



New South Wales

# Criminal Procedure Amendment (Child Sexual Offence Evidence) Bill 2023

## 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*—

- (a) to allow a child who is a complainant or prosecution witness in proceedings for a prescribed sexual offence in the District Court, wherever sitting, to give evidence in a pre-recorded evidence hearing in the absence of the jury, if any, and
- (b) to provide for the appointment by the District Court, wherever sitting, of a witness intermediary whose role is to facilitate the communication of, and with, a witness if the witness is less than 16 years of age, or is 16 or more years of age and the Court is satisfied the witness has difficulty communicating.

## 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.

## Schedule 1      **Amendment of Criminal Procedure Act 1986 No 209**

**Schedule 1[1]** makes it clear section 164A does not apply to a pre-recorded evidence hearing or require the same presiding judge to preside over the pre-recorded evidence hearing and the remainder of the proceedings.

**Schedule 1[2]** inserts proposed Division 1A into Chapter 6, Part 5 to make the amendments described in the overview.

**Proposed section 294E** contains definitions for the proposed division.

**Proposed section 294F** states that the proposed division applies to proceedings before the District Court (the *Court*) in relation to a prescribed sexual offence. If the relevant proceedings relate to more than 1 offence, at least 1 of the offences must be a prescribed sexual offence whenever committed.

**Proposed section 294G** provides that unless the Court makes an order to the contrary, the evidence of a child who is a complainant or prosecution witness in proceedings to which the proposed division applies must be given at a pre-recorded evidence hearing under proposed section 294G. The proposed section also details the factors to be considered by the Court in determining whether to make a contrary order.

**Proposed section 294H** provides that a pre-recorded evidence hearing must be held as soon as practicable after the date listed for the accused person's first appearance in the Court in the proceedings, but not before the prosecution's pre-trial disclosure required by section 141.

**Proposed section 294I** provides that the witness is entitled to give, and may give, evidence in chief as provided by section 306U and other evidence by audio visual link. The hearing must take place in the absence of the jury, if any. The proposed section makes further provision relating to other aspects of pre-recorded evidence hearings.

**Proposed section 294J** ensures the accused person and the accused person's Australian legal practitioner are given reasonable access to a recording of evidence made at a pre-recorded evidence hearing. However, the accused person and the accused person's Australian legal practitioner are not entitled to be given possession of the recording or a copy of the recording. The Court may order a transcript of all or part of a recording made under the proposed division be supplied to the Court or the jury if a transcript would be likely to aid the Court or jury's comprehension of the evidence.

**Proposed section 294K** prevents a witness who gives evidence at a pre-recorded evidence hearing from giving further evidence except with the leave of the Court. The proposed section also provides the grounds for which leave may be sought and requires further evidence, to the extent practicable, to be given at a pre-recorded evidence hearing in the same way as the original evidence unless the Court otherwise directs.

**Proposed section 294L** describes the role of a witness intermediary. A witness intermediary is an officer of the Court and has a duty to impartially facilitate the communication of, and with, the witness so the witness may give the witness's best evidence.

**Proposed section 294M** provides for the appointment of witness intermediaries.

**Proposed section 294N** provides for the giving of evidence in the presence of a witness intermediary.

**Proposed section 294O** requires the Court, if pre-recorded evidence or a witness intermediary is used in proceedings to which the proposed division applies, to inform the jury it is standard procedure to give evidence via a pre-recording or to use a witness intermediary. The Court must also warn the jury not to draw an inference adverse to the accused person or to give the evidence greater or lesser weight because the evidence was given in that way or a witness intermediary was used.

**Proposed section 294P** makes it clear that, except as provided by the proposed division, the regulations or rules of court, the proposed division does not affect the application of the *Criminal Procedure Act 1986* to proceedings for offences to which the proposed division applies. Proposed section 249P(3) clarifies the *Criminal Procedure Act 1986*, section 20 applies to an indictment presented at a pre-recorded evidence hearing.

**Proposed section 294Q** permits the regulations and rules of court to make provision about the giving, taking and recording of, and access to, evidence of witnesses under the proposed division and witness intermediaries.

**Proposed section 294R** allows the Chief Judge to give directions the Chief Judge considers appropriate in relation to the taking and giving of evidence of witnesses under the proposed division, including by audio visual link, and witness intermediaries.

**Proposed section 294S** requires the Attorney General to review proposed Division 1A as soon as possible after the period of 3 years after the commencement of the proposed Act to determine whether the policy objectives of the proposed Act remain valid and the terms of the proposed Act remain appropriate for securing those objectives. A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

**Schedule 1[3]** consequentially repeals Schedule 2, Part 29, which provides for the child sexual offence evidence pilot scheme.

**Schedule 1[4]** inserts proposed Part 44 in Schedule 2 which contains transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Criminal Procedure Regulation 2017**

**Schedule 2** makes several consequential amendments to the *Criminal Procedure Regulation 2017*.