that the complainant would have under the *Evidence (Children) Act 1997*.

Savings and transitional provisions make it clear that the entitlement extends to proceedings already instituted or partly heard.

See **Schedule 1 [18] and [26]** (proposed clause 45).

### **Simplification and standardisation of sexual offence provisions**

At present, various provisions of the *Criminal Procedure Act 1986* provide a complainant in proceedings for a sexual offence with special protections when it comes to giving evidence, being questioned by or on behalf of the accused person, and other matters. However, there is no standard definition of the types of offences to which those provisions apply. Each of the relevant provisions contains its own definition of the types of offences to which the provision applies. As a consequence, the provisions do not apply uniformly to all complainants in all sexual offence proceedings.

The amendments address this issue by providing for a new, comprehensive definition of **prescribed sexual offence**. The definition is intended to cover all offences of a sexual nature (including repealed offences) under the *Crimes Act 1900* and various related offences. The various provisions of the Act that provide special protection to a complainant in proceedings for a sexual offence, including the proposed new provision to allow a record of the original evidence of a complainant to be tendered as evidence in any retrial proceedings and existing provisions relating to compellability of child complainants and sexual assault communications privilege, are amended so that they all apply in respect of all proceedings for a prescribed sexual offence.

The principal amendments relating to this proposal are contained in **Schedule 1 [1], [2], [6], [8], [10], [12], [14], [20], [23] and [24]**. Consequential amendments are contained in **Schedule 1 [9], [11], [13], [16], [17], [21] and [22]**.

Savings and transitional provisions extend the amendments to proceedings already instituted or partly heard, but make it clear that the amendments do not affect the validity of anything already done in such proceedings. See **Schedule 1 [26]** (proposed clause 41).

### **Arrangements for giving evidence of complainant**

At present, the *Criminal Procedure Act 1986* allows a complainant in sexual offence proceedings to give 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. If such technology is unavailable, the

complainant may give evidence by use of alternative arrangements to restrict contact between the complainant and the accused person.

The amendments make it clear that the complainant is entitled to choose to give evidence by use of those alternative arrangements whether or not the technology is available for the giving of evidence by closed-circuit television.

See **Schedule 1 [15] and [26]** (proposed clause 45).

### **Other amendments**

The Bill allows savings and transitional regulations to be made as a consequence of the amendments, and provides for the other savings and transitional matters previously mentioned. See **Schedule 1 [25] and [26]**.

The Bill also makes 2 minor amendments by way of statute law revision. See **Schedule 1 [3] and [19]**.

## **Schedule 2 Amendment of other Acts**

The amendment to the *Children (Criminal Proceedings) Act 1987* in **Schedule 2.1** is consequential on the proposal to require evidence given by a complainant in sexual offence proceedings to be given in camera, and to allow the complainant to have one or more persons present near the complainant when giving evidence. The amendment makes it clear that the new provisions extend to proceedings to which a child is a party (generally heard by the Children's Court), and that the support person or persons chosen by the complainant cannot be directed to leave under provisions in the *Children (Criminal Proceedings) Act 1987* that allow the court to direct persons to leave the court.

The amendment to the *Crimes Act 1900* in **Schedule 2.2** is consequential on the proposal to standardise and simplify the provisions of the *Criminal Procedure Act 1986* relating to sexual offences.

The amendment to the *Evidence Act 1995* in **Schedule 2.3** is consequential on the proposal to require the court in criminal proceedings to disallow improper questions put in cross-examination of a witness.

The amendment to the *Evidence (Children) Act 1997* in **Schedule 2.4** is consequential on the proposal to confer an entitlement on complainants to have one or more persons present near the complainant when giving evidence. If the complainant is a child, the provisions of the *Criminal Procedure Act 1986* apply instead of the provisions relating to support persons that might otherwise apply under the *Evidence (Children) Act 1997*.



New South Wales

# Criminal Procedure Further Amendment (Evidence) Bill 2005

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New South Wales

# **Criminal Procedure Further Amendment (Evidence) Bill 2005**

No. , 2005

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## **A Bill for**

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Criminal Procedure Further Amendment (Evidence) Act 2005</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6
<b>3 Amendment of Criminal Procedure Act 1986 No 209</b>	7
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 1.	8
<b>4 Amendment of other Acts</b>	9
The Acts specified in Schedule 2 are amended as set out in that Schedule.	10 11

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## 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 <i>Crimes Act 1900</i> , the person who is alleged to have been the subject of sexual servitude, and	1 2 3
(b)	in relation to an offence under section 91D, 91E or 91F of the <i>Crimes Act 1900</i> , the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and	4 5 6 7
(c)	in relation to an offence under section 91G of the <i>Crimes Act 1900</i> , the person under the age of 18 years who is alleged to have been used for pornographic purposes.	8 9 10
<b>[3]</b>	<b>Section 274 Application</b>	11
	Omit “Part”. Insert instead “Chapter”.	12
<b>[4]</b>	<b>Section 275A</b>	13
	Insert before section 276:	14
<b>275A</b>	<b>Improper questions</b>	15
(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 <i>disallowable question</i> ):	16 17 18 19
(a)	is misleading or confusing, or	20
(b)	is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive, or	21 22
(c)	is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate, or	23 24
(d)	has no basis other than a sexist, racial, cultural or ethnic stereotype.	25 26
(2)	Without limiting the matters that the court may take into account for the purposes of subsection (1), it is to take into account:	27 28
(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	29 30 31 32
(b)	any mental, intellectual or physical disability to which the witness is or appears to be subject.	33 34

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| (3) | A question is not a disallowable question merely because:  | 1                    |
| (a) | the question challenges the truthfulness of the witness or the consistency or accuracy of any statements made by the witness, or   | 2<br>3<br>4          |
| (b) | the question requires the witness to discuss a subject that could be considered to be distasteful or private.  | 5<br>6               |
| (4) | A party to criminal proceedings may object to a question put to a witness on the ground that it is a disallowable question.  | 7<br>8               |
| (5) | However, the duty imposed on the court by this section applies whether or not an objection is raised to a particular question.   | 9<br>10              |
| (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. | 11<br>12<br>13<br>14 |
| (7) | Section 41 of the <i>Evidence Act 1995</i> does not apply to criminal proceedings to which this section applies.   | 15<br>16             |
| (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.  | 17<br>18<br>19       |
|     | Maximum penalty: 60 penalty units.   | 20                   |
| (9) | In this section:   | 21                   |
|     | <b><i>criminal proceedings</i></b> means proceedings against a person for an offence (whether summary or indictable), and includes the following:  | 22<br>23<br>24       |
| (a) | committal proceedings,   | 25                   |
| (b) | proceedings relating to bail,  | 26                   |
| (c) | proceedings relating to sentencing,  | 27                   |
| (d) | proceedings on an appeal against conviction or sentence.   | 28                   |

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<b>[5] Chapter 6, Part 2A</b>	1
Insert after Part 2 of Chapter 6:	2
 <b>Part 2A Sensitive evidence</b>	 3
<b>281A Definitions</b>	4
(1) In this Part:	5
<i>accused person</i> means a person who stands, or any of the persons who stand, charged with an offence (whether summary or indictable), and includes the following:	6 7 8
(a) in relation to proceedings for a summary offence, a defendant,	9 10
(b) in relation to sentencing proceedings, a person who has been committed for sentence to the District Court or Supreme Court,	11 12 13
(c) in relation to proceedings on an appeal against a conviction or sentence, the person convicted or sentenced.	14 15
<i>criminal investigation</i> means the investigation of an offence or alleged offence.	16 17
<i>criminal proceedings</i> means proceedings against a person for an offence (whether summary or indictable), and includes the following:	18 19 20
(a) committal proceedings,	21
(b) proceedings relating to bail,	22
(c) proceedings relating to sentencing,	23
(d) proceedings on an appeal against conviction or sentence.	24
<i>prosecuting authority</i> means:	25
(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	26 27 28 29 30
(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.	31 32 33
<i>sensitive evidence</i> has the meaning given by section 281B.	34
(2) In this Part, a reference to an <i>accused person</i> or a <i>prosecuting authority</i> includes a reference to a legal practitioner representing the accused person or the prosecuting authority.	35 36 37

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<b>281B Sensitive evidence—meaning</b>	1
(1) For the purposes of this Part, anything that contains or displays an image of a person (the <i>protected person</i> ) is <i>sensitive evidence</i> if:	2
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(a) the image is obscene or indecent, or	5
(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	6
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(c) the image was taken after the death of the protected person.	9
(2) Without limiting subsection (1), the following are examples of sensitive evidence:	10
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(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,	12
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	14
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(b) a video, held or seized by a prosecuting authority, showing a person committing a sexual offence,	16
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(c) a computer hard drive, held or seized by a prosecuting authority, containing images of child pornography,	18
	19
(d) a photograph of a deceased person taken in connection with a post mortem examination,	20
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(e) a photograph of a deceased person taken at a crime scene.	22
(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.	23
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<b>281C Accused person not entitled to copy of sensitive evidence</b>	27
(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.	28
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(2) This section applies despite anything to the contrary in this or any other Act, or any other law.	34
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<b>281D</b>	<b>Procedures for giving access to sensitive evidence to accused person</b>	1 2
(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 <b><i>sensitive evidence notice</i></b> ) that complies with this section.	3 4 5 6 7 8 9
(2)	The sensitive evidence notice must:	10
(a)	describe the thing that the prosecuting authority considers to be sensitive evidence, and	11 12
(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	13 14 15 16
(c)	indicate that the accused person will not be given a copy of the thing, and	17 18
(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	19 20 21 22
(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.	23 24 25
(3)	After receiving a sensitive evidence notice, the accused person may give the prosecuting authority a written notice (an <b><i>access request notice</i></b> ) that indicates that the accused person requires access to the thing.	26 27 28 29
(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.	30 31 32 33 34 35
(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.	36 37 38 39 40



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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.   | 1<br>2<br>3<br>4                             |
| (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:  | 5<br>6<br>7                                  |
| (a)         | copy, or permit a person to copy, the thing, or  | 8  |
| (b)         | give the thing to another person, or   | 9  |
| (c)         | remove the thing from the custody of the prosecuting authority.  | 10<br>11                                     |
|             | Maximum penalty: 100 penalty units, or 2 years imprisonment, or both.  | 12<br>13                                     |
| (8)         | The Attorney General may approve the form of any notice to be used for the purposes of this section.   | 14<br>15                                     |
| <b>281E</b> | <b>Prosecuting authority entitled to retain possession of sensitive evidence</b>   | 16<br>17                                     |
| (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.   | 18<br>19<br>20<br>21<br>22<br>23<br>24       |
| (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. | 25<br>26<br>27<br>28<br>29<br>30<br>31<br>32 |
| <b>281F</b> | <b>Improper copying or circulation of sensitive evidence</b>   | 33   |
| (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:  | 34<br>35<br>36<br>37                         |
| (a)         | for the legitimate purposes of a criminal investigation or criminal proceedings, or  | 38<br>39                                     |

(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).	1 2 3
	Maximum penalty: 100 penalty units, or 2 years imprisonment, or both.	4 5
(2)	For the purposes of this section, any sensitive evidence in the possession of a person is <i>prosecution evidence</i> if:	6 7
(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	8 9 10
(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.	11 12 13 14 15
(3)	In this section:	16
	<i>public official</i> has the same meaning as in the <i>Independent Commission Against Corruption Act 1988</i> .	17 18
<b>[6]</b>	<b>Sections 290 and 290A</b>	19
	Omit section 290. Insert instead:	20
<b>290</b>	<b>Application</b>	21
(1)	This Division applies to proceedings in respect of a prescribed sexual offence, including committal proceedings.	22 23
(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.	24 25 26 27 28 29
<b>290A</b>	<b>Definitions</b>	30
	In this Division:	31
	<i>accused person</i> , 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.	32 33 34
	<i>complainant</i> , 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:	35 36 37 38

(a)	in relation to an offence under section 80E of the <i>Crimes Act 1900</i> , the person who is alleged to have been the subject of sexual servitude, and	1 2 3
(b)	in relation to an offence under section 91D, 91E or 91F of the <i>Crimes Act 1900</i> , the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and	4 5 6 7
(c)	in relation to an offence under section 91G of the <i>Crimes Act 1900</i> , the person under the age of 18 years who is alleged to have been used for pornographic purposes.	8 9 10
<b>[7]</b>	<b>Sections 291–291B</b>	11
	Omit section 291. Insert instead:	12
<b>291</b>	<b>Proceedings must be held in camera when complainant gives evidence</b>	13 14
(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.	15 16 17
(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 <i>Evidence (Children) Act 1997</i> .	18 19 20 21
(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:	22 23 24 25
(a)	special reasons in the interests of justice require the part of the proceedings to be held in open court, or	26 27
(b)	the complainant consents to giving his or her evidence in open court.	28 29
(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.	30 31 32 33 34
(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 <i>Evidence (Children) Act 1997</i> .	35 36 37 38 39

- (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. 1  
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- (7) This section does not affect the entitlement of a complainant to have a person or persons present when giving evidence under section 294C. 6  
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- 291A Other parts of proceedings may be heard in camera** 9
- (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. 10  
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- (2) The court may make a direction under this section on its own motion or at the request of any party to the proceedings. 13  
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- (3) In determining whether to make a direction under this section, the court is to consider the following matters: 15  
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- (a) the need of the complainant to have any person excluded from those proceedings, 17  
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  - (b) the need of the complainant to have any person present in those proceedings, 19  
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  - (c) the interests of justice, 21
  - (d) any other matter that the court thinks relevant. 22
- (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. 23  
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- (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. 27  
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- (6) This section does not affect: 32
- (a) the entitlement of a complainant to have a person or persons present when giving evidence under section 294C, or 33  
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  - (b) the entitlement of a child to have a person present when giving evidence under section 27 of the *Evidence (Children) Act 1997*. 36  
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<b>291B</b>	<b>Incest offence proceedings to be held entirely in camera</b>	1
(1)	Any proceedings in respect of an offence under section 78A or 78B of the <i>Crimes Act 1900</i> are to be held entirely in camera, despite any other provision of this Division.	2 3 4
(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.	5 6 7 8 9
(3)	This section does not affect:	10
(a)	the entitlement of a complainant to have a person or persons present when giving evidence under section 294C, or	11 12 13
(b)	the entitlement of a child to have a person present when giving evidence under section 27 of the <i>Evidence (Children) Act 1997</i> .	14 15 16
<b>[8]</b>	<b>Section 292 Publication of evidence may be forbidden in certain cases</b>	17
	Omit “against a person for an offence to which this Division applies” from section 292 (1).	18 19
	Insert instead “against a person for a prescribed sexual offence”.	20
<b>[9]</b>	<b>Section 292 (2)</b>	21
	Insert “(or his or her counsel, if any)” after “accused person”.	22
<b>[10]</b>	<b>Section 293 Admissibility of evidence relating to sexual experience</b>	23
	Omit section 293 (1). Insert instead:	24
(1)	This section applies to proceedings in respect of a prescribed sexual offence.	25 26
<b>[11]</b>	<b>Section 293 (9)</b>	27
	Omit the subsection.	28
<b>[12]</b>	<b>Section 294A Arrangements for complainant in prescribed sexual offence proceedings giving evidence when accused person is unrepresented</b>	29 30 31
	Omit “sexual offence proceedings” from section 294A (1).	32
	Insert instead “proceedings in respect of a prescribed sexual offence”.	33

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<b>[13] Section 294A (9)</b>	1
Omit the subsection.	2
<b>[14] Section 294B Giving of evidence by complainant in prescribed sexual offence proceedings—alternative arrangements</b>	3
Omit section 294B (1). Insert instead:	4
(1) This section applies to evidence given in proceedings (including a new trial) in respect of a prescribed sexual offence.	5
<b>[15] Section 294B (3)</b>	6
Omit the subsection. Insert instead:	7
(3) A complainant who gives evidence to which this section applies is entitled (but may choose not):	8
(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	9
(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:	10
(i) use of screens,	11
(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).	12
<b>[16] Section 294B (7) (b)</b>	13
Insert “person” after “accused”.	14
<b>[17] Section 294B (11)</b>	15
Omit the subsection.	16
<b>[18] Section 294C</b>	17
Insert after section 294B:	18
<b>294C Complainant entitled to have support person or persons present when giving evidence</b>	19
(1) A complainant is entitled to have a person or persons chosen by the complainant present near the complainant, and within the	20

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complainant's sight, when the complainant is giving evidence in proceedings in respect of a prescribed sexual offence.	1 2
(2) The entitlement applies:	3
(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 <i>Evidence (Children) Act 1997</i> , and	4 5 6 7 8
(b) even if the proceedings, or the part of the proceedings in which the complainant gives evidence, are held in camera.	9 10
(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.	11 12 13 14 15 16
(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).	17 18 19 20 21 22 23 24
(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.	25 26 27 28 29 30
(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 <i>Evidence (Children) Act 1997</i> does not apply.	31 32 33 34 35
<b>Note.</b> This section applies to proceedings before the Children's Court because of section 27 of the <i>Children (Criminal Proceedings) Act 1987</i> .	36 37
<b>[19] Section 295 Interpretation</b>	38
Omit "In this Part" from section 295 (1). Insert instead "In this Division".	39

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<b>[20]</b>	<b>Section 295 (1), definition of “sexual assault offence”</b>	1
	Omit paragraph (a). Insert instead:	2
	(a) a prescribed sexual offence, or	3
<b>[21]</b>	<b>Section 306A Definitions (as inserted by the Criminal Procedure Amendment (Evidence) Act 2005)</b>	4
	Insert “prescribed” before “sexual offence” in the definition of <i>accused person</i> .	5
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<b>[22]</b>	<b>Section 306A, definition of “complainant” (as inserted by the Criminal Procedure Amendment (Evidence) Act 2005)</b>	8
	Omit the definition. Insert instead:	9
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	<i>complainant</i> , 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:	11
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	(a) in relation to an offence under section 80E of the <i>Crimes Act 1900</i> , the person who is alleged to have been the subject of sexual servitude, and	15
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	(b) in relation to an offence under section 91D, 91E or 91F of the <i>Crimes Act 1900</i> , the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and	18
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	(c) in relation to an offence under section 91G of the <i>Crimes Act 1900</i> , the person under the age of 18 years who is alleged to have been used for pornographic purposes.	22
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<b>[23]</b>	<b>Section 306A, definition of “sexual offence” (as inserted by the Criminal Procedure Amendment (Evidence) Act 2005)</b>	25
	Omit the definition.	26
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<b>[24]</b>	<b>Section 306B Admission of evidence of complainant in new trial proceedings (as inserted by the Criminal Procedure Amendment (Evidence) Act 2005)</b>	28
	Insert “prescribed” before “sexual offence” wherever occurring in section 306B (1) and (8).	29
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<b>[25]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	33
	Insert at the end of clause 1 (1):	34
	<i>Criminal Procedure Further Amendment (Evidence) Act 2005</i>	35



[26] Schedule 2, Part 8	1
Insert after Part 7:	2
<b>Part 8 Provisions consequent on enactment of Criminal Procedure Further Amendment (Evidence) Act 2005</b>	3 4 5
<b>40 Definition</b>	6
In this Part:	7
<i>amending Act</i> means the <i>Criminal Procedure Further Amendment (Evidence) Act 2005</i> .	8 9
<b>41 Extension of definition of “prescribed sexual offence”</b>	10
(1) The amendments made by the amending Act to the definitions of <i>prescribed sexual offence</i> in section 3 (1), <i>child sexual assault offence</i> in section 91 and <i>sexual assault offence</i> 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.	11 12 13 14 15 16 17
<b>Note.</b> Division 1B of Part 3.10 of Chapter 3 of the <i>Evidence Act 1995</i> applies the definition of <i>sexual assault offence</i> in section 295 to certain civil proceedings.	18 19 20
(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.	21 22 23 24
(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.	25 26 27 28 29 30 31 32 33 34
(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.	35 36 37 38

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<b>42</b>	<b>Improper questions</b>	1
(1)	Section 275A, as inserted by the amending Act, extends to proceedings instituted or partly heard before the commencement of that section.	2 3 4
(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.	5 6 7 8
<b>43</b>	<b>Sensitive evidence</b>	9
	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.	10 11 12
<b>44</b>	<b>Evidence of complainant to be given in camera</b>	13
(1)	New section 291, and sections 291A and 291B as inserted by the amending Act, extend to proceedings instituted or partly heard before the commencement of new section 291, subject to this clause.	14 15 16 17
(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.	18 19 20 21
(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.	22 23 24 25 26 27
(4)	In this clause: <i>former section 291</i> means section 291, as in force before its replacement by the amending Act. <i>new section 291</i> means section 291, as inserted by the amending Act.	28 29 30 31 32
<b>45</b>	<b>Other amendments relating to giving of evidence by complainant</b>	33
	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.	34 35 36 37

<b>Schedule 2</b>	<b>Amendment of other Acts</b>	1
	(Section 4)	2
<b>2.1</b>	<b>Children (Criminal Proceedings) Act 1987 No 55</b>	3
	<b>Section 10 Exclusion of general public from criminal proceedings</b>	4
	Insert after section 10 (3):	5
	(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 <i>Criminal Procedure Act 1986</i> ):	6
	(a) sections 291, 291A, 291B and 294C of that Act apply in respect of the proceedings, and	7
	(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	8
	(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).	9
	<b>Note.</b> Sections 291, 291A and 291B of the <i>Criminal Procedure Act 1986</i> 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.	10
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<b>2.2</b>	<b>Crimes Act 1900 No 40</b>	29
	<b>Section 578A Prohibition of publication identifying victims of certain sexual offences</b>	30
	Omit the definition of <i>complainant</i> from section 578A (1). Insert instead:	31
	<i>complainant</i> has the same meaning as in Division 1 of Part 5 of Chapter 6 of the <i>Criminal Procedure Act 1986</i> .	32
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<b>2.3 Evidence Act 1995 No 25</b>	1
<b>Section 41 Improper questions</b>	2
Insert at the end of the section:	3
<b>Note.</b> This section does not apply to criminal proceedings to which section 275A of the <i>Criminal Procedure Act 1986</i> applies.	4 5
<b>2.4 Evidence (Children) Act 1997 No 143</b>	6
<b>Section 27 Children have a right to presence of a supportive person while giving evidence</b>	7 8
Insert at the end of the section:	9
<b>Note.</b> 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 <i>Criminal Procedure Act 1986</i> sets out the entitlements of the child to have one or more support persons present when giving evidence.	10 11 12 13 14