



Tabled, by leave,
Mr Moshley
for Steffell
Clerk of the Parliaments
10 / 10 / 23

CRIMINAL PROCEDURE AMENDMENT (CHILD SEXUAL OFFENCE EVIDENCE) BILL 2023

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Criminal Procedure Amendment (Child Sexual Offence Evidence) Bill 2023 will expand the availability of pre-recorded evidence hearings and witness intermediaries to child complainants and prosecution witnesses in sexual offence matters heard at any District Court location.

These special measures are currently available to eligible complainants and prosecution witnesses under the Child Sexual Offence Evidence Program (**Program**) in some locations. The Program aims to reduce the stress and trauma experienced by children and young people who are complainants and prosecution witnesses in sexual offence cases.

The Program originally began in 2016 as a pilot in the Sydney Downing Centre and Newcastle District Courts. Witness intermediaries were also made available in the corresponding Police Child Abuse Units, to assist with the child's communication needs at police interview.

A 2018 evaluation found strong and widespread support for the special measures in the program, which were seen to help reduce the stress of the investigation and prosecution process for child witnesses and help children to give better quality evidence. The 2018 evaluation also found very strong support for expanding the program across NSW.

On 1 April 2019, the Child Sexual Offence Evidence Program transitioned to an established program at the existing District Court and Police Child Abuse Unit locations. The Program is now being expanded to every District Court location and Police District in NSW.

Witness intermediaries became available in all Police Districts from 1 July 2023. This statewide expansion occurred without needing legislative amendment, as the use of witness intermediaries at the police investigative stage is not governed by legislation.

The Bill will amend the *Criminal Procedure Act 1986* (Criminal Procedure Act) to expand the availability of these special measures to all District Courts in NSW, including by:

- Relocating the relevant provisions from Schedule 2 of the Criminal Procedure Act to proposed Chapter 6, Part 5, Division 1A of the Act. This is to permanently embed the special measures of the Program.
- Ensuring all participants in pre-recorded evidence hearings can participate via audio-visual link. This will facilitate the expansion of pre-recorded evidence hearings to all NSW courts and enable these hearings to occur in a timely way.
- Expressly allowing the judicial officer who presides over the pre-recorded evidence hearing, and the judicial officer who presides over the remainder of the trial, to be different. This is to provide greater flexibility and enable pre-recorded evidence hearings to occur as early as possible.

The Bill makes other enhancements to the provisions, which include:

- An automatic entitlement for child complainants and prosecution witnesses who are under 18 (or who were under 18 at the time the accused was committed for trial or sentence) to give evidence via a pre-recorded evidence hearing.
- Using the term 'witness intermediary' in favour of 'children's champion', to better reflect the role of a witness intermediary as an impartial officer of the court.
- Clarifying the role of witness intermediaries, to better reflect current practice.
- Enabling the court to appoint a person as a witness intermediary, even if they have assisted the witness in a professional capacity, if this is in the interests of justice. This is to provide flexibility to the court to accommodate the particular needs of the case.

Objectives: What is the policy's objective couched in terms of the public interest?

It is in the public interest to:

- reduce the stress and trauma for all child complainants and prosecution witnesses in sexual offence matters across NSW, through the use of pre-recorded evidence hearings and witness intermediaries, and
- assist these witnesses to give their best and most reliable evidence, which is vital for investigations and prosecutions of child sexual offending.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Legislative amendment is necessary to expand the availability of pre-recorded evidence hearings and witness intermediaries to all District Court locations in NSW.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Pre-recorded evidence hearings and witness intermediaries should be available for all child complainants and prosecution witnesses in sexual offence matters, no matter which court the case is heard in. These special measures have been shown to be effective and there is strong support for expanding them statewide.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill will commence by proclamation on a designated date to enable implementation by agencies in advance of the statewide expansion. It is the NSW Government's intention for the Bill to commence as quickly as possible.

The Department of Communities and Justice will be responsible for the general oversight of the implementation of the reforms and monitoring their impacts.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The District Court of NSW, the NSW Police Force, the Office of the Director of Public Prosecutions, Legal Aid NSW, the Public Defenders, the Law Society of NSW, the NSW Bar Association and the Aboriginal Legal Service (NSW/ACT) were consulted.