



New South Wales

Criminal Procedure Amendment (Sexual Offence Evidence) Bill 2004

Explanatory note

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

Overview of Bill

The common law generally requires a witness to be physically present in the courtroom, and in the presence of the accused, when giving evidence in relation to an offence.

The object of this Bill is to amend the *Criminal Procedure Act 1986* to make specific provision, similar to that available to children under Part 4 of the *Evidence (Children) Act 1997*, for alternate arrangements for the giving of evidence by closed-circuit television and use of screens and other means to be available to complainants giving evidence in sexual offence proceedings.

The Bill gives effect to Recommendation 10 of NSW Law Reform Commission in its report entitled *Questioning of complainants by unrepresented accused in sexual offence trials* (Report 101) that such alternate arrangements be available to complainants, whether or not the accused is represented.

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 the date of assent to the Act.

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

Clause 4 is a formal provision that gives effect to the amendment to the *Evidence (Children) Act 1997* set out in Schedule 2.

Schedule 1 Amendment of Criminal Procedure Act 1986

Schedule 1 inserts a new section 294B into Part 5 (Evidence in sexual offence proceedings) of Chapter 6 of the *Criminal Procedure Act 1986* to give effect to the object of the Bill.

The proposed section creates a presumption that a complainant who gives evidence in proceedings for a sexual offence (as defined in the proposed section) is entitled to give evidence from a place outside the courtroom by means of closed-circuit television facilities or other technology that enables communication between that place and the courtroom or, if such technology is unavailable, by other alternative arrangements such as use of screens and seating arrangements to restrict contact (including visual contact) between the complainant and the accused and any other person or persons who might, for example, intimidate the complainant in giving his or her evidence. It also creates a presumption that a complainant is entitled to have a person chosen by the complainant present near the complainant while he or she is giving evidence for the purpose of providing emotional support to the complainant. A complainant may choose not to give evidence in these ways and a court may, on its own initiative or on application, order that closed-circuit television facilities or other technology not be used. The court's discretion to make such an order is limited to cases where it is satisfied that there are special reasons, in the interests of justice, why such arrangements should not be used. This limitation is similar to the limitation imposed by section 93 of the *Criminal Procedure Act 1986* on the ability of a Magistrate to direct a victim of an offence involving violence to give oral evidence in committal proceedings.

In any proceedings in which evidence is given by means of closed-circuit television facilities or other technology or by use of such alternative arrangements, the judge must inform the jury that it is standard procedure for complainants' evidence in such cases to be given by those means or use of those

arrangements and warn the jury not to draw any inference adverse to the accused or give the evidence any greater or lesser weight because of the evidence being given in that way.

The proposed section will extend to evidence given in proceedings instituted before the commencement of the section, including a new trial that was ordered to take place before that commencement and proceedings that have been partly heard.

Part 4 of the *Evidence (Children) Act 1997* will continue to apply to evidence of any children who are currently entitled under that Part to give evidence by way of closed-circuit television or similar arrangements or by use of alternative arrangements such as screens.

Schedule 2 Consequential amendment of Evidence (Children) Act 1997

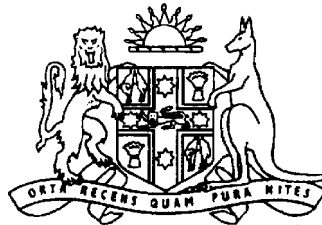
Schedule 2 makes an amendment to section 18 (Children have a right to give evidence by closed-circuit television) of the *Evidence (Children) Act 1997* that is consequential on proposed section 294B (6) to be inserted in the *Criminal Procedure Act 1986* by Schedule 1.

The amendment to section 18 ensures that the limitation of a court's discretion to make an order preventing use of closed-circuit television facilities or similar technology by a child in giving evidence is consistent with the limitation under proposed section 294B (6) of the discretion to make similar orders in cases where it is satisfied that there are special reasons, in the interests of justice, why such arrangements should not be used.

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No. , 2004

A Bill for

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

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

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

2 Commencement

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

3 Amendment of Criminal Procedure Act 1986 No 209

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

4 Amendment of Evidence (Children) Act 1997 No 143

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

Schedule 1 Amendment of Criminal Procedure Act 1986

(Section 3)

Section 294B

Insert after section 294A:

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

- (1) This section applies to evidence given in proceedings (including a new trial) in which a person stands charged with a sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.
- (2) This section does not apply to or in respect of the giving of evidence by a child if Part 4 of the *Evidence (Children) Act 1997* applies to the giving of that evidence.
- (3) A complainant who gives evidence to which this section applies is entitled (but may choose not):
- (a) to give that evidence from a place other than the courtroom by means of closed-circuit television facilities or other technology that enables communication between that place and the courtroom, or
 - (b) if such technology is unavailable and the court does not adjourn the proceeding under subsection (4)—to give that evidence by use of alternative arrangements made to restrict contact (including visual contact) between the complainant and the accused or any other person or persons in the courtroom, including the following:
 - (i) use of screens,
 - (ii) planned seating arrangements for people who have an interest in the proceeding (including the level at which they are seated and the people in the complainant's line of vision),

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

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- giving evidence for the purpose of providing emotional support to the complainant. 1
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- (4) If, to enable evidence to be given as referred to in subsection (3), the court considers it appropriate to do so, the court may adjourn the proceeding or any part of the proceeding from the courtroom to another court or place. 3
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- (5) Despite subsection (3) (a), a complainant must not give evidence as referred to in that paragraph if a court, on its own initiative or on application by a party to the proceeding, orders that such means not be used. 7
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- (6) A court may make an order under subsection (5) only if it is satisfied that there are special reasons, in the interests of justice, for the complainant's evidence not to be given by such means. 11
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- (7) In any proceedings in which evidence is given as referred to in subsection (3), the judge must: 15
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- (a) inform the jury that it is standard procedure for complainants' evidence in such cases to be given by those means or use of those arrangements, and 17
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- (b) warn the jury not to draw any inference adverse to the accused or give the evidence any greater or lesser weight because it is given by those means or by use of those arrangements. 20
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- (8) Any place outside the courtroom from which a complainant gives evidence under this section is taken to be part of the courtroom in which the proceeding is being held. 24
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- (9) If a complainant gives evidence as referred to in subsection (3) in a place other than a courtroom, the court may order that a court officer be present at that place. 27
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- (10) This section extends to evidence given in proceedings instituted before the commencement of this section, including a new trial that was ordered to take place before that commencement and proceedings that have been partly heard. 30
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- (11) In this section: 34
- accused*, in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in those proceedings with a sexual offence. 35
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complainant, in relation to any proceedings, means the person, or any of the persons, on whom a sexual offence with which the accused stands charged in those proceedings is alleged to have been committed.

sexual offence means:

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

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**Schedule 2 Consequential amendment of Evidence
(Children) Act 1997**

(Section 4)

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

Omit section 18 (4). Insert instead:

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