

[Act 1996 No 68]



New South Wales

Crimes Amendment (Children's Evidence) Bill 1996

Explanatory note

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

Overview of Bill

The object of this Bill is to reform the law relating to children's evidence in criminal and other proceedings.

The proposed amendments will make it possible for all children who give evidence as witnesses in certain proceedings to be accompanied by a parent, relative, friend or other supportive person.

In addition, children giving evidence in criminal or civil proceedings arising from a personal assault offence, or in proceedings involving the making of an apprehended violence order, will be entitled to give that evidence by means of closed-circuit television facilities or similar technology.

A child who gives evidence in his or her own defence in proceedings in the Children's Court will have a limited right to give that evidence by means of closed-circuit television facilities, in cases where the court thinks it appropriate.

* Amended in committee—see table at end of volume.

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 proclaimed.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Schedule 1 Amendments

Evidence of child witnesses

At present, section 405D of the *Crimes Act 1900* provides that a court may, on the application of the prosecution, make an order permitting a child victim of certain sexual offences to give evidence by means of closed-circuit television facilities. The court may make such an order if the court is satisfied that it is likely that the child would suffer mental or emotional harm if required to give evidence in the ordinary way, or if it is likely that the facts would be better ascertained if the child's evidence were given by means of closed-circuit television facilities.

That section is proposed to be repealed and re-enacted. The new section applies to criminal and civil proceedings arising from or involving a personal assault offence and to proceedings in relation to a complaint for an apprehended violence order. In such cases, the new section creates a presumption that the evidence of any child witness will be given by means of closed-circuit television facilities or similar technology, regardless of whether or not the child is the victim. (See Schedule 1 [2])

Proposed section 405D provides that such facilities will not be used if the child witness does not wish to use them, or if the court is satisfied that it is not in the interests of justice for them to be used. In addition, such facilities will not be used for the giving of identification evidence, since the child needs to be able to see (or hear) the person whom the child is identifying. Special provision is made to minimise as much as possible the contact between the child and that person, and to minimise the effect of that contact on the child's evidence. (See proposed section 405DC)

Evidence of accused children

At present, no special provision is made in the *Crimes Act 1900* for the giving of evidence by accused children. Proposed section 405D (discussed above) applies to all children giving evidence, even those who are the accused in criminal proceedings, or against whom an apprehended violence order is being sought. However, the section does not apply to accused children if the proceedings are being heard in the Children's Court.

Proposed section 405DA makes provision for such children giving evidence in the Children's Court. The Children's Court is given the power to order the use of closed-circuit television facilities or other similar technology for the purposes of a child's evidence, but such an order can only be made if the court is satisfied that the child would suffer mental or emotional harm if evidence were given by ordinary means, or that the facts would be better ascertained if evidence were given by means of closed-circuit television facilities or other similar technology. (See Schedule 1 [2])

Support of children giving evidence

At present, in the narrow class of cases where the giving of evidence by means of closed-circuit television facilities is permitted, the court is also empowered to order that any person may be present with the child as a support or as an interpreter.

Proposed section 405CA creates an absolute right for all children who give evidence in specified proceedings to have a person of their choice with them. That person may be there to give support, assistance with a language problem or assistance with any difficulty associated with a disability. (See Schedule 1 [1])

Alternative arrangements

At present, section 405F creates a discretion for the court to order alternative arrangements for the giving of a child victim's evidence, in order to restrict contact (including visual contact) between the child and the defendant. Those arrangements may involve special seating arrangements or the use of screens.

That section is proposed to be repealed and re-enacted. The new section creates a presumption in favour of the use of alternative arrangements for the giving of evidence of child witnesses, where closed circuit television, or similar technology, is not available or is not used. (See Schedule 1 [5])

Special provision is made for proceedings in which the accused is not represented by a legal practitioner. The court may make alternative arrangements to avoid the child having to be questioned directly by the accused, or having to hear the accused's voice. (See proposed section 405FA)

Warnings to juries

At present, in proceedings in which evidence is given by closed-circuit television facilities, or by means of any "alternative arrangements", the court is required to 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 arrangements. (See existing section 405H)

The proposed amendments made to section 405D will mean that the use of closed-circuit television facilities will be standard procedure. The warning required to be given to juries in such cases is amended accordingly. (See Schedule 1 [6])

Similar warnings are also required in proceedings in which a person is present with the child when giving evidence, or where alternative arrangements are used. (See proposed section 405H (2) and (3))

Other amendments

Schedule 1 [3], [4] and [7] make amendments consequential on the proposed changes.

Schedule 1 [8] inserts a transitional provision, so as to provide that the new rules about children's evidence do not have effect in relation to proceedings that commenced before the relevant amendments were commenced.